

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
BADGER VILLAGE TOWNHOMES ASSOCIATION INC.**

THIS DECLARATION made this _____ day of September, 2003, by Badger Village Townhomes LLC, a Minnesota limited liability company (“Declarant”).

W I T N E S S E T H

WHEREAS, Declarant is the owner of the real property described in Article II of this Declaration and desires to create thereon a residential community with common facilities for the pleasure and general benefit of said community; and,

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of said common facilities and to this end desires to subject the real property described in Article II to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and,

WHEREAS, Declarant has deemed it desirable for the community and for the efficient preservation of the values and amenities in said community to create an agency to which should be delegated and assigned the power to attend to and effectuate progress and facilities that will maintain and administer the common properties and facilities, administer and enforce the covenants and restrictions and collect and disburse the assessments and charges hereinafter created; and

WHEREAS, Declarant has incorporated, under the laws of the State of Minnesota, Badger Village Townhomes Association Inc., for the purpose of exercising the functions aforesaid.

NOW, THEREFORE, Declarant declares that the real property described in Article II is, and shall be, held, transferred, sold, conveyed and occupied, subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth, which covenants and restrictions shall run with the real property and be binding on all parties having any right, title or interest in the hereinafter described properties or any part hereof, and their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

Article I. DEFINITIONS

The following words, when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

- (a) "Association" shall mean and refer to Badger Village Townhomes Association Inc., a Minnesota non-profit corporation, its successors and assigns.
- (b) "Common Properties" shall mean and refer to all real property and improvements thereon owned by the Association for the common use and enjoyment of the Owners and such other persons to whom the Owners may delegate this right pursuant to this Declaration and to all improvements located thereon and owned or otherwise held by the Association for the common use and enjoyment of said persons.

The Common Properties to be owned by the Association at the time of the conveyance of the first Lot is described as follows:

[Badger Village Townhomes, Common Interest Community Number _____,](#)

and said Common Property shall be conveyed to the Association by Declarant prior to the conveyance of the first Lot forming a part of the real property described in Article II, Section 1 hereof. In addition to the Common Property described above, "Common Properties" shall mean and refer to such real property as shall be so designated by Declarant in any valid Supplementary Declaration of Covenants, Conditions and Restrictions, made and filed in accordance with Article II, Section 2 hereof.

- (c) "Declarant" shall mean and refer to Declarant above-named, and to its successors and assigns, if (a) any such successor or assign should acquire more than one undeveloped Lot from Declarant for the purpose of development and the instrument of conveyance recites that such successor or assign has acquired all of the rights and obligations of Declarant; or (b) such rights and obligations pass to such successor or assign by operation of law. "Affiliate of Declarant" shall mean any person or entity that controls, is controlled by, or is under common control with, Declarant. A person or entity shall be deemed to control a Declarant if that

person or entity (a) is a general partner, officer, director, or employee of the Declarant; (b) directly or indirectly or acting in concert with one or more persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting shares of Declarant; (c) controls in any manner the election of a majority of the directors of Declarant; or (d) has contributed more than twenty percent (20%) of the capital of Declarant. A person or entity shall be deemed to be controlled by a Declarant if Declarant (a) is a general partner, officer, director or employee of that person or entity; (b) directly or indirectly or acting in concert with one or more persons or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting share of that person or entity; (c) controls in any manner the election of a majority of the directors of that person or entity; or (d) has contributed more than twenty percent (20%) of the capital of that person or entity.

- (d) "[Badger Village Townhomes](#)" shall mean and refer to all properties subject to this Declaration, and any valid Supplementary Declaration created in accordance with the provisions of Article II hereof.
- (e) "First Mortgagee" shall mean and refer to any person, corporation or other entity named as mortgagee in any mortgage deed granting a first lien upon the fee simple title to any Lot.
- (f) "Unit" shall mean and refer to any portion of a building situated upon [Badger Village Townhomes](#) designated and intended for use and occupancy as a residence by a single family and located or to be located upon one Lot.
- (g) "Lot" shall mean and refer to any platted lot in the Properties, with the exception of the Common Properties.
- (h) "Member" shall mean and refer to all Owners who are members of the Association as provided in Article III, Section 1, hereof.
- (i) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon [Badger Village Townhomes](#), but notwithstanding any applicable theory of mortgages, shall not mean or refer to a mortgagee unless and until such mortgagee has acquired title pursuant to the foreclosure or deed in lieu of foreclosure.
- (j) "Properties" shall mean and refer to all of the real property subject to this Declaration, as more particularly described in Article II hereof, and all improvements now or hereafter located thereon.

Article II. PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS SUBJECTED THERETO

Section 1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located entirely in the City of Rochester, County of Olmsted and State of Minnesota, and is more particularly described as follows:

Badger Village Townhomes, Lots 1 through 37, Block 1, Olmsted County, Minnesota, City of Rochester, according to the Plat thereof on file and of record in the office of the County Recorder in and for Olmsted County, Minnesota.

Section 2. Supplementary Declaration. The only Supplementary Declaration that may be made would be an addition of property as Common Property.

Section 3. Property Not Subject to Further Restriction. No property now or hereafter subject to this Declaration, including any Common Property, parking spaces or other amenities in *Badger Village Townhomes* shall be subject to any other restriction in favor of Declarant or affiliate of Declarant.

Article III. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot that is subject to assessment by the Association shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation unless and until such mortgagee has acquired title pursuant to foreclosure of said mortgage and the period in which the fee owner may redeem from such foreclosure has terminated. Where any such Lot is being sold by the fee owner to a contract vendee who is entitled to possession of the Lot, the contract vendee shall be considered the owner of the Lot if (a) the rights of the contract vendor hereunder are delegated to the vendee under such contract for deed; and (b) the vendee shall furnish proof of such delegation to the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment by the Association.

Section 2. Voting Rights. The Association shall have two (2) classes of voting membership.

- (a) Class "A". Class "A" Members shall be all those owners referred to in Section 1, with the exception of Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they, among

themselves, determine, but in no event shall more than one (1) vote be cast with respect to a Lot.

- (b) Class "B". The sole Class "B" Member shall be Declarant who shall be entitled to three (3) votes for each Lot owned by it. The Class "B" membership shall cease and be converted to Class "A" membership when the total votes outstanding in the Class "A" membership equal the total votes outstanding in the Class "B" membership.

Article IV. PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Easements. Subject to the provisions of Section 2 hereof, there shall exist the following easements in favor of each Owner and appurtenant to such Owner's Lot over, across and upon the Common Properties:

- (a) Nonexclusive easements to construct, install, repair and replace sanitary and storm sewer, water, gas, electric, telephone, cable television and other utility lines serving such Lot in the location the same shall be initially constructed or installed by Declarant, or such other location as may be approved by the Board of Directors of the Association;
- (b) An exclusive easement to maintain any encroachment by fireplaces, roof overhangs, air conditioning equipment, flower boxes, decks, balconies or other appurtenances which are part of the original construction of any Unit or which are added or altered pursuant to the provisions of Article VIII hereof; and
- (c) A nonexclusive easement of ingress and egress over the Common Properties and for the use and enjoyment of the Common Properties.

Section 2. Extent of Members' Easements. The rights and easements created hereby and the title of the Association to the Common Properties shall be subject to the following and as further provided herein:

- (a) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Properties, and in aid thereof to mortgage said Common Properties; provided, however, that the rights of such mortgagee in said Common Properties shall be subordinate to the rights of the Members hereunder and provided, further, that the requisite consent under Article XI shall have been first obtained;
- (b) The right of the Association to take such steps as are reasonably necessary to protect the above-described Common Properties against foreclosure;

- (c) The right of the Association, as provided in its Articles and By-Laws, to suspend the voting and enjoyment rights of any Member for any period during which any assessment remains unpaid, as provided in the Association's By-Laws; provided, however, that nothing contained in this Paragraph (c) shall be deemed to deny an Owner access to and from his or her Lot in [Badger Village Townhomes](#).
- (d) The right of Declarant to make use of such portions of the Common Properties as may be necessary and incidental to the construction of the initial improvements upon [Badger Village Townhomes](#) of including, without limitation, vehicular ingress and egress, vehicular parking, storage and maintenance of models and signs advertising Units in [Badger Village Townhomes](#) together with the right of Declarant to execute and deliver any and all necessary conveyances or dedication to governmental authorities or public utilities deemed necessary by Declarant for the purpose of providing public utilities to [Badger Village Townhomes](#) provided, however, that Declarant shall promptly restore any damage to the Common Properties by reason of any construction incident to the foregoing;
- (e) The right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority or utility (including, without limitation, utilities furnishing gas, electricity, water, telephone or cable television) or to grant permits, licenses and easements over such Common Properties for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Properties, provided that no dedication or transfer of any portion of the Common Properties, nor any easement, license or permit over or with respect to any portion thereof of more than one hundred eighty (180) days duration shall be effective unless an instrument signed by Members entitled to cast three-fourths (3/4) of the votes of each class of membership has been recorded agreeing to such dedication, transfer, grant, permit, license or easement, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least ninety (90) days in advance of any action taken. The consent requirements of Article XI, if applicable, must also be satisfied with respect to any transaction of the nature therein described;
- (f) Rights to access of City of Rochester, for fire, police, emergency or any other lawful governmental purpose.

Nothing herein contained shall be construed as a dedication of any part of the Common Properties to the public or to public use.

Section 3. Title to Common Properties. Declarant shall convey marketable legal title to the Common Properties to the Association prior to the first conveyance of any Lot.

Section 4. Taxes and Special Assessments on Common Properties. Taxes and special assessments that would normally be levied against the Common Properties by a governmental entity shall be divided and levied in equal amounts against the individual Lots in the Properties, which levies shall be a lien against said individual Lots provided that such a method is permitted by state law.

Section 5. Delegation of Rights. An Owner may delegate his or her right and easement of enjoyment in and to the Common Properties to the members of his or her family, a contract vendee, who is entitled to possession of the Lot, or to his or her guests or tenants who reside on the Owner's Lot, subject to rules and regulations of the Association.

Article V. COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned by it within [Badger Village Townhomes](#), hereby covenants, and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be and hereby is deemed to covenant and agree to pay to the Association (a) annual assessments or charges and (b) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof and reasonable attorneys' fees as hereinafter provided, shall be a charge on the land and shall be a continuing lien on each such Lot against which each such assessment is made. Each such assessment, together with interest, costs of collection and reasonable attorneys' fees, as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to the Owners' successors in title unless expressly assumed by said successors.

Section 2. Purpose of Assessments. The assessments levied by the Association under this Article V shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of [Badger Village Townhomes](#) and, in particular, for the improvement and maintenance of the Common Properties and for services and facilities related to the use and enjoyment of the Common Properties, including, but not limited to the payment of taxes and insurance in regard to the Common Properties, repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision, including but not limited to, the cost of lawn and landscaping care, removal of snow and ice from driveways and roadways, parking areas and sidewalks on the Common Properties, and to the extent the Association agrees to provide for such services to each Lot, and the maintenance of utilities located on the Common Properties (to the extent such utilities are not maintained by the utility concerned). Such assessments shall also be used for the maintenance obligation of the Association set forth in Article IX hereof. Such assessments shall include monthly contributions to an adequate reserve fund for the maintenance, repair and replacement of those elements of the

Common Properties that must be maintained, repaired or replaced on a periodic basis as well as an adequate reserve for the exterior maintenance obligation of the Association set forth in Article IX hereof.

Section 3. Basis of Annual and Special Assessments. Annual and special assessments shall be levied on each Lot on the basis of the number of Units in each class of membership as follows:

- (a) Lots, which create Class "A" membership, shall be assessed on the basis of one (1) Unit per Lot.
- (b) Lots, which create Class "B" membership, shall be assessed on the basis of one (1) Unit per Lot; provided, however, that the Class "B" Member for any vacant Lot owned by it prior to issuance of a building permit shall be assessed twenty-five (25%) percent of the annual assessment for a Class "A" Member. Once a building permit has been issued to a Class "B" Member, a Class "B" Member for any vacant lot shall be subject to a full assessment.

Section 4. Maximum Annual Assessments. Declarant shall pay the maintenance costs associated with and incidental to ownership, management, insurance and supervisions of the Common Properties and other incidental costs of operating the Association until the first annual meeting; provided, however, that each Owner shall pay Twenty-five (\$25.00) Dollars per month commencing on the first day of the month following closing on such Owner's purchase. From the date of the first closing on a Unit, until the first annual meeting, the maximum annual assessment for each class shall be Three Hundred (\$300.00) Dollars per Lot. From and after the first annual meeting, the maximum annual assessment may be increased by the Board of Directors by the greater of (a) ten (10%) percent of the maximum assessment for the previous year; or (b) the percentage increase, if any, over the twelve-month period preceding the year for which such assessment is levied, in the Consumer Price Index, all items, published by the United States Department of Commerce, Bureau of Labor Statistics for the region including Rochester, Minnesota ("CPI"). The annual assessment may be increased above the amount of the maximum established hereunder only by a vote of Members holding two-thirds voting in person or proxy, at a meeting duly called for that purpose. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 5. Special Assessments for Capital Improvement. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, repair or replacement of any capital improvement upon the Common Properties, including fixtures and personal property related thereto, provided that each such assessment shall have the assent of Members holding three-fourths (3/4) of the votes in each class of voting membership who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Quorum Requirements for Actions under Section 4 or Section 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 or Section 5 of this Article V shall be sent to all Members not less than ten (10) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of Members or proxies entitled to cast seventy-five (75%) percent of all of the votes of each class of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements and the required quorum at the subsequent meeting shall be three-fourths (3/4) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Uniform Rate. Except as provided in Article V, Section 3 hereof, annual and special assessments, as well as reconstruction assessments levied pursuant to Article VI hereof, must be fixed at a uniform rate for both classes of membership and shall be collected on a monthly basis.

Section 8. Commencement of Assessments. The first annual assessments provided for herein shall commence as to all Lots subject to this Declaration on the first day of the month following the conveyance of the Common Properties to the Association. The amount of the first year's assessment upon a Lot shall be prorated according to the number of months left in the year from the time the assessment commences as to such Lot.

Section 9. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date for commencement of monthly installments of annual or special assessments and the total amount of the assessment against each Lot for each assessment period at least thirty (30) days in advance of such commencement date or period and shall at that time prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall become a lien against a Lot on the date when the same becomes due and payable, as fixed by the Board of Directors, as herein provided.

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

The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid. Said certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 10. Effect of nonpayment of Assessment; Personal Obligation of the Owner; Lien; Remedies of Association. If any assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest at the rate of nine (9%) percent per annum from the due date, and the Association may bring an action at law against the Owner personally obligated to pay the same, or may foreclose the lien against the Lot. There shall also be added to the

amount of such assessment the cost of preparing and filing the complaint in such action, and in the event that a judgment is obtained, such judgment shall include interest on the assessment, as above provided, and reasonable attorneys' fees to be fixed by the Court, together with all other costs of the action

No Owner may waive or otherwise avoid liability for the assessments provided for herein by nonuse of the Common Properties or abandonment of his or her Lot.

Section 11. Subordination of Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage now or hereafter placed upon a Lot subject to assessments' provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the later of (a) the time such First Mortgagee comes into possession of the Lot; or (b) the expiration of the period of redemption from mortgage foreclosure sale or conveyance by deed in lieu of foreclosure. The purchaser at a foreclosure sale of a first mortgage shall, upon expiration of the period of redemption (or, the obtaining of possession of the Lot, whichever later occurs), hold title to the Lot free and clear of (and shall not be liable for) any existing lien for unpaid assessments and such purchaser shall not be personally liable for such assessments unless such purchaser specifically assumes such assessments; provided, however, that nothing herein contained shall prevent the Association from reallocating and reassessing any such extinguished assessments as a common expense among all Lots. Such sale or transfer shall not release the Lot from the lien of any assessments that thereafter become due.

Section 12. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments, charges and liens created herein:

- (a) All properties to the extent of any easement or other interest therein dedicated to and accepted by the local public authority and devoted to public use;
- (b) All properties exempt from taxation by the laws of the State of Minnesota upon the terms and to the extent of such legal exemption;
- (c) All Common Properties as defined in Article I, Section 1, hereof.

Notwithstanding any provision herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

Article VI. INSURANCE

Section 1. Liability Insurance; Fidelity Bonds. The Board of Directors of the Association, or its duly authorized agent, shall obtain a broad form of public liability insurance covering all of the Common Properties insuring the Association, with such limits of liability as the Association shall determine to be necessary, but in no event less than \$1,000,000.00 covering

all claims for personal injury and/or property damage arising out of a single occurrence, including protection against water damage liability, liability for no owned and hired automobiles, liability for property of others, and, if applicable, garage keeper's liability, host liquor liability, and such other risks as are customarily covered or required by private institutional mortgage investors to be covered in projects similar in construction, location and use as [Badger Village Townhomes](#). Such insurance policy shall preclude the insurer from denying the claim of an Owner because of the negligence of the Association or other Owner. The Board of Directors shall also provide fidelity bonds providing protection to the Association against loss by reason of acts of fraud or dishonesty on the part of the Association's directors, managers, officers, employees or volunteers who are responsible for handling funds of the Association in an amount sufficient to provide no less protection than one and one-half (1 1/2) times the estimated annual operating expenses and reserves of the Association, including reserves. Any policy or bond obtained hereunder shall provide that it may not be cancelled or substantially modified, including cancellation for nonpayment of premium, without at least thirty (30) days' prior written notice to First Mortgagees. No Insurance is needed if there are no Common Properties.

Section 2. Casualty Insurance on Insurable Common Properties. The Association shall keep all insurable improvements and fixtures of the Common Properties insured as follows:

- (a) Against loss or damage by fire and other hazards covered by the standard extended coverage endorsement, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage, as well as other risks customarily covered in similar projects for an amount equal to the full replacement value (i.e., 100% of current "replacement cost: excluding land, foundation, excavation, and other items normally excluded from coverage), such insurance to cover all common facilities owned by the Association including all fixtures and building service equipment to the extent they are a part of the Common Properties, as well as common personal property and supplies with an Agreed Amount Endorsement, if available, and, if required by Federal National Mortgage Association, Demolition and Contingent Liability from Operation of Building Laws Endorsements, an Increased Cost of Construction Endorsement, and an Earthquake Damage Endorsement, and other endorsements as necessary; and
- (b) Against such other hazards and casualties as the Association may deem desirable.

All insurance coverage with respect to the Common Properties shall be written in the name of, and the proceeds thereof shall be payable to, the Association. The insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses included in the annual assessments made by the Association under Article V hereof. Any policy herein

described may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association. No Insurance is needed if there are no Common Properties.

Section 3. Casualty Insurance on Units. In addition to casualty insurance on the Common Properties, the Association, through the Board of Directors, may elect to obtain and continue in effect, on behalf of all Owners, adequate blanket casualty insurance against loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and against loss or damage by debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage and other risks customarily covered in similar projects, in such form as the Board of Directors deem appropriate in an amount equal to the full replacement value without deduction for depreciation or coinsurance, of all of the Units, including the structural portions and fixtures thereof, owned by such Owners. Insurance premiums from any such blanket insurance coverage, and any other insurance premium paid by the Association shall be a common expense of the Association to be levied in the annual assessments thereof under Article V hereof. The insurance coverage with respect to the Units shall be written in the name of, and the proceeds thereof shall be payable to the Association as Trustee for the Owners, and mortgagees of record, if any.

Nothing herein contained shall be construed to preclude an Owner from maintaining property insurance on his or her Unit, provided such insurance shall not be brought into contribution with any insurance maintained by the Association.

Section 4. Replacement or Repair of Common Properties. In the event of damage to or destruction of any part of the Common Properties, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a reconstruction assessment against all Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other assessments made against such Owners. First Mortgagees shall receive notice from the Association in the event of any damage or destruction to Common Properties in excess of \$10,000.00. Any reconstruction assessment adopted hereunder shall be adopted in accordance with the procedures set forth in Article V of this Declaration with respect to annual assessments and special assessments, as therein provided, and the lien of any reconstruction assessment levied hereunder shall be subordinate to the lien of any First Mortgage in the same manner and to the same extent as the subordination of annual assessments and special assessments, as provided in Article V, Section 11 of this Declaration.

Section 5. Replacement or Repair of Units. In the event that the Association is maintaining blanket casualty and fire insurance on the Units in the Properties, the Association shall repair or replace the same from the insurance proceeds available, in the following manner:

- (a) In the event of an insured loss to a Unit or Units, all insurance proceeds paid to the Association shall be deposited by the Association in escrow with a title insurance company licensed to do business in Minnesota, as hereinafter provided.
- (b) In the event of an insured loss to a Unit, the Association shall, within thirty (30) days after the insurance proceeds are deposited with a title insurance company in accordance with Section 5(a) above, enter into a firm contract with a qualified builder providing for the reconstruction or remodeling of the Unit to substantially the same condition as existed immediately prior to the insured loss. Said reconstruction or remodeling shall be commenced and completed with due diligence and in no event shall said work be completed later than one hundred eighty (180) days after said insurance proceeds are deposited in escrow as aforesaid.
- (c) In the event the Association fails to enter into a contract as provided in Section 5(b) above, for the reconstruction or remodeling of the Unit as provided above; or in the event that reconstruction or remodeling is not commenced or completed as provided above, then the Owner, or the First Mortgagee of record, with the consent of the Owner, shall have the right, but not the obligation, to enter into those contracts which it deems necessary to complete said reconstruction or remodeling of the Unit, and the Owner or First Mortgagee shall have the right to have said insurance proceeds applied in satisfaction of any obligations incurred pursuant to said contracts without liability of any kind to the Association.
- (d) Disbursements of funds on deposit pursuant to Section 5(a) above for contracts for reconstruction or remodeling entered into under Section 5(b) and Section 5(c) above, shall be made by the title insurance company, subject to the following:
 - (i) Compliance with Article VIII hereof entitled "Architectural Control Committee," which shall apply to all such reconstruction or remodeling.
 - (ii) Receipt by the title insurance company of written consent of any party holding a lien or encumbrance on the Unit.
 - (iii) Receipt by the title insurance company, of such sworn construction statements, lists of subcontractors, lien waivers and receipts as it shall determine to be appropriate. Disbursements may be by periodic or progress payments, and the title insurance company may make such inspections and withhold such payments as it deems necessary to ensure completion in compliance with plans and specifications. The title insurance company shall be entitled to charge and the Association shall be empowered to pay a reasonable fee for the services rendered by the title

insurance company, and the Association may collect such charge from the Owner or Owners, as the case may be.

- (iv) In the event a contract is entered into pursuant to Section 5(b) above, the written consent of the Owner to such payment of payments.
- (e) Nothing contained in this Section 5 shall be construed to make any First Mortgagee or Mortgagees of record, if any, responsible for collection or noncollection of any insurance proceeds; the First Mortgagees being responsible solely for the insurance proceeds which come into their hands.

Section 6. Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board of Directors in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacements of the Properties that may be damaged or destroyed.

Article VII. PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as part of the original construction of the homes upon [Badger Village Townhomes](#) and placed on the dividing line between the Lots shall constitute a party wall and to the extent not inconsistent with the provisions of this Article the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

Section 2. Share of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, any Owner who by his negligent or willful act, causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall or pursuant to the provisions of this Article, each party shall choose one arbitrator and such arbitrators shall choose one additional arbitrator and the decision of a majority of all the arbitrators shall be final and conclusive of the question involved.

Article VIII. ARCHITECTURAL CONTROL COMMITTEE

Section 1. Review by Committee. From and after the completion of construction and sale of each Lot or Unit within [Badger Village Townhomes](#), no building, fence, wall, patio, or other structure shall be commenced, erected or maintained upon such Lot, nor shall any exterior addition to or change or alteration herein be made; nor shall any shrubs, trees or bushes be placed within said Lot or anything of a permanent nature be placed, planted or constructed within such Lot exterior to such Unit, until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony or external design and location in relation to surrounding structures and topography by the Board of Directors of the Association or by an architectural control committee composed of three (3) or more representatives appointed by the Board of Directors. In the event the Board or its designated committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article shall be deemed to have been fully complied with. No structure shall be commenced, erected, maintained, changed or altered except in conformity with the Zoning Code of the City of Rochester, as from time to time amended, and after any and all approvals required thereunder have been obtained.

Article IX. MAINTENANCE

Section 1. Exterior Maintenance. In addition to maintenance upon the Common Properties, the Association shall provide exterior maintenance upon each Lot and Unit which is subject to assessment under Article V hereof as follows: painting or staining of exterior wall surfaces, repair and replacement of roofs, gutters, downspouts and exterior building surfaces (excluding doors, decks, windows and glass surfaces) and repair or replacement of sidewalks and stoops on each Lot.

Section 2. Assessment of Cost. The costs of such exterior maintenance shall be included in the assessments levied pursuant to Article V hereof. The Board of Directors of the Association, when establishing the annual assessment under Article V hereof, shall include therein the estimated costs of the exterior maintenance to each Lot for the year as to which such annual assessment is made.

Section 3. Negligence of Owner. In the event that the need for maintenance or repair of the exterior of any Unit is caused through the willful and negligent acts of its Owner, or through the willful or negligent acts of the family, guests or invitees or the Owner of the Unit needing

such maintenance or repair, the cost of such exterior maintenance shall be added to and become a part of the assessment to which such Lot is subject pursuant to the terms of this Article IX.

Section 4. Access at Reasonable Hours. For the purpose solely of performing the exterior maintenance authorized by this Article IX, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owners, to enter upon any Lot or Unit at reasonable hours of any day.

Section 5. Provisions of Article V Applicable to Maintenance Assessments. The commencement of assessments levied under this Article IX and the duties of the Board of Directors of the Association with respect thereto shall be governed by the terms and conditions of Article V, all of the terms of which Article are hereby incorporated into this Article IX.

Article X. EASEMENTS

Section 1. Extent of Mutual Easements. The title of a Lot shall include an exclusive easement on and over any adjoining Lot or Common Properties to areas occupied by fireplaces, roof overhangs, air conditional compressors, decks, balconies and flower boxes and the use of common utility installations and other appurtenances which are part of the original construction of any Unit on each Lot or which are added pursuant to the provisions of Article VIII hereof. In the event any portion of a Unit encroaches on the Common Properties or in the event any portion of the Common Properties encroaches on any Unit as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the Properties, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

Section 2. Extent of Association Easements. Rights and easements of enjoyment by the Owner of each Lot and the title of such Lot shall be subject to the rights of the Association to an exclusive easement on and over said Lot for the purpose of installation and maintenance of necessary utilities to serve the Common Properties.

Article XI. RIGHTS OF FIRST MORTGAGEES AND OTHERS

Section 1. Conflicting Provisions. The provisions of this Article take precedence over any other conflicting provisions of this Declaration.

Section 2. Notice of Action. Upon written request to the Association, identifying name and address of the holder, insurer or guarantor and the number or address of the Lot or Unit mortgaged, any mortgage holder or insurer or guarantor with respect to any First Mortgage will be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or any Lot or Unit thereon on which there is a First Mortgage held,

insured or guaranteed by such Mortgage Holder or Insurer or Guarantor, as applicable;

- (b) Any delinquency in the payment of assessments or charges owned by the Owner of any Lot subject to a First Mortgage held, insured or guaranteed by such Mortgage Holder or Insurer or Guarantor, which default or delinquency remains uncured for a period of sixty (60) days;
- (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; or
- (d) Any proposed action, which would require the consent of a specified percentage of Mortgage Holders, as specified elsewhere in this Declaration.

Section 3. Other Rights of Mortgage Holders. Except as otherwise provided by law, unless Mortgage Holders with respect to Lots having at least fifty-one (51%) percent of the Association votes attributed to all Lots subject to First Mortgages held by Mortgage Holders have given their approval, the Association or the Owners shall not:

- (a) Perform or cause to be performed any restoration or repair in the Properties after a partial condemnation or damage due to an insurable hazard, otherwise than substantially in accordance with this Declaration and the original plans and specifications;
- (b) Terminate or abandon this Declaration after substantial destruction or a substantial taking in condemnation of the Properties; or
- (c) When professional management has been previously required by any Mortgage Holder or Insurer or Guarantor, whether such entity became a Mortgage Holder or Insurer or Guarantor at that time or later, establishment of self management by the Association, provided, however, that any election to establish self management by the Association shall, in addition, require the prior consent of Owners of Lots to which at least three-fourths (3/4%) percent of the votes in the Association are allocated.

Section 4. Amendments to Documents. Unless the consent of Owners to Lots to which at least seventy-five (75%) percent of the votes in the Association are allocated and the approval of Mortgage Holders with respect to Lots having at least fifty-one (51%) percent of the votes in the Association attributable to all Lots held by Mortgage Holders and, for so long as there is a Class "B" membership, the Class "B" Member, has given its prior approval, the Association shall not be entitled to add to or amend any material provisions of this Declaration, the Articles or the By-Laws of the Association which establish, provide for, govern or regulate any of the following:

- (a) Voting;
- (b) Assessments, assessment liens or subordination of such liens;
- (c) Reserves for maintenance, repair and replacement of the Common Properties (or Units if applicable);
- (d) Insurance or Fidelity Bonds;
- (e) Rights to use of the Common Properties;
- (f) Responsibility for maintenance and repair of the Properties;
- (g) Expansion or contraction of the Properties or the addition, annexation or withdrawal of property to or from the Properties;
- (h) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Lot or Unit; or
- (i) Any provisions which are for the express benefit of mortgage holders, or Insurers or Guarantors of First Mortgages.

Any addition or amendment to such documents shall not be considered material if entered into for the purpose of correcting technical errors, or for clarification only. A Mortgage Holder who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

Section 5. Restrictions on Activities of Association. Unless at least seventy-five (75%) percent of First Mortgagees of Lots (based upon one (1) vote for each First Mortgage owned) or Owners (other than Declarant) of Lots, and, for so long as there is a Class "B" membership, the Class "B" Member, have given their prior written approval, the Association shall not be entitled to:

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Properties owned, directly or indirectly by the Association for the benefit of the Lots, provided, however, that in addition to the foregoing, the consent of Owners having at least sixty-seven (67%) percent of the votes in the Association shall also be required to abandon or terminate this Declaration and provided, further, that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Properties shall not be deemed a "transfer" within the meaning of this subparagraph (a);

- (b) Change the method of determining the obligations, assessments, dues of other charges which may be levied against an Owner of a Lot as provided hereunder;
- (c) By act or omission change, waive or abandon any method of regulations, or enforcement thereof, pertaining to the architectural design or exterior appearance of Units, the maintenance of Common Properties, party walls or common fences and driveways or the upkeep of lawns and plantings;
- (d) As provided in Article VI, Section 2 hereof, fail to maintain fire and extended coverage on insurable Common Properties on a current replacement cost basis in an amount not less than one hundred (100%) percent of the insurable value; or
- (e) Use hazard insurance proceeds for losses to any Common Properties for other than the repair, replacement or reconstruction of such improvements.

Section 6. Examination of Association Books and Records; Financial Statements.

The Association shall make available to any Owner, and to any holder, insurer or guarantor of any First Mortgage, a current copy of this Declaration, the By-Laws, any other rules governing the Properties and the books, records and financial records of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. Any financial statement requested pursuant to this Section 6 shall be furnished within a reasonable time following such request.

Section 7. Right to Pay Association Obligations. First Mortgagees may, jointly or singly, pay any charges or debts of the Association which are in default and which may or have become a charge against the Common Properties and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such property and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. The Board of Directors of the Association shall have power to enter into an agreement in favor of all First Mortgagees to effectuate the provisions of this Section 7. The prevailing party shall be entitled to its costs, disbursements and attorney's fees.

Section 8. Agreements for Professional Management. The length of any agreement for professional management of the Properties or any contract providing for any services of Declarant, may not exceed one (1) year, renewable thereafter for successive one (1) year periods. Any such agreement or contract shall provide for termination by either party without cause and without payment of a termination fee upon thirty (30) days' written notice.

Section 9. Priority of First Mortgagees. No provision of this Declaration or the By-Laws of the Association shall be construed to give any Owner, or any other party, priority over the rights of any First Mortgagee of a Lot pursuant to its First Mortgage in the case of a distribution to an Owner of insurance proceeds or condemnation award for losses to or a taking of Common Properties or any portion thereof or any Lot or portion thereof. The Association

shall give timely written notice of any damage or proposed condemnation to all First Mortgagees, if such damage or condemnation affects the Common Properties, and to the First Mortgagee of any Lot affected by such damage or condemnation.

Section 10. Attendance at Meetings of Members. Any holder of a First Mortgage who so requests shall be given notice of all meetings of the Members as if such First Mortgagee was a Member entitled to notice. Each such First Mortgagee shall have the right to designate a representative to attend all such meetings, which representative shall not have the right to cast a vote.

Article XII. GENERAL PROVISIONS

Section 1. Nuisances. No noxious or offensive activities shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 2. Rules and Regulations. The Association shall have the power to adopt rules and regulations not inconsistent herewith governing the use of Lots and Common Properties, including, without limitation, regulations related to parking, storage (of vehicles or other property), the posting of signs, and the raising or keeping of domestic animals. Any such regulation shall be adopted in accordance with the By-Laws.

Section 3. Unit Restrictions. No Unit shall be used for purposes other than as a single family residence, nor shall any garage be used for or occupied as living or sleeping quarters, nor shall any Lot or any part thereof be assigned or suffered to be used for hotel or transient occupancy; provided, however, that none of the following activities shall be considered to be in violation of these restrictions:

- (a) The maintenance of a business and sales office by Declarant during the construction and sale periods.
- (b) The maintenance of an office by the Association or its designated manager for the purposes of management of the Properties.

Section 4. No Right of First Refusal. The right of any Owner to sell, transfer, or otherwise convey his or her Lot or Unit shall not be subject to any right of first refusal or similar restriction in favor of the Association.

Section 5. Prohibition of Damage and Certain Activities. Nothing shall be done or kept on any Lot or any part thereof (a) to increase the rate of insurance on any other Lot over what the Owner of such other Lot, but for such activity, would pay, without the prior written consent of the Association, or (b) which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage

to, or waste of, the Properties or the buildings situated thereon, shall be committed by any Owner or any invitee of any Owner and each Owner agrees to indemnify and hold harmless the Association and the other Owners from and against all loss resulting from any such damage or waste caused by him or his invitees. No noxious, destructive or offensive activity shall be allowed on any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to any other Owner or to any other person at any time lawfully residing in the Properties.

Section 6. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed postpaid to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 7. Enforcement. In the event any Owner fails to comply with the provisions of this Declaration, or the By-Laws or Articles of Incorporation of the Association or with decisions of the Association which are made pursuant thereto, such failure will give rise to a cause of action on the part of the Association or any aggrieved Owner for the recovery of damages or for injunctive relief, or both. Owners shall have a similar right of action against the Association. Enforcement of these covenants and restrictions may be by any proceeding at law or in equity. The prevailing party shall be entitled to its costs, disbursements and attorney's fees.

Section 8. Members. Upon a merger or consolidation of the Association with another corporation as provided in its By-Laws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or corporation or alternatively the properties, rights and obligations of another corporation may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established by this Declaration together with the covenants and restrictions established upon any other properties as one method. No such merger or consolidation, however, shall affect any revocation, change or additions to the covenants established by this Declaration except as hereinabove provided.

Section 9. Total or Partial Condemnation; Loss or Destruction; Termination of Declaration. In the event of the taking of any of the Common Properties by eminent domain or any action or proceeding in lieu of eminent domain (hereinafter "condemnation"), the Association shall represent the Owners in any such condemnation or in negotiations, settlements and agreements with the condemning authority, and each Owner hereby appoints the Association as his or her attorney-in-fact, irrevocably, for such purposes. If deemed necessary by the Association, it may obtain the services of a trustee to act on behalf of the Owners in carrying out any functions under this Section 9. In the event of a condemnation of part or all of the Common Properties, the award or proceeds of settlement shall be payable to the Association, or any trustee, for the use and benefit of the Owners and their mortgagees as their interest may appear.

All proceeds payable with respect to any condemnation of Common Properties shall be applied to the restoration or repair of such Common Properties remaining after such condemnation or, subject to the provisions of Section 9 of Article XI hereof, to such other purposes as may be in accordance with the functions and powers of the Association and the welfare of the Owners. Any proceeds of any condemnation with respect to a Lot or Unit shall belong and be paid to the Owner thereof and his or her mortgagee, as their interest may appear.

In the event of any termination or abandonment of this Declaration, and the dissolution of the Association pursuant thereto, the Common Properties shall be disposed of as provided in the Articles of Incorporation of the Association.

Section 10. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

Section 11. Duration of Covenants, Restrictions and Easements. The covenants, restrictions and easements of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, or their respective legal representatives, heirs, successors and assigns. The easements set forth herein shall be perpetual. The covenants and restrictions herein set forth shall have a term of twenty (20) years from the date this Declaration is recorded, after which time, said covenants and restrictions shall be automatically renewed for successive periods of ten (10) years. The covenants and restrictions of this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than seventy-five (75%) percent of the Lot Owners and thereafter by an instrument signed by not less than seventy-five (75%) percent of the Lot Owners. Any amendment must be properly recorded.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed as of the day and year first above written.

**BADGER VILLAGE TOWNHOMES LLC,
a Minnesota limited liability company**

By: _____
John M. Hamilton, Chief Manager/President

STATE OF MINNESOTA

ss.

COUNTY OF OLMTED

The foregoing was acknowledged before me this _____ day of September, 2003, by John M. Hamilton, Chief Manager/President of Badger Village Townhomes LLC, a Minnesota limited liability company, on behalf of the company.

This Instrument Was Drafted By:

Dunlap & Seeger, P.A.
206 South Broadway #505
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Rochester, Minnesota 55903-0549
Telephone: (507) 288-9111