COMMON INTEREST COMMUNITY NO. 962

PLANNED COMMUNITY

WYNSTONE TOWNHOMES

DECLARATION

THIS DECLARATION, made this 22nd day of November, 1999, by Jasper Development Corporation of Waconia, a Minnesota corporation (hereinafter called "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described in Article II, Section 1, of this Declaration and desires to create thereon a residential neighborhood with permanent open spaces and other common amenities for the benefit of said neighborhood; and

WHEREAS, the Declarant intends to create by this Declaration a planned community which is not subject to a master association; and

WHEREAS, Declarant has caused the incorporation of Wynstone Townhomes Association under the laws of the State of Minnesota as a non-profit corporation pursuant to Minn. Stat. 317A, which shall own the Common Elements and to which shall be assigned the powers and duties of maintaining the Common Elements and certain other portions of the Property, administering and enforcing the covenants and restrictions herein, and collecting and disbursing the assessments and charges herein created; and

WHEREAS, Inter Savings Bank fsb, Beacon Bank, 1st United Bank, Construction Finance, Inc., and Assured Financial, LLC, join in this Declaration in their capacity as a Mortgagee soley for the purpose of marketability of title.

NOW, THEREFORE, Declarant hereby declares that the real property described in Article II, Section 1, hereof shall be held, sold, conveyed and occupied subject to the following covenants, restrictions, easements, charges and liens, which are for the purpose of protecting the value and desirability of, and shall run with, the real property, and which shall be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I

DEFINITIONS

The following words when used in this Declaration or any Supplementary Declaration shall have the following meanings:

Section 1. "Association" shall mean Wynstone Townhomes Association.

Section 2. "Common Elements" shall mean Outlot A of Wynstone according to the recorded plat thereof and such additional areas which may be designated as Common Elements and are made subject to this Declaration.

Section 3. "Common Expenses" shall mean expenses of the Association for maintenance, repair, operation, management and enforcement; expenses declared common expenses by the provisions of this Declaration; and all sums lawfully assessed against the Lots by the Board of Directors of the Association.

Section 4. "Declarant" shall mean Jasper Development Corporation of Waconia, a Minnesota corporation, and its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot for the purpose of development.

Section 5. "Declarant Control Period" shall mean the time period during which the Declarant can select and remove the majority of the officers and directors of the Association, subject to the limitations set forth in Minn. Stat. § 515B.3-103.

Section 6. "First Mortgagee" shall mean any person owning a mortgage on any Lot, which mortgage is first in priority upon foreclosure to all other mortgages which may affect such Lot.

Section 7. "Unit" shall mean a Lot upon which a dwelling has been constructed and a certificate of occupancy has been issued by the City of Eden Prairie.

Section 8. "Limited Common Elements" shall have the meaning set forth in Article III, Section 7 hereof.

Section 9. "Member" shall mean a Member of the Association as provided in Article III, Section 1 hereof.

Section 10. "Owner" shall mean the record Owner, whether one or more persons, or entities of title to any Unit subject to this Declaration, including contract for deed vendors and vendees, but excluding those having such interest merely as security for the performance of an obligation.

Section 11. "Property" shall mean the real property described in Article II, Section 1, hereof, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 12. "Lot" shall mean Lots 1 and 2, Block 2; Lots 1 and 2, Block 3; Lots 1 and 2, Block 4; Lots 1 through 6, Block 5; Lots 1 and 2, Block 6; Lots 1 and 2, Block 7; Lots 1 and 2, Block 8; Lots 1 and 2, Block 9; Lots 1 and 2, Block 10; Lots 1 and 2, Block 11 of Wynstone; and such additional areas which may be designated as Lot(s) and are made subject to this Declaration. Lots 1 through 5, Block 1 of Wynstone are not included within the definition of "Lot."

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Existing Property. The real property which is and shall be held, sold, conveyed and occupied subject to this Declaration is located in the City of Eden Prairie, County of Hennepin and State of Minnesota, and is legally described as follows:

> Lots 1 and 2, Block 2; Lots 1 and 2, Block 3; Lots 1 and 2, Block 4; Lots 1 through 6, Block 5; Lots 1 and 2, Block 6; Lots 1 and 2, Block 7; Lots 1 and 2, Block 8; Lots 1 and 2, Block 9; Lots 1 and 2, Block 10; Lots 1 and 2, Block 11, and Outlot A of Wynstone, according to the plat on file in the office of the Hennepin County Recorder.

Section 2. Boundaries. Each Unit is specified as a Lot on the plat of Wynstone, Hennepin County, Minnesota, and the boundaries of the Units are the same as the Lot dimensions.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

IN THE ASSOCIATION

Section 1. Members. All Owners of Units shall automatically by virtue of such interest be Members of the Association. When more than one person is an Owner of a Unit, all such persons shall be Members. It shall be the duty of each Owner to register his name and the nature of his interest with the Secretary of the Association. If an Owner fails to register his name or interest, the Association shall be under no duty to recognize his ownership.

Section 2. Voting. All Owners shall be entitled to one (1) vote for each Unit owned. If a Unit has more than one Owner, the vote for the Unit shall be allocated amongst the Owners as provided in the Bylaws of the Association.

Section 3. Allocation of Interests. Each Unit holds an equal interest in the Common Elements.

Section 4. Use Restrictions. There will be a total of twenty-four (24) Units subject to this Declaration and all such Units are restricted to residential use only and may not be used for non-residential purposes other than home occupations permitted by Eden Prairie City Code.

Section 5. Transfer of Membership. Membership shall be appurtenant to and may not be separated from ownership of a Unit. The share of a Member in the funds and assets of the Association cannot be assigned, pledged, encumbered or transferred in any manner, except as an appurtenance to his Unit.

Section 6. Declarant Control Period. Subject to the provisions of Minn. Stat. § 515B.3-103, the Declarant shall have the right to appoint and remove the officers and directors of the Association for a period which shall extend from the date of the first conveyance of a Unit to an Owner other than Declarant for a period not exceeding three (3) years, provided, however, that the Declarant Control Period shall terminate upon the earlier of (i) surrender of control by the Declarant, or (ii) sixty (60) days after conveyance of seventy-five (75%) percent of the Units to Owners other than Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created to Owners other than Declarant or an affiliate of Declarant, a meeting of the Owners shall be held at which not less than thirty-three and one-third percent (33.3%) of the members of the Board of Directors of the Association shall be elected by Owners other than Declarant or an affiliate of Declarant.

Section 7. Limited Common Elements. The Limited Common Elements are those parts of the Common Elements reserved for the exclusive use of the Owners and Occupants of the Units to which they are allocated, and the rights to the use and enjoyment thereof are automatically conveyed with the conveyance of such Units. The Limited Common Elements are described and allocated to the Units as follows:

(a) Chutes, flues, ducts, pipes, wires, conduit or other utility installations, bearing walls, bearing columns, or any other components or fixtures lying partially within and partially outside the boundaries of the Unit, and serving only that Unit, are allocated to the Unit they serve. Any portion of such installations serving or affecting the functions of more than one Unit or any portion of the Common Elements is a common part of the Common Elements but is not a Limited Common Element.

(b) The utility lines and driveway running between each Unit and the access street (whether public or private) is a Limited Common Element for that Unit.

