



# DANCING WATERS

premier residential neighborhood

## TRANQUILITY TOWNHOMES ASSOCIATION

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### DECLARATION of PROTECTIVE COVENANTS & BY-LAWS

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**COMMON INTEREST COMMUNITY NUMBER 92**  
**(Planned Community)**

**TRANQUILITY TOWNHOMES**  
**BLUE EARTH COUNTY, MANKATO, MINNESOTA**  
**DISCLOSURE STATEMENT**

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**INTRODUCTION**

THE MINNESOTA COMMON INTEREST OWNERSHIP ACT, MINNESOTA STATUTES CHAPTER 515B (THE "ACT") REQUIRES THAT CERTAIN DISCLOSURE INFORMATION BE FURNISHED BY THE DEVELOPER (THE "DECLARANT") TO PURCHASERS OF UNITS IN A "COMMON INTEREST COMMUNITY" LOCATED IN THE STATE OF MINNESOTA. THIS DISCLOSURE STATEMENT CONTAINS A VARIETY OF INFORMATION RELATING TO THE REAL ESTATE ON WHICH THE COMMUNITY IS LOCATED, THE OPERATION OF THE COMMUNITY AND THE DOCUMENTS GOVERNING THE COMMUNITY. THIS INFORMATION WILL HELP YOU UNDERSTAND YOUR RIGHTS IN CONNECTION WITH YOUR PURCHASE OF A UNIT IN TRANQUILITY TOWNHOMES. PLEASE REVIEW THIS INFORMATION CAREFULLY.

THIS DISCLOSURE STATEMENT IS FURNISHED PURSUANT TO THE REQUIREMENTS OF SECTION 515B.4-1021 OF THE ACT. THIS DISCLOSURE STATEMENT SHOULD NOT BE CONSTRUED AS LEGAL OR TAX ADVICE. PROSPECTIVE PURCHASERS SHOULD CONSULT THEIR OWN LEGAL COUNSEL AND TAX COUNSEL CONCERNING THE LEGAL AND TAX IMPLICATIONS OF THE PURCHASE OF A UNIT.

THE REPRESENTATIONS AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE CURRENT AS OF THE DATE OF DELIVERY OF THIS DISCLOSURE STATEMENT BY THE DECLARANT OR ITS AUTHORIZED REPRESENTATIVE TO THE PROSPECTIVE PURCHASER OF THE UNIT. THE REPRESENTATIONS ARE MADE TO THAT PURCHASER ONLY. REPRODUCTION OR DISTRIBUTION OF THIS DISCLOSURE STATEMENT BY PERSONS OTHER THAN DECLARANT OR ITS AUTHORIZED REPRESENTATIVE IS PROHIBITED.

**DISCLOSURE INFORMATION**

**1. Name and Number of Common Interest Community.**

The name of the common interest community is Tranquility Townhomes, Common Interest Community Number 92.

**2. The Declarant's Name and Address and Special Declarant Rights.**

The Declarant's name and address is OWN Ovation LLC, 4608 Eastwood Court, Madison Lake, MN 56063. Declarant has special declarant rights within the meaning of Section 515B.1-103 of the Act for as long as it owns a Unit, or for such shorter period as may be specifically indicated in the Declaration. A complete description of the Declarant's special declarant rights can be found in Article V of the Declaration and are provided below.

*The Declarant shall have and hereby reserves for its benefit the exclusive and unconditional right to:*

- (a) Complete any improvements indicated on the Plat;*
- (b) Create up to 50 Units on the Subject Property by subdividing any Unit owned by Declarant or to relocate boundaries between Units or to otherwise alter Units owned by it;*

- (c) *Maintain a sales office, a management office, model Units and Dwellings, sales and rental facilities and signs advertising the Subject Property within the Common Element and/or any Units owned by the Declarant from time to time, located anywhere on the Property;*
- (d) *Merge the Planned Community with any other planned community (as defined in the Act);*
- (e) *Control the operation and administration of the Association, including without limitation the power to appoint and remove the members of the Board of Directors of the Association pursuant to section 515B.3-103 of the Act, until the earlier of the voluntary surrender of control by Declarant or the end of the Declarant Control Period. Notwithstanding the foregoing, the Members other than Declarant shall have the right to nominate and elect not less than 33 1/3% of the directors of the Association at a meeting of the Members which shall be held within 60 days following the conveyance by Declarant of 50% of the total number of Units authorized to be included in the Subject Property and built on the Additional Property; and*
- (f) *To add all or a portion of the Additional Property to the Planned Community.*

Additionally, during the Declarant Control Period, Declarant's written consent shall be required for any amendment to the Governing Documents which directly or indirectly affects or may affect Declarant's rights under the Governing Documents.

### **3. Type of Common Interest Community and Number of Units.**

Tranquility Townhomes (the "Community") is a "Planned Community" as defined by Minnesota Statutes chapter 515B, also known as the Minnesota Common Interest Ownership Act (the "Act"). The Community may be composed of up to Ninety (90) units.

### **4. General Description of Community.**

The Community will be composed initially of Forty (40) units – contained in Ten (10) newly constructed four unit townhomes. The Declarant plans to add up to Fifty (50) additional units in Twelve (12) newly constructed four unit townhomes to the initial Forty (40) units by the fall of 2021. There will be a private street located at Tranquility Drive, Mankato, MN 56001. The Community will have water, sewer, natural gas, electric and telephone mains in and/or parallel with the described private street.

The Forty (40) townhome units will be located on Lot 1, Block 1, Dancing Waters, all in Tranquility Townhomes CIC Plat 92, Blue Earth County, Minnesota. Each unit will be a wood frame dwelling. The Forty (40) Units may have full basements or be slab on grade (the "Standard Units").

Each unit will be separately metered for electricity. Interior walls will be constructed of gypsum board or plaster and the floors will be concrete subfloors for the basement or first level of the Standard Units. Each dwelling will contain standard supply, waste and vent systems. The plumbing system will meet or exceed City of Mankato Building Codes. The planned community will be registered with the City of Mankato and will have all permits and licenses necessary for occupancy.

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**5. Construction Schedule.**

Construction of the initial units and landscaping and planting for the units began in the summer of 2015. Construction of the additional units will begin in the spring of 2016. If sales of units meet Declarant's expectations, Declarant estimates that construction of all units will be completed by the fall of 2019.

**6. Declarant Expenses.**

Declarant is presently unaware of any supplies and services which are not reflected in the estimated annual operating budget which the Declarant itself provides, or of any expenses which it pays and which it expects may become at any subsequent time a Common Expense of the Association. Accordingly, there is no projected Common Expense assessment of which Declarant at this time is aware which would be attributable to any such supplies or services.

Declarant has established an alternate common expense plan as permitted by section 515B.3-1151(a)(2)(i) of the Act. Specifically, if a common expense assessment has been levied, the Declarant's common expense liability, and the corresponding assessment lien against units owned by the Declarant, shall be limited to: (a) paying when due, the full share of replacement reserves allocated to the units owned by the Declarant, and (b) paying when due, all accrued expenses of the Association in excess of the aggregate assessments payable with respect to Units owned by Owners other than the Declarant. There are no assurances that this alternate common expense plan will have no effect on the level of services for items set forth in the Association's budget.

**7. Working Capital Reserve Payment Due From Purchaser to Association at Closing.**

At the closing, Purchaser will pay to the Association an assessment for working capital in an amount equal to two (2) months projected Common Expense assessments for the unit purchased. Such assessment is to be used to provide a working capital reserve fund for the Association. The assessment is neither refundable, nor is it to be considered an advance payment of monthly assessments. The estimate of the monthly Common Expenses assessable to the unit Purchaser is buying and the working capital assessment required by the Purchase Agreement is detailed in the documentation annexed hereto. Also, Purchaser shall pay to the Association at closing the full Common Expense assessment for the month succeeding the closing by ACH monthly payments or for the full year if payment by check/cash. In addition, the Purchaser shall pay the Association at closing \$100 fee to create a new Member account.

**8. Liens, Defects or Encumbrances Affecting Title to Community After Conveyance.**

The following are the liens, defects or encumbrances on or affecting the title to the unit or property owned by the Association after the contemplated conveyance by Declarant to Purchaser:

- (a) Reservation of any minerals or mineral rights to the State of Minnesota;
- (b) Requirements of the Act, as amended;
- (c) Requirements, restrictions, easements, conditions, obligations, covenants and reservations contained in the Declaration, Bylaws and plat of record, and any amendments thereto;
- (d) Building, housing and zoning laws, codes, ordinances and regulations – federal, state and local;

- (e) Lien of real estate taxes and installments of special assessments (including interest) payable therewith in the year of the closing and in subsequent years;
- (f) Any mortgage given by Purchaser and encumbering the unit together with its undivided interest in the Common Area;
- (g) Easements for drainage and utilities shown on the recorded plat;

**9. Financing Offered by Declarant.**

The Declarant does not offer financing in connection with the contemplated conveyance by Declarant to Purchaser.

**10. Project Approvals.**

The Declarant has not applied for project approvals from the following: Federal National Mortgage Association (FNMA); the Federal Housing Administration (FHA), an agency of the Department of Housing and Urban Development; Federal Home Loan Mortgage Corporation (FHLMC); and Department of Veterans Affairs (VA).

**11. Terms of Warranties Provided by Declarant and Statutory Warranties.**

Purchaser will be provided with any written warranties of the manufacturers of any appliances included in the unit purchased by Purchaser. These warranties may be found in or on the appliances covered.

Declarant makes no representations with respect to the expected useful lives of any of the structural components and mechanical and electrical installations material to the use and enjoyment of the Community.

In connection with the sale of the unit Purchaser is purchasing from Declarant, Declarant makes the express and implied warranties which are provided by law. The statutory warranties provided under Minnesota Statutes sections 515B.4-112, 515B.4-113, 515B.4-114 and 515B.4-1152 are attached to this Disclosure and are incorporated herein by reference (any other applicable statutory warranties must be attached – Minnesota Statutes chapter 327A applies to new construction residential developments). Warranties imposed by law may be excluded or modified by Minnesota Statutes section 515B.4-114 and are subject to the statute of limitations for warranties, MINN. STAT. § 515B.4-1152.

**12. Receipt/Provision of Disclosure Statement and Cancellation.**

Declarant hereby advises Purchaser that pursuant to Minnesota Statutes section 515B.4-106:

- (a) Within ten (10) days after receipt of this Disclosure Statement, Purchaser may, prior to conveyance, cancel the Purchase Agreement Purchaser has entered into with Declarant;
- (b) If Purchaser receives the Disclosure Statement more than ten (10) days before Purchaser signs a Purchase Agreement, Purchaser cannot cancel the Purchase Agreement; and

- (c) If Declarant fails to provide a Disclosure Statement to Purchaser before conveying the unit Purchaser is buying, then Declarant shall be liable to Purchaser in the amount of \$5,000, in addition to any other damages recoverable by Purchaser.

**13. Judgments or Pending Suits Against the Association.**

Declarant, to the best of its knowledge, after reasonable inquiry, is unaware of any unsatisfied judgments or lawsuits to which the Association is a party, or of any pending suits which are material to the Community or the unit being purchased by Purchaser.

**14. Earnest Money.**

The earnest money paid by Purchaser to Declarant in connection with the purchase of a unit in the Community will be held by Seller or Seller's agent until closing or until termination of the Purchase Agreement and will be returned to Purchaser if Purchaser cancels the Purchase Agreement pursuant to section 515B.4-106 of Minnesota Statutes.

**15. Description of Insurance Coverage.**

The Declarant will obtain for the Association a master casualty insurance policy which will be in effect prior to the first conveyance of units in the Community, and which will cover the Community against loss or damage by all hazards normally covered by "broad form coverage," for one hundred percent (100%) of the replacement cost of the Community facilities, including the individual units, the common area and all the items referred to in section 515B.3-113(b) but exclusive of land, footings, excavations and other items normally excluded from such coverage. The insured will be the Association for the use and benefit of the individual unit owners. The policy will contain standard mortgagee provisions.

The Association shall also maintain commercial general liability coverage over all Common Areas and public ways surrounding the Community in an amount of at least \$1,000,000 for bodily injury and property damage for any single occurrence. The general liability portion of the policy will contain a severability of interest endorsement. Unit owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, operation or management of the common area.

The Association will maintain a fidelity bond or insurance coverage against dishonest acts on the part of directors, officers, managers, trustees, employees or all persons responsible for handling funds belonging to or administered by the Association if the Board deems such coverage necessary. The Association will purchase worker's compensation insurance and other insurance policies as required by law.

**16. Current or Expected Fees or Charges to be Paid by Unit Owners for the Use of Common Elements and Other Facilities Related to the Community.**

There are no current or expected fees or charges (other than assessments) that will be paid by unit owners for the use of any of the common facilities in or related to the Community.

**17. Financial Arrangements for Completion of Any Improvements Labeled "Must Be Built" Pursuant to section 515B.4-118 of Minnesota Statutes. :**

Declarant has not labeled any improvements shown in the plat as "MUST BE BUILT," as allowed under section 515B.2 110 of Minnesota Statutes, and accordingly has made no financial arrangements for the completion of such improvements.

**18. Real Estate Taxes.**

The real estate taxes for the unit or any real property owned by the Tranquility Townhomes Association are not delinquent. Real estate taxes have not been separately assessed against any unit as of the date of this statement.

**19. Completion of Purchaser's Unit.**

The unit Purchaser is purchasing from Declarant will be substantially completed at the time of the contemplated conveyance.

**20. Community and Association Documents.**

Attached hereto and incorporated herein are copies of the following documents related to the Community and the Association:

- (a) Declaration and any amendments (other than the plat);
- (b) Articles of Incorporation of the Association;
- (c) Bylaws of the Association;
- (d) Rules and Regulations of the Association;
- (e) List of Association Board members;
- (f) Balance sheet, current within 90 days, and projected annual budget of the Association conforming with Minnesota Statutes section 515B.4-1021(a){23};
- (g) Statutory Express and Implied Warranties;
- (h) Description of contracts or leases that may be subject to cancellation by the Association under Minnesota Statutes section 515B.3-1051;

**21. Budget.**

As of the date of this Disclosure Statement there is no current balance sheet for Tranquility Townhomes Association. A projected budget for the association for the year in which the first unit is conveyed to a purchaser is attached; there is no other current annual budget of the association. The party responsible for preparing the first budget is the declarant. The budget, when prepared and available, shall include, without limitation: (i) a statement of the amount included in the budget as a reserve for maintenance, repair and replacement; (ii) a statement of any other reserves; (iii) the projected common expense for each category of expenditures for the association; (iv) the projected monthly common expense assessment for each type of unit, and (v) a statement as to the components of

the common interest community whose replacement will be funded by assessment under section 515B.3-1151(c) or (e), rather than by replacement reserves as approved pursuant to section 515B.3-1141(a).

**22. Additional Real Estate.**

The following notice is required by Minnesota Statutes. The Declarant has reserved in the Declaration certain rights to add additional real estate. These rights allow a declarant to add units or common elements to a common interest community, and to make other changes to the community over a specified period of time. These changes may have a substantial effect upon the units or rights of unit owners, by changing relative voting power and share of common expenses, by increasing the number of persons using the common elements, by altering the size and appearance of the common interest community and by making other changes which may affect the value or utility of the units. A purchaser of units in this common interest community should consider the possible effects of the Declarant's rights reserved for this project. The rights to add additional real estate are reserved in Article VIII of the Declaration.

**23. Minor Changes to Documents; Priority of Community Documents.**

The Declarant retains the right to make minor, non-material changes to the Community documents in order to comply with the requirements of the Blue Earth County Recorder, the Blue Earth County Surveyor and other governmental agencies, and Declarant's Mortgagees. In the event of any discrepancy between the Community documents and this Disclosure Statement, the language of the Community documents shall control.

DECLARANT:

/s/ Cheryl J.M. Freitag

By: Cheryl J.M. Freitag, Chief Manager

PURCHASER(S) HEREBY ACKNOWLEDGE(S) RECEIPT OF THE FOREGOING DISCLOSURE STATEMENT AND THE DOCUMENTATION INCLUDED HERewith THIS \_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_.

PURCHASER:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Current Address)

\_\_\_\_\_  
(Telephone No.)

PURCHASER:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Current Address)

\_\_\_\_\_  
(Telephone No.)



**327A.01 DEFINITIONS.**

**Subdivision 1. Scope.** As used in sections 327A.01 to 327A.07, the terms in this section shall have the meanings assigned to them.

**Subd. 2. Building standards.** "Building standards" means the materials and installation standards of the State Building Code, adopted by the commissioner of labor and industry pursuant to sections 326B.101 to 326B.194, in effect at the time of the construction or remodeling.

**Subd. 3. Dwelling.** "Dwelling" means a new building, not previously occupied, constructed for the purpose of habitation; but does not include appurtenant recreational facilities, detached garages, driveways, walkways, patios, boundary walls, retaining walls not necessary for the structural stability of the dwelling, landscaping, fences, nonpermanent construction materials, off-site improvements, and all other similar items.

