

ARCHITECTURAL MODIFICATION AGREEMENT

WYNSTONE TOWNHOMES ASSOCIATION

THIS ARCHITECTURAL MODIFICATION AGREEMENT (the "Agreement") is entered into this ____ of _____, 2009, by and between Wynstone Townhomes Association, a Minnesota non-profit corporation (the "Association"), and _____ (collectively, the "Owner").

RECITALS

WHEREAS, the Association is the homeowners association that maintains, operates and manages the Wynstone Townhomes Association, located in Eden Prairie, Minnesota ("Wynstone Townhomes"). The Owner is the record owner of the real estate and townhome unit that is part of Wynstone Townhomes and that is located at _____, Minnesota (the "Unit"). The Unit is legally described as follows:

Lot ____, Block _____, Wynstone, Hennepin County, Minnesota.

WHEREAS, pursuant to Section 1 of Article VI of the Declaration of Wynstone Townhomes, Common Interest Community Number 962, recorded in the office of the Hennepin County Registrar of Titles/Recorder, as Document No. __7277098_____ (the "Declaration"), the owner of a unit within the Association, who intends to modify the exterior of the unit (hereinafter collectively referred to as the "Modifications") must, in most situations, receive approval by the Association or by an Architectural Committee ("AC") appointed by the Association's Board of Directors, prior to performing the Modifications;

WHEREAS, the Association has established certain policies and procedures for applying to perform, and the approval of, proposed Modifications by the owners at Wynstone Townhomes, all in accordance with the terms of the Declaration. The policies and procedures for approval of the Modifications require that approval of the application for the Modifications is contingent upon, among other things, the execution of this Agreement by the Owner;

WHEREAS, the Owner has applied to the Association for the Modifications to the Unit that are generally described in Exhibit A hereto, which is incorporated by reference herein and made a part hereof; and

AGREEMENTS

NOW, THEREFORE, the Association and the Owner, in consideration of the agreements contained herein, the Recitals, above, which are part of the agreements contained herein, and for other valuable consideration, the receipt of which is hereby acknowledged by the Owner and the Association, agree to the following:

1. The Owner shall abide by, and comply in all respects with, the guidelines and procedures of the Association or the AC in approving the Modifications.
2. The Owner agrees that the Modifications will not encroach upon the Common Elements of Wynstone Townhomes, unless such encroachment is approved in writing by the Association.
3. All costs and expenses relating to the Modifications, including, but not limited to, the costs and expenses for maintenance, repair, replacement, reconstruction and insurance, shall be completely borne by, and be the expense of, the Owner.
4. The Owner shall be solely and completely responsible for the construction standards and specifications relating to the Modifications, and for the construction work. The Owner, and not the Association, is responsible for determining whether the Modifications are in violation of any restrictions imposed by any governmental authority having jurisdiction over Wynstone Townhomes, the Unit, and the Modifications. The Owner shall hold harmless, defend, and indemnify the Association, and the Association's officers, directors, employees, representatives, and all other owners of units at Wynstone Townhomes from and against any expenses, claims, damages, losses or other liabilities including, without limitation, attorneys' fees and costs of litigation, arising out of (i) any part of the construction of the Modifications that violate(s) any governmental laws, codes, ordinances, regulations or laws, (ii) the adequacy of the specifications for construction of the Modifications, and (iii) the construction, maintenance and repair of the Modifications. Such expenses, damages, losses or other liabilities shall be the personal obligation of the Owner, and be a lien against the Unit, enforceable in the same manner as a lien for unpaid assessments, as provided in the Declaration.
5. The Owner agrees to include Exhibit B to this Agreement as an attachment to all contracts entered into with each contractor/builder for the construction of the Modifications. Exhibit B must be dated and signed by all parties to it, and submitted to the Association or the AC prior to commencement of construction of the Modifications.
6. The Modifications shall conform to the requirements of the Declaration, the Association's Bylaws and Articles of Incorporation, the Rules and Regulations of the Association, and all relevant policies and procedures of the Association, as those documents may be amended from time to time. The Modifications shall also comply with Minnesota Statutes and any and all state building codes and locality ordinances or codes.

7. Structural and construction requirements of the Modifications are as follows:
- A. The design and construction of the Modifications must replicate existing designs and construction of similar Modifications on other parts of the Unit and be painted or stained according to the colors approved by the Association or the AC.
 - B. The Modifications must (i) comply with all rules, regulations, laws and codes of any governmental authority having jurisdiction over Wynstone Townhomes, the Unit, and the Modifications, and (ii) be covered by one or more current city building permits which must be properly posted on the Unit during construction of the Modifications.
 - C. If a contractor/builder is retained to construct the Modifications, the Owner shall insure that such contractor/builder maintains in effect during the construction period adequate liability and other related builder's risk insurance covering the Association and other persons utilizing the Common Elements of Wynstone Townhomes. Such insurance shall include public liability coverage with minimum limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance is to protect the Association, all members of the Association, and all other occupants of the units at Wynstone Townhomes from, among other things, personal injury or property damage resulting from the Modifications.
 - D. Any agreement entered into between the Owner and each contractor/builder must contain a provision restricting mechanic's lien rights only to the Unit. The Owner should obtain from each contractor /builder lien waivers for work and materials when payments are made.
 - E. Owner shall be responsible for, and promptly cause to be repaired at his/her/their expense, any damage to the Common Elements of Wynstone Townhomes caused by construction of the Modifications. If the Owner does not cause such repairs to be completed, to the satisfaction of the Association, within ten (10) days of the damage, the Association shall cause such repairs to be made. All costs and expenses incurred by the Association for such repairs shall be the personal liability collectively of the Owner and be a lien against the Unit.
 - F. Access to the construction area for construction personnel or vehicles, if such access crosses the Common Elements of Wynstone Townhomes, must be pre-approved by the Association or the AC. All construction activity shall be conducted in such a manner so as not to disturb the owners of other units at Wynstone Townhomes and not to interfere with the other owners' easements for ingress and egress to their units, enjoyment, and utilities.
 - G. Construction work must be performed within reasonable business hours.

8. The Association and the AC have the sole discretion to determine when and if the Modifications require maintenance, repair, replacement, and reconstruction (hereinafter collectively referred to as "Maintenance"). If the Association or the AC determines that the Modifications require Maintenance, the Association or the AC will notify the Owner of such decision and will provide the Owner a reasonable time period within which to comply with the request by the Association or the AC to perform the Maintenance. Said time period shall not be less than forty-five (45) days after the notice of the Association or the AC is either mailed or hand-delivered to the Owner.
4. If the Owner is required to perform Maintenance, as provided in Paragraph 8, above, then the Owner shall perform such maintenance in accordance with the terms and conditions set forth in (i) this Agreement, (ii) the Declaration, and (iii) all relevant policies and procedures of the Association. If the Owner fails to perform the Maintenance, the Association may, at its discretion, perform the Maintenance and the cost thereof may, at the Association's discretion, be charged to and become the personal obligation of the Owner and be a lien against the Unit. A lien for any maintenance expenses hereunder or other amounts due and owing to the Association under any terms of the Declaration may be foreclosed against a Unit under the laws of the State of Minnesota (i) by action, or (ii) by advertisement as a lien under a mortgage containing a power of sale. The Association, or its authorized representative, shall have the power to bid in at the foreclosure sale and to acquire, hold, lease, mortgage and convey any Unit so acquired. The Owner and any other Person claiming an interest in the Unit, by the acceptance or assertion of any interest in the Unit, grants to the Association a power of sale and full authority to accomplish the foreclosure. The Association shall, in addition, have the right to pursue any other remedy at law or in equity against the Owner who fails to pay any assessment or charge against the Unit. The commencement of an action to recover the sums is not an election of remedies if it is dismissed before commencement of foreclosure of the lien. The Association has the right to enter the Unit to perform the Maintenance.
10. This Agreement shall be binding jointly and severally upon the parties hereto, their heirs, personal representatives, successors (in title to the Unit, or otherwise), assigns and all subsequent owners of the Unit. Any agreement for the sale or conveyance of the Unit shall specifically provide for the assumption by the purchaser(s) of the Owner's obligations under this Agreement, and a copy of this Agreement shall be delivered by the Owner to the purchaser(s) prior to the signing of the purchase agreement.
11. The provisions of this Agreement shall be severable, and in the event any provision hereof is declared unenforceable, the remaining provisions shall remain in full force and effect. This Agreement shall be interpreted, controlled, governed and construed in all respects by the laws of the state of Minnesota.
12. This Agreement constitutes the full and complete understanding and agreement of the parties with respect to the matters contained herein, and supersedes any prior understanding or agreement between the parties relating thereto. No amendment, waiver or modification of

any provision of this Agreement shall be binding on the parties unless made in writing and signed by all parties hereto.

13. No waiver of any term, condition or covenant of this Agreement by a party hereto shall be deemed to be a waiver of any subsequent breaches of the same or other terms, covenants or conditions hereof by such party. The failure of either party hereto to insist at any time upon the strict observance or performance of any of the provisions of this Agreement, or to exercise any right or remedy as provided in this Agreement, shall not impair any such right or remedy or be construed as a waiver or relinquishment of any such right or remedy with respect to subsequent defaults. Every right and remedy given this Agreement to the parties hereto may be exercised from time to time and as often as may be deemed expedient by those parties.
14. The Association or the Owner have the absolute right to record this Agreement in the office of the Hennepin County Registrar of Titles or Hennepin County Recorder's Office. The Owner also agrees to consent to or join in any court or administrative proceeding (*i.e.*, proceedings subsequent to initial registration of land, etc.) that may be necessary to record this Agreement. All costs and expenses, including attorney's fees, incurred by the Association in connection with such recording and any such court or administrative proceeding shall be borne by and be the personal obligation of the Owner and be a lien against the Unit.
15. The Owner agrees that any and all claims by, and subsequent judgments in favor of, the Association against the Owner for any costs, expenses, damages, or other losses incurred by the Association, as provided for under this Agreement, are excepted from the homestead exemption on or to the Unit from seizure or sale, pursuant to Minn. Const. Art. 1, Section 12, and Minn. Stat. § 510.01. The Owner specifically agrees that any lien in favor of the Association, as provided for under this Agreement, shall also be excepted from the homestead exemption on or to the Unit from seizure or sale, pursuant to Minn. Const. Art. 1, Section 12, and Minn. Stat. § 510.01.
16. If so required by the Association or the AC, the Owner agrees to obtain approval, in writing, from the owner(s) of any other unit at Wynstone Townhomes that shares walls with the Unit, and who might be affected by the Modifications.

OWNER

Dated: _____

Dated: _____

WYNSTONE TOWNHOMES ASSOCIATION

Dated: _____ By: _____
Its: _____

[illegible]

On the _____ day of _____, 20____, before me appeared _____, to me personally known to be the person described in _____ and who executed the same as his free act and deed.

Notary Public

[illegible]

On the _____ day of _____, 20____, before me appeared _____, to me personally known to be the person described in _____ and who executed the same as his free act and deed.

Notary Public

[illegible]

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, the _____ of Wynstone Townhomes Association, a Minnesota corporation, on behalf of the corporation.

Notary Public

DRAFTED BY:

HELLMUTH & JOHNSON, PLLC (DGH)
10400 VIKING DRIVE, SUITE 500
EDEN PRAIRIE, MN 55344
(952) 941-4005

**EXHIBIT A
TO
ARCHITECTURAL MODIFICATION AGREEMENT**

WYNSTONE TOWNHOMES ASSOCIATION

The Owner has applied to the Association for approval of the following Modifications to be performed by the Owner on or to the Unit:

Installation of new windows

**EXHIBIT B
TO
ARCHITECTURAL MODIFICATION AGREEMENT**

WYNSTONE TOWNHOMES ASSOCIATION, INC.

The contractor/builder understands and agrees that (i) services to be performed and materials to be delivered and installed under this contract by the contractor/builder are being furnished and installed at the request of the Owner of the real estate and townhouse unit located _____, Minnesota (the "Unit"), (ii) the contractor's/builder's lien rights are limited to the Unit, and (iii) the Wynstone Townhomes Association, has no responsibility for any charges or costs in connection with such service and materials.

OWNER

Dated: _____

Dated: _____

CONTRACTOR/BUILDER

Dated: _____

By: _____

(Print Name)

Its: _____

(Print Name of Contractor/Builder)