ARTICLE IV

PROPERTY RIGHTS IN THE

COMMON ELEMENTS

Section 1. Members' Easements of Enjoyment. Every Member and each Unit shall have the following rights and nonexclusive appurtenant easements over and across the Common Elements for the following purposes:

(a) Ingress and egress including the right to use the private streets located within the Common Elements.

(b) Parking in designated areas.

(c) Utilities, water and sewer.

(d) Enjoyment for recreational purposes.

Every Member shall also have an exclusive appurtenant easement over the Common Elements for the use and enjoyment of the sidewalk, steps and entry way adjacent to the Member's Lot.

Section 2. Title and Improvements to the Common Elements. The Declarant shall convey and record marketable title to the Common Elements to the Association prior to the conveyance of fee title to any Unit. The Declarant covenants and agrees with the Association that it will make and pay for the initial improvements to the Common Elements as set forth in the plans and specifications on file with the Association, and delivery of the deed to the Common Elements shall not constitute a release of Declarant from the obligation to perform such work. Upon the Declarant having fulfilled its obligation to improve the Common Elements, the Association shall file in the office of the County Recorder a release of the Declarant. Until the Declarant has completed the work as set forth in said plans and specifications, the Declarant shall have the right to enter and to store materials and equipment upon the Common Elements for the purpose of completing such work.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment described herein and the title of the Association to the Common Elements shall be subject to the following:

(a) The right of the Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money for capital improvements on the Common Elements, and in aid thereof to mortgage the Common Elements. The rights of any such mortgagees in the Common Elements shall be subordinate to the rights of the Members hereunder. No indebtedness authorized by this paragraph shall exceed twice the sum of the annual assessment levied against all Units. No such mortgage shall be given or other encumbrance of the Common Elements permitted unless first approved in writing by the Owners and First Mortgagees representing seventy-five percent (75%) of the Lots.

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

(c) The right of the Association to suspend the enjoyment rights of any Member 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. Nothing contained in this paragraph, however, shall be deemed to deny an Owner easements for access and utility purposes. Furthermore, any such fine may not exceed $50.00 for all consecutive infractions arising out of the same violation of published rules and regulations of this Declaration.

(d) The right of the Association to charge reasonable admission and other fees for the use of the Common Elements.

(e) The right of the Owner of each Unit to an exclusive appurtenant easement over the Common Elements for areas occupied by bay windows, roof overhangs, air conditioning compressors, flower boxes patios, decks and other appurtenances which are part of the original construction of any Unit or which are added pursuant to the provisions of Article VI, Section 1, hereof.

(f) The right of the Association to dedicate or transfer all or any part of the Common Elements to any public agency, authority or 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 first approved in writing by the Owners of sixty-seven percent (67%) of the

Units. Nothing herein shall preclude the Board of Directors of the Association from granting access to the Common Elements on a temporary, non-exclusive basis to any public agency, authority, utility or cable television company for construction, maintenance or repair of any utility delivery system.

Section 4. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Elements to his tenants who reside on the Property and to members of his family and his guests.

Section 5. Taxes and Special Assessments on the Common Elements. The Association shall have the right, power and authority to collect taxes and special assessments levied against the Common Elements as part of the annual assessment, if such taxes and special assessments are not collected by the governmental body from the Owners or paid by the Owners to the governmental body when the same are due and payable.

Section 6. Use of the Common Elements. The Common Elements shall be used strictly in accordance with the easements granted thereon. Except as herein provided, no Owner shall obstruct or interfere with the rights and privileges of other Owners in the Common Elements, and nothing shall be planted, altered, constructed upon or removed by an Owner from the Common Elements except as authorized in this Declaration or by prior written consent of the Association. If an Owner shall violate this Section, the Association shall have the right to restore the Common Elements to its prior condition and assess the cost thereof against the Owner who violates this Section, and such cost shall become a lien upon the Unit of such Owner which is due and payable upon demand. The Association shall have the same right and powers to collect the cost of such restoration as provided in Article VII hereof for the collection of delinquent annual assessments. If any Owner interferes with the right and privileges of another Owner in the use of the Common Elements, except as provided herein, the Association or the Owner may commence an action to enjoin such interference, and the prevailing party shall be entitled to recover such reasonable attorneys' fees as the court may allow, together with all necessary costs and disbursements incurred in connection therewith.

Section 7. City Easements. The City of Eden Prairie is hereby declared to have the right and easements to enter the Common Elements for public safety purposes and to construct, maintain, operate and replace utilities.

Section 8. Declarant's Easements. Declarant shall have an easement to enter the Common Elements for construction purposes and to conduct sales activities.

ARTICLE V

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. Common Elements Maintenance. In order to preserve the uniform and high standard of appearance of the Property, the Association shall be responsible for the maintenance and repair and for the exclusive management and control of the Common Elements and the Lots and all exterior improvements thereon, and shall keep the same in good, clean, attractive and sanitary condition. The Common Elements and exterior Lot improvements shall be deemed to include such things as streets, parking areas, driveways, sidewalks, retaining walls, trees, flowers and shrubs, patios and decks, and docks; together with all lines, pipes, wires, conduits, systems, sanitary sewer, storm sewer, water, irrigation lines or other utilities which are installed on or across the Common Elements or the Lots. The Association, or its contractor, shall have the right to enter upon the Lots to perform the maintenance and repair outlined herein. The Association shall be solely responsible for maintaining in good repair, at its own expense, Outlot A of Wynstone.

Section 2. Exterior Maintenance. In order to preserve the uniform and high standard of appearance of the Units, the Association shall be responsible for the maintenance and repair of the exterior surfaces of each Unit, including painting, repair, replacement and care for roofs, gutters and downspouts, exterior building surfaces, patios, decks, overhangs and other exterior improvements. Such responsibility for exterior maintenance shall not extend to glass surfaces or doors, screens or screen doors, or exterior door or window fixtures.

Section 3. Lawn and Planting Maintenance. The Association shall mow, trim, water, rake and otherwise maintain, all to the extent the Board of Directors deems necessary or desirable, all lawns and exterior plantings except the Association may elect not to maintain gardens and plantings established by individual Owners but, to the extent the Association undertakes to do so, it will not be responsible for any damage to such gardens and plantings due to over watering, under watering, or improper watering. All plantings shall be subject in each instance to the Board of Directors right to disapprove plantings and locations which would be disharmonious to the overall development.

Section 4. Incidental Damage. The Association shall be responsible for the repair of all incidental damage caused to a Unit or Lot by any maintenance, repair, alteration or improvements of the Common Elements or the exterior surfaces of the Units performed by or with the authority of the Association.

Section 5. Services. To the extent it deems advisable, the Association may obtain and pay for the services of any person or entity to manage its affairs, to fulfill its obligations hereunder, or to enforce this Declaration or the Bylaws. The Association may arrange with others to furnish water, trash collection, sewer service, and other common services to each Lot.

Section 6. Personal Property for Common Use. The Association may acquire and hold for the use of all of the Members tangible and intangible personal property and may dispose of the same by sale or otherwise. Every Member may use such property in accordance with the purpose for which it is intended and without hindering or encroaching upon the lawful rights of other Members.

Section 7. Rules and Regulations. The Association may make reasonable rules and regulations governing the use of the Lots and the Common Elements, which rules and regulations shall be consistent with the rights and duties established in this Declaration.