**Subd. 4. Initial vendee.** "Initial vendee" means a person who first contracts to purchase a dwelling from a vendor for the purpose of habitation and not for resale in the ordinary course of trade.

**Subd. 5. Major construction defect.** "Major construction defect" means actual damage to the load-bearing portion of the dwelling or the home improvement, including damage due to subsidence, expansion or lateral movement of the soil, which affects the load-bearing function and which vitally affects or is imminently likely to vitally affect use of the dwelling or the home improvement for residential purposes. "Major construction defect" does not include damage due to movement of the soil caused by flood, earthquake or other natural disaster.

**Subd. 6. Vendee.** "Vendee" means any purchaser of a dwelling and includes the initial vendee and any subsequent purchasers.

**Subd. 7. Vendor.** "Vendor" means any person, firm, or corporation that constructs dwellings, including the construction of dwellings on land owned by vendees. Vendor does not include a subcontractor or material supplier involved in the construction of a dwelling.

**Subd. 8. Warranty date.** "Warranty date" means the date from and after which the statutory warranties provided in section 327A.02 shall be effective, and is the earliest of:

- (a) the date of the initial vendee's first occupancy of the dwelling; or
- (b) the date on which the initial vendee takes legal or equitable title in the dwelling.

In the case of a home improvement, the warranty date is the date on which the home improvement work was completed.

**Subd. 9. Home improvement.** "Home improvement" means the repairing, remodeling, altering, converting or modernizing of, or adding to a residential building. For the purpose of this definition, residential building does not include appurtenant recreational facilities, detached garages, driveways, walkways, patios, boundary walls, retaining walls not necessary for the structural stability of the building, landscaping, fences, nonpermanent construction materials, off-site improvements, and all other similar items.

**Subd. 10. Home improvement contractor.** "Home improvement contractor" means a person who is engaged in the business of home improvement either full time or part time, and who holds out to the public as having knowledge or skill peculiar to the business of home improvement.

**Subd. 11. Owner.** "Owner" means any person who owns a residential building on which home improvement work is performed, and includes any subsequent owner of the residential building.

**Subd. 12. Inspection.** "Inspection" means a visual or invasive examination of the alleged property damage.

**History:** 1977 c 65 s 1; 1981 c 119 s 1-5; 1986 c 444; 2001 c 207 s 8; 1Sp2003 c 8 art 1 s 12; 2007 c 140 art 4 s 61; art 12 s 12; art 13 s 4; 2010 c 343 s 4,5

**327A.02 STATUTORY WARRANTIES.**

**Subdivision 1. Warranties by vendors.** In every sale of a completed dwelling, and in every contract for the sale of a dwelling to be completed, the vendor shall warrant to the vendee that:

(a) during the one-year period from and after the warranty date the dwelling shall be free from defects caused by faulty workmanship and defective materials due to noncompliance with building standards;

(b) during the two-year period from and after the warranty date, the dwelling shall be free from defects caused by faulty installation of plumbing, electrical, heating, and cooling systems due to noncompliance with building standards; and

(c) during the ten-year period from and after the warranty date, the dwelling shall be free from major construction defects due to noncompliance with building standards.

**Subd. 2. Warranties to survive passage of title.** The statutory warranties provided in this section shall survive the passing of legal or equitable title in the dwelling to the vendee.

**Subd. 2a. Remedies unaffected by corporate dissolution.** The statutory warranties provided in this section are not affected by the dissolution of a vendor or home improvement contractor that is a corporation or limited liability company.

**Subd. 3. Home improvement warranties.** (a) In a sale or in a contract for the sale of home improvement work involving major structural changes or additions to a residential building, the home improvement contractor shall warrant to the owner that:

(1) during the one-year period from and after the warranty date the home improvement shall be free from defects caused by faulty workmanship and defective materials due to noncompliance with building standards; and

(2) during the ten-year period from and after the warranty date the home improvement shall be free from major construction defects due to noncompliance with building standards.

(b) In a sale or in a contract for the sale of home improvement work involving the installation of plumbing, electrical, heating or cooling systems, the home improvement contractor shall warrant to the owner that, during the two-year period from and after the warranty date, the home improvement shall be free from defects caused by the faulty installation of the system or systems due to noncompliance with building standards.

(c) In a sale or in a contract for the sale of any home improvement work not covered by paragraph (a) or (b), the home improvement contractor shall warrant to the owner that, during the one-year period from and after the warranty date, the home improvement shall be free from defects caused by faulty workmanship or defective materials due to noncompliance with building standards.

**Subd. 4. Response from vendor or home improvement contractor to notice of claim; right to inspect.** (a) The vendee or owner must allow an inspection for purposes of the preparation of an offer to repair the alleged loss or damage under subdivision 5. The inspection must be performed by the vendor or home improvement contractor within 30 days of the notification under section 327A.03, clause (a). Any

damage to property caused as a result of an inspection must be promptly repaired by the inspecting party to restore the property to its preinspected condition.

(b) The applicable statute of limitations and statute of repose for an action based on breach of a warranty imposed by this section, or any other action in contract, tort, or other law for any injury to real or personal property or bodily injury or wrongful death arising out of the alleged loss or damage, is tolled from the date the written notice provided by the vendee or owner is postmarked, or if not sent through the mail, received by the vendor or home improvement contractor until the latest of the following:

- (1) the date of completion of the home warranty dispute resolution process under section 327A.051; or
- (2) 180 days.

(c) Upon completion of repairs as described in an offer to repair, the vendor must provide the vendee with a list of the repairs made and a notice that the vendee may have a right to pursue a warranty claim under this chapter. Provision of this statement is not an admission of liability. Compliance with this subdivision does not affect any rights of the vendee under this chapter.

**Subd. 5. Right to repair; agreement.** (a) Within 15 days of completion of the inspection required by subdivision 4, the vendor or home improvement contractor must provide to the vendee or owner a written offer to repair. The offer to repair must include, at a minimum:

- (1) the scope of the proposed repair work; and
- (2) the proposed date on which the repair work would begin and the estimated date of completion.

(b) This subdivision does not prevent the vendee or owner from obtaining the information in paragraph (a) from another contractor or from negotiating with the vendor or home improvement contractor for a different scope of work.

(c) If the parties agree to a scope of work, the vendor or home improvement contractor must perform the repair work in accordance with the offer to repair. If the parties do not agree to a scope of work, the vendee or owner must submit the matter to the homeowner warranty dispute resolution process under section 327A.051.

(d) Upon completion of repairs described in an offer to repair, the vendor or home improvement contractor must provide the vendee or owner with a written notice that the scope of the work agreed upon has been completed.

**Subd. 6. Failure to perform inspection or repair.** If the vendor or home improvement contractor fails to perform an inspection under subdivision 4 or fails to make an offer to repair or perform agreed upon repairs under subdivision 5, the vendee or owner may commence an action.

**Subd. 7. Processes required before commencement of action.** Except as provided in subdivision 6, a cause of action for which the statute of limitations or statute of repose is tolled under subdivision 4, paragraph (b), must not be commenced in district court until the earlier of:

- (1) the completion of the home warranty dispute resolution process under section 327A.051; or
- (2) 60 days after the written offer of repair is provided to the vendee or owner.

**History:** 1977 c 65 s 2; 1981 c 119 s 6; 2001 c 207 s 9,10; 2006 c 202 s 5,6; 2010 c 343 s 6-9

**327A.03 EXCLUSIONS.**

The liability of the vendor or the home improvement contractor under sections 327A.01 to 327A.07 is limited to the specific items set forth in sections 327A.01 to 327A.07 and does not extend to the following:

(a) loss or damage not reported by the vendee or the owner to the vendor or the home improvement contractor in writing within six months after the vendee or the owner discovers or should have discovered the loss or damage; unless the vendee or owner establishes that the vendor or home improvement contractor had actual notice of the loss or damage;

(b) loss or damage caused by defects in design, installation, or materials which the vendee or the owner supplied, installed, or directed to be installed;

(c) secondary loss or damage such as personal injury or property damage;

(d) loss or damage from normal wear and tear;

(e) loss or damage from normal shrinkage caused by drying of the dwelling or the home improvement within tolerances of building standards;

(f) loss or damage from dampness and condensation due to insufficient ventilation after occupancy;

(g) loss or damage from negligence, improper maintenance or alteration of the dwelling or the home improvement by parties other than the vendor or the home improvement contractor;

(h) loss or damage from changes in grading of the ground around the dwelling or the home improvement by parties other than the vendor or the home improvement contractor;

(i) landscaping or insect loss or damage;

(j) loss or damage from failure to maintain the dwelling or the home improvement in good repair;

(k) loss or damage which the vendee or the owner, whenever feasible, has not taken timely action to minimize;

(l) loss or damage which occurs after the dwelling or the home improvement is no longer used primarily as a residence;

(m) accidental loss or damage usually described as acts of God, including, but not limited to: fire, explosion, smoke, water escape, windstorm, hail or lightning, falling trees, aircraft and vehicles, flood, and earthquake, except when the loss or damage is caused by failure to comply with building standards;

(n) loss or damage from soil movement which is compensated by legislation or covered by insurance;

(o) loss or damage due to soil conditions where construction is done upon lands owned by the vendee or the owner and obtained by the vendee or owner from a source independent of the vendor or the home improvement contractor;

(p) in the case of home improvement work, loss or damage due to defects in the existing structure and systems not caused by the home improvement.

**History:** 1977 c 65 s 3; 1981 c 119 s 7; 1986 c 444; 2010 c 343 s 10

**327A.04 WAIVER AND MODIFICATION LIMITED.**

**Subdivision 1. Waiver.** Except as provided in subdivisions 2 and 3, the provisions of sections 327A.01 to 327A.08 cannot be waived or modified by contract or otherwise. Any agreement which purports to waive or modify the provisions of sections 327A.01 to 327A.08, except as provided in subdivisions 2 and 3 of this section, shall be void.

**Subd. 2. Modification.** At any time after a contract for the sale of a dwelling is entered into by and between a vendor and a vendee or a contract for home improvement work is entered into by and between a home improvement contractor and an owner, any of the warranties provided for in section 327A.02 may be excluded or modified only by a written instrument, printed in boldface type of a minimum size of ten points, which is signed by the vendee or the owner and which sets forth in detail the warranty involved, the consent of the vendee or the owner, and the terms of the new agreement contained in the writing. No exclusion or modification shall be effective unless the vendor or the home improvement contractor provides substitute express warranties offering substantially the same protections to the vendee or the owner as the statutory warranties set forth in section 327A.02. Any modification or exclusion agreed to by vendee and vendor or the owner and home improvement contractor pursuant to this subdivision shall not require the approval of the commissioner of labor and industry pursuant to section 327A.07.

**Subd. 3. Exception.** If a major construction defect is discovered prior to the sale of a dwelling, the warranty set forth in section 327A.02, subdivision 1, clause (c) may be waived for the defect identified in the waiver instrument, after full oral disclosure of the specific defect, by an instrument which sets forth in detail: the specific defect; the difference between the value of the dwelling without the defect and the value of the dwelling with the defect, as determined and attested to by an independent appraiser, contractor, insurance adjuster, engineer or any other similarly knowledgeable person selected by the vendee; the price reduction; the date the construction was completed; the legal description of the dwelling; the consent of the vendee to the waiver; and the signatures of the vendee, the vendor, and two witnesses.

A single waiver agreed to pursuant to this subdivision may not apply to more than one major construction defect in a dwelling.

The waiver shall not be effective unless recorded with the county recorder or registrar of titles who shall file the waiver for record.

**History:** 1977 c 65 s 4; 1981 c 119 s 8; 2005 c 4 s 61; 2008 c 337 s 59; 2009 c 91 s 1

**327A.05 REMEDIES.**

**Subdivision 1. New home warranties.** Upon breach of any warranty imposed by section 327A.02, subdivision 1, the vendee shall have a cause of action against the vendor for damages arising out of the breach, or for specific performance. Damages shall be limited to:

- (a) the amount necessary to remedy the defect or breach; or
- (b) the difference between the value of the dwelling without the defect and the value of the dwelling with the defect.

**Subd. 2. Home improvement warranty.** Upon breach of any warranty imposed by section 327A.02, subdivision 3, the owner shall have a cause of action against the home improvement contractor for damages arising out of the breach, or for specific performance. Damages shall be limited to the amount necessary to remedy the defect or breach.

**History:** 1977 c 65 s 5; 1981 c 119 s 9

**327A.051 HOME WARRANTY DISPUTE RESOLUTION.**

**Subdivision 1. Panel of neutrals.** (a) The commissioner of labor and industry shall maintain a list of persons who consent to serve as qualified neutrals for purposes of this section. The commissioner shall establish application requirements and qualifications for qualified neutrals, taking into consideration the education, experience, and training of the applicant, potential conflicts of interest, and that the purpose of the process is to assist parties in determining an agreeable scope of repair or other resolution of their dispute.

(b) As a condition of being included on the panel of neutrals identified in this section, the commissioner of labor and industry may charge each qualified neutral a fee of \$200 per year for the administration of the home warranty dispute resolution process.

**Subd. 2. Dispute resolution process.** (a) The home warranty dispute resolution process required by this section is commenced by written application to the commissioner. A request must include the complete current address and full name of the contact person for each participating party.

(b) Within ten days of receiving a written request, the commissioner shall provide each party with a written list of three qualified neutrals randomly selected from the panel of neutrals established under subdivision 1. The commissioner shall also provide complete contact information for each qualified neutral.

(c) Within five business days after receipt of the list from the commissioner, the parties shall mutually select one of the three qualified neutrals identified by the commissioner to serve as the qualified neutral for their dispute. If the parties cannot mutually agree on a neutral, the vendor or home improvement contractor shall strike one of the neutrals from the list, the vendee or owner shall subsequently strike one of the remaining neutrals from the list, and the remaining neutral shall serve as the qualified neutral for the dispute resolution process. The parties shall notify the selected qualified neutral and the commissioner of the selection.

**Subd. 3. Neutral evaluation; fee.** (a) The qualified neutral selected by the parties shall convene, and each party shall attend, an in-person conference of the parties. The qualified neutral shall select the date for the conference after consulting the parties. The conference must occur no later than 30 days after the neutral's selection, except by mutual agreement of the parties. In addition, the neutral shall collect from each party an administrative fee of \$25 and shall submit those fees to the commissioner no later than ten days after the completion of the conference.

(b) At least seven days before the conference, each party must provide the qualified neutral and the other party with all information and documentation necessary to understanding the dispute, or the alleged loss or damages.

(c) After reviewing the information and documentation provided by the parties and after consulting with the parties at the conference, the neutral shall issue to the parties a nonbinding, written determination, which must include, to the extent possible, findings and recommendations on the scope and amount of repairs necessary, if any. The qualified neutral shall mail the determination to each party within ten days after the conference.

(d) The parties shall share the expense of the qualified neutral's billed time equally, unless otherwise agreed. The neutral's billed time for evaluation of documents, meeting with the parties, and issuing a written determination must not exceed six hours, unless agreed to in writing by both parties. The neutral must identify the neutral's hourly rate to the parties.



**Subd. 4. Alternative process.** If both parties agree, the parties may designate an alternative dispute resolution process in lieu of participating in the home warranty dispute resolution process established by this section. If the parties agree to an alternative dispute resolution process, they shall provide written notice of the agreement and a description of the selected process to the commissioner as soon as practicable, but no later than the date the parties are required to select a neutral under subdivision 2.

**Subd. 5. Effect on future proceedings.** (a) The written determination issued by the qualified neutral and all communications relating to the home warranty dispute resolution process, except those between any party and the commissioner, are deemed confidential settlement communications pursuant to Rule 408 of the Minnesota Rules of Evidence.

(b) No party may use the written offer of repair provided by a vendor or home improvement contractor, a counteroffer to repair, or a written determination issued by the qualified neutral as evidence of liability in subsequent litigation between the parties. The qualified neutral may not be called to testify regarding the dispute resolution proceedings.

(c) Any amount paid by a party for the services of a qualified neutral under this section is deemed a taxable cost of the prevailing party in a subsequent litigation involving the same subject matter.

**Subd. 6. Noncompliance with timelines; effect.** Failure to strictly comply with the timelines in this section shall not be grounds for dismissal of any claim brought under section 327A.05, provided that the parties establish good faith effort in complying with this section.

**History:** 2010 c 343 s 11

**327A.06 OTHER WARRANTIES.**

The warranties provided for in section 327A.02 shall be in addition to all other warranties imposed by law or agreement. The remedies provided in section 327A.05 shall not be construed as limiting the remedies in any action not predicated upon breach of the statutory warranties imposed by section 327A.02.

**History:** 1977 c 65 s 6; 2009 c 91 s 2

**327A.07 VARIATIONS.**

The commissioner of labor and industry may approve pursuant to sections 14.05 to 14.28, variations from the provisions of sections 327A.02 and 327A.03 if the warranty program of the vendor or the home improvement contractor requesting the variation offers at least substantially the same protections to the vendee or owner as provided by the warranties set forth in section 327A.02.

