

RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

BRIAR HILL

THIS RESTATED DECLARATION, made on this 20th day of November, 1980, by TOLLEPSON DEVELOPMENT, INC., a Minnesota corporation, (hereinafter referred to as the "Declarant") is intended to supersede and replace in its entirety that certain Declaration of Covenants, Conditions and Restrictions dated March 4, 1980 and recorded April 23, 1980 as Document No. 559175 in the Office of the County Recorder, Dakota County, Minnesota:

WITNESSETH THAT:

WHEREAS, Declarant is the owner of certain real property in the City of Eagan, County of Dakota, State of Minnesota, which is more particularly described as:

Lots One (1), through Twenty (20), Block One (1), Briar Hill,
Dakota County, Minnesota.

WHEREAS, Declarant desires to provide for the preservation of the values in said community and to this end desires to subject the real property described above together with such additions as may hereafter be made thereto, as provided 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 real property and each owner thereof; and

WHEREAS, Declarant has deemed it desirable for the pleasure of said community and for the efficient preservation of the values in said community to create an agency to receive the power to attend to and effectuate policies and programs that will enhance the pleasure and value of said community, and maintain, 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, the Briar Hill Homeowners Association, Inc. for the purpose of exercising the functions as aforesaid;

NOW, THEREFORE, in consideration of the premises the Declarant hereby declares that the real property described above and such additions thereto as may hereafter be made pursuant to Article II hereof is, and shall be held, transferred, sold, conveyed and occupied subject to the conditions, restrictions, easements, charges and liens hereinafter set forth, which covenants and restrictions shall run with the real property described above and any additional property annexed thereto pursuant to the provisions set forth in Article II, and be binding on all parties having any right, title or interest in said properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

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

1.1 "Association" shall mean and refer to Briar Hill Homeowners Association, Inc., a nonprofit corporation organized and existing under the laws of the State of Minnesota, its successors and assigns.

1.2 "Declarant" shall mean and refer to Tollefson Development, Inc., and its successors or assigns if such successors or assigns should acquire more than one undeveloped Lot from Tollefson Development, Inc. for the purpose of development.

1.3 "Developer" shall mean and refer to Tollefson Development, Inc., and its successors or assigns if such successors or assigns should acquire more than one undeveloped Lot from the Developer for the purpose of development.

1.4 "Living Unit" shall mean and refer to a residential housing unit consisting of a group of rooms and hallways and attached garage which are designed and intended for use as living quarters for one family and located or to be located upon one Lot.

1.5 "Lot" shall mean and refer to any tract or parcel of land designated as a Lot shown upon any recorded plat or subdivision map of the Property with the exception of any tracts or parcels designated as outlots or common area.

1.6 "Member" shall mean and refer to every person or entity who is a record owner of a fee or undivided fee simple interest in any Lot which is subject by covenants of record to assessment by the Association, including, but not limited to, contract vendors.

1.7 "Mortgage" shall mean and refer to any mortgage or other security instrument by which a lot, or any part thereof, or any structure thereon, is encumbered.

1.8 "Mortgagee" shall mean any person or entity named as the mortgagee under any Mortgage, or any successors or assigns to the interest of such person or entity under a Mortgage.

1.9 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers, but excluding any person having such interest merely as security for the performance of an obligation.

1.10 "Private Common Driveway" shall mean and refer to access driveways from public streets to the Living Units.

1.11 "Private Yard Area" shall mean and refer to that portion of a Lot not covered by a Living Unit or by a Private Common Driveway.

1.12 "Property" shall mean and refer to all the real property subject to this Declaration, all of which is more fully described above and all additional real property made subject to this Declaration in accordance with the provisions of Article II.

1.13. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The Common area to be owned by the Association at the time of the conveyance of the first Lot is described as follows:

The Southeasterly fifty (50) feet of Lots 19 and 20, Block 1, Briar Hill, Dakota County, Minnesota as measured at right angles from the Southeasterly lines of said Lots 19 and 20. Together with the Westerly

five (5) feet of Lots 15 and 16, Block 1, Briar Hill as measured at right angles from the Westerly lines of said Lots 15 and 16. Together with five (5) feet on both sides of the common lot line of Outlot B and Lot 19, Block 1, Briar Hill and its Northwesterly extension to the Westerly line of Lot 16, Block 1.