Section 8. Access at Reasonable Hours. For the purpose of performing the Common Elements and exterior maintenance authorized by this Article, the Association, acting through its duly authorized agents or employees, shall have the right after reasonable notice to the Owner to enter upon any Lot at reasonable hours of the day.

ARTICLE VI

OBLIGATIONS OF THE OWNERS

Section 1. Architectural Control. From and after the completion of construction and sale of any Unit, no building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any modification to the exterior of any Unit, whether to the structure or appearance thereof, be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Association or by an architectural committee composed of three or more representatives appointed by the Association. The Association or the architectural committee shall not approve any alterations or structural modifications which would jeopardize or impair the soundness, safety or appearance of the Property. In the event the Association fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article shall be deemed to have been fully complied with. The prevailing party in an action brought by the Association to cause the removal or alteration of any improvement or addition to any Lot or Unit not in conformance with this Section shall be entitled to recover from the other party reasonable attorneys' fees together with all necessary costs and disbursements incurred in connection therewith. Exterior Unit or site changes may also require approval of the City of Eden Prairie in the form of a revision to the final development plan.

Section 2. Use of Lots. Each Lot shall be used for residential Unit purposes only, except that the Declarant shall be entitled to maintain model townhouses on the Property. No structure of a temporary character, trailer, tent, shack, or other building shall be used on any Lot or the Common Elements at any time as a residence, either temporarily or permanently. No improvement or structure whatsoever, other than single-family dwellings or garages or other structure appurtenant to a Unit and approved as provided in Section 1 of this Article may be erected, placed or maintained. No noxious or offensive activities shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to the neighborhood. Porches which do not encroach on the Common Elements may be constructed adjacent to a Unit subject to the approval of the architectural control committee. Porches must be constructed in concrete although the surface of the concrete may be textured, colored or covered by brick or stone.

Section 3. Use of the Units. The Units shall not be rented by the Owners thereof for transient or hotel purposes, which shall be defined as rental for any period of less than thirty (30) days. Each Owner shall otherwise have the absolute right to lease his Unit, provided that any lease is made subject to this Declaration and the Bylaws of the Association. No Owner shall subdivide any Unit or sell or lease only a part of a Unit. Time shares are prohibited. Neither the Declarant nor any Owner may subdivide any Unit.

Section 4. Maintenance and Upkeep. Every Owner shall maintain and keep in repair the interior of his Unit and all parts of the Unit which are not the responsibility of the Association as defined in Article V, Section 2, hereof. Every Owner shall perform promptly all maintenance and repair work within his Unit which, if omitted, would adversely affect the Property in its entirety or in part belonging to other Owners or to the Association, being expressly responsible for any damage or liability that his failure to do so may cause. Every Owner shall be deemed to own and shall be responsible for the maintenance and repair of all lines, pipes, wires, conduits, systems or other utilities, together with the fixtures and equipment served or supplied thereby, which are installed within his Unit or upon his Lot, commencing at the point where such utilities enter upon his Lot. Each Owner shall maintain the Unit free of hazardous substances, vermin, cockroaches, pests, and debris which may pose a threat to the health and safety of occupants of other Units. Without limiting the generality of the foregoing, the Association may require an Owner to remove offending items, or to use a professional exterminator or other appropriate contractor, and upon the failure of the Owner to do so, the Association after reasonable notice may enter upon the Unit with a professional exterminator or other appropriate contractor and take corrective action, charging the Owner of such Unit for the reasonable costs thereof. An Owner shall do no act nor any work which will impair the structural soundness or integrity of an adjoining Unit or a garage, or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Units, garages or the Owners.

Section 5. Heating of Units. For the purpose of preventing damage to and breakage of water, sewer and other utility lines and pipes in a Unit which might result in damage to the adjoining Unit(s), all Owners shall maintain the temperature in their Unit, at all times, at at least 55 degrees Fahrenheit, subject, however, to the inability to maintain such temperature due to causes beyond the Owner's reasonable control. Any damage resulting from the refusal or failure of an Owner to maintain such minimum temperature may be repaired by the Association and (unless due to causes beyond the Owner's reasonable control) the cost thereof assessed against the Unit of the refusing or failing Owner. However, if the failure to maintain such minimum temperature is due to causes beyond the Owner's reasonable control, the cost of such repair shall be a Common Expense. The Association may require Units which are unoccupied for substantial periods of time during the winter months to use alarms which will detect abnormally low temperatures.

Section 6. Responsibility for Misuse and Negligence. In the event that the need for maintenance or repair of the Common Elements and improvements thereon or the exterior surfaces of any Unit is caused by the misuse or negligence of an Owner, his family, guests, tenants or invitees, the cost of such maintenance or repair shall be assessed against such Owner.

Such cost shall become a lien upon the Lot of such Owner which is due and payable on demand, and the Association shall have the same right and powers to collect the amount so assessed as provided in Article VII for the collection of delinquent annual assessments.

Section 7. Minimum Elevations. Any structure constructed in the areas between the storm water detention pond and the interior access drive within the Common Elements shall have a basement floor elevation set at or above 893 feet above Mean Sea Level ("MSL") and Declarant, or if the structure is erected after the Declarant Control Period terminates the Association, shall provide a certification to the Riley-Purgatory-Bluff Creek Watershed District that the basement floor elevation of such structure described herein has been constructed at or above 893 MSL. The provisions of this Section shall be in full force and effect into perpetuity and inure to the benefit of the Riley-Purgatory-Bluff Creek Watershed District and may not be amended or terminated without the prior written consent of the district.

The Units constructed on Lots 1 and 2, Block 7; Lots 1 and 2, Block 8; Lots 1 and 2, Block 9; and Lot 2, Block 10, of Wynstone shall have basement floor elevations set at or above 889.5 MSL and Declarant shall provide a certification to the Riley-Purgatory-Bluff Creek Watershed District that the basement finished floor elevations for the Units described herein have been constructed at or above 889.5 MSL. The provisions of this Section shall be in full force and effect into perpetuity and inure to the benefit of the Riley-Purgatory-Bluff Creek Watershed District and may not be amended or terminated without the prior written consent of the district.

ARTICLE VII

ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant for each Lot owned hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) annual assessments or charges and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Use of Assessments. The assessments shall be used exclusively for the benefit of the Owners, to promote the health, safety and welfare of the Owners, to preserve, protect and enhance the value of the Property, and to ensure the enjoyment of rights, privileges and easements with respect to the Common Elements.

Section 3. Method of Levying Annual Assessments. Annual assessments against the Units for Common Expenses shall be levied by a majority vote of the Board of Directors of the Association. The Board of Directors shall fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period and send written notice thereof to every Owner. All Units shall be assessed equally. The annual assessments shall be due and payable in monthly installments on such dates as are established by the Board of Directors. If an annual assessment is not timely made, there shall be an assessment in the amount, installments, and on the due dates of the last prior annual assessment. The Board of Directors may require each Owner to deposit and maintain with the Board of Directors an amount equal to one quarterly estimated annual assessment for use as working capital.

Section 4. Commencement and Maximum Amount of Annual Assessments. The annual assessments herein authorized shall commence, as provided herein as to all Lots on the first day of the third month following conveyance of the Common Elements to the Association. Until January 1 of the year following the conveyance of the first Unit to an Owner, the maximum annual assessment shall be $125.00 per Unit which has been issued a certificate of occupancy.