**History:** 1977 c 65 s 7; 1981 c 119 s 10; 1982 c 424 s 130; 1995 c 233 art 2 s 56; 2008 c 337 s 60; 2009 c 91 s 3

**327A.08 LIMITATIONS.**

Notwithstanding any other provision of sections 327A.01 to 327A.08:

(a) the terms of the home improvement warranties required by sections 327A.01 to 327A.08 commence upon completion of the home improvement and the term shall not be required to be renewed or extended if the home improvement contractor performs additional improvements required by warranty;

(b) the home improvement warranties required by sections 327A.01 to 327A.08 shall not include products or materials installed that are already covered by implied or written warranty; and

(c) the warranties required by sections 327A.01 to 327A.08 must be set forth as written warranty instruments and must be included as part of the construction contract. The warranties and the exclusions under section 327A.03, the right to inspect and offer to repair under section 327A.02, subdivisions 4 and 5, and the home warranty dispute resolution process under section 327A.051 must be conveyed in writing to the owner. Failure to comply with this paragraph is a violation of section 326B.84.

(d) If the warranties required by sections 327A.01 to 327A.08 are not provided to the owner in writing as required by paragraph (c), they are implied statutory warranties that have the same effect as if the vendor or home improvement contractor had complied with paragraph (c).

(e) The owner's right under this section to receive the written warranty required under this section may not be waived or modified by contract or otherwise. Any agreement that purports to waive or modify the right to the written warranty required under this section is void.

(f) This section does not limit the ability of the vendor or home improvement contractor and the owner to enter into the agreements permitted under section 327A.04, subdivisions 2 and 3.

**History:** 1981 c 119 s 11; 1997 c 7 art 1 s 126; 2009 c 91 s 4; 2010 c 343 s 12

**515B.4-112 EXPRESS WARRANTIES.**

(a) Express warranties made by a declarant or an affiliate of a declarant to a purchaser of a unit, if reasonably relied upon by the purchaser, are created as follows:

(1) Any affirmation of fact or promise which relates to the unit; use of the unit; rights appurtenant to the unit; improvements to the common interest community that would directly benefit the purchaser or the unit; or the right to use or have the benefit of facilities which are not a part of the common interest community, creates an express warranty that the unit and related rights and uses will conform to the affirmation or promise.

(2) Any model or description of the physical characteristics of a unit or the common interest community, including plans and specifications of or for a unit or other improvements located in the common interest community, creates an express warranty that the unit and the common interest community will conform to the model or description. A notice prominently displayed on a model or included in a description shall prevent a purchaser from reasonably relying upon the model or description to the extent of the disclaimer set forth in the notice.

(3) Any description of the quantity or extent of the real estate comprising the common interest community, including plats or surveys, creates an express warranty that the common interest community will conform to the description, subject to customary tolerances.

(b) Neither the form of the word "warranty" or "guaranty," nor a specific intention to make a warranty, are necessary to create an express warranty of quality, but a statement purporting to be merely an opinion or commendation of the real estate or its value does not create a warranty.

(c) Any conveyance of a unit transfers to the purchaser all express warranties.

**History:** 1993 c 222 art 4 s 12

**515B.4-113 IMPLIED WARRANTIES.**

(a) A declarant warrants to a purchaser that a unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, reasonable wear and tear excepted.

(b) A declarant warrants to a purchaser that:

(1) a unit and the common elements in the common interest community are suitable for the ordinary uses of real estate of its type; and

(2) any improvements subject to use rights by the purchaser, made or contracted for by the declarant, or made by any person in contemplation of the creation of the common interest community, will be (i) free from defective materials and (ii) constructed in accordance with applicable law, according to sound engineering and construction standards, and in a workmanlike manner.

(c) In addition, a declarant warrants to a purchaser of a unit which under the declaration is available for residential use that the residential use will not violate applicable law at the earlier of the time of conveyance or delivery of possession.

(d) Warranties imposed by this section may be excluded or modified only as specified in section 515B.4-114.

(e) For purposes of this section, improvements made or contracted for by an affiliate of a declarant are made or contracted for by the declarant.

(f) Any conveyance of a unit transfers to the purchaser all implied warranties.

(g) This section does not in any manner abrogate the provisions of chapter 327A relating to statutory warranties for housing, or affect any other cause of action under a statute or the common law.

**History:** 1993 c 222 art 4 s 13

**515B.4-114 EXCLUSION OR CHANGE OF IMPLIED WARRANTIES.**

(a) With respect to a unit available for residential use, no general disclaimer of implied warranties is effective, but a declarant may disclaim liability in an instrument separate from the purchase agreement signed by the purchaser for a specified defect or specified failure to comply with applicable law, if the defect or failure entered into and became a part of the basis of the bargain.

(b) With respect to a unit restricted to nonresidential use, implied warranties:

(1) may be excluded or modified by agreement of the parties; and

(2) are excluded by expression of disclaimer, such as "as is," "with all faults," or other language that in common understanding calls the purchaser's attention to the exclusion of warranties.

**History:** 1993 c 222 art 4 s 14

**515B.4-1152 STATUTE OF LIMITATIONS FOR WARRANTIES; CIC CREATED ON OR AFTER AUGUST 1, 2011.**

(a) A judicial proceeding for breach of an obligation arising under section 515B.4-101(e) or 515B.4-106(d) shall be commenced within 12 months after the conveyance of the unit or other parcel of real estate.

(b) A judicial proceeding for breach of an obligation arising under section 515B.4-112 or 515B.4-113 shall be commenced within six years after the cause of action accrues, but the parties may agree to reduce the period of limitation to not less than two years. An agreement reducing the period of limitation signed by one purchaser of a unit shall be binding on any copurchasers of the unit. If an agreement reducing the period of limitations is recorded in compliance with applicable law, the agreement is binding on the purchaser's and copurchaser's successors in title to the unit. With respect to a unit that may be occupied for residential use, an agreement to reduce the period of limitation must be evidenced by an instrument separate from the purchase agreement signed by a purchaser of the unit.

(c) Subject to subsection (d), a cause of action under section 515B.4-112 or 515B.4-113, regardless of the purchaser's lack of knowledge of the breach, accrues:

(1) as to a unit, at the earlier of the time of conveyance of any interest in the unit by a declarant to a bona fide purchaser, other than an affiliate of a declarant, or the time a purchaser enters into possession of the unit. As to a unit subject to time shares, a cause of action accrues upon the earlier of the conveyance of the unit or the conveyance of the first time share interest in the unit to a purchaser; and

(2) as to each common element, the latest of (i) the time the common element is completed; (ii) the time the first interest in a unit in the common interest community is conveyed to a bona fide purchaser, or, if the common element is located on property that was additional real estate, at the time the first interest in a unit created thereon is conveyed to a bona fide purchaser; or (iii) the termination of the period of declarant control.

(d) If a warranty explicitly extends to future performance or duration of any improvement or component of the common interest community, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

(e) This section applies only to common interest communities created on or after August 1, 2011.

**History:** 2011 c 116 art 2 s 22

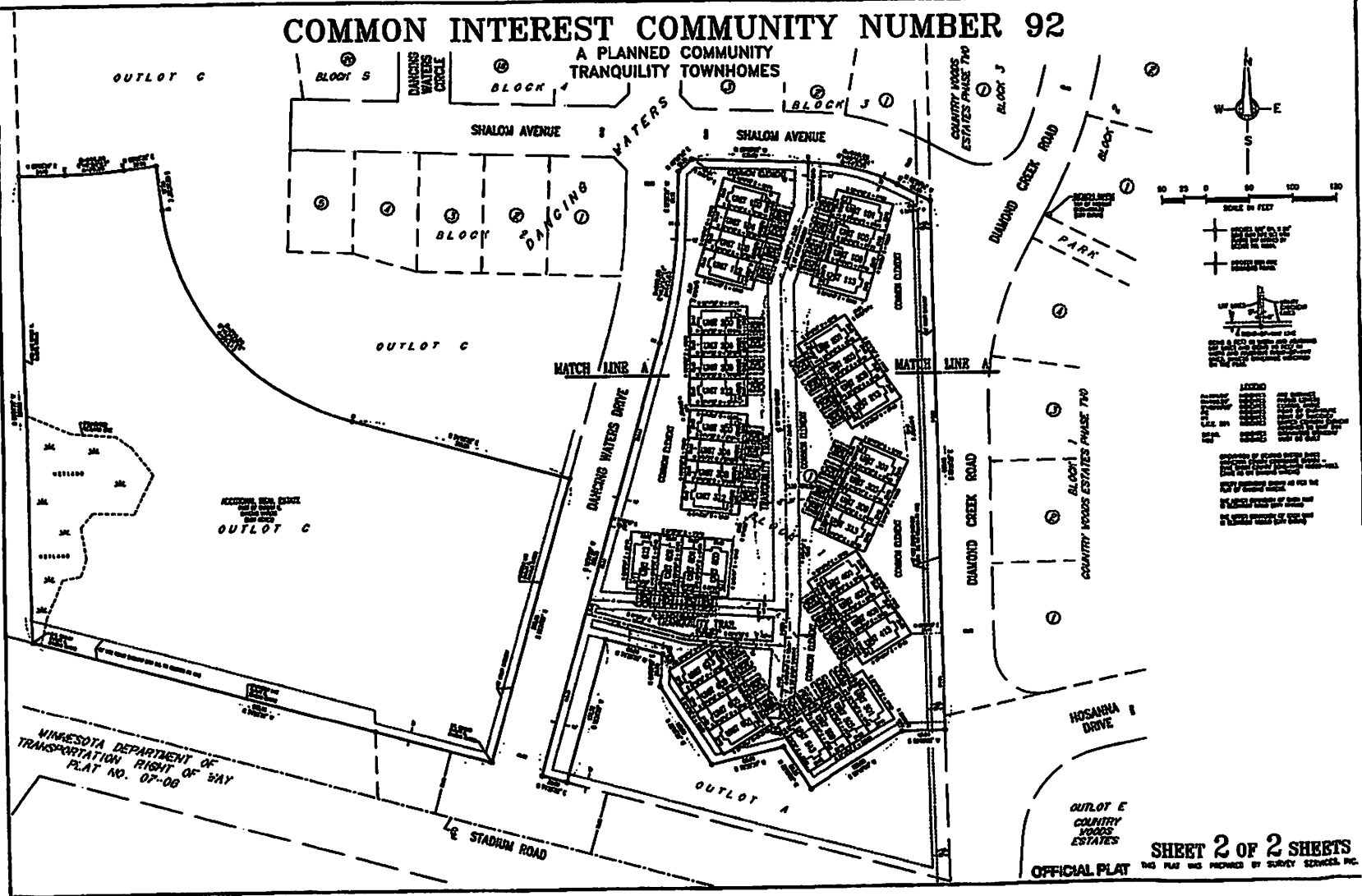




OFFICIAL PLAT

# COMMON INTEREST COMMUNITY NUMBER 92

A PLANNED COMMUNITY  
TRANQUILITY TOWNHOMES



**Annual assessments to be paid by ACH monthly withdrawals or prepaid annually in full when assessment is due.**

**COMMON INTEREST COMMUNITY NUMBER 92**

**A PLANNED COMMUNITY**

**TRANQUILITY TOWNHOMES**

**DECLARATION**

**COMMON INTEREST COMMUNITY NUMBER 92  
(Planned Community)**

**TRANQUILITY TOWNHOMES**

**DECLARATION**

**THIS DECLARATION**, made as of this 27<sup>th</sup> day of October, 2015 by OWN Ovation, LLC, a Minnesota limited liability company (the "Declarant"), pursuant to the provisions of Minnesota Statutes chapter 515B, known as the Minnesota Common Interest Ownership Act (the "Act"), for the purpose of creating Common Interest Community Number 92, Tranquility Townhomes, a planned community.

**RECITALS**

**A.** Declarant is the owner in fee simple of the real property situated in the City of Mankato, in the County of Blue Earth, in the State of Minnesota, legally described on Exhibit A attached hereto and incorporated herein by reference (the "Subject Property").

**B.** Declarant is the owner of the real property situated in the City of Mankato, in the County of Blue Earth, in the State of Minnesota, legally described on Exhibit B attached hereto and incorporated herein by reference (the "Additional Real Estate") all or any portion of which Additional Real Estate Declarant may add to the Subject Property at a later date.

**C.** Declarant has deemed it desirable for the preservation of the value of the Subject Property to submit the same, together with the buildings, structures, improvements and other permanent fixtures thereon to the provisions of the Act, and to incorporate under chapter 317A of the laws of the State of Minnesota "Tranquility Townhomes Association" for the purpose of administering the Subject Property. The Subject Property is not subject to a master association (whether or not the CIC is subject to a master association is required under section 515B.2-105(a)(2).)

**D.** Declarant is about to sell, dispose of and convey townhome interests or estates in and to the Subject Property, together with the buildings, structures, improvements and other permanent fixtures of whatsoever kind thereon, and any and all rights and privileges belonging to or in any way appertaining thereto, and to accomplish this purpose desires to submit the Subject Property to the requirements of the Act.

**E.** Declarant desires and intends that the owners, mortgagees, occupants, and other persons hereafter acquiring any interest in the Subject Property shall at all times enjoy the rights, easements, privileges, and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the cooperative aspect of the townhome form of ownership of the Subject Property and are established for the purposes of enhancing and perfecting the value, desirability and attractiveness of the same.

**NOW, THEREFORE**, Declarant, as the sole owner of the Subject Property and of the Additional Real Estate and for the purposes above set forth, hereby submits the Subject Property to the Act as a planned community under the name Tranquility Townhomes and declares as follows:

**ARTICLE I.  
DEFINITIONS**

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

**"Additional Property"** shall mean that certain real property situated in the City of Mankato, in the County of Blue Earth, in the State of Minnesota, legally described on Exhibit B of this Declaration.

**"Association"** shall mean and refer to the Tranquility Townhomes Association, a Minnesota nonprofit corporation, its successors and assigns.

**"Common Element"** shall mean and refer to all real property 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 Element owned or to be owned by the Association is legally described on Exhibit C attached hereto.

**"Consumer Price Index"** means the Consumer Price Index – All Items, Minneapolis/St. Paul Average, All Urban Consumers as published by the United States Department of Labor's Bureau of Labor Statistics or a similar government index of inflation in the event such index is no longer published.

**"Declarant Control Period"** shall mean the period commencing on the date of creation of the common interest community and continuing until the earlier of the date five (5) years after the date of the first conveyance of a unit to a unit owner other than the Declarant, the Declarant's voluntary surrender of control by giving written notice to the unit owners pursuant to Minnesota Statutes sections 515B.1-115 and 515B.3-103(c)(ii), or the date upon which conveyance of seventy-five percent (75%) of the Units to Owners other than Declarant occurs. In determining the Declarant Control Period, the percentage of the Units which have been conveyed shall be computed by including all Units in the Planned Community which the Declarant have reserved the right to build on the Additional Property.

**"Declaration"** shall mean this document and all amendments and supplements hereto.

**"Dwelling"** shall mean and refer to any portion of a building situated upon the Subject Property designated and intended for use and occupancy as one residential unit.

**"Governing Documents"** shall mean and refer to this Declaration, and the Articles of Incorporation and Bylaws of the Association, as amended from time to time, all of which shall govern the use and operation of the Subject Property.

**"Member"** shall mean and refer to all Owners who are members of the Association as provided in Article III, Section 1, hereof.

**"Owner"** shall mean and refer to the record Owner or contract vendee, whether one or more persons or entities, of a fee simple title to any Unit situated upon the Subject Property but excluding contract vendors, unless the contract provides otherwise, and others having such interest merely as security for the performance of an obligation.

**"Planned Community"** shall mean the real estate, portions of which are designated for separate ownership as Units and the remainder of which is designated as Common Element which is subject to this Declaration. Specifically, as the term is used herein, it means and refers to Tranquility Townhomes, Common Interest Community Number 92, the Planned Community established by this Declaration.

**"Plat"** shall mean the recorded plat depicting the Subject Property pursuant to the requirements of section 515B.2-1101(d) of the Act, or complying with Minnesota Statutes Chapter 505, including any amended or supplemental Plat recorded from time to time in accordance with the Act.

**"Subject Property"** shall mean and refer to all properties that are subject to this Declaration as defined in Article II, Section 1, and shall also include any portion of the Additional Property as may hereafter be added to the Community pursuant to Article VIII of this Declaration.

**"Unit"** shall mean and refer to a Dwelling together with the parcel of property or percentage interest in the parcel of property upon which the Dwelling is situated, as legally described in the instrument of conveyance in favor of the current Owner. Unit shall not be construed to include Common Element as herein defined.

## **ARTICLE II.**

### **PROPERTY SUBJECT TO THIS DECLARATION AND USE THEREOF**

#### **Section 1. Subject Property.**

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the City of Mankato, County of Blue Earth and State of Minnesota, and is legally described as shown on Exhibit A, all of which real property shall hereinafter be referred to as the "Subject Property".

#### **Section 2. Units.**

There are Forty (40) Units. Except for any rights reserved to the Declarant under this Declaration, no person may create additional Units by the subdivision or conversion of Units pursuant to section 515B.2-112 of the Act.