ARTICLE II ADDITIONAL PROPERTY SUBJECT TO THIS DECLARATION

2.1 Additions to Existing Property. Additional real property may become subject to this Declaration in the following manner:

(a) Additions in Accordance with General Plan of Development. The Developer, its successors and assigns, shall have the right, without the consent of the Members to bring within the scheme of this Declaration the additional real property described below within four (4) years of the date of this instrument; provided, however, that the Federal Housing Administration and the Veteran's Administration shall have the right to veto any such future additions in the event that either of such agencies determines that any such future addition is not in accordance with the general plan of development heretofore approved by each of them. Such additional property is legally described as follows:

Outlots A, B, C, D, E, F, G, H, I, J and K, Briar Hill, Dakota County, Minnesota, according to the plat thereof now on file with the County Recorder, Dakota County, Minnesota.

(b) Additions Authorized by Members. Additional residential property may become subject to this Declaration upon approval of two-thirds (2/3) of the Members of each class of Association Members.

2.2 Manner of Annexation. Additions authorized under this Article shall be made by filing a Supplementary Declaration of Covenants, Conditions and Restrictions with respect to the additional property and, after such filing, such additional property shall be subject to the covenants and restrictions of this Declaration. Such Supplementary Declaration shall contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and shall not be inconsistent with the scheme of this Declaration. In no event, however, shall such Supplementary Declaration revoke, modify or add to the covenants established by this Declaration within the existing property.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

3.1 Membership. Every person or entity who is a record owner of a fee or undivided fee simple interest in any Lot which is subject by covenants of record to assessment by the Association, including, but not limited to, contract vendors, shall be a member of the Association. The foregoing is intended to exclude persons or entities who hold an interest merely as a security for the performance of an obligation until such time such person acquires a fee simple interest in such Lot by foreclosure or by any proceeding in lieu thereof.

Membership shall be appurtenant to and may not be separated from the ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

3.2 Voting Rights. The Association shall not have nor shall it issue any capital stock and may only have two (2) classes of voting membership:

(a) Class A. Class A Members shall be all those Owners as defined in Section 1.9, with the exception of the Declarant. Each Class A member shall be entitled to one (1) vote for each Lot in which he holds the interest required for membership by Section 3.1. When more than one person holds such interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they, among themselves shall determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) Class B. The Declarant shall be the sole Class B member and shall be entitled to three (3) votes for each Lot owned. Class B membership shall cease and be converted to Class A membership upon the occurrence of the first of the following events:

(i) when the total number of votes outstanding in the Class A membership equals or exceeds the total number of votes outstanding in the Class B membership; or,

(ii) on December 31, 1984.

3.3 Suspension of Voting Rights. The right of any Member to vote and the right of any Member, his family or guests to use any recreational facilities that may be acquired by the Association shall be suspended during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended, after notice and hearing, for a period not to exceed sixty (60) days for any infraction of any rules or regulations published by the Association.

ARTICLE IV

COVENANTS FOR MAINTENANCE ASSESSMENTS

4.1 Creation of Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, 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) general annual assessments or charges, and,
- (b) special assessments for capital improvements,

such assessments to be established and collected from time to time as herein-after provided. The general annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on each such Lot and shall be a continuing lien on each such Lot against which each such assessment is made. Each such assessment, together with

such interest thereon and all costs of collection thereof, as hereinafter provided, shall also be the personal obligation of each person who was the Owner of each such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them. All such assessments shall be fixed, established and collected from time to time in the manner provided in this Article.

4.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purposes of promoting the pleasure, health, safety and welfare of the residents of the Property and, in particular, for the management and maintenance of the Property, services and facilities devoted to this purpose and related to the use and enjoyment of the improvements erected upon each Lot.

4.3 Maximum Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot by the Developer to an Owner, the maximum annual general assessment shall be \$360.00 payable at the rate of \$30.00 per month per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the annual general assessment may be increased each year not more than five percent (5%) or by a percentage not more than the increase in the Consumer Price Index for the Minnesota Twin City Metropolitan Area, whichever is greater, above the assessment for the previous year, without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the annual general assessment may be increased above the amounts specified in 4.3(a) above by two-thirds vote of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

4.4 Special Assessments for Capital Improvements. In addition to the general annual assessments authorized by Section 4.3, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part the cost of any construction or reconstruction or unexpected repair or replacement of a capital improvement; provided, however, that any such assessment shall require the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

4.5 Notice of Meetings. Written notice of any meeting called for the purpose of taking any action authorized under Section 4.3 or 4.4 shall be sent to all Members, and to any mortgagee who shall request such notice in writing, no less than thirty (30) days nor more than sixty (60) days in advance of such meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty (60%) percent of all votes 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 one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held later than sixty (60) days following the preceding meeting.