(a) At the time each Unit which has been awarded a certificate of occupancy is sold by Declarant the Purchaser (Owner) shall pay a capitalization fee to the Association of $ 250.00 .

(b) The Declarant shall, after the commencement of the obligation to pay assessments, pay to the Association for each Lot upon which construction has commenced, but which has not been awarded a certificate of occupancy, reduced monthly assessment payments in the amount of 25% of full monthly assessment payments. No assessments are due for vacant Lots. For each Lot upon which construction has commenced but which has not been issued a Certificate of Occupancy the Declarant guarantees payment on a monthly basis to the association per Unit of $ 31.25. This alternative assessment program will be imposed for a period of not less than one year nor more than three years following conveyance of the first Unit to someone other than Declarant or an affiliate of Declarant. In no event may the alternative assessment program commence later than the expiration of the Declarant Control Period. There are no assurances that the alternative assessment program will have no effect on the level of services for items in the Association's budget.

(c) The Declarant shall pay full monthly assessment payments as to each Unit which has been awarded a certificate of occupancy but has not been conveyed to a purchaser.

(d) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner the maximum annual assessment may be increased each year not more than 5% or a percentage equal to the increase for the immediately preceding year in the Consumer Price Index established by the United States Department of Labor for the Minneapolis area, whichever of said percentages is greater, above the maximum assessment for the previous year without an affirmative vote of a majority of the membership approving such an increase.

Section 5. Reserves and Surplus. Annual assessments for Common Expenses shall include an allocation to maintain an adequate Replacement Reserve Fund for maintenance, repair and replacement of those elements of the Common Elements and the exterior surfaces of the Units that must be repaired or replaced on a periodic basis. Such elements include, by way of example and without limitation, roadways and driveways, sidewalks, roofs, common utility lines, decks and outdoor lighting systems. In addition, the Board of Directors may establish and fund as part of the annual assessments a General Operating Reserve to provide a measure of financial stability during periods of special stress and to be used to meet deficiencies as a result of delinquent payments and other contingencies. The Association shall not be obligated to apply any such surplus to the reduction of the annual assessments in the succeeding year, but may carry forward such surplus from year to year as the Board of Directors may determine to be desirable for the greater financial security and the effectuation of the purposes of the Association.

Section 6. Special Assessments. In addition to annual assessments, the Board of Directors may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of capital improvements on the Common Elements, exterior surfaces of Units, or utility lines serving more than one Lot. Any such assessment, however, shall first be approved by a vote of Owners representing sixty-seven percent (67%) of the Units at a meeting duly called for such purpose, written notice of which shall be sent to all Owners at least thirty (30) days in advance.

Section 7. Uniform Rate of Assessments. Both annual and special assessments shall be fixed at a uniform rate for all Units, subject to the following exceptions:

(a) Any Common Expense associated with the maintenance, repair or replacement of a Limited Common Element undertaken by the Association may (but need not) be assessed exclusively against the Unit or Units to which that Limited Common Element is assigned on the basis of (i) equality, (ii) square footage of the area being maintained, repaired or replaced, or (iii) the actual cost incurred with respect to each Unit.

(b) If any damage to the Common Elements or another Unit is caused by the act or omission of any Owner or Occupant, or their guests, the Association may assess the costs of repairing the damage exclusively against the Owner's Unit to the extent not covered by insurance.

(c) Assessments levied under Minn. Stat. § 515B.3-116 to pay a judgment against the Association may be levied only against the Units existing at the time the judgment was entered in proportion to their Common Expenses liabilities.

. Section 8. Record of Assessments. The assessments against all Units shall be set forth on a roll of the Units kept by the Secretary of the Association and available for inspection at reasonable times by any Owner or his authorized representative. Such roll shall indicate for each Unit the name and address of the Owners, the assessments levied for all purposes, and the amounts of all assessments paid and unpaid.

Section 9. Delinquent Assessments: Interest and Liens. Any assessment or installment thereof not paid within ten (10) days after becoming due shall bear interest at the rate of eight percent (8%) per annum from the date when due until paid. All sums assessed by the Association but unpaid for the share of Common Expenses chargeable to any Unit shall constitute a lien on such Unit commencing on the due date of the assessment and prior to all other liens except only tax liens and liens for special assessments on the Unit in favor of any taxing and assessing unit of government and all sums unpaid on a first mortgage of record. The sale or transfer of any Unit shall not affect the assessment lien. However (except in the case of an Owner's redemption) the sale or transfer of any Unit pursuant to foreclosure of any first mortgage shall extinguish the lien of such assessments as to payments which become due prior to the six month period immediately preceding the first day following the end of the Owner's period of redemption. Any such unpaid assessments shall thereupon be spread over and become a lien on all Units in equal shares. No foreclosure sale or transfer shall relieve any Unit from liability for any assessments thereafter becoming due or from the lien thereof. A lien for assessments may be foreclosed by suit by the Board of Directors of the Association in like manner as foreclosure by action of a mortgage on real property or in like manner as a mortgage containing a power of sale by advertisement. The Board of Directors shall have the power to convey the Unit so acquired. In addition, the Association shall have the right to pursue any other remedy at law or in equity against any Owner who fails to pay any assessment or charges against his Unit.

Section 10. Ineffectiveness of Waiver or Abandonment. No Owner may exempt himself from liability for contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Elements, by waiver or protest of the need for maintenance or repair of exterior surfaces of any Unit, or by abandonment of his Unit.

ARTICLE VIII

INSURANCE

Section 1. Casualty Insurance on Insurable Common Elements. The Association shall keep all insurable improvements and fixtures of the Common Elements insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Elements shall be written in the name of, and the proceeds thereof shall be payable to the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses included in the assessments made by the Association.

In addition to casualty insurance on the Common Elements, the Association, pursuant to Minn. Stat. § 515B.3-113 which requires the Association to maintain casualty insurance on the Units because the Units share contiguous walls, siding and roofs, shall maintain blanket casualty and fire insurance in such form as the Board of Directors deems appropriate in an amount equal to the full replacement value, without deduction for depreciation or coinsurance, on all of the dwelling Units, including the structural portions and fixtures thereof. Insurance premiums from any such blanket insurance coverage, and any other insurance premiums paid by the Association, shall be a Common Expense of the Association to be included in the regular assessments of the Owners, as levied by the Association, but such assessments for insurance premiums shall not be subject to the limits on percentage increases recited in Article VII hereof. The insurance coverage with respect to the dwelling Units shall be written in the name of, and the proceeds thereof shall be payable to the Association as Trustee for the Owners.

Section 2. Public Liability and Other Insurance.

(a) The Association shall carry public liability insurance with one or more reputable insurance companies in minimum amounts of $1,000,000.00 for any one occurrence in connection with the Property and in aggregate of $1,000,000.00 in connection with the Property.

(b) The Association shall carry fidelity insurance with a reputable insurance company covering the acts of its Officers, Directors and Employees with a limit of $50,000.00 for any one occurrence.

Section 3. Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Elements improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repairs or replacement of the property damaged or destroyed, the Association may make a reconstruction assessment against all Lot Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other common assessments made against such Unit Owner.

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

Section 4. Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board of Directors in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the property which may have been damaged or destroyed.