Each Unit constitutes a separate parcel of real estate. The Units shall each be improved with one Dwelling and all Units and Dwellings will be restricted to residential use. Unless stated otherwise in this Declaration, an Owner shall be responsible for maintenance of the Unit and the Dwelling thereon.

The identifiers and locations of the Units are shown on the Plat, which is incorporated herein by reference. The identifier for a Unit shall be its Unit number and the subdivision name. The front, rear and side boundaries of each Unit shall be the boundary lines of the platted lot upon which the Dwelling is located or intended to be located as shown on the Plat.

**Section 3. Common Element.**

The Common Element shall be owned by the Association and used for open space, private utilities, and related activities. Maintenance, replacement and repair of sanitary sewer, storm sewer and water lines on the Common Element are the responsibility of the Association. The Common Element shall be conveyed to the Association as of the date of conveyance of any Unit to an Owner other than Declarant.

**Section 4. Statement Pursuant to Section 515B.2-105(13) of the Act.**

The Community does not include any shoreland, as defined in Minnesota Statutes section 103F.205.

**ARTICLE III.**

**MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION;  
POWERS OF THE ASSOCIATION.**

**Section 1. Membership.**

Every Owner of a Unit which is subject to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Unit which is subject to assessment by the Association. The foregoing is intended to exclude persons or entities holding an interest merely as security for the performance of an obligation including contract vendors (unless the contract for deed provides otherwise) until such time such person acquires a fee simple interest in such Unit by foreclosure or by a proceeding in lieu thereof, or as to a contract under, until such time as the contract for deed is cancelled. Ownership of such Unit shall be the sole qualification for membership.

**Section 2. Voting Rights.**

Each Member shall be entitled to one vote for each Unit owned. When more than one (1) person holds the interest in a Unit, all such persons shall be Members but the vote for such Unit shall be exercised as they among themselves shall determine, subject, however, to the limitation that the voting power for any Unit may not be split. The vote for any Unit which is owned by more than one (1) Member may not be cast at any meeting unless such Members have filed with the Secretary of the Association prior to such meeting the name of one (1) of their number who then shall be the only person authorized to cast such



vote at such meeting. In lieu of such filing prior to every meeting, such Members may file a document executed by all of them, designating one (1) of their number as the person authorized to cast their vote at all future meetings and such authorization shall continue to be valid until such time as such authorization shall have been rescinded in writing by all of such Members.

### **Section 3. Suspension of Rights.**

The right of any Member, the Member's 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 adopted by the Association.

### **Section 4. Powers of the Association.**

Declarant hereby delegates to, and the Association hereby is permitted to, exercise all powers described in the Governing Documents, the Act and the statute under which it was incorporated. Neither this Planned Community nor the Association is subject to any Master Association.

## **ARTICLE IV.**

### **PROPERTY RIGHTS AND OBLIGATIONS IN THE COMMON ELEMENT**

#### **Section 1. Members' Easement and Enjoyment.**

Subject to the provisions of Section 2 below, every Member shall have a non-exclusive easement of ingress and egress over the Common Element and a non-exclusive easement and right of enjoyment in and to the Common Element, and such easements shall be appurtenant to and shall pass with the title to every Unit.

#### **Section 2. Extent of Members' Easements.**

The rights and easements in favor of the Members created hereby and the title of the Association to the Common Element shall be subject to the following and as further provided herein:

- (a) The right of the Association, as provided in the Governing Documents, to borrow money for the purpose of improving, repairing and maintaining the Common Element or any improvements thereon, and in aid thereof to mortgage said properties, which rights of such mortgagee in said properties 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 above-described properties against foreclosure;

- (c) The right of the Association, as provided in the Governing Documents, to suspend the voting and enjoyment rights of any Member for any period during which any assessments remain unpaid, and to suspend the said enjoyment rights for any period not to exceed sixty (60) days and to impose a fine not to exceed Ten Dollars (\$10.00) for each infraction of its published rules and regulations, each day during which infractions exist being deemed a separate and distinct infraction; provided, however, that nothing contained in this Section 2(c) shall be deemed to deny an Owner access to and from his or her Unit or Dwelling located on the Subject Property;
- (d) The right of the Association to charge reasonable admission and other fees to Members for the use of the Common Element;
- (e) The right of the Association to dedicate or transfer all or any part of the Common Element to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed by the Members. Except for the installation of utilities pursuant to the easements created by Article XI hereof, no such dedication or transfer shall be effective unless an instrument signed by all Members has been recorded agreeing to such dedication or transfer, 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 XIII, Section 5, must also be met to effect a valid dedication or transfer;
- (f) Rights, if any, of the City of Mankato to maintain the Common Element in the event of failure by the Association to do so;
- (g) Utility and drainage easements to install sewer, water, gas, electric and telephone lines, transformers, towers, poles, lighting fixtures, pipes, conduits, cables, wires, drainage channels and other utility facilities, including the right of access thereto for the purpose of constructing, installing, repairing, maintaining, altering and modifying any such facilities;
- (h) Encroachments, if any, created pursuant to Section 5 of this Article.

### **Section 3. Delegation of Use.**

Any Owner may delegate, in accordance with the Bylaws, his or her right of enjoyment to the Common Element and facilities to the members of his or her family or to his or her tenants who reside on the Subject Property, subject to the limitation contained in Article IX, section 9 regarding rental of Dwellings.

### **Section 4. Taxes and Municipal Special Assessments on Common Elements.**

Taxes and special assessments that would normally be levied against the Common Element shall be divided and levied against the individual Units in the Subject Property in equal proportion, or as the governmental taxing authorities shall determine, which levies shall be a lien against said individual Units.

### **Section 5. Encroachments.**

Notwithstanding any other provisions contained herein, in the event any Dwelling or garage or any fireplace, roof, air conditioner, flower box, deck, patio, balcony, eaves, or other appurtenance on any Unit

as originally constructed (or as reconstructed or added to in accordance with the provisions of Article VIII herein) encroaches upon or overhangs upon any part of the Common Element, then a perpetual easement appurtenant to such encroaching or overhanging Unit shall exist for the continuance of such encroachment or overhang upon the Common Element.

**Section 6. Parking Rights.**

Ownership of each Unit shall entitle the Owner to the right of ingress and egress in and to the Owner's garage and the right to exclusive use of the driveway/parking pad located adjacent to the Owner's Unit.

**Section 7. Association's Easements.**

The Association or its agents or employees shall have the right to go upon any Unit in connection with the maintenance or repair of the Common Element or any improvements thereon or in connection with its maintenance responsibilities set forth in Article XIII.

**ARTICLE V.**

**SPECIAL DECLARANT RIGHTS**

**Section 1. Reservation of Rights.**

The Declarant shall have and hereby reserves for its benefit the exclusive and unconditional right to:

- (a) Complete any improvements indicated on the Plat;
- (b) Create up to 80 Units on the Subject Property by subdividing any Unit owned by Declarant or to relocate boundaries between Units or to otherwise alter Units owned by it;
- (c) Maintain a sales office, a management office, model Units and Dwellings, sales and rental facilities and signs advertising the Subject Property within the Common Element and/or any Units owned by the Declarant from time to time, located anywhere on the Property;
- (d) Merge the Planned Community with any other planned community (as defined in the Act);
- (e) Control the operation and administration of the Association, including without limitation the power to appoint and remove the members of the Board of Directors of the Association pursuant to section 515B.3-103 of the Act, until the earlier of the voluntary surrender of control by Declarant or the end of the Declarant Control Period. Notwithstanding the foregoing, the Members other than Declarant shall have the right to nominate and elect not less than 33 1/3% of the directors of the Association at a meeting of the Members which shall be held within 60 days following the conveyance by Declarant of 50% of the total number of Units authorized to be included in the Subject Property and built on the Additional Property; and
- (f) To add all or a portion of the Additional Property to the Planned Community.

Additionally, during the Declarant Control Period, Declarant's written consent shall be required for any amendment to the Governing Documents which directly or indirectly affects or may affect Declarant's rights under the Governing Documents.

## **Section 2. Declarant's Easement.**

The Declarant shall convey fee simple title to the Common Element to the Association as of the date of conveyance of any Unit to an Owner other than Declarant; provided, however, that Declarant shall have and does hereby reserve the right and easement to enter upon and pass through, on and over such Common Element for the purpose of maintaining, developing and improving the Common Element, the Additional Property, or Units and marketing and selling Units, and provided further that Declarant may place a mortgage or other lien upon the Common Element in connection with the development and improvement thereof, but any and all such mortgages and liens shall be released as to the Common Element prior to conveyance thereof to the Association. The Declarant shall improve the Common Element, in locations selected by it and pursuant to its plans and specifications, with paths, landscaping and such other improvements and amenities as the Declarant shall determine. The Association shall at all times have responsibility for management and maintenance of the Common Element and shall govern and control the same to the same extent as if the Common Element were owned by the Association, except for the rights and easements of Declarant provided in this Section 2. The cost of such maintenance shall be assessed against the various Units as set forth in Article VI herein.

## **ARTICLE VI.**

### **COVENANTS FOR MAINTENANCE ASSESSMENTS**

#### **Section 1. Creation of the Lien and Personal Obligations of Assessments.**

The Declarant, for each Unit owned by it within the Subject Property, hereby covenants, and each Owner of any Unit by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges; and (b) special assessments. Such assessments, together with interest, costs of collection and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs of collection and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his or her successors in title unless expressly assumed by them, but may continue to be a lien on the Unit. No Owner may avoid the lien of, or personal liability for, such assessment by nonuse of the Common Element or abandonment of the Owner's Unit. All assessments shall be fixed, established and collected in the manner provided in this Article. A lien created under this Article is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances recorded before the Declaration, (ii) any first mortgage encumbering the fee simple interest in the unit, and (iii) liens for real estate taxes and other governmental assessments or charges against the unit.

## **Section 2. Purpose of Assessments.**

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Subject Property and for the improvements and maintenance of the Common Element and other areas that the Association is obligated to maintain as provided herein. The annual assessments shall be payable in regular installments and shall be used for (but not limited to) hazard insurance for Common Element and Dwellings; maintenance to be performed by the Association pursuant to Article XIV; an adequate reserve fund for maintenance, repairs and replacement of the Common Element and improvements thereon and other areas that must be replaced on a periodic basis; and maintenance, repairs and replacement of water, sewer and the utility lines and fixtures that are not the responsibility of the City of Mankato, which serve the Common Element or any Unit.

Said annual assessments shall also be used for maintenance and replacement of lawn, landscaping and shrubbery on Common Elements, for snow removal from paths and sidewalks located on Units and Common Element and public sidewalks; and for maintenance and replacement of lawn, landscaping and shrubbery located on public boulevards and exterior maintenance of the Dwellings situated upon the Subject Property.

## **Section 3. Basis and Maximum of Annual Assessments.**

Except as provided in Section 8, below, annual and special assessments shall be levied equally between all the Units and may be collected on a monthly basis, provided, however, that assessments arising out of the negligence or nonperformance of any obligation of an Owner shall be for additional non-uniform amounts and shall be immediately due in full from the Owner and assessments against fewer than all Units shall be set pursuant to section 7, below. In addition, upon determination by the Board, the costs of insurance may be assessed in proportion to risk or coverage of the Unit being assessed.

## **Section 4. Special Assessments.**

In addition to the annual assessments authorized by section 3 hereof, 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 emergency or unbudgeted expense, provided that any such assessment shall have the assent of Members holding at least seventy-five percent (75%) of the voting power of the Association and who are voting in person or by proxy at a meeting duly called for this purpose. If additional Units are added to the Subject Property by the addition of all or any portion of the Additional Property to the Subject Property, the Owner of each additional Unit shall be responsible for all special assessments levied on or after the date of such addition.

## **Section 5. Change in Basis and Maximum of Annual Assessments.**

The limitations of section 3 hereof shall not apply to any change in the maximum and basis of assessments undertaken as incident to a merger or consolidation in which the Association is authorized to participate. The consent requirements of Article XII, section 5, must also be obtained to effect a valid change in the method of determining the assessments.

**Section 6. Notice and Quorum for Any Action Authorized Under Sections 3 and 4.**

Written notice of any meeting of the general membership required for an action authorized under sections 3, 4 or 5 shall be sent to all Members not less than thirty (30) nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the entire voting power of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half of the quorum required at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 7. Annual and Special Assessments.**

Except as provided in section 8, below, both annual and special assessments must be allocated equally between all the Units. This requirement shall not apply to:

- (a) Common expenses or portions thereof benefiting fewer than all of the Units, which may be assessed exclusively against those Units benefited in equal proportion;
- (b) Reasonable attorneys' fees incurred by the Association in connection with the collection of assessments or the enforcement of the Governing Documents or the Rules against a Member, which may be assessed against the Member's Unit;
- (c) Fees and charges, interest, fines and late charges for: services provided to specific Units, late payments of assessments, violations of the Governing Documents or Rules, fees for preparation of Association documents, resale certificates, etc.; and
- (d) Willful or negligent acts as set forth in section 11 hereof.

If additional Units are added to the Subject Property (by the subdivision or conversion of Units by Declarant), the Owner of each additional Unit shall be responsible for all special assessments levied on or after the date of such addition.

**Section 8. Alternate Common Expense Plan for Declarant.**

The Declarant hereby establishes an alternate common expense plan as permitted by Minnesota Statutes section 515B.3-1151(a)(2)(i). Specifically, if a common expense assessment has been levied, the Declarant's common expense liability, and the corresponding assessment lien against Units owned by the Declarant, shall be limited to: (a) paying when due, the full share of replacement reserves allocated to the Units owned by the Declarant, and (b) paying when due, all accrued expenses of the Association in excess of the aggregate assessments payable with respect to Units owned by Owners other than the Declarant.

**Section 9. Date of Commencement of Annual Assessments; Due Dates.**

The annual assessments provided for herein shall commence as to all Units on the date that the first Unit is sold to an Owner other than Declarant (or their affiliates).

If additional Units are added to the Subject Property (by the subdivision or conversion of Units by Declarant or pursuant to Article VIII), Declarant shall not be responsible for the payment of any annual assessment on any such additional Unit until the Supplemental Declaration adding the additional Unit to the Subject Property is recorded. Upon such recording, all Units added by the amendment to this Declaration shall be subject to annual assessments. The initial payment of monthly installments for each additional unit shall be the installment amount payable by the Owner of each Unit in the Community prior to the Filing Date (the "Pre-Filing Installment Amount"), pro-rated for the period commencing with the Filing Date and ending with the date upon which such initial monthly installment is due. Subsequent monthly installments shall be in the amount equal to the Pre-Filing Installment Amount until the Association determines the next subsequent annual assessment.

The first annual assessment shall be made for the balance of the calendar year and shall become due and payable in equal installments on payment dates to be established by the Board of Directors.

The amount of annual assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment provided for in Section 3 hereof as the remaining number of months in the year bear to twelve. The same reduction in the amount of the assessment shall apply to the first assessment levied against any property which is hereafter added to the properties now subject to assessment at a time other than the beginning of any assessment period.

The due date of any special assessment under Section 4 shall be fixed by the resolution authorizing such assessment.

#### **Section 10. Duties of the Board of Directors.**

The Board of Directors of the Association shall fix the amount of the assessment against each Unit for each assessment period at least thirty (30) days in advance of such date or period.

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

The Board shall have the right to collect any annual or special assessment on a monthly basis. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a given Unit have been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

#### **Section 11. Assessment of Cost Due to Willful or Negligent Acts.**

If the need for maintenance or repair is due to the willful or negligent acts of an Owner or the Owner's family, guests, tenants or invitees, the cost of such maintenance less the net insurance proceeds received by the Association due to such act or neglect, if any, shall be assessed against such Owner's Unit and shall be added to and become a part of the current annual assessment against that Unit and, at the option of the Board, shall be payable in full with the next monthly installment of the then current annual assessment, or divided equally over the remaining months for the then current annual assessment and payable with and in addition to the monthly installments of the then current annual assessment.

## **Section 12. Effect of Nonpayment of Assessments: Remedies of the Association.**

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eight percent (8%) per annum. The Association may bring (a) an action at law against the Owner personally obligated to pay the assessments, and/or (b) foreclose its lien for the amounts owed by the Owner.

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 Unit, and a description of the Unit 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 by the Association in the same manner in which mortgages on real property may be foreclosed by action or by advertisement under a power of sale in Minnesota. Each Owner, by acceptance of a deed for any Unit, does further hereby give full and complete power of sale to the Association and does consent to a foreclosure of the assessment lien as if such lien were a mortgage containing a power of sale. 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. The person personally obligated to pay such lien shall also be required to pay the Association any assessments against the Unit 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 Unit as the Owner thereof. Prior to reselling the Unit after foreclosure, no assessments shall be levied against the subject Dwellings; provided, however, that if the Association rents or leases the Dwelling, the Association shall once again have the right to levy assessments against said Dwelling. A release or satisfaction 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.

## **Section 13. 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 Unit. Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof (including the delivery of a deed in lieu thereof) shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall release such Unit from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessments.