4.6 Uniform Rate of Assessment. Both general annual and special assessments must be fixed at a uniform rate for all Lots; provided, however, that any Lots owned by the Developer shall be assessed an amount equal to one-fourth (1/4) of the amount assessed against Lots owned by persons other than the Developer provided, further, that notwithstanding anything set forth in the preceding clause to the contrary, a Lot owned by the Developer shall be assessed on the same basis as a Lot owned by any person other than the Developer from and after the time that a building constructed upon such Lot is (a) used by the Developer as a model for regular public inspection, (b) finally inspected by the United States Department of Housing and Urban Development or Federal Housing Administration, (c) occupied by a tenant of the Developer as a residential dwelling, or (d) commencing to use the maintenance or management services provided by the Association, whichever event occurs first in time.

4.7 Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the calendar month following the conveyance of a Lot to an Owner. In addition, in the event that additional properties are subsequently brought within the scope of this Declaration pursuant to Article II, annual assessments shall commence as to all Lots within such additional properties on the first day of the calendar month following the conveyance of the first Lot therein by the Developer to an Owner. In the event that the annual assessments, with respect to any Lot, shall commence during any calendar year on any day other than January 1, the amount of such assessments payable for such year shall be that proportion of the full amount applicable to the entire calendar year which the number of remaining full calendar months in such year bears to the number twelve. All assessments, both general and special may be collected on a monthly, or other periodic basis, and with such due dates as the Board of Directors may determine and establish.

4.8 Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement, and the amount of the assessment against each Lot for each annual assessment period at least thirty (30) days in advance of such date of commencement of such period and shall at that time prepare a roll of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of every assessment shall thereafter be sent to each Owner subject to such assessments. The Association shall, upon demand and upon the payment of a reasonable charge, furnish a written certificate signed by an officer of the Association setting forth whether or not assessments upon particular Lots have been paid. Such certificate shall be conclusive evidence of payment of any assessments therein stated to have been paid.

4.9 Effect of Nonpayment of Assessment; the Personal Obligation of the Owner; the Lien; Remedies of Association.

(a) If any assessment is not paid on the date when due then such assessment shall become delinquent and shall, together with such interest thereon and costs of collection thereof, as hereinafter provided, thereupon become a continuing lien on such Lot or Lots which shall bind such Lot or Lots in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the Owner to pay such assessment, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them.

Such lien shall run in favor of the Association and shall be superior to all other liens and encumbrances on such Lot except for the following:

(i) Liens for general real estate taxes and special assessments levied by any governmental authority; and,

(ii) The liens of any first mortgage as provided in Section 4.11 hereof.

(b) All other lienors acquiring liens on any Lot after this Declaration shall have been recorded and whose liens shall also have been recorded, shall be deemed to consent that their liens shall be and remain inferior to future liens provided for herein whether or not such consent has been expressed in the instrument creating their liens.

(c) To evidence a lien for sums assessed pursuant to this Article, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot and a description of the Lot and file or record the same, but such notice of lien shall not be recorded until such assessment has been wholly or partially unpaid for at least thirty (30) days from the due date. Such lien may be enforced and foreclosed either by judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed in Minnesota or by foreclosing the lien in the manner prescribed by Minnesota Statutes for the foreclosure of a mechanic's lien. Each Owner, by acceptance of a deed for any Lot, does further hereby give full and complete power of sale to the Association and does consent to a foreclosure of the assessment lien by advertisement. In the event of any such foreclosure, and in the further event that the Association shall prevail in any such foreclosure the person personally obligated to pay the same shall be required to pay all costs of foreclosure including, but not limited to, reasonable attorneys' fees. All such costs and expenses shall be further secured by the lien being foreclosed. The person personally obligated to pay such lien, shall also be required to pay the Association any assessment against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the Lot as the Owner thereof. A release of the notice of lien shall be executed by an Officer of the Association and recorded upon payment of all sums secured by such lien.

(d) Any encumbrancer holding a lien on any Lot may pay, but shall not be required to pay, any amounts secured by the lien created and authorized by this Section and, upon payment of such sums, such encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including, but not limited to, priority as to any other lien or interest in such Lot.

(e) The Association shall, upon written request, report to any first Mortgagee or other encumbrancer of a Lot the amount of any assessment remaining unpaid for a period longer than thirty (30) days after the same shall become due.

(f) Any assessment not paid within twenty (20) days after the due date shall bear interest from the due date at the rate of six percent (6%) per annum. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot or non-use of the services of the Association. A suit to recover a money judgment for unpaid expenses hereunder, with costs of collection, including reasonable attorneys fees and interest, shall be maintainable without foreclosing or waiving the lien securing the same.

4.10 Subordination of Lien to First Mortgages. The lien of assignments provided for herein shall be subordinate to the lien of any first Mortgage, and the sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to the foreclosure arrangement in lieu of such foreclosure, shall extinguish the lien of such assessments as to installments which became due prior to the effective date of such sale, transfer or acquisition by the Mortgagee to the end that no assessment liability shall accrue to an acquiring Mortgagee except with respect to installments of assessments becoming due after possession has passed to such acquiring Mortgagee, whether such possession has passed at the termination of any period of redemption or otherwise, and in the event of the extinguishment of such assessment lien as aforesaid, the entire amount of such unpaid assessment shall be reallocated and assessed against, and payable by the Owners of, all other Lots in the Association exclusive of such mortgaged Lot. No such sale, transfer or acquisition of possession shall relieve an Owner or a Lot from liability for any assessments thereafter becoming due or from the lien thereof or shall relieve the person personally obligated to pay the assessments which were levied prior to the transfer of such property from the personal obligation to pay the same.

ARTICLE V

PROPERTY RIGHTS IN THE COMMON AREAS AND EASEMENTS

5.1 Owners' Easements. Every Owner shall have the following non-exclusive easements over, under and upon the Common Areas: (i) ingress and egress (ii) utility, water and sewer easements; (iii) parking privileges as determined by the Board of Directors of the Association; and (iv) enjoyment for recreational purposes.

5.2 Title to Common Areas. The Developer hereby covenants that prior to the conveyance of any Lot, it will convey to the Association legal title to the Common Areas, subject to the rights and easements created pursuant to Section 1 of this Article V.

The rights and easements created hereby and the title of the Association to the Common Areas shall be subject to the following:

(a) The rights of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving, repairing or maintaining of the Common Areas, or any improvements located thereon, and to mortgage the Common Areas, provided, however, the rights of a mortgagee in said Common Areas shall be subordinate to the rights of the Members hereunder;

(b) The right of the Association to take such steps as are reasonably necessary to protect the Common Areas against foreclosure;

(c) The right of the Association to suspend the enjoyment rights of any Owner to use the recreational facilities for any period during which any assessment against said Owner's Lot remains unpaid, and to suspend any Owner's enjoyment rights to use the recreational facilities for any period not to exceed sixty (60) days for each infraction of its published rules and regulations; provided, however, that nothing contained in this Subsection 2 (c) shall be deemed to deny an owner access to and from his or her Living Unit;

(d) The rights of Members to the use of parking spaces as determined by the Board of Directors;

(e) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members provided that no such dedication or transfer, determination as to the purpose or as to the condition thereof shall be effective unless an instrument, signed by Members entitled to cast three-fourths (3/4) the vote of each class of membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the action has been sent to every Member at least sixty (60) days in advance of any action taken; and

(f) The right of the Developer and of the Association to grant and reserve easements and rights of way through, under, over, and across the Common Areas, for the installation, maintenance, and inspection of lines and appurtenances for public and private water, sewer, drainage, fuel oil or other utilities, and the right of Developer, during the construction and sale period, to grant and reserve easements and rights of the completion of developer's work under this Section; for the operation and maintenance of the Common Areas under Section 1 of Article V; and for purposes of sale by the Developer of Living Units.

5.3 Delegation of Use. Any Owner may, in accordance with the By-Laws delegate his or her rights of enjoyment to the Common Areas to members of his or her family, a contract vendee who is entitled to possession of the Lot, or his or her guests or tenants who reside in the Owner's Living Unit (subject to rules and regulations of the Association).

5.4 Taxes and Special Assessments on Common Areas. Taxes and special assessments that would normally be levied against the Common Areas shall be divided and levied in equal amounts against the individual Lots in the Development, which levies shall be a lien against said individual Lots (provided that such a method is permitted by state or local law).

5.5 Use of the Common Areas. The Common Areas shall be used strictly in accordance with the easements granted thereon, Subject to the provisions of Section 5.1 of Article V, no Owner shall obstruct or interfere with the rights and privileges of other Owners in the Common Areas and nothing shall be planted, altered, constructed upon or removed by an Owner from the Common Areas, except by prior written consent of the Association. If an Owner shall violate this Section, the Association shall have the right to restore the Commons Areas to its prior condition and assess the cost thereof against the Owner who violates this Section, and such cost shall become a lien upon the Lot of such Owner,

which shall become due and payable upon demand. The Association shall have the same right and powers to collect the cost of such restoration as provided in Article IV for the Collection of delinquent annual assessments. If an Owner interferes with the rights and privileges of another Owner in the use of the Common Areas, except as herein provided, the Association or the affected Owner may commence an action to enjoin such interference and the prevailing party shall be entitled to recover such reasonable attorneys' fees as the court may allow, together with all necessary costs and disbursements incurred in connection therewith.

5.6 Easements. Additionally to the easements, covenants, and conditions of Article VI hereof concerning party walls, and of Article VII concerning Architectural and Exterior controls, the units and lots shall be subject to easements and covenants for the benefit of the properties or for the limited benefit of specified adjoining lots as more fully in this Article provided.

5.7 Driveway Easements. Declarant has or will by separate Declaration establish limited private common driveway easements for ingress and egress by and to units upon townhome lots. Maintenance of the same as well as maintenance of the private apron from the common driveway to a townhome unit shall be by the Association and assessable to the owners affected as in case of exterior maintenance as provided in Article VII.

5.8 Private Yard Easements. Save and except as herein provided, each owner shall be fully entitled to use and occupancy of the private yard area in his lot to the exclusion of others. The properties generally and the other owners shall be entitled to a visual easement over the same limited only by original structures as originally erected thereon by Developer and the owner shall not build any other structure of any sort upon the same, (or, in the case of a townhome lot, make any planting) other than as approved specifically under the provision of Article VII. Other than as may be done by the owner under the foregoing sentence all planting and private yard maintenance of townhome lots shall be by the Declarant originally or by the Association thereafter, and annual assessment by the Association for townhome lots shall include maintenance of private yard and renewal planting as to each private yard area.

5.9 Sewer, Water and Utility Easements. For sewer, water and utility service to a Lot over another Lot or other Lots, Declarant hereby grants a blanket easement for utility purposes over and across all lots in Briar Hill Addition except those areas of any lot which are occupied by a Living Unit or intended to be occupied by a Living Unit. Regardless of the extent of the easement area, maintenance of sewer and water lines and other utilities to the building lines of a unit upon a Townhome Lot shall be the responsibility of the Association and as to any Townhome Lot the Association is given full and free right of access for this purpose. Moreover the Association is given free right of access as to any Unit upon a townhome lot to maintain on the exterior thereof a separately metered water line or lines for yard maintenance purposes.

ARTICLE VI

PARTY WALLS

6.1 General Rules of Law to Apply. Each wall which is built as part of the original construction of the Living Units upon the Property and placed upon

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 negligence or willful acts or omissions shall apply thereto.

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

6.3 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 other under any rule of law regarding liability for negligent or willful acts or omissions.

6.4 Weatherproofing. Notwithstanding any other provisions 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.

6.5 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.

6.6 Encroachments. If, for whatever reason, a wall intended to be a party wall is not precisely constructed on the dividing line between two Lots, during the life of the building containing such wall, the Lot upon which such party wall encroaches shall be subject to an easement for the life of such building which shall be in favor of and appurtenant to the other Lot, to the end that for all purposes of this Declaration, such wall shall be treated as if it were centered precisely upon the common Lot line.

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

ARTICLE VII

ARCHITECTURAL AND EXTERIOR CONTROLS

7.1 Architectural Control and Committee Authority. After the completion of initial construction by the declarant, no modification, decoration, change or other improvement of any kind shall be commenced, erected or maintained upon the Lot or exterior of the buildings without prior written approval by the Board of Directors or by a Design Review Committee composed of three or more representatives appointed by the Board of Directors.

Approval shall not be given until plans and specifications showing the nature, kind, materials and location of the same shall have been submitted to the Board of Directors or Design Review Committee in sufficient detail to assure its structural and maintenance soundness and its compliance with the architectural scheme and harmony in relation to the surrounding structures and topography of the complex.

The Board of Directors or Design Review Committee shall approve or disapprove the request within thirty-five (35) days from receipt by the person designated by the Association to receive such requests, or in the event of no designation, the President. In the event the Board of Directors or Design Review Committee fails to approve or disapprove said request in writing within thirty-five (35) days after said plans and specifications have been received by the designated representative of the Association, approval will be automatically given and this Article shall be deemed to have been fully complied with.

The Board of Directors retains the right to submit any request to the members of the Association at a Special Meeting called in pursuant to the By-Laws. Such meeting shall be called within thirty-five (35) days from receiving the request in accordance with this Article.

In the event that no notice of default of compliance of this Article is given or legal action to enjoin any modification, decoration, change or improvement has been commenced within thirty-five (35) days of the completion thereof, approval will be automatically given and this Article shall be deemed to have been fully complied with.

If the Association prevails in any action brought pursuant to this Article, it shall be entitled to recover from the other party reasonable attorney's fees and costs incurred in connection with such action, and the recovery shall be a lien against the owner's lot and a personal obligation of the owner.

During the time in which the Association has a Class B member, all decisions of the Design Review Committee may be vetoed by the Developer.

7.2 Exterior Maintenance. In order to preserve the uniform and high standards of appearance of the Property, the Association shall provide and be solely responsible for the maintenance and repair of the exterior of all Living Units, and the walks, yard areas and driveways of the Lots which responsibility shall include, but not be limited to, the following: The maintenance and repair of the exterior surfaces of all buildings on the Property, including, without limitation, the painting of the same as often as necessary, the replacement of trim and caulking, the maintenance and repair of roofs, gutters, downspouts and overhangs, (but excluding all maintenance and repair to glass and other window surfaces), mowing, trimming, watering and other care of grass, trees, and other plants, and the maintenance and repair of walks, driveway aprons, driveways and walkways, including snow removal therefrom. All maintenance and repair of individual Living Units and garages shall be the sole obligation and responsibility and expense of the individual Owners thereof, except to the extent that the exterior maintenance and repair is provided by the Association. In the event that any maintenance or repair measures are necessitated by willful

or negligent acts of any Owner, his family, guests, or invitees, the cost of all such maintenance and repairs shall be added to and become a part of the assessments to which the Lot of such Owner is subject. The Association or its representatives, shall have the right to enter upon any Lot for the purpose of maintaining the common plumbing, sewer and utilities lines crossing such Lot. The Association shall be responsible for all damage done to the Lots and the improvements thereon in the course of such maintenance and repair and shall perform or pay for the restoration of any repairs to such improvements.

ARTICLE VIII INSURANCE AND RECONSTRUCTION

8.1 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 insuring the Association, with such limits of liabilities as the Association shall determine to be necessary, against all acts, omissions to act and negligence of the Association, its employees and agents. The Association's 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 the handling of 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.

8.2 Destruction and Reconstruction. In the event that a building or buildings containing a Living Unit is partially or totally destroyed and in the further event that a decision is made by the Owners of the Living Units in such building or buildings to repair or reconstruct such building or buildings, then such repairs or reconstruction must be substantially commenced no later than ninety (90) days following the date upon which such decision has been made by the Owners. No such reconstruction or repairs shall be commenced without (i) the unanimous written consent of all the Owners in the buildings affected and (ii) the written approval of the plans and specifications of the proposed repairs and reconstruction by the Board of Directors or by the Design Review Committee.

8.3 Manner of Reconstruction. On reconstruction, the design, plans and specifications of any building or Living Unit may vary from that of the original upon approval of the Board of Directors or by the Design Review Committee, provided, however, that the number of square feet of any Living Unit may not vary by more than 5% from the number of square feet for such Living Unit as originally constructed, and the location of the buildings shall be substantially the same as prior to the damage or destruction. All reconstruction costs and expenses shall be the sole obligation of the affected Owners only, and shall not be assessed to any other Owners.

8.4 Casualty Insurance on Insurable Common Area. The Association shall keep all insurable improvements and fixtures of the Common Area insured against loss or damage by fire for the full insurable replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall

be payable to the Association. 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 Common Assessments made by the Association.

In addition to casualty insurance on the Common Area, the Association, through the Board of Directors, may elect to obtain and continue in effect, on behalf of all Owners, adequate blanket casualty and fire insurance in such form as the Board of Directors deems appropriate in an amount equal to the full replacement value, without deduction for depreciation or coinsurance, of all of the Dwelling Units, including the structural portions and fixtures thereof, owned by such Owners. Insurance premiums from any such blanket insurance coverage, and any other insurance premiums paid by the Association shall be a Common Expense of the Association to be included in the regular Common Assessments of the Owners, as levied by the Association. The insurance coverage with respect to the Dwelling Units shall be written in the name of, and the proceeds thereof shall be payable to the Association as Trustee for the Homeowners.