Section 5. Waivers of Subrogation. All policies of physical damage insurance shall contain waivers of subrogation and waivers of any reduction of the pro-rata liability of the insurer as a result of any insurance carried by Owners or of invalidity arising from any acts of the insured or any Owners. Provisions shall be made for issuance of certificates of physical damage insurance to mortgagees.

Section 6. Notices to FNMA and FHLMC. All policies of physical damage, fidelity and comprehensive liability insurance maintained by the Association shall provide that the policies shall not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC"), all of the insureds and all First Mortgagees of record. The Association agrees to notify FNMA and FHLMC in writing whenever damage to the Common Elements exceeds Ten Thousand Dollars ($10,000.00) from a single occurrence, or whenever damage with respect to any Unit covered by a mortgage purchased in whole or in part by FNMA or FHLMC exceeds One Thousand Dollars ($1,000.00).

Section 7. Individual Owner's Insurance. Each Owner shall carry insurance for his own benefit insuring his personal liability and his carpeting, wall coverings, fixtures, furniture, furnishings and other personal real estate, and fixtures or other improvements supplied or installed by him or a previous owner or tenant, provided that all such policies shall contain waivers of subrogation and further provide that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such additional insurance carried by any Owner, that is, Owner's policy shall be "without contribution" against Association policies. If a casualty loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable on the insurance maintained by the Association due to proration of insurance purchased by any Owner, such Owner agrees to assign the proceeds of this latter insurance, to the extent of the amount of such reduction, to the Association to be distributed as hereinafter provided, and such Owner shall be liable to the Association to the extent of any such diminution or loss of proceeds.

Section 8. Deductibles. The Association may, in 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 Unit(s) affected in any reasonable manner, or (iii) require the Owners of the Units affected to pay the deductible amount directly.

ARTICLE IX

RECONSTRUCTION AND REPAIR

Section 1. Casualty. In the event of damage or destruction by casualty to any part of the property subject to this Declaration, the determination of whether or not to reconstruct or repair the same shall be made as follows:

(a) Any portion of the Common Elements which is damaged or destroyed by a casualty otherwise not affecting the Units shall be restored to substantially the same condition which existed prior to such casualty. If insurance proceeds are insufficient to pay the costs of such restoration, the Board of Directors shall levy a special assessment as provided in Section 6 of Article VII hereof to meet the costs thereof which assessment shall be fixed at a uniform rate for all Lots.

(b) If a Unit is damaged or destroyed by a casualty it shall be restored by the Owner to substantially the same condition which existed prior to such casualty. If insurance proceeds are insufficient to pay the costs of such restoration or reconstruction, then the Owner shall be responsible for the difference needed to complete such restoration or reconstruction, except that in the event such loss is covered by blanket casualty insurance carried by the Association as provided in Section 1 and 2 of Article VIII, then the Board of Directors shall levy a special assessment to meet such deficiency in costs, which assessment shall be fixed at a uniform rate for all Lots.

(c) Partial destruction, which shall mean damage or destruction which renders less than sixty percent (60%) of the Units, collectively, unfit for occupancy, shall be reconstructed or repaired unless this Declaration is revoked within ninety (90) days after the date of such casualty.

(d) Total destruction, which shall mean destruction which renders sixty percent (60%) or more of the Units, collectively, unfit for occupancy, shall not be reconstructed or repaired unless at a special meeting of the Members which shall be called within ninety (90) days after the date of such casualty or if by such date the insurance loss has not been fully adjusted, then within thirty (30) days thereafter, Owners representing eighty percent (80%) or more of the Units vote in favor of such reconstruction or repair.

Immediately after a casualty causing damage to the Property, the Board of Directors shall obtain reliable and detailed estimates of the cost to restore the damaged Property to substantially the same condition which existed prior to such casualty. If the proceeds of

negligent or willful acts or omissions.

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

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

ARTICLE XI

MUTUAL EASEMENTS

The title to each Lot shall include an exclusive appurtenant easement over and across the adjoining Lot or Common Elements for encroachments created by construction, settling and overhangs for all Units originally constructed by the Declarant or improvements which are added pursuant to Article VI, Section 1, hereof. A valid easement for said encroachments and for the maintenance thereof, so long as such encroachments stand, shall and does exist upon each Lot in favor of the adjoining Lot or Lots.

ARTICLE XII

RIGHTS OF FIRST MORTGAGEES

For the protection of First Mortgagees and their assigns, the following provisions shall take precedence over any other conflicting provisions of this Declaration:

Section 1. Notification of Default. A First Mortgagee, upon request, shall be entitled to written notification from the Association of any default in the performance by an Owner of any obligation under the Declaration or the Bylaws which is not cured within sixty (60) days.

Section 2. Exemption from Right of First Refusal. Any First Mortgagee that obtains title to a Unit by foreclosure of the mortgage, by deed or assignment in lieu of foreclosure, or pursuant to the remedies provided in the mortgage, shall be exempt from any right of first refusal contained in the Declaration or Bylaws.

Section 3. Liability for Assessments. Any First Mortgagee that obtains title to a Unit pursuant to the remedies provided in the mortgage or by foreclosure of the mortgage will not be liable for such Unit's unpaid assessments or charges except as provided in Article VII, Section 9.

Section 4. Books and Records. First Mortgagees shall have the right to examine the books and records of the Association.

Section 5. Approval of Certain Acts. Unless a higher percentage is required by law or this Declaration, the following actions (including an amendment of this Declaration) must be agreed upon by the First Mortgagees who have submitted a written request to the Association to be notified of any proposed action requiring consent of mortgage holders, who represent at least fifty-one percent (51%) of the votes ascribed to Units that are subject to first mortgages held by such First Mortgagees:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Owners shall not be deemed a transfer within the meaning of this clause.)

(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 of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of the Units, the exterior maintenance of Units, the maintenance of party walls or common fences and driveways, or the upkeep of lawns and plantings on the Property.

(d) Fail to maintain fire and extended coverage insurance on insurable Common Elements and Property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost).

(e) Use hazard insurance proceeds for losses to the Property for other than repair, replacement or reconstruction of such Property.

Section 6. Liens. All taxes, assessments and charges which may become liens prior to the first mortgage under Minnesota law shall relate only to the individual Units and not to the Property as a whole.

Section 7. Reserves. Assessments for Common Expenses shall include an adequate reserve fund for maintenance, repairs, and replacement of those Common Elements that must be replaced on a periodic basis. Such routine and foreseeable assessments shall be payable in regular installments rather than by special assessment.

Section 8. No Priority Over First Mortgagees. No provision of the Declaration or Bylaws shall be construed as giving to any 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 Units or the Common Elements, or both.

Section 9. Contract Terms. The term of any agreement for professional management of the Property, or any other contract providing for services of the Declarant, may not exceed two (2) years. Any such agreement shall provide for termination by either party without cause and without payment of a termination fee upon ninety (90) days' prior written notice.

ARTICLE XIII

ADDITIONAL RESTRICTIONS

Section 1. Declarant Rights. Notwithstanding any provision of the Declaration or Bylaws to the contrary, the Declarant may operate and maintain upon the Property during the period of construction and sale of the Units such facilities as may be reasonably required or convenient to the construction and sale of the Units, including without limitation a business office, storage area, construction yards, signs, model units and sales office, and shall have easements for access to and enjoyment and use of such facilities for itself, its employees, agent and prospective purchasers.