All other parties acquiring liens on any Unit after this Declaration is recorded shall be deemed to consent that their liens shall be and remain inferior to future liens provided for herein.

The Association shall, upon written request, report to any first Mortgagee or other encumbrancer of a Unit the amount of the assessments remaining unpaid for a period longer than ninety (90) days after the same shall become due.



#### **Section 14. Exempt Property.**

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

- (a) All properties dedicated and accepted by the local public authority and devoted to public use;
- (b) All properties exempted from taxation by the laws of the State of Minnesota upon the terms and to the extent of such legal exemption; and
- (c) All Common Element as defined in Article I hereof.
- (d) Notwithstanding any provision herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

### **ARTICLE VII. PARTY WALLS**

#### **Section 1. General Rules of Law to Apply.**

Each wall which is built as a part of the original construction of the Dwelling upon the Subject Property and placed on the dividing line between the Units 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 liability for property damage due to negligence or willful acts or omissions shall apply thereto.

#### **Section 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.

#### **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 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 Owner 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, an Owner who by his or her 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 any 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 shall be by a majority of all of the arbitrators.

**Section 7. Lien Rights.**

As soon as any expenses for repair and maintenance of a party wall are known, each Owner agrees to make the necessary payments due as soon as reasonably possible. If an Owner fails to make any payment which is due or is necessary to avoid a payment to any contractor, supplier or creditor becoming delinquent, the other Owner shall have the right to make such payment and upon making such payment, such payment shall be deemed to be due and owing from the defaulting Owner and the non-defaulting Owner shall have the right to file a lien against the defaulting Owner's Unit together with interest at the judgment rate as that rate is established from time to time. To evidence such lien, the non-defaulting Owner may prepare a written notice of lien, setting forth the amount due together with the interest, which notice shall be filed against the defaulting Owner's Parcel in the office of the Blue Earth County Recorder. This lien shall be superior to all other liens and encumbrances except liens for general real estate taxes and assessments and the lien of any first mortgage. Such lien can be enforced and foreclosed by an action in the same manner in which mechanic's liens can be enforced and foreclosed under the laws of the State of Minnesota and in such action the defaulting Owner shall be liable for all costs of such action including attorneys' fees.

**ARTICLE VIII.**

**ADDITIONAL PROPERTY**

**Section 1. Reservation of Rights to Add Additional Units.**

The Declarant hereby reserves the right to add all or any portion of the Additional Property to the Community. The Declarant's right to add any portion of the Additional Property to the Community will terminate fifteen (15) years following the date of recording of this Declaration. Portions of the Additional Property may be added at different times. The Declarant reserves the right to create no more than Fifty (40) Units on the Additional Property. All buildings built and Units created on the Additional Property shall be restricted to residential use and shall be compatible with the Units constructed on the Subject Property in terms of architectural style, quality of construction, and principal materials employed in construction. Notwithstanding any provision set forth in this Declaration to the contrary, Units constructed on the Additional Property may vary in size (including the number of stories) from Units constructed on the Subject Property. All restrictions contained in this Declaration affecting the use, occupancy, ownership

and alienation of Units will apply to units on the Additional Property that may be made subject to this Declaration. None of the assurances regarding the Subject Property contained in this Declaration shall apply to any portion of the Additional Property not subjected to this Declaration pursuant to this Article. The Declarant makes no other assurances with regard to the Additional Property pursuant to Minnesota Statutes section 515B.2-106.

#### **Section 2. Supplemental Declaration.**

The Declarant may add all or any portion of the Additional Property to the Planned Community at any time within the time limit set forth in section 515B.2-106 of the Act by recording a Supplemental Declaration identifying that portion of the Additional Property that is being subjected to this Declaration. All improvements on the Additional Property being subjected to this Declaration by such an amendment shall be substantially completed prior to recording such amendment.

#### **Section 3. Treatment of Additional Property.**

The Additional Property shall not be subject to the provisions of this Declaration unless and until added to the Community by the filing of a Supplemental Declaration as described in this Article, but once added, shall be treated in the same manner as the Subject Property.

### **ARTICLE IX.**

#### **ARCHITECTURAL CONTROL COMMITTEE**

No exterior additions, removals or alterations (including changes in color or appearance) to any building on the Subject Property, additional fences, hedges, walls, walkways, or other structures shall be commenced, erected or maintained except such as are installed or approved by the Declarant in connection with the initial construction of the improvements on the Subject Property, until the plans and specifications showing the nature, kind, shape, height, materials, location and approximate cost of same shall have been submitted to and approved in writing as to harmony of the external design and location in relation to surrounding buildings erected upon the Subject Property by an architectural committee composed of the Board of Directors of the Association or three (3) or more representatives appointed by the Board of Directors. In the event said 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, such approval shall be deemed to have been given. If no application has been made to the architectural committee or their representatives, or if such application has been rejected, a suit to enjoin or remove such additions, alterations or changes may be instituted at any time by the Association or any Owner, in which suit the Association or any Owner shall have the right to collect reasonable attorneys' fees, costs and expenses. None of the members of the architectural committee shall be entitled to any compensation for their services performed pursuant to this paragraph, but compensation may be allowed to independent professional advisors retained by such committee. During the Declarant Control Period, all decisions of the architectural committee may be vetoed by the Declarant.

**ARTICLE X.**  
**BUILDING AND USE RESTRICTIONS**

**Section 1. Land Use.**

No Unit shall be used except for residential purposes.

**Section 2. Nuisances.**

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

**Section 3. Pets.**

During the period of Declarant control, the Declarant may determine, in its sole discretion, the number and type of animals allowed per Unit. After the period of Declarant control has ended, Owners and Occupants shall be permitted to have no more than two (2) dogs and two (2) cats per Unit, unless they have previously been authorized in writing by Declarant to have a different number and/or type of animals in their Unit. No animals may be bred, kept or maintained for business or commercial purposes anywhere on the Property. Animals shall be leashed at all times when they are outside their Owner's Unit, or in an approved dog run, which shall be cleaned and maintained by the Owner. Pet Owners shall be responsible for cleaning up after their pets whenever the pets are outside their Owner's Unit. Failure to promptly clean up after a pet will subject the pet's owner to an assessment from the Association for the cost of such clean up.

**Section 4. Garbage and Refuse Disposal.**

No Unit shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall be kept in sanitary containers and no exterior burning of household refuse shall be done.

**Section 5. Prohibited Structures, Window Treatments and Lawn Ornaments.**

No structure of a temporary character, basketball hoop, trailer, tent, shack, boat house, barn or other out-building shall be constructed on any Unit. No garage shall be used at any time as a residence either temporarily or permanently. Window treatments must be in harmony with the design of the Dwelling and the surrounding area and must be properly installed. No blankets, sheets, loose fabric, other material(s) or excessively-brightly colored window treatments shall be permitted on any window including garage door windows. No lawn ornaments or sculptures shall be permitted on any Unit unless inside a Dwelling and not visible from the exterior of the Dwelling. The Architectural Control Committee shall be the final arbiter of any disputes under this section.

**Section 6. Storage.**

Outside storage of boats, recreational vehicles, trailers, inoperable cars and trucks or other property shall not be allowed; however, outdoor cooking equipment and patio furniture may be

kept in the patio area only upon a Unit, subject to the following limitations: Owners or Occupants shall keep and/or store in the patio area no more than one patio table and 4 chairs, one grill of up to medium in size, and one storage container of neutral color not to exceed 25 gallons in size. All such items must be kept in excellent and aesthetically pleasing condition. Yard areas must be kept free of storage or other items of any kind. Planting pots in excellent condition are acceptable in limited numbers, to be determined by the Association. Owners or Occupants must keep their windows including garage door windows free from any stickers, clings or any other items that may be seen from the exterior with the exception that Owners or Occupants may tastefully and minimally decorate entries and patios for the holiday season. Holiday decorating items shall be promptly removed after the end of the holiday season, as determined by the Association. The storage or collection of rubbish of any character whatsoever, any material that emits foul or obnoxious odors, the growing of any noxious weeds or other noxious natural substance, and the harboring of any source of unreasonable noise or activity which disturbs the peace, comfort or serenity of Owners or Occupants, is prohibited. Usual trash and garbage shall be kept in sanitary containers, in a neat and clean condition, and shall be regularly collected. Garbage containers shall be stored on days other than garbage days inside units.

#### **Section 7. Sewer Facilities.**

The sewer disposal facilities in the Subject Property shall be limited to the municipal sanitary sewer system.

#### **Section 8. Time Shares.**

The time share form of ownership, or any comparable form of lease, occupancy rights or ownership which has the effect of dividing the ownership or occupancy of a Unit into separate time periods, is prohibited.

#### **Section 9. Rental of Dwellings.**

A Dwelling may be rented by the Owner in conformance with the City Rental Ordinance governing the subject property. In no event, however, shall a Dwelling be rented by the Owner for transient or hotel purposes, which shall be defined as:

- (a) Rental for any period less than 6 months, or
- (b) Any rental if the occupants of the Dwelling are provided customary hotel services, such as room service for food and beverage, maid service, furnishing laundry and linen, and bellboy service.

Any lease agreement between an Owner and a tenant shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of the Governing Documents and rules of the Association, that any failure by the tenant to comply with the terms of the Governing Documents or the rules shall be a default under the lease, and that the Association shall have the right to enforce the terms of the Lease, the Governing Documents or the Association rules by any legal means including, if necessary, by eviction of the tenant.

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**Section 10. Antennas.**

Television and radio antennas are not permitted to be installed on Units or in Common Area(s). Satellite receiving dishes (one per unit only) may be erected or placed upon Units on the exterior of Dwelling in accordance with the regulations and only with prior written approval of the Association. All satellite dishes must be screened from adjoining Units and the road serving the Units and are limited to no more than 18" in size.

**ARTICLE XI.  
EASEMENTS**

**Section 1. Utilities and Drainage Easements.**

Easements for installation and maintenance of utilities and drainage facilities are hereby created and dedicated in, over and upon the Common Element owned by the Association. Within these easements, no structure, fence, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements, or which may interfere with snow plowing or snow storage within these easements.

**Section 2. Water and Electricity Easements.**

The rights and easements of enjoyment by the Owner of each Unit and the title of such Owner in said Unit shall be subject to the rights of the Association to an exclusive easement on and over said Unit for the purpose of installing and maintaining a source of water and electricity from Dwellings to serve the Common Element.

If water or electricity taken from such Unit is used to serve the Common Element and such water and electricity is not separately metered, the Association and the Owner of the affected Unit shall agree on a reasonable method and amount of compensation payable therefore by the Association to the Owner. In the event that the parties cannot agree on a reasonable method and amount of compensation, each party shall choose one arbitrator and the two (2) arbitrators shall choose a third arbitrator and the decision of the majority of all arbitrators shall be final and conclusive of the method and amount of compensation to be paid.

**ARTICLE XII.  
INSURANCE**

**Section 1. Required Coverage.**

**12.1 Required Coverage.** The Association shall obtain and maintain, at a minimum, a master policy or policies of insurance in accordance with the insurance requirements set forth in the Act and the additional requirements set forth herein, issued by a reputable insurance company or companies authorized to do business in the State of Minnesota, as follows:

**A.** Property insurance in broad form covering all risks of physical loss in an amount equal to one hundred percent (100%) of the insurable "replacement cost" of the Property, less deductibles, exclusive of land, footings, excavation and other items normally excluded from coverage (but including all building service equipment and machinery). The policy or policies shall cover personal property owned by the Association. The policy or policies shall also contain "Inflation Guard" and "Agreed Amount" endorsements, if reasonably available. Such policy or policies shall include such additional endorsements, coverage and limits with respect to the foregoing and other hazards as may be required from time to time by the regulations of the FHA or Federal National Mortgage Association ("FNMA") as a precondition to their insuring, purchasing or financing a mortgage on a Unit. The Board may also, on behalf of the Association, enter into binding written agreements with a mortgagee, insurer or guarantor, including, without limitation, the FHA or FNMA, obligating the Association to keep certain specified coverage or endorsements in effect.

**B.** Comprehensive public liability insurance covering the use, operation and maintenance of the Common Elements, with minimum limits of \$1,000,000.00 per occurrence, against claims for death, bodily injury and property damage, and such other risks as are customarily covered by such policies for projects similar in construction, location and use to the Property. The policy shall contain a "severability of interest" endorsement, which shall preclude the insurer from denying the claim of an Owner or Occupant because of negligent acts of the

Association or other Owners or Occupants. The policy shall include such additional endorsements, coverage and limits with respect to such hazards as may be required by the regulations of the FHA or FNMA as a precondition to their insuring, purchasing or financing a mortgage on a Unit.

**C.** Fidelity bond or insurance coverage against dishonest acts on the part of directors, officer, manager, trustees, employees or persons responsible for handling funds belonging to or administered by the Association if deemed to be advisable by the Board or required by the regulation of the FHA or FNMA as a precaution to their insuring, purchasing or financing of a mortgage on a Unit, be written in an amount equal to the greater of (i) the estimated maximum of Association funds, including reserves, in the custody of the Association or management agent at any given time while the bond is in force or (ii) a sum equal to three months aggregate assessments on all Units plus reserves. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise

cover volunteers, or waiver of defense based upon the exclusion of persons serving without compensation, shall be added.

**D. Worker's Compensation insurance as required by law.**

**E. Directors and Officers liability insurance with such reasonable limits and coverages as the Board shall determine from time to time.**

**12.2 Premiums; Improvements; Deductibles.** All insurance premiums shall be assessed and paid as a Common Expense. The insurance need not cover improvements and betterment to the Units installed by Owners, but if improvements and betterment are covered, any increase cost may be assessed against the Units affected. The Association may, in the case of a claim for damage to a Unit, (i) pay the deductible amount as a Common Expense, (ii) assess the deductible amount against the Units affected in any reasonable manner, or (iii) require the Owners of the Units affected to pay the deductible amount directly.

**12.3 Loss Payee; Insurance Trustee.** All insurance coverage maintained by the Association shall be written in the name of and the proceeds thereof shall be payable to, the Association (or a qualified insurance trustee selected by it) as trustee for the benefit of the Owners and secured parties, including Eligible Mortgagees, which suffer loss. The Association, or any insurance trustee selected by it, shall have exclusive authority to negotiate, settle and collect upon any claims or losses under any insurance policy by the Association.

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

**12.5 Cancellation; Notice of Loss.** All policies of property insurance and comprehensive liability insurance maintained by the Association shall provide that the policies shall not be canceled or substantially modified, for any reason, without at least thirty (30) days prior written notice to the Association, to the FHA or FNMA, if applicable.



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

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

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

**12.9 Owner's Personal Insurance.** Each Owner may obtain additional personal insurance coverage at his or her own expense covering fire and other casualty to the Unit, personal property or personal liability. All insurance policies maintained by Owners shall provide that they are without contribution as against the insurance purchased by the Association.

**12.10 Indemnification.** The Association shall, to the extent the alleged liability is not covered by insurance, indemnify every individual acting in any official capacity on behalf of the Association, pursuant to the provisions of Minnesota Statutes Section 317A. 521. The Association shall obtain and maintain, at a minimum, a master policy or policies of insurance in accordance with the insurance requirements set forth in the Act and the additional requirements set forth herein, issued by a reputable insurance company or companies authorized to do business in the State of Minnesota, as follows:

### **ARTICLE XIII. SPECIAL PROVISIONS**

#### **Section 1. Overriding Provisions.**

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**The provisions of this Article take precedence over any other conflicting provisions of this Declaration.**

**Section 2. Notice of Default.**

A first mortgagee of a Unit, upon request, is entitled to written notification from the Association of any default in the performance by the Owner of any obligation under the Governing Documents known to the Association which is not cured within sixty (60) days.

**Section 3. No Right of First Refusal.**

The right of an Owner to sell, transfer, or otherwise convey his or her Unit shall not be subject to any right of first refusal or similar restrictions.

**Section 4. Liability for Unpaid Assessments.**

Any first mortgagee of a Unit who obtains title to a Unit pursuant to the remedies provided in its mortgage or by foreclosure of its mortgage shall not be liable for the unpaid assessments of the Unit which accrue prior to the acquisition of title to such Unit by the mortgagee.

**Section 5. Restricted Activities.**

Until the Association has received written approval from all of the first mortgagees of Units, all Owners other than the Declarant and, during the Declarant Control Period, the Declarant, the Association shall not be entitled to:

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Element owned, directly or indirectly, by the Association for the benefit of the Units. The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Element shall not be deemed a transfer within the meaning of this subsection;
- (b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;
- (c) By act or omission change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Dwellings, the maintenance of the Common Element, party walls or common fences and driveways, or the upkeep of lawns and plantings;
- (d) Fail to maintain first and extended coverage on insurable Common Elements on a current replacement cost basis in an amount not less than 100% of the insurable value, based on current replacement costs; or
- (e) Use hazard insurance proceeds received for losses to any Common Elements other than for the repair, replacement or reconstruction of such Common Elements.

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**Section 6. Examination of Books and Records.**

First mortgagees shall have the right to examine the books and records of the Association.

**Section 7. Right to Cure Default.**

First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Element and may pay overdue premiums in hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Element, and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

**Section 8. Priority of First Mortgagees.**

No provision of the Declaration or Bylaws shall be construed as giving to the Owner or to any other party priority over any rights of first mortgagees of Units pursuant to their mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Common Element.

**Section 9. Foreclosure of First Mortgages and Contracts.**

The sale or transfer of any Unit pursuant to the foreclosure of a first Mortgage, or pursuant to any other proceeding or arrangement in lieu of such foreclosure or cancellation, shall extinguish the lien of all other assessments as to the 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; provided, however, that if a first mortgage on a Unit is foreclosed, the first mortgage was recorded after June 1, 1994, and no Owner redeems during the Owner's period of redemption provided by Minnesota Statutes chapters 580, 581 or 582, then the holder of the sheriff's certificate of sale from the foreclosure of the first mortgage shall take title to the Unit subject to unpaid assessments for Common Expenses levied pursuant to sections 515B.3-115 (a), (e)(1) to (5), (f), and (i) of the Act, which became due, without acceleration, during the six months immediately preceding the first day following the end of the Owner's period of redemption. 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 Units in the Association, exclusive of such encumbered Unit. No such sale, transfer or acquisition of possession shall relieve an Owner of a Unit from liability for any assessments thereafter becoming due or from the lien thereof, nor shall it relieve the person personally obligated to pay the assessments which were levied prior to the transfer of such Unit from the personal obligation to pay the same.

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**ARTICLE XIV.**  
**MAINTENANCE**

**Section 1. Mandatory Maintenance.**

The Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for, and be vested with, the exclusive management and control of the Common Element and all improvements thereon (including furnishings and equipment related thereto), and shall keep the same in good, clean, attractive and sanitary condition, order and repair (consistent with its natural character). In addition to maintenance upon the Common Element, the Association shall provide exterior maintenance for the Dwelling upon each Unit which is subject to assessment hereunder, as follows: painting, repair, replacement, cleaning and care of roofs, soffits, fascia, gutters, downspouts and exterior building surfaces, care and replacement of trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include windows, doors, screens and garage doors (except painting, which shall be a responsibility of the Association), exterior air conditioning units, gardens, shrubs and other plantings established by Owners and not by the Association and private decks or patios except that if an Owner after notice neglects to replace broken glass in exterior surfaces, or fails to maintain the appearance of its air conditioning unit, or private deck or patio, the Association may do so, charging the cost thereof to such Owner. At the option of the Board, the Association may undertake to clean exterior glass surfaces. All such painting, repair and maintenance shall be done as and when, and to the extent that, the Board deems it necessary or desirable. The Association shall remove snow from the Common Element driveways, parking areas and sidewalks (including sidewalks located on Owners' Units), but shall not be required to remove snow from decks or patios.

**Section 2. Access at Reasonable Hours.**

For the purpose solely of performing the maintenance and repairs authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter any Dwelling and upon any Unit with such persons and material as the Association deems necessary at reasonable times during the day.

**Section 3. Emergency Access.**

For the purpose of performing emergency action to seal a Dwelling from weather or otherwise to prevent damage or destruction to any Dwelling, the Association through its duly authorized agents or employees, shall have the right to enter any Dwelling, and upon any Unit at any time, without notice, with such persons and material as the Association deems necessary to accomplish such emergency repairs or to take such emergency action.

**Section 4. Lawn and Planting Maintenance.**

The Association shall mow, water, rake and maintain, to the extent the Board deems necessary or desirable, the irrigation system and all lawns and exterior plantings; except that the Association may, but shall not be required to, water gardens and plantings established by Owners, and to the extent the Association undertakes to do so, it will not be responsible for any damage to such gardens and plantings due to overwatering, under watering or improper watering. In lieu of maintaining separate water lines for the Common Element, the Association may draw water for such common purposes from exterior sillcocks on each Dwelling, provided that it rotates such drawing among all Dwellings by a schedule or other reasonable means so as to approximately equalize the amount of water taken from each Dwelling over the course of a season.

## **ARTICLE XV. EMINENT DOMAIN**

### **Section 1. Total Taking of Unit and Dwelling.**

If a Unit and Dwelling is acquired by eminent domain, or if so much of a Unit and Dwelling is acquired by eminent domain as to effectively leave the Owner with a remnant which may not practically or lawfully be used for any purpose permitted by this Declaration, the award, including severance damages, shall compensate the Owner of the Unit and Dwelling and holder of a first mortgage or other security interest of record as their interests may appear. Any such remnant of a Unit and Dwelling remaining after part of a Unit and Dwelling is taken shall be conveyed to the Association and shall thereafter be Common Element. The voting rights and liability for expenses attributable to the Unit and Dwelling acquired by eminent domain shall be reapportioned among the remaining Units.

### **Section 2. Partial Taking of Unit and Dwelling.**

Unless treated as a total taking under Section 1, if part of a Unit and Dwelling is acquired by eminent domain, the award shall compensate the Owner and first mortgagee of the Unit and Dwelling as their interests may appear for the reduction in value of the Unit and Dwelling. A partial taking of a Unit or Dwelling shall not affect the voting rights or liability of that Unit or Dwelling for common expenses.

### **Section 3. Taking of Common Element.**

If part of the Common Element is acquired by eminent domain, the award shall be paid to the Association. The Association shall divide any portion of the award not used for any restoration or repair of the remaining Common Element among the Owners and first mortgagees as their interests may appear in proportion to their votes in the Association before the taking.

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**ARTICLE XVI.**  
**GENERAL PROVISIONS**

**Section 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. 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.

**Section 2. Rules and Regulations.**

The Association may make reasonable rules and regulations governing the use of the Units and of the Common Elements, which rules shall be consistent with the rights and duties established in this Declaration. The Declaration shall supersede any conflicting rules by the Association.

**Section 3. Severability.**

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way effect any other provisions which shall remain in full force and effect.

**Section 4. Enforcement and Amendment.**

The covenants and restrictions 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 Unit subject to this Declaration, their respective legal representatives, heirs, successors and assigns.

Except as provided in the Act or as hereinafter provided, the covenants and restrictions of this Declaration may be amended only by the assent of Members holding at least sixty-seven percent (67%) of the voting power of the Association. Any amendment must be properly recorded and a recorded certificate of the Secretary of the Association certifying that the amendment was approved by Members holding at least 67% of the voting power of the Association shall be sufficient evidence of such fact. The prior written approval of all the first mortgagees of Dwellings or Owners other the Declarant shall be required for any amendment of this Declaration which would affect the right of the Association to do any of the acts specified in Article XIII, section 5(a), (b), (c), (d) and (e).

**Section 5. 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 postage-paid to the last known address of the person who appears as Member or Owner on the records of the Association at the time of mailing.

**Section 6. Mergers.**

Upon a merger or consolidation of the Association with another corporation as provided in its Articles and Bylaws, 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 upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or additions to the covenants established by this Declaration within the Subject Property except as hereinabove provided.

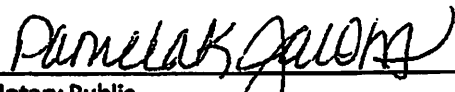
**IN WITNESS WHEREOF**, the undersigned, being the Declarant herein, has hereunto caused these presents to be executed this 27<sup>th</sup> day of October, 2015.

  
\_\_\_\_\_  
a Minnesota Company

By: Cheryl JM Freitag, Chief Manager

STATE OF MINNESOTA, COUNTY OF BLUE EARTH

On this 27 day of October, 2015, before me, a Notary Public, personally appeared Cheryl JM Freitag, to me personally known, who, after being first duly sworn, did state that she is the Chief Manager, of OWN Ovation, LLC, a Minnesota limited liability company, and that she signed the same on behalf of said corporation.

  
\_\_\_\_\_  
Notary Public



THIS INSTRUMENT WAS DRAFTED BY:  
Wade H. Abed II (#0391805)  
Knutson+Casey Law Firm  
196 St. Andrews Dr., Suite 100  
Mankato, MN 56001  
507-344-8888  
wade@knutsoncasey.com

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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
TRANQUILITY TOWNHOMES**

**EXHIBIT A**

**Subject Property**

**Lot 1, Block 1, Dancing Waters, according to the plat thereof on file and of record with the Blue Earth County Recorder. Containing 5.50 acres.**

**SCHEDULE OF UNITS**

**Each Unit's unit identifier is its unit number and the name of the common interest community. The Units are as follows:**

**100, 104, 108, 112, 101, 105, 109, 113, 200, 204, 208, 212, 201, 205, 209, 213, 300, 304, 308, 312, 301, 305, 309, 313, 401, 405, 409, 413, 501, 505, 509, 513, 600, 604, 608, 612, 601, 605, 609, and 613.**

**An example is: Unit 100, Common Interest Community Number 92, a Planned Community, Tranquility Townhomes, City of Mankato, Blue Earth County, Minnesota.**



**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
TRANQUILITY TOWNHOMES**

**EXHIBIT B**

**Additional Property**

That part of Outlot C, Dancing Waters, according to the plat thereof on file and of record with the Blue Earth County Recorder described as:

Beginning at the southeast corner of said Outlot C; thence North 74 degrees 25 minutes 52 seconds West, (Minnesota County Coordinate System – Blue Earth County Zone – HARN – NAD83 – 1986) along the southerly line of said Outlot C, a distance of 555.16 feet to the southwest corner of said Outlot C, thence North 00 degrees 54 minutes 36 seconds West, along the west line of said Outlot C, 555.00; thence North 89 degrees 05 minutes 24 seconds East, 54.19 feet to the point of curvature of a circular curve to the left; thence easterly along a 660.00 foot radius curve, central angle = 06 degrees 04 minutes 52 seconds, an arc distance of 70.05 feet to the point of tangency of said curve; thence North 83 degrees 00 minutes 32 seconds East, along the tangent of said curve, 37.84 feet; thence South 06 degrees 59 minutes 28 seconds East, 52.34 feet to the point of curvature of a circular curve to the left; thence southeasterly along a 300.00 foot radius curve, a central angle = 67 degrees 26 minutes 25 seconds, an arc distance of 353.12 feet to the point of tangency of said curve; thence South 74 degrees 25 minutes 52 seconds East, along the tangent of said curve, 261.15 feet to a point on the east line of said Outlot C; thence South 15 degrees 34 minutes 08 seconds West, along said easterly line, 347.45 feet to the point of beginning. Containing 5.87 acres.

The above legal description fully and accurately depicts all information required by Minn. Stat. § 515B.2-1101 (c).

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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
TRANQUILITY TOWNHOMES**

**EXHIBIT C  
Common Elements**

The Common Elements are designated as the Common Elements on the Plat of Common Interest Community Number 92, a Planned Community Tranquility, City of Mankato, Blue Earth County, Minnesota.

**BY-LAWS  
OF  
TRANQUILITY TOWNHOMES ASSOCIATION**

**COMMON INTEREST COMMUNITY NUMBER 92  
A PLANNED COMMUNITY  
TRANQUILITY TOWNHOMES**

**BY-LAWS OF TRANQUILITY TOWNHOMES ASSOCIATION**

**ARTICLE I  
NAME AND LOCATION**

The name of this corporation is Tranquility Townhome Association, hereinafter referred to as the "Association". The principal office of the Association shall be located at 4608 Eastwood Court, Madison Lake, Minnesota 56063, or at such other place within the State of Minnesota as may be designated by the Board of Directors.

**ARTICLE II  
DEFINITIONS**

"Additional Real Estate" shall mean the real property, including all improvements located thereon now or in the future, and all easements and rights appurtenant thereto, which property Declarant has the right to add to the Subject Property located in Blue Earth County, Minnesota.

"Articles" shall mean and refer to the Articles of Incorporation of the Association.

"Association" shall mean and refer to Tranquility Homeowner's Association, a Minnesota non-profit corporation, its successors and assigns.

"Common Area" shall mean and refer to all real property 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 the 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 Area owned or to be owned by the Association is described in the Declaration.

"Declarant" shall mean and refer to OWN Ovation, LLC, a Minnesota limited liability company, its successors and assigns.

"Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Subject Property originally recorded in the Office of the County Recorder within and for Blue Earth County, Minnesota on \_\_\_\_\_ 2015, as Document No. \_\_\_\_\_ CR \_\_\_\_\_, and as amended and recorded on \_\_\_\_\_, 2015, as Document No. \_\_\_\_\_ CR \_\_\_\_\_, and as amended and recorded thereafter.

**"Dwelling"** shall mean and refer to any house or appurtenant structure constructed upon a Lot intended for use and occupancy as a residence by a single family.

**"Governing Documents"** shall mean and refer to the Declaration, the Articles and these By-Laws.

**"Member"** shall mean and refer to all Owners who are Members of the Association as provided in the Declaration.

**"Owner"** shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot. Provided, however, that if the Owner of a Lot transfers the same by contract for deed, unless the contract for deed provides otherwise, the vendee under the contract for deed shall be deemed to be the Owner for purposes of this Declaration.

**"Subject Property"** shall mean and refer to that certain real property described as the Subject Property in the Declaration.

### **ARTICLE III MEETING OF MEMBERS**

#### **Section 1. Annual Meetings.**

The first annual meeting of the Members shall be held within one year from the date of incorporation of the Association, and each subsequent regular annual meeting of the Members shall be held on the date selected by the Board of Directors thereafter, at the hour of 7:00 p.m. If the day for an annual meeting is a legal holiday, the meeting shall be held at the same hour on the first day following which is not a legal holiday. At each annual meeting, there shall be, at a minimum, (i) an election of successor directors for those directors whose terms have expired, (ii) a report on the activities and financial condition of the Association, and (iii) consideration of and action on any other matters included in the notice of meeting.

#### **Section 2. Special Meetings.**

Special meetings of the Members may be called at any time by the President or by the Board of Directors and must be called by the President in any event upon receipt of a written request for a special meeting signed by twenty percent (20%) of the Members entitled to vote or upon written request of any of the first mortgagees holding mortgages on the Subject Property.

#### **Section 3. Special Meeting upon Termination of the Declarant Control Period.**

Upon termination of the Declarant Control Period, a special meeting of the Members shall be held upon a call issued by the Declarant. All of the officers and directors of the Association appointed by the Declarant shall resign at the first meeting of the Members and thereafter the Members shall elect successors for said directors.

#### **Section 4. Notices.**

Notice of all meetings of the Members, stating the date, time, place complete agenda thereof, and the procedure for appointment of proxies, shall be given by the President or Secretary unless waived in writing. Such notice shall be in writing and shall be delivered by hand or sent by prepaid United States

Mail to each Member at the Member's address as it appears on the books of the Association. Notices shall be mailed not less than twenty-one (21) days nor more than thirty (30) days in advance of any annual meeting, and not less than seven (7) days nor more than thirty (30) days in advance of any special meeting. Proof of such mailing shall be given by the affidavit of the person giving the notice. The notice of the meeting may be waived before or after such meeting.

#### **Section 5. Quorum.**

The presence at the meeting of Members, either in person or by proxy, entitled to cast two-thirds (2/3) of the votes of the Association shall constitute a quorum for any action except as otherwise provided in the Governing Documents. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote at that meeting shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

#### **Section 6. Proxies.**

At all meetings of Members, each Member may vote, in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his or her Unit.

### **ARTICLE IV**

#### **BOARD OF DIRECTORS: SELECTION; TERM OF OFFICE**

##### **Section 1. First Board of Directors.**

The first Directors shall serve until the first annual meeting of the Members or until their successors have been duly elected and qualified. The Declarant shall have the sole right to appoint and remove members of the Board of Directors until the earlier of:

- a. Three (3) years after the date of the first conveyance of a Unit to an Owner other than Declarant;
- b. The conveyance of seventy-five percent (75%) of the Units to Owners other than the Declarant;  
or
- c. Declarant's voluntary surrender of control by giving written notice to the Unit Owners (the "Termination of Declarant Control").

Provided, however, that no later than sixty (60) days after the conveyance of fifty percent (50%) of the Units to Owners other than Declarant, at least one (1) member of the Board of Directors shall be elected by Owners other than Declarant at a special meeting of the Owners to be held for such purpose. Upon Termination of Declarant Control, at a meeting of the Owners called by the secretary of the Association, the Owners shall elect a Board of Directors of not fewer than three (3) members of the number of directors set forth herein as amended from time to time.

At the special meeting of Owners after conveyance of fifty percent (50%) of the Units, the Owners other than Declarant shall elect one (1) director for an initial term of one (1) year, and the Declarant shall

appoint the remaining two (2) directors. Thereafter, at the expiration of the term of office of each director, a successor shall be elected to serve for a term of three (3) years. The directors shall hold office until their respective successors have been elected and installed.

## **Section 2. Number and Qualifications of Directors.**

The initial Board of Directors shall consist of three natural persons. The second Board of Directors and all successive Boards shall consist of three, five, or seven members, as determined by the Board of Directors, all of whom are holders of an interest in at least one of the Units, or, in the case of the Declarant, a representative of the Declarant.

## **Section 3. Nomination of Directors.**

Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting (or a special meeting called for the election of Directors). The Nominating Committee shall consist of a Chairperson, who shall be a member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or non-Members.

## **Section 4. Election.**

Election to the Board of Directors shall be by secret written ballot. At such election, the Members or their proxies may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## **Section 5. Term.**

The term of each Director, other than the first Directors and the Directors elected at the First Special Election and the Second Special Election (as defined in the Articles), shall extend to the next annual meeting of the Members after the annual meeting at which the Director was elected and until the Director's successor has been duly elected and has qualified.

## **Section 6. Removal.**

Any Director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a Director, his or her successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his or her predecessor.

## **Section 7. Compensation.**

No Director shall receive compensation for any service rendered to the Association. However, any Director may be reimbursed for actual expenses incurred in the performance of his or her duties.

**Section 8. Action Taken Without a Meeting.**

The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

**ARTICLE V  
MEETINGS OF DIRECTORS**

**Section 1. Regular Meetings.**

Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone or telegraph, at least three (3) days prior to the day designated for such meeting unless such notice is waived.

**Section 2. Special Meetings.**

Special meetings of the Directors may be called by the President and must be called by the Secretary at the written request of one (1) Director. Not less than three (3) days' notice of such special meeting shall be given personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of such meeting.

**Section 3. Waiver of Notice.**

Any Director may waive notice of a meeting, either regular or special, before or after such meeting, and such waiver shall be deemed equivalent to the giving of notice.

**Section 4. Quorum.**

Two (2) Directors, or if there are a total of seven (7) Directors, then three (3) Directors, shall constitute a quorum for the transaction of business at any meeting of the Board.

**Section 5. Adjournment When Quorum Lacking.**

If at any meeting of the Board of Directors there shall be only one (1) Director present, that Director may adjourn the meeting from time to time until a quorum is present. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting as originally called may be transacted without further notice. The joinder of a Director in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such Director for the purpose of determining a quorum.

**Section 6. Manner of Action.**

Each Director shall be entitled to one (1) vote, and the act of a majority of the Directors present at a meeting at which a quorum is present shall constitute the act of the Board of Directors unless the act of a greater number is required by these Bylaws.



## **Section 7. Board Meeting Open to Members.**

Except as otherwise provided in this section, meetings of the Board of Directors shall be open to Members. The Board shall give reasonable notice to Members of the date, time, and place of each Board Meeting. No notice need be given to Members if: (i) the date, time, and place of meeting were announced at a previous Board meeting; (ii) the date, time, and place of the meeting were posted in a location accessible to Members and designated by the Board from time to time; or (iii) if an emergency requires immediate consideration of a matter by the Board. Meetings may be closed to Members to discuss the following: (1) personnel matters; (2) pending or potential litigation, arbitration or other potentially adversarial proceedings between Members, between the Board or the Association and Members, or other matters in which any Member may have an adversarial interest, if the Board determines that closing the meeting is necessary to discuss strategy or otherwise to protect the position of the Board or the Association or the privacy of a Member or occupant of a Unit; or (3) criminal activity arising within the Community if the Board determines that closing the meeting is necessary to protect the privacy of the victim or that opening the meeting would jeopardize any investigation of the activity.

## **ARTICLE VI THE BOARD OF DIRECTORS: POWERS, DUTIES AND RESTRICTIONS**

### **Section 1. Powers.**

The Board of Directors shall have the power to:

- (a) adopt and publish rules and regulations governing the use of the Common Area and facilities and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;
- (b) impose a fine not to exceed Ten Dollars (\$10.00) for each infraction of its published rules and regulations, each day during which infractions exist being deemed a separate and distinct infraction;
- (c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of the Governing Documents;
- (d) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and
- (e) employ a manager, an independent contractor or such other employees, as they deem necessary, and to prescribe their duties; provided, however, that any agreement for professional management of the Subject Property, or any other contract providing for services by the Declarant, shall provide for termination by either party without cause or payment of a termination fee on ninety (90) days or less written notice and a maximum contract term of three (3) years.

## **Section 2. Duties.**

It shall be the duty of the Board of Directors to:

- (a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested by one-fourth of the members entitled to vote;
- (b) supervise all officers, agents and employees of this Association, and see that their duties are properly performed;
- (c) as more fully provided in the Declaration:
  - (1) fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period;
  - (2) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and
  - (3) foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or bring an action at law against the Owner personally obligated to pay the same;
- (d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- (e) procure and maintain adequate liability and hazard insurance on property owned by the Association;
- (f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate and in accordance with the Declaration;
- (g) cause the Common Area and exterior of the Dwellings to be maintained as set forth in the Declaration.

## **ARTICLE VII**

### **OFFICERS AND THEIR DUTIES**

#### **Section 1. Enumeration of Offices.**

The officers of this Association shall be a President and Vice President, who shall at all times be members of the Board of Directors, a Secretary, a Treasurer and such other officers as the Board may from time to time by resolution create.

## **Section 2. Election of Officers.**

The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

## **Section 3. Term.**

The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he or she shall sooner resign, or shall be removed, or otherwise become disqualified to serve.

## **Section 4. Special Appointments.**

The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board may, from time to time determine.

## **Section 5. Resignation and Removal.**

Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

## **Section 6. Vacancies.**

A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

## **Section 7. Multiple Offices.**

The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to section 4 of this Article.

## **Section 8. Duties.**

The duties of the officers are as follows:

### **President**

- (a) The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

#### **Vice President**

- (b) The Vice President shall act in the place and stead of the President in the event of his or her absence, inability or refusal to act and shall exercise and discharge such other duties as may be required by the Board.

#### **Secretary**

- (c) The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses; and shall perform such other duties as required by the Board.

#### **Treasurer**

- (d) The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and disburse such funds as directed by resolution of the Board of Directors; sign all checks and promissory notes of the Association; keep proper books of account; and prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meetings, and deliver a copy of each to the Members.

### **ARTICLE VIII BOOKS AND RECORDS**

The Association shall keep adequate records of its membership, minutes of Members' meetings, minutes of Board of Directors meetings, committee meetings, contracts, leases and other agreements to which the Association is a party, and material correspondence and memoranda relating to its operations, and financial records sufficiently detailed to enable the Association to prepare the annual report and to comply with all applicable laws. The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member and by any first mortgagee of a Unit. The Governing Documents shall be available, during reasonable business hours, for inspection by any Member and by any first mortgagee of a Unit at the principal office of the Association, where copies may be purchased at reasonable cost.

### **ARTICLE IX ASSESSMENTS**

As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments all of which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eight percent (8%) per annum, and the Association may bring an action at law

against the Owner personally obligated to pay the same or foreclose the lien and interest, costs, and reasonable attorneys' fees in any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of such Owner's Unit.

## **ARTICLE X INSURANCE**

### **Section 1. Required Coverage.**

**10.1 Required Coverage.** The Association shall obtain and maintain, at a minimum, a master policy or policies of insurance in accordance with the insurance requirements set forth in the Act and the additional requirements set forth herein, issued by a reputable insurance company or companies authorized to do business in the State of Minnesota, as follows:

A. Property insurance in broad form covering all risks of physical loss in an amount equal to one hundred percent (100%) of the insurable "replacement cost" of the Property, less deductibles, exclusive of land, footings, excavation and other items normally excluded from coverage (but including all building service equipment and machinery). The policy or policies shall cover personal property owned by the Association. The policy or policies shall also contain "Inflation Guard" and "Agreed Amount" endorsements, if reasonably available. Such policy or policies shall include such additional endorsements, coverage and limits with respect to the foregoing and other hazards as may be required from time to time by the regulations of the FHA or Federal National Mortgage Association ("FNMA") as a precondition to their insuring, purchasing or financing a mortgage on a Unit. The Board may also, on behalf of the Association, enter into binding written agreements with a mortgagee, insurer or guarantor, including, without limitation, the FHA or FNMA, obligating the Association to keep certain specified coverage or endorsements in effect.

B. Comprehensive public liability insurance covering the use, operation and maintenance of the Common Elements, with minimum limits of \$1,000,000.00 per occurrence, against claims for death, bodily injury and property damage, and such other risks as are customarily covered by such policies for projects similar in construction, location and use to the Property. The policy shall contain a "severability of interest" endorsement, which shall preclude the insurer from denying the claim of an Owner or Occupant because of negligent acts of the

Association or other Owners or Occupants. The policy shall include such additional endorsements, coverage and limits with respect to such hazards as may be required by the regulations of the FHA or FNMA as a precondition to their insuring, purchasing or financing a mortgage on a Unit.

**C. Fidelity bond or insurance coverage against dishonest acts on the part of directors, officer, manager, trustees, employees or persons responsible for handling funds belonging to or administered by the Association if deemed to be advisable by the Board or required by the regulation of the FHA or FNMA as a precaution to their insuring, purchasing or financing of a mortgage on a Unit, be written in an amount equal to the greater of (i) the estimated maximum of Association funds, including reserves, in the custody of the Association or management agent at any given time while the bond is in force or (ii) a sum equal to three months aggregate assessments on all Units plus reserves. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers, or waiver of defense based upon the exclusion of persons serving without compensation, shall be added.**

**D. Worker's Compensation insurance as required by law.**

**E. Directors and Officers liability insurance with such reasonable limits and coverages as the Board shall determine from time to time.**

**10.2 Premiums; Improvements; Deductibles. All insurance premiums shall be assessed and paid as a Common Expense. The insurance need not cover improvements and betterment to the Units installed by Owners, but if improvements and betterment are covered, any increase cost may be assessed against the Units affected. The Association may, in the case of a claim for damage to a Unit, (i) pay the deductible amount as a Common Expense, (ii) assess the deductible amount against the Units affected in any reasonable manner, or (iii) require the Owners of the Units affected to pay the deductible amount directly.**

**10.3 Loss Payee; Insurance Trustee. All insurance coverage maintained by the Association shall be written in the name of and the proceeds thereof shall be payable to, the Association (or a qualified insurance trustee selected by it) as trustee for the benefit of the Owners and secured parties, including Eligible Mortgagees, which suffer loss. The Association, or any insurance trustee selected by it, shall have exclusive authority to negotiate, settle and collect upon any claims or losses under any insurance policy by the Association.**

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

**10.5 Cancellation; Notice of Loss.** All policies of property insurance and comprehensive liability insurance maintained by the Association shall provide that the policies shall not be canceled or substantially modified, for any reason, without at least thirty (30) days prior written notice to the Association, to the FHA or FNMA, if applicable.

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

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

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

**10.9 Owner's Personal Insurance.** Each Owner may obtain additional personal insurance coverage at his or her own expense covering fire and other casualty to the Unit, personal property or personal liability. All insurance policies maintained by Owners shall provide that they are without contribution as against the insurance purchased by the Association.

**10.10 Indemnification.** The Association shall, to the extent the alleged liability is not covered by insurance, indemnify every individual acting in any official capacity on behalf of the Association, pursuant to the provisions of Minnesota Statutes Section 317A. 521. The Association shall obtain and maintain, at a minimum, a master policy or policies of insurance in accordance with the insurance requirements set forth in the Act and the additional requirements set forth herein, issued by a reputable insurance company or companies authorized to do business in the State of Minnesota, as follows:

**ARTICLE XI**  
**NO CORPORATE SEAL**

There shall be no corporate seal.

**ARTICLE XII**  
**AMENDMENTS**

**Section 1.** These Bylaws may be amended, at a regular or special meeting of the Members, by a vote of a majority of a quorum of Members present in person or by proxy, provided that such additional consent required by Article XII of the Declaration is obtained, and provided that during the Declarant Control Period, both the Declarant (and the Federal Housing Administration if it has insured loans against any Units) shall have the right to veto amendments.

**Section 2.** In the case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws; the Declaration shall control.

**ARTICLE XIII**  
**MISCELLANEOUS**

**Section 1. Fiscal Year.**

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

**Section 2. Financial Statement.**

A review of the Association's financial statements shall be made at the end of the Association's fiscal year, unless prior to thirty (30) days after the end of that fiscal year, at a meeting or by mailed ballot, Members to which at least thirty percent (30%) of the votes in the Association are allocated vote to waive the review requirement for that fiscal year. A waiver vote shall not apply to more than one fiscal year and shall not affect the Board's authority to cause a review or audit to be made. The review shall be made by a independent certified public accountant licensed to do business in the State of Minnesota and shall be prepared in accordance with generally accepted accounting principles. The financial statements shall be presented on a full accrual basis using an accounting format that separates operating activity from replacement reserve activity. The financial statements shall be delivered to all Members within 120 days of the end of the fiscal year.

**Section 3. Annual Report.**

An annual report shall be prepared by the President or Treasurer and shall be provided to each member at or prior to the annual meeting of members. The annual report shall contain: (1) a statement



of any capital expenditures in excess of two percent (2%) of the current budget or \$5,000, whichever is greater, approved by the Association for the current fiscal year and for the succeeding two fiscal years; (2) a statement of the Association's total reserves, the components of the Community for which the reserves are set aside, and the amount of the reserves, if any, that the Board has allocated for the replacement of each of those components; (3) a copy of the statement of revenues and expenses for the Association's last fiscal year, and a balance sheet as of the end of said fiscal year; (4) a statement of the status of any pending litigation or judgments to which the Association is a party; (5) a detailed description of the insurance coverage provided by the Association including a statement as to which, if any, of the items referred to in section 515B.3-113(b) are insured by the Association; (6) a statement of the total past due assessments on all Units, current as of not more than sixty (60) days prior to the date of the annual meeting; and (7) any other matter which the officers or directors of the Association deem appropriate.

#### **Section 4. Committees.**

The Association shall appoint an Architectural Control Committee, as provided in the Declaration, and a Nominating Committee, as provided in these Bylaws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

#### **CERTIFICATION**

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of said Tranquility Townhome Association, a Minnesota non-profit corporation, and that the foregoing Bylaws constitute the Bylaws of said Tranquility Townhome Association as duly adopted at a meeting of the Members thereof held on May 5, 2015.

THIS INSTRUMENT WAS DRAFTED BY:  
Wade H. Abed II (#0391805)  
Knutson+Casey Law Firm  
196 St. Andrews Dr., Suite 100  
Mankato, MN 56001  
507-344-8888  
wade@knutsoncasey.com

/s/Cheryl JM Freitag  
Cheryl JM Freitag, President & Secretary

**A typed name in the space(s) above for the signature is legally considered a signature under Minnesota Statutes, §§ 325L.02, clause (h) and 325L.07, clause (d).**

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**ARTICLES OF INCORPORATION  
OF  
TRANQUILITY TOWNHOMES ASSOCIATION**

The undersigned, being of legal age, for the purposes of forming a nonprofit corporation under chapter 317A of Minnesota Statutes, as amended, and in compliance with the requirements thereof, do hereby voluntarily associate ourselves as a body corporate, not for profit, but for the purposes herein conferred and adopt in these Articles of Incorporation.

**ARTICLE I  
NAME**

The name of this Corporation shall be Tranquility Townhomes Association.

**ARTICLE II  
REGISTERED OFFICE**

The registered office of this Corporation shall be at 4608 Eastwood Ct., Madison Lake, MN 56063-8602.

**ARTICLE III  
PURPOSES AND AUTHORITY**

This Corporation is formed generally for civic, recreational, social and community welfare purposes, and specifically for the purposes of constituting and acting as an association of the owners of units in that certain platted subdivision situated in the City of Mankato, Blue Earth County, Minnesota, on property legally described in Exhibit A attached hereto and incorporated herein by reference (the "Subject Property"), and on any portion of the property legally described in Exhibit B (the "Additional Property") that may be added to the Subject Property by an amendment to the Declaration, as defined below.

The Subject Property is being developed as a townhome development and is a "planned community" as defined in chapter 515B of the Minnesota Statutes. For the purposes of managing, maintaining, repairing, replacing and operating certain buildings and facilities located thereon, and any additions thereto as may be made in accordance with the Declaration hereinafter referred to, all for the preservation of the value and amenities of said development, and such

additions as may be made thereto as provided in said Declaration, and in fulfillment of such purposes, this Corporation shall have the power:

- (a) To exercise all of the powers and privileges and to perform all of the duties and obligations of the Association described in that certain Declaration of Covenants, Conditions and Restrictions herein referred to as the "Declaration," applicable to the aforementioned property and recorded or to be recorded in the Office of the County Recorder (or Registrar of Titles) of Blue Earth County, Minnesota, and as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if set forth at length;
- (b) To fix, levy, collect and enforce the payment of, by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the aforementioned property of the Association;
- (c) To acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;
- (d) To borrow money, and with the assent of all the members of the Association, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- (e) To dedicate, sell or transfer all or any part of the Common Area to any public agency, authority, utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument has been signed by all members, agreeing to such dedication, sale or transfer;
- (f) To participate in mergers and consolidations with other nonprofit corporations organized for the same purposes, provided that any such merger or consolidation shall have the assent of all members;
- (g) To enforce provisions of the Declaration, and any and all other covenants, conditions or restrictions applicable to the aforementioned property; and
- (h) To, insofar as permitted by law, and consistent with the provisions and purposes hereof and of the Declaration, do any other thing that, in the opinion of the Board of Directors, will promote the common benefit and enjoyment of the members, including cooperative developments or undertakings with adjacent properties.

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**ARTICLE IV**  
**NO PECUNIARY GAIN TO MEMBERS**

This Corporation does not and shall not afford pecuniary gain, incidentally or otherwise, to its members. None of its members shall be personally liable for corporate debt. Members, however, shall be liable to this Corporation for the assessments as specified in the Declaration.

**ARTICLE V**  
**MEMBERSHIP**

Every person or entity who is a record owner of a fee or undivided fee simple interest or a contract vendee, in any Unit as described in the Declaration (an "Owner"), shall be a member of this Corporation. The foregoing is intended to exclude contract vendors, unless the contract provides otherwise, and other persons or entities who hold an interest in any Unit merely as security for the performance of any obligation. Membership in this Corporation shall be appurtenant to and may not be separated from the above-described ownership interest in each such Unit.

The Owner of any Unit created by the addition of any portion of the Additional Property to the Community shall become a Member of the Association upon the recording of an amendment to the Declaration that creates the new Unit.

When more than one (1) person holds an interest in a Unit, all such persons shall be Members. The vote for each Unit shall be exercised as the Owners shall determine among themselves, but in no event shall more than the percentage vote indicated on Exhibit B of the Declaration be cast with respect to any Unit. The percentage vote indicated on Exhibit B of the Declaration must be cast by the Owners of the Unit acting together and may not be divided among the Owners of Unit.

The "Declarant Control Period" shall mean the period commencing on the date of creation of the common interest community and continuing until the earlier of: (i) the date five (5) years after said date or three (3) years if not a phased development; (ii) the declarant's voluntary surrender of control by giving written notice to the unit owners pursuant to Minnesota Statutes section 515B.1-115; or (iii) the conveyance of seventy-five percent (75%) of the Units to Owners other than Declarant. In determining the Declarant Control Period, the percentage of Units that have been conveyed shall be computed by including all Units that the Declarant has built or reserved the right to build on the Additional Property in the Declaration.

**ARTICLE VI**  
**BOARD OF DIRECTORS**

The business and affairs of this Corporation shall be managed by a Board of Directors consisting of three Directors, or such other number of Directors as may be determined in accordance with the Bylaws. Until the first full Board of Directors consisting of three members shall have been elected, the first and interim Board of Directors shall consist of three Directors whose names and addresses have been set forth in resolutions adopted by the Board of Directors of the Association.

Said first directors shall serve until the first annual meeting of the members or until their successors have been duly elected and qualified.

The number of directors in the second and subsequent Board of Directors will be three (3). The Declarant shall have the sole right to elect members of the Board of Directors until the earlier of: (a) three (3) years after the date of the first conveyance of a Unit to an Owner other than Declarant; (b) the date of conveyance of seventy-five percent (75%) of the Units to Owners other than Declarant; or (c) Declarant's voluntary surrender of control (the "Termination of Declarant Control"). Provided, however, that at the earlier of sixty (60) days after conveyance of fifty percent (50%) of the Units to Owners other than Declarant, at least one (1) member of the Board of Directors shall be elected by Owners other than Declarant at a special meeting of the Owners to be held for such purpose. Upon Termination of Declarant Control, the Owners shall elect a Board of Directors in such number and for the terms set forth in the Bylaws at a meeting of Owners to be called for by the secretary of the Association for such purpose. At the special meeting of the Members after conveyance of fifty percent (50%) of the Units as provided in the By-Laws, the Owners other than Declarant shall elect one (1) director for an initial term of two (2) years, and the Declarant shall elect two (2) directors. Thereafter, at each succeeding annual meeting of the Members, successor directors for any existing director whose term has expired shall be elected or appointed for three (3) year terms only.

**ARTICLE VII**  
**WRITTEN ACTION BY DIRECTORS**

Any action required or permitted to be taken at a meeting of the board of directors of this Corporation may be taken by written action signed by the number of directors that would be required to take the same action at a meeting of the board at which all directors were present.

**ARTICLE VIII**  
**DIRECTOR LIABILITY**

To the fullest extent permitted by chapter 317A, Minnesota Statutes, as the same exists or may hereafter be amended, a director of this Corporation shall not be personally liable to the Corporation or its members for monetary damages for breach of fiduciary duty as a director.

**ARTICLE IX**  
**DURATION**

The duration of this Corporation shall be perpetual.

**ARTICLE X**  
**DISSOLUTION**

This Corporation may be dissolved only with the written consent of members holding at least 90% of the voting power of the Corporation. Written notice of a proposal to dissolve, setting forth the reasons therefor and the disposition to be made of its assets (which shall be consistent with Article XI hereof), shall be mailed to every member at least ninety (90) days prior to any meeting at which such dissolution shall be voted upon.

**ARTICLE XI**  
**DISPOSITION OF ASSETS UPON DISSOLUTION**

Upon dissolution of this Corporation, all of its property and assets, both real and personal, including, but not limited to, sewer and water lines, if any, first shall be dedicated or transferred to an appropriate municipality, public agency or utility, or if such transfer or dedication be refused, such assets then shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other entity, to be devoted to purposes as nearly as practicable to the same as those to which they were required to be devoted by this Corporation. No disposition of the assets of this Corporation shall be effective to divest or diminish any vested right or title of any member in any such assets arising under recorded covenants and deeds applicable to such assets unless made in accordance with the provisions of such covenants and deeds.

**ARTICLE XII  
AMENDMENTS**

These Articles of Incorporation may be amended only with the assent of 75% of the Members of the Association.

**ARTICLE XIII  
FHA APPROVAL**

During the Declarant Control Period, the following actions will require the prior approval of the Federal Housing Administration: annexation of additional properties, mergers and consolidations, mortgaging of Common Area, dedication of Common Area, dissolution, and amendment of these Articles.

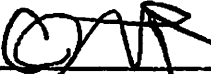
**ARTICLE XIV  
INCORPORATORS**

The following person constitutes the incorporator who is forming this Corporation:

**Name**  
Cheryl JM Freitag

**Address**  
4608 Eastwood Court  
Madison Lake, MN 56063

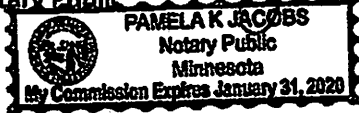
IN WITNESS WHEREOF, we have hereunto executed these ARTICLES OF INCORPORATION effective this 27 day of October, 2015.

  
\_\_\_\_\_  
Cheryl JM Freitag

STATE OF MINNESOTA, COUNTY OF BLUE EARTH

On this 27 day of October, 2015, before me, a notary public, personally appeared Cheryl JM Freitag, incorporator of the Tranquility Townhomes Association to me known to be the person described in, and who executed, the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

THIS INSTRUMENT WAS DRAFTED BY:  
Wade H. Abed II (#0391805)  
Knutson+Casey Law Firm  
196 St. Andrews Dr., Suite 100  
Mankato, MN 56001  
507-344-8888  
wade@knutsoncasey.com

Pamela K. Jacobs  
Notary Public  




**EXHIBIT "A"**  
**TO**  
**ARTICLES OF INCORPORATION**  
**OF**  
**Tranquility Townhomes Association**  
**SUBJECT PROPERTY LEGAL DESCRIPTION**

**Lot 1, Block 1, Dancing Waters, according to the plat thereof on file and of record with the Blue Earth County Recorder. Containing 5.50 acres.**

**EXHIBIT "B"**  
**TO**  
**ARTICLES OF INCORPORATION**  
**OF**  
**Tranquility Townhomes Association**  
**ADDITIONAL PROPERTY LEGAL DESCRIPTION**

That part of Outlot C, Dancing Waters, according to the plat thereof on file and of record with the Blue Earth County Recorder described as:

Beginning at the southeast corner of said Outlot C; thence North 74 degrees 25 minutes 52 seconds West, (Minnesota County Coordinate System – Blue Earth County Zone – HARN – NAD83 – 1986) along the southerly line of said Outlot C, a distance of 555.16 feet to the southwest corner of said Outlot C, thence North 00 degrees 54 minutes 36 seconds West, along the west line of said Outlot C, 555.00; thence North 89 degrees 05 minutes 24 seconds East, 54.19 feet to the point of curvature of a circular curve to the left; thence easterly along a 660.00 foot radius curve, central angle = 06 degrees 04 minutes 52 seconds, an arc distance of 70.05 feet to the point of tangency of said curve; thence North 83 degrees 00 minutes 32 seconds East, along the tangent of said curve, 37.84 feet; thence South 06 degrees 59 minutes 28 seconds East, 52.34 feet to the point of curvature of a circular curve to the left; thence southeasterly along a 300.00 foot radius curve, a central angle = 67 degrees 26 minutes 25 seconds, an arc distance of 353.12 feet to the point of tangency of said curve; thence South 74 degrees 25 minutes 52 seconds East, along the tangent of said curve, 261.15 feet to a point on the east line of said Outlot C; thence South 15 degrees 34 minutes 08 seconds West, along said easterly line, 347.45 feet to the point of beginning. Containing 5.87 acres.

The above legal description fully and accurately depicts all information required by Minn. Stat. § 515B.2-1101 (c) 2014.

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**TRANQUILITY TOWNHOMES ASSOCIATION**

**LIST OF BOARD OF DIRECTORS**

**Cheryl Freitag (Secretary & Treasurer)**

**c/o Tranquility Townhomes Association**

**4608 Eastwood Court**

**Madison Lake, MN 56063**

**Nicholas Freitag (President)**

**c/o Tranquility Townhomes Association**

**4608 Eastwood Court**

**Madison Lake, MN 56063**

**William Freitag (Vice-President)**

**c/o Tranquility Townhomes Association**

**P.O. Box 502**

**St. James, MN 56081-0502**

**612-599-8161**

## Office of the Minnesota Secretary of State Certificate of Incorporation

I, Steve Simon, Secretary of State of Minnesota, do certify that: The following business entity has duly complied with the relevant provisions of Minnesota Statutes listed below, and is formed or authorized to do business in Minnesota on and after this date with all the powers, rights and privileges, and subject to the limitations, duties and restrictions, set forth in that chapter.

The business entity is now legally registered under the laws of Minnesota.

Name: TRANQUILITY TOWNHOMES ASSOCIATION

File Number: 825434700020

Minnesota Statutes, Chapter: 317A

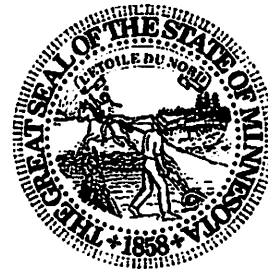
This certificate has been issued on: 05/06/2015



A handwritten signature in cursive script that reads "Steve Simon".

Steve Simon  
Secretary of State  
State of Minnesota

**Office of the Minnesota Secretary of State**  
**Minnesota Nonprofit Corporation/Articles of Incorporation**  
*Minnesota Statutes, 317A*



The individual(s) listed below who is (are each) 18 years of age or older, hereby adopt(s) the following Articles of Incorporation:

**Article 1 CORPORATE NAME:**

**TRANQUILITY TOWNHOMES ASSOCIATION**

**Article 2 REGISTERED OFFICE AND AGENT(S), IF ANY AT THAT OFFICE:**

**Name**

**Address:**

**4608 Eastwood Ct Madison Lake MN 56063 USA**

**Article 3 INCORPORATOR(S):**

**Name:**

**Address:**

**Cheryl Freitag**

**4608 Eastwood Ct Madison Lake MN 56063**

**DURATION: PERPETUAL**

If you submit an attachment, it will be incorporated into this document. If the attachment conflicts with the information specifically set forth in this document, this document supersedes the data referenced in the attachment.

***By typing my name, I, the undersigned, certify that I am signing this document as the person whose signature is required, or as agent of the person(s) whose signature would be required who has authorized me to sign this document on his/her behalf, or in both capacities. I further certify that I have completed all required fields, and that the information in this document is true and correct and in compliance with the applicable chapter of Minnesota Statutes. I understand that by signing this document I am subject to the penalties of perjury as set forth in Section 609.48 as if I had signed this document under oath.***

**SIGNED BY: cheryl freitag**

**MAILING ADDRESS:**

**None Provided**

**EMAIL FOR OFFICIAL NOTICES:**

**oriondevelopment@rocketmail.com**



**Work Item 825434700020**  
**Original File Number 825434700020**

**STATE OF MINNESOTA**  
**OFFICE OF THE SECRETARY OF STATE**  
**FILED**  
**05/06/2015 11:59 PM**

*Steve Simon*

**Steve Simon**  
**Secretary of State**

Date of this notice: 06-24-2015

Employer Identification Number:  
47-4362698

Form: SS-4

Number of this notice: CP 575 A

For assistance you may call us at:  
1-800-829-4933

TRANQUILITY TOWNHOMES ASSOCIATION  
4608 EASTWOOD CT  
MADISON LAKE, MN 56063

IF YOU WRITE, ATTACH THE  
STUB AT THE END OF THIS NOTICE.

**WE ASSIGNED YOU AN EMPLOYER IDENTIFICATION NUMBER**

Thank you for applying for an Employer Identification Number (EIN). We assigned you EIN 47-4362698. This EIN will identify you, your business accounts, tax returns, and documents, even if you have no employees. Please keep this notice in your permanent records.

When filing tax documents, payments, and related correspondence, it is very important that you use your EIN and complete name and address exactly as shown above. Any variation may cause a delay in processing, result in incorrect information in your account, or even cause you to be assigned more than one EIN. If the information is not correct as shown above, please make the correction using the attached tear off stub and return it to us.

Based on the information received from you or your representative, you must file the following form(s) by the date(s) shown.

Form 1120H

03/15/2016

If you have questions about the form(s) or the due date(s) shown, you can call us at the phone number or write to us at the address shown at the top of this notice. If you need help in determining your annual accounting period (tax year), see Publication 538, *Accounting Periods and Methods*.

We assigned you a tax classification based on information obtained from you or your representative. It is not a legal determination of your tax classification, and is not binding on the IRS. If you want a legal determination of your tax classification, you may request a private letter ruling from the IRS under the guidelines in Revenue Procedure 2004-1, 2004-1 I.R.B. 1 (or superseding Revenue Procedure for the year at issue). Note: Certain tax classification elections can be requested by filing Form 8832, *Entity Classification Election*. See Form 8832 and its instructions for additional information.

**IMPORTANT INFORMATION FOR S CORPORATION ELECTION:**

If you intend to elect to file your return as a small business corporation, an election to file a Form 1120-S must be made within certain timeframes and the corporation must meet certain tests. All of this information is included in the instructions for Form 2553, *Election by a Small Business Corporation*.

If you are required to deposit for employment taxes (Forms 941, 943, 940, 944, 945, CT-1, or 1042), excise taxes (Form 720), or income taxes (Form 1120), you will receive a Welcome Package shortly, which includes instructions for making your deposits electronically through the Electronic Federal Tax Payment System (EFTPS). A Personal Identification Number (PIN) for EFTPS will also be sent to you under separate cover. Please activate the PIN once you receive it, even if you have requested the services of a tax professional or representative. For more information about EFTPS, refer to Publication 966, *Electronic Choices to Pay All Your Federal Taxes*. If you need to make a deposit immediately, you will need to make arrangements with your Financial Institution to complete a wire transfer.

The IRS is committed to helping all taxpayers comply with their tax filing obligations. If you need help completing your returns or meeting your tax obligations, Authorized e-file Providers, such as Reporting Agents (payroll service providers) are available to assist you. Visit the IRS Web site at [www.irs.gov](http://www.irs.gov) for a list of companies that offer IRS e-file for business products and services. The list provides addresses, telephone numbers, and links to their Web sites.

To obtain tax forms and publications, including those referenced in this notice, visit our Web site at [www.irs.gov](http://www.irs.gov). If you do not have access to the Internet, call 1-800-829-3676 (TTY/TDD 1-800-829-4059) or visit your local IRS office.

**IMPORTANT REMINDERS:**

- \* Keep a copy of this notice in your permanent records. This notice is issued only one time and the IRS will not be able to generate a duplicate copy for you. You may give a copy of this document to anyone asking for proof of your EIN.
- \* Use this EIN and your name exactly as they appear at the top of this notice on all your federal tax forms.
- \* Refer to this EIN on your tax-related correspondence and documents.

If you have questions about your EIN, you can call us at the phone number or write to us at the address shown at the top of this notice. If you write, please tear off the stub at the bottom of this notice and send it along with your letter. If you do not need to write us, do not complete and return the stub.

Your name control associated with this EIN is TRAN. You will need to provide this information, along with your EIN, if you file your returns electronically.

Thank you for your cooperation.



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CP 575 A (Rev. 7-2007)

CP 575 A

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DATE OF THIS NOTICE: 06-24-2015  
EMPLOYER IDENTIFICATION NUMBER: 47-4362698  
FORM: SS-4 NOBOD

TRANQUILITY TOWNHOMES ASSOCIATION  
4608 EASTWOOD CT  
MADISON LAKE, MN 56063