8.5 Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Area Improvements, 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 Lot Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other Common Assessments made against such Lot Owner.

In the event that the Association is maintaining blanket casualty and fire insurance on the Dwelling Units on the Lots in the Properties, the Association shall repair or replace the same from the insurance proceeds available.

8.6 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 replacement of the property which may have been damaged or destroyed.

ARTICLE IX
GENERAL RESTRICTIONS, OBLIGATIONS
AND RIGHTS OF OWNERS

9.1 Living Unit Restriction. No Living 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 trade or business of any kind be carried on within a Living Unit or upon a Lot, nor shall any Lot or any part thereof be leased, sublet, 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 the Developer 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 Property.

(c) Lease or rental of a Lot for purposes consistent with this Section.

9.2 Prohibition of Damage and Certain Activities. Nothing shall be done or kept on any Lot or any part thereof (i) 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 (ii) 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 Property 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 on the property.

9.3 Animals. No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred, or kept in or upon any Lot or any part thereof, except that the Association may, by regulation, rule or otherwise develop rules for the keeping of dogs, cats or other household pets; provided, however, that no such pets shall be kept, bred or maintained for any commercial purposes.

9.4 Signs. No signs of any kind shall be displayed to the public view on any Lot; unless prior approval is granted by the Board of Directors; provided, further, the Developer reserves for itself and its agents, the right to maintain a business and sales office during the construction and sales period and to place any advertising sign upon the Property during such period.

9.5 Maintenance of Garages. All garage facilities, as originally erected by the Developer, shall be retained as and used for a garage facility for the off-street interior storage of the vehicles and no such facility shall be converted by construction or usage to any other purposes.

ARTICLE X GENERAL PROVISIONS

10.1 Enforcement. The Association or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration including, but not limited to, the collection of all assessments. In the event that the Association should employ the services of an attorney in connection with a breach of the terms hereof by a Member, his family or guests, or in connection with the enforcement of the terms hereof, and if the Association shall prevail in any such action, such Member shall pay, in addition to all other sums due, the Association's reasonable attorneys' fees, costs and expenses. The failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. If these restrictions are enforced by appropriate proceedings by any one or more of such heretofore described persons, such persons may be reimbursed by the Association for all or any part of the costs incurred, as the Board of Directors of the Association shall, in its sole discretion determine.

10.2 Access. Solely for the purpose of performing the maintenance authorized by this Declaration, the Association through its duly authorized Agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot.

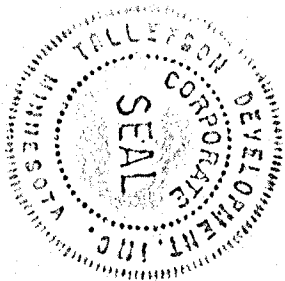
10.3 Severability. The invalidation of any one of these covenants or restrictions by legislation, judgment or court order shall in no way effect any other provision which shall remain in full force and effect.

10.4 Amendments. The provisions of this Declaration may be amended during the first twenty (20) years by an instrument signed by Members entitled to cast no less than ninety (90%) percent of the votes of each class of membership and thereafter by an instrument signed by Members entitled to cast no less than seventy-five (75%) percent of such votes. No amendment shall be effective until it shall have been properly recorded.

10.5 FHA-VA Approval. As long as there are Class B Members, the following actions shall require the prior approval of the Federal Housing Administration or the Veteran's Administration: Annexation of additional property, amendment of this Declaration of Covenants, Conditions and Restrictions, and conveyance of the common area.

10.6 Limitation on Declaration. The covenants, restrictions, conditions and reservations imposed or established by or created under this Declaration shall run with and bind the Property for a period of thirty (30) years from the date of the recordation of this Declaration and may be enforced as provided in Section 10.1 hereinabove. After the expiration of said thirty (30) year period, all of such covenants, restrictions, conditions and reservations shall continue to run with and bind the Property for successive periods of ten (10) years each unless revoked, changed or amended in whole or in part, by Members entitled to cast three-fourths (3/4) of each class of votes and evidenced by a recorded instrument executed by duly authorized officers of the Association.

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



TOLLEFSON DEVELOPMENT, INC.

By:

Carl R. Tollefson, President,

By:

Christine M. Tollefson, Secretary

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this 20th day of NOVEMBER, 1980, before me a Notary Public within and for said County, appeared Carl R. Tollefson and Christine M. Tollefson, to me personally known, who being by me duly sworn, and say that they are the President and Secretary, respectively, of Tollefson Development, Inc., that said instrument was executed on behalf of said corporation by authority of its Board of Directors and the said Carl R. Tollefson and Christine M. Tollefson acknowledged said instrument to be the free act and deed of said corporation.

This instrument drafted by:
HOEY AND KRAMBEER
Attorneys at Law
3908 Sibley Memorial Highway
Eagan, Minnesota 55122

Notary Public



GEORGE H. HOEY
NOTARY PUBLIC - MINNESOTA
DAKOTA COUNTY
My Commission Expires Jan. 27, 1982

C O N S E N T

THE FIRST NATIONAL BANK OF SAINT PAUL, a national banking association, mortgagee of the premises described in the foregoing Restated Declaration of Covenants, Conditions and Restrictions dated November 20, 1980 hereby consents to and joins in said foregoing Restated Declaration of Covenants, Conditions and Restrictions.

Dated: November 26, 1980

THE FIRST NATIONAL BANK OF SAINT PAUL

By _____

Its

By

Its



STATE OF MINNESOTA)

SS.

COUNTY OF RAMSEY

On this 26th day of Nov, 1980, before me, a Notary Public within and for said County personally appeared J. A. Owen and J. Werner to me personally known, who, being each by me duly sworn they did say that they are respectively the VICE PRESIDENT and the ASSISTANT VICE PRESIDENT of the First National Bank of Saint Paul, a national banking association, the bank named in the foregoing instrument, and that the seal affixed to said instrument is the seal of said bank, and that said instrument was signed and sealed in behalf of said bank by authority of its Board of Directors and said J. Werner and J. A. Owen acknowledged said instrument to be the free act and deed of said bank.

PATRICIA M. DANNA
 NOTARY PUBLIC - MINNESOTA
 RAMSEY COUNTY
 My Commission Expires June 29, 1985

Notary Public

County, Minnesota

My Commission expires

C O N S E N T

CAMERON-BROWN COMPANY, a North Carolina Corporation, mortgagee of the premises described in the foregoing Restated Declaration of Covenants, Conditions and Restrictions dated November 20, 1980 hereby consents to and joins in said foregoing Restated Declaration of Covenants, Conditions and Restrictions.

Dated: November 26, 1980

CAMERON-BROWN COMPANY

By

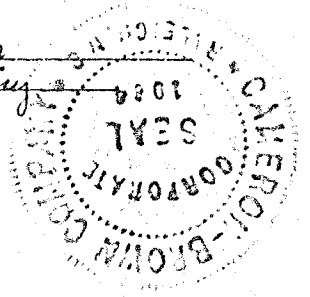
D.B. Hawkins Jr.
Its Vice Pres.

By

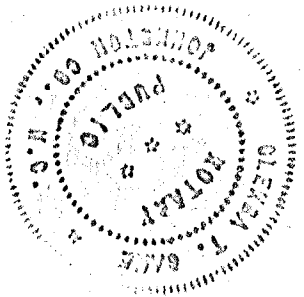
Margaret Day
Its Asst. Secretary

STATE OF NORTH CAROLINA)

Micklesburg) ss.
COUNTY OF ~~WAKE~~



On this 26 day of November, 1980, before me, a Notary Public within and for said County personally appeared D.B. Hawkins Jr. and Margaret Day to me personally known, who, being each by me duly sworn they did say that they are respectively the Vice President and the Asst. Secretary of Cameron-Brown Company, the corporation named in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and said D.B. Hawkins Jr. and Margaret Day acknowledged said instrument to be the free act and deed of said corporation.



Glenda T. Name
Notary Public
Johnston County, North Carolina
My Commission Expires 10-26-85

X
572162

STATE OF MINNESOTA		}	SS.
County of Dakota.			
Office of County Recorder			
This is to certify that the within			
instrument was filed for record in			
this office, at Hastings, on the <u>2nd</u>			
day of <u>July</u> , A. D., 19 <u>80</u>			
at <u>10</u> o'clock <u>AM</u> , and that			
the same was duly recorded in			
Dakota County Records.			
JAMES J. FOUTCHIS			
County Recorder			
By	<u>[Signature]</u>		
	Deputy		

*Collefer
Beers.*
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