Section 2. Keeping of Animals. No pets shall be permitted to be kept on the Lots or within the Units by any Owner or occupant except conventional domesticated animals. No kennel, dog house or outside run shall be constructed or maintained on any Lot or on the Common Elements. No pets shall be kept for any commercial purpose nor shall any pets be bred for a commercial purpose upon the property. Any cat or dog, whenever outside of a Unit, must be kept under direct control of the pet owner or another person able to control the pet. The person in charge of the pet must clean up after it. The Board of Directors may adopt more specific rules and penalties not inconsistent with the foregoing. Upon the petition of seventy-five percent (75%) of the Owners of Units located within 100 feet of the Unit in which resides a specified pet, the Board of Directors may order the removal of a particular dog for constituting uncontrolled barking or of a particular animal for repeated instances of wandering unleashed or other repeated behavior reasonably offensive to others, provided that the Owner of the Unit harboring the animal shall first have 30 days written notice in which to correct the offensive behavior.

Section 3. Signs. No sign of any kind shall be displayed to the public view on any Lot or in the Common Elements, except that the Declarant shall be permitted to erect and maintain upon the Property such signs as it deems appropriate to advertise the development until the Declarant conveys the last Unit.

Section 4. Miscellaneous. All sporting equipment, toys, and other equipment and supplies necessary or convenient to residential living shall be enclosed or shall be screened from view. No boats or recreational vehicles shall be stored by an Owner unless stored inside a garage. In addition, no television or radio antenna shall be erected or placed on the exterior of any Unit. One satellite dish per Unit of up to 24 inches in diameter may be installed, but only in a location approved by the architectural control committee. The design and appearance of storm doors must be approved by the architectural control committee.

Section 5. Gazebo. The Association shall establish reasonable rules for the use and maintenance of the gazebo.

ARTICLE XIV

GENERAL PROVISIONS

Section 1. Duration and Binding Effect. The easements created hereby shall be permanent and the covenants and restrictions contained in this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors and assigns.

Section 2. Amendment. Except as otherwise provided in Minn. Stat. § 515B.2-118, this Declaration shall not be amended unless at least sixty-seven percent (67%) of the Owners agree to such amendment or revocation.

Section 3. Revocation. The common interest community created by this Declaration may be terminated only by the agreement of Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated, and eighty percent (80%) of the First Mortgagees of Units (each mortgagee having one vote per Unit financed).

Section 4. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain such violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure by the Association or 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 5. Notices. Any notice required to be given to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly given when personally delivered or when mailed postpaid to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such notice.

Section 6. Severability. In the event that any provision of this Declaration shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 7. Singular and Plural; Gender; Joint and Several Obligations. When required by the context of this Declaration, the singular shall include the plural, or vice versa, and the masculine gender shall include the feminine or neutral gender. Any obligations of the Owners or Members shall be joint and several except where the context clearly requires otherwise.

Section 8. Governing Law. This Declaration shall be interpreted in accordance with and governed by the laws of the State of Minnesota.

Section 9. Public Trail. Along the northerly boundary of the Property is a trail open to use by the public which trail is maintained by the City of Eden Prairie.

IN WITNESS WHEREOF, the Declarant has executed this Declaration the day and year first above written.

JASPER DEVELOPMENT CORPORATION OF WACONIA

James E. Jasper

By: James E. Jasper
Its: President

STATE OF MINNESOTA)
) ss.
COUNTY OF CARVER)

The foregoing instrument was acknowledged before me this 22nd day of November, 1999 by James E. Jasper, known to me to be the President of Jasper Development Corporation of Waconia, a Minnesota corporation.

TAMERA J. SCHIMELPFENIG
NOTARY PUBLIC - MINNESOTA
My Comm. Exp. Jan. 31, 2000

Tamera J. Schimelpfenig
Notary Public

INTER SAVINGS BANK fsb

Robert C. Fairchild

By: ROBERT C. FAIRCHILD
Its: ASSISTANT VICE PRESIDENT

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 17th day of FEBRUARY, ~~1999~~ 2000 by ROBERT C. FAIRCHILD, known to me to be the ASST VICE PRESIDENT of Inter Savings Bank fsb, a federal corporation.

Elizabeth Anderson
Notary Public

ELIZABETH B. ANDERSON
Notary Public
Minnesota
My Commission Expires Jan. 31, 2005

BEACON BANK

By: Janice V. Berg
Its: Assistant Vice President

STATE OF MINNESOTA)
) ss.
COUNTY OF Hennepin)

The foregoing instrument was acknowledged before me this 14th day of December, 1999 by Janice V. Berg, known to me to be the AVP of Beacon Bank, a Minnesota financial corporation.

TAMI J. LAECHELT
NOTARY PUBLIC - MINNESOTA
My Comm. Expires Jan. 31, 2005

Notary Public

1st UNITED BANK

By: GENE H. BUHR
Its: VICE PRESIDENT

STATE OF MINNESOTA)
) ss.
COUNTY OF RICE)

The foregoing instrument was acknowledged before me this 13th day of DECEMBER, 1999 by GENE H BUHR, known to me to be the VICE PRESIDENT of 1ST United Bank, organized and existing under the laws of the United States of America.

PAMELA J. ELZEN
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2005

Notary Public

CONSTRUCTION FINANCE, INC.

By: [signature]
Its: Pres

STATE OF MINNESOTA)
) ss.
COUNTY OF Hennepin)

The foregoing instrument was acknowledged before me this 17 day of December, 1999 by John Osnuss, known to me to be the President of Construction Finance, Inc., a Minnesota corporation.

[signature]
Notary Public

ANGELA R. QUALE
NOTARY PUBLIC - MINNESOTA
My Commission Expires Jan. 31, 2000

ASSURED FINANCIAL, LLC

[signature]
By:
Its: President

STATE OF MINNESOTA)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this 14 day of December, 1999 by Dennis Richardson, known to me to be the President of Assured Financial, LLC, a Minnesota limited liability company.

Kari L Anderson
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:
Melchert Hubert Sjodin, PLLP
121 West Main Street
Waconia, Minnesota 55387-1023 (rlh)
(612) 442-5155
Larry/jasper/wynstone/declaration
fourth draft 11/12/99

KARI L ANDERSON
NOTARY PUBLIC—MINNESOTA
MY COMMISSION EXPIRES
JANUARY 31, 2005

HOME BUYERS WARRANTY BOOKLET
LIMITED STRUCTURAL WARRANTY COVERAGE

Dear Homebuyer(s):

Congratulations! You are purchasing a Home with express limited warranty protection provided by a Builder enrolled in the Home Buyers Warranty (HBW) program.

This booklet, together with the Application for Home Enrollment which you sign, is your Builder's Limited Warranty to you. Your Builder warrants that, within the limitations described in these two documents, your Home will be free from major structural defects.

Your Builder's Limited Warranty will be insured by National Home Insurance Company (A Risk Retention Group) (NHIC) after it is enrolled by HBW, a company which performs certain warranty-related administrative functions which are described in this booklet.

This Warranty is a contract between you and your Builder. HBW is the Warranty Administrator, but NOT a warrantor under the contract. NHIC is your Builder's Warranty Insurer, and is a risk retention group made up of all HBW Builders nationwide. NHIC is not a party to this Warranty Contract, but as your Builder's Insurer has agreed to perform certain tasks and undertake certain obligations which are described in this booklet.

Congratulations and enjoy your new home!

Home Buyers Warranty

1) EXPRESS LIMITED WARRANTY: TEN YEAR. For ten years from the Effective Date of Warranty (your closing date or the day you or anyone else first occupied the Home, if that was before the closing), your Builder warrants your Home against a Structural Defect. A Structural Defect is defined in Section 9.

If your Home is a unit of a condominium, and if all units of the condominium are enrolled by your Builder in this HBW program, then common elements will be covered as described above, with coverage commencing on the effective date of Common Elements Coverage. Common Elements Coverage begins on the date the Certificate of Occupancy is issued for the structure containing your unit. A "common element" is any portion of the structure in which enrolled units are located which portion is defined as a common element in either the state condominium law or the Declaration of condominium. "Common element stairways and landings" are defined as stairways and landings that are maintained by the Homeowners Association or someone other than the owner/occupant of the particular residence. **All common element exterior stairways and landings contained within multi-family projects will be covered only if they are constructed with metal and/or concrete materials. All exterior common element stairways and landings contained within multi-family projects that are constructed of wood are excluded from coverage unless your builder paid an additional fee for coverage of wood materials used in common element exterior stairways and landings as reflected on your Application for Home Enrollment (HBW Form #202)*. EXCEPTION: In the Las Vegas and Phoenix metropolitan areas no additional fee is required for coverage of wood materials used on common element exterior stairways and landings.**

***State of Colorado Only: All common stairways and landings contained within multi-family projects must be constructed with metal and/or concrete materials. Wood materials are strictly excluded from coverage.**

This warranty does NOT APPLY TO ANY DEFECT YOU KNEW ABOUT BEFORE THE CLOSING, WHETHER APPEARING ON A PUNCH-LIST OR WALK-THROUGH LIST OR NOT.

2) WARRANTY NOT INSURANCE. THIS **WARRANTY** IS NOT AN INSURANCE POLICY. YOU SHOULD HAVE HOMEOWNERS INSURANCE AND THIS IS NOT IT. YOUR BANK OR OTHER MORTGAGE FINANCIER WILL INSIST ON **HOMEOWNERS** INSURANCE COVERAGE IF YOU HAVE A MORTGAGE. THIS IS NOT YOUR BUILDER'S CGL (COMPREHENSIVE AND GENERAL LIABILITY) INSURANCE POLICY.

This is an EXPRESS LIMITED WARRANTY offered by your Builder. **NO OTHER WARRANTIES ARE INSURED BY NHIC.** TO THE EXTENT POSSIBLE UNDER THE LAW OF YOUR STATE, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF HABITABILITY, ARE HEREBY DISCLAIMED. NO ONE CAN ADD TO OR VARY THE TERMS OF THIS WARRANTY, ORALLY OR IN WRITING.

The warranty obligations of your Builder insured by NHIC during the entire term of a warranty are limited to the lesser of the original sales price of your Home, or $750,000 or such lesser amount as HBW or NHIC shall have communicated to your Builder. In addition, payments made to anyone for defects in the Common Elements of a condominium structure reduce your Builder's and/or NHIC's warranty obligation with respect to the structure, and reduce pro rata the warranty obligation with respect to each enrolled condominium unit in the structure. When the limit has been paid, your warranty rights are extinguished. Your Builder's and/or NHIC's costs or designing, accomplishing, and monitoring repairs to your Home (or payments to you or to another instead) are deducted from your Home's warranty limit. Your Builder's and/or NHIC's cost of determining the existence and/or extent of a covered defect, and of any unsuccessful repair attempts, are not deducted.

If at the time of a claimed loss there is, in your name or your Builder's name, any valid and collectible insurance, whether primary, excess or contingent, that applies to the losses, defects, or claims covered by this warranty, then NHIC shall not be liable for any said losses, defects, or claims.

3) REPORTING A STRUCTURAL DEFECT. If you believe that your Home has a defect covered (and not excluded) under the Structural warranty, you must send a written claim to HBW Customer Service stating the date you found the defect and describing the defect. You should use a photocopy of the HBW Form #204 at the end of the Warranty booklet, because when completely filled out, it provides the information NHIC needs to know. With the Notice of Claim Form #204, you must also enclose a copy of Application for Home Enrollment Form #202 so that warranty coverage can be verified, and a $250.00 claim investigation fee for each claim. (If you are the original owner and your home has original FHA financing, the $250.00 is collected after the claim is accepted and the amount of loss is determined.) As your Builder's insurer, NHIC is entitled to assess claimed defects and decide upon an appropriate repair plan. NHIC is also entitled to choose to repair or replace, or to pay you the fair value of the repair or replacement of, a covered defect. If you repair (or cause the repair of) the claimed defect before NHIC has an opportunity to inspect the claimed defect, you make it impossible for NHIC to assess whether the defect was covered by the warranty, whether the repair you performed or caused was cost-effective, necessary, and effective, and whether NHIC would have been able to solve the problem in another way altogether. FOR THESE REASONS, NHIC WILL NOT ACCEPT, NOR WILL THE ARBITRATOR BE ABLE TO AWARD TO YOU, ANY CLAIMED DEFECT WHICH YOU HAVE HAD REPLACED OR REPAIRED, <u>EXCEPT</u> FOR AN EMERGENCY REPAIR WHICH WAS AUTHORIZED BY NHIC. If NHIC is unavailable for emergency authorization, you must make minimal repairs so that further damages can be mitigated and report the emergency to HBW Customer Service on the next business day. Any unauthorized repairs will not be reimbursed to you unless you have followed the above procedures.

IF YOUR HOME IS A CONDOMINIUM: The Condominium Association or any representative designated by the Association must file one claim as described above under "Reporting a Structural Defect" for each affected building. The designated representative must list all of the units in the building and attach the HBW Application for Home Enrollment Form for each unit to one (1) Notice of Claim Form #204, and enclose the proper claim investigation fee. BE SURE THAT YOUR CLAIM IS RECEIVED WITHIN THE APPLICABLE WARRANTY TERM WHICH BEGINS ON THE DATE THE COMMON ELEMENTS COVERAGE BECAME EFFECTIVE. The maximum claim investigation fee for each claim is Two Hundred and Fifty Dollars ($250.00) per unit in the building, or Five Thousand Dollars ($5,000.00) per building, whichever is less. If your Home is a condominium unit, by accepting this Limited Warranty, you agree to allow free access to, on, through or within your Home during normal business hours (after receiving reasonable notice from NHIC) so that repairs may be made to any adjacent unit or common elements area. You also agree that if emergency repairs are required (which would be the responsibility of NHIC) and you cannot be contacted within a reasonable period of time, you waive such notice.

THE ABOVE DESCRIBED PROCEDURES MUST BE COMPLETED PRIOR TO THE TEN YEAR WARRANTY EXPIRATION AND <u>RECEIVED</u> BY HBW CUSTOMER SERVICE NO LATER THAN 30 DAYS AFTER THE EXPIRATION OF THE TEN YEAR WARRANTY TERM. WARRANTY COVERAGE FOR ANY NOTICE OF CLAIM RECEIVED AFTER THIS DATE WILL BE DENIED AND NHIC WILL HAVE NO OBLIGATION TO YOU FOR THE REPAIR OF THESE DEFECTS. THE TIME LIMITS ARE A MATERIAL CONDITION OF THE WARRANTIES.

THIS IS AN INSURED WARRANTY. IN ORDER FOR NHIC TO PLAN FOR THE RIGHT AMOUNT OF REINSURANCE AND TO INSURE THIS STRUCTURAL WARRANTY COVERAGE AT A CORRECT PRICE, NHIC NEEDS TO OBSERVE THE WARRANTY TIME LIMITS CAREFULLY, AND SO DO YOU, IN ORDER TO AVOID A MATERIAL BREACH AND THE LOSS OF WARRANTY COVERAGE.

NHIC has the sole right to choose to do the repair required, or to pay its fair value. NHIC will also repair (or pay for the repair of) any item needed to be damaged or destroyed to make the warranted repair, but YOU ARE RESPONSIBLE TO REMOVE OR REPAIR ANY IMPROVEMENTS YOU ADDED AFTER YOUR BUILDER'S ORIGINAL CONSTRUCTION WORK WAS FINISHED, for example wallpaper, fences, or sprinklers, to name a few of many possibilities. **The warranty duration term is not extended by any repair.** Before NHIC repairs or pays for the repair of a claim, you must assign to NHIC any rights you may have against any other person in respect of the claim. In the case of cash payments regarding homes with the original FHA-financed mortgage, NHIC is required to make payment to you and your mortgagee. You must provide the name and address of your mortgagee, the FHA case number and the loan number (your HUD settlement statement will have this information) when you file a claim in respect of a home with FHA-financed mortgages, in order for these obligations to be performed. The repair of a structural defect consists of, and is limited to, 1) repair of damage to the load-bearing portions of your Home which is necessary to restore their load-bearing function, 2) repair of those non-load-bearing portions damaged by the structural defect and whose repair is necessary to make your Home once again safe, sanitary, or otherwise livable, and 3) repair and cosmetic correction of portions damaged by the structural defect or which require removal and replacement to repair the structural defect or to repair other damage directly attributable to the structural defect.

4) ACCESS TO YOUR HOME: In order for NHIC to carry out their responsibilities under this agreement, they will require access to your Home from time to time. BY SIGNING THE APPLICATION FOR HOME ENROLLMENT UNDER THIS WARRANTY COVERAGE, YOU HEREBY 1) AGREE TO GRANT ACCESS TO NHIC AND THEIR AGENTS AND CONTRACTORS DURING NORMAL BUSINESS HOURS TO INSPECT, REPAIR, AND CONDUCT TESTS IN YOUR HOME AS IN THEIR JUDGMENT MAY BE REQUIRED, AND 2) APPOINT NHIC AS YOUR ATTORNEY IN FACT FOR THE PURPOSE OF APPLYING OR MOVING FOR AN ORDER TO COMPEL ACCESS TO YOUR HOME DURING NORMAL BUSINESS HOURS IN ORDER FOR THEM OR THEIR AGENTS OR CONTRACTORS TO INSPECT, REPAIR, AND CONDUCT TESTS IN IT. FAILURE TO ALLOW ACCESS TO YOUR HOME WILL VOID THE WARRANTY.

5) ARBITRATION. In order to be able to request arbitration, you must have followed the claim procedures set forth in #3, Reporting A Structural Defect, within the time limits set forth there.

Any controversy concerning a claim arising out of or relating to the Builder's ten year structural coverage (insured by NHIC) shall be settled by final and binding arbitration in accordance with Construction Arbitration Service, Inc. (CAS) or other NHIC approved rules applicable to the home warranty industry in effect at the time of arbitration. Arbitration must be requested within sixty (60) days of NHIC's claim denial or a new structural claim must be filed so that NHIC can reinspect the home to determine if a qualifying structural defect has developed since its claim denial. Arbitrations of all structural warranty disputes will be conducted by a single arbitrator, or at the option of the Builder, Homebuyer or NHIC, by a panel of three arbitrators supplied by the arbitration service. The party opting for a panel of three arbitrators will be responsible for any costs in excess of those which would be incurred by a single-arbitrator arbitration and must advance those costs to the arbitration service on demand prior to the arbitration service administering the case.

YOUR SOLE REMEDY AGAINST NHIC (and/or HBW) IS FINAL AND BINDING ARBITRATION AS DESCRIBED HEREIN. HBW and NHIC are not responsible to the Homebuyer or Builder for any controversy, dispute, complaint or claim (whether it is called a contract, tort or other controversy) other than claims or disputes arising out of this warranty which must be settled by final and binding arbitration and shall be governed by the U. S. Arbitration Act, 9 U. S. C. Secs. 1-16, to the exclusion of any provisions of state arbitration law. The binding arbitration provision as described herein is specifically limited to the following parties: the Builder, the individual Homebuyer (which includes the individual owner or the Condominium Association) and NHIC/HBW). Consolidation of arbitration proceedings by groups is prohibited except as provided above.

The administration fee charged by the arbitration service will be paid by NHIC in the case of single-arbitrator structural claim arbitrations. The arbitrator's compensation fee shall be borne equally by the arbitrating parties for single-arbitrator arbitrations.

The total value of any award made by an arbitrator for any and all claims shall not exceed the lesser of the original sales price of the home or any applicable limit imposed upon the award of damages in a civil proceeding under the laws of the jurisdiction in which the home is situated.

Because this Warranty provides for mandatory arbitration of disputes, if any party commences litigation in violation of this Warranty agreement, such party shall reimburse the other parties to the litigation for their costs and expenses including attorneys' fees incurred in seeking dismissal of such litigation.

6) WARRANTIES TRANSFERABLE. All of your rights and obligations hereunder shall fully transfer to each successor in title to the Home, including any mortgagee in possession, for the remainder of the warranty term and any such transfer shall in no way affect or reduce the coverage under this warranty for its unexpired term. There is no limit to the number of such transfers during the Warranty Term, nor any cost hereunder as a result of such successions. If you sell your Home during the warranty term, you agree to give this Warranty to your buyer to enable buyer to enforce warranty rights and perform warranty obligations. IF YOU ARE A SUCCESSOR OWNER OF THE HOME (THAT IS, AN OWNER OTHER THAN THE ORIGINAL PURCHASER), YOUR HOME WILL BENEFIT FROM THE COVERAGE PROVIDED BY THIS EXPRESS LIMITED WARRANTY. LIKEWISE, YOU ARE ALSO BOUND BY ALL THE TERMS AND CONDITIONS OF THE WARRANTY INCLUDING BUT NOT LIMITED TO CLAIMS PROCEDURES AND PARTICIPATION IN BINDING ARBITRATION.

7) EXCLUSIONS. This warranty does not apply to:

a) defects in outbuildings, including detached garages and detached carports (except outbuildings which contain the plumbing, electrical, heating, cooling or ventilation systems serving your Home); swimming pools and other recreational facilities; driveways; walkways; patios, decks, stoops, steps and porches or any appurtenant structure or attachments to the dwelling other than attached garages or carports; boundary walls, retaining walls and bulkheads (except where boundary walls retaining walls and bulkheads are necessary for the structural stability of the Home); fences; landscaping (including sodding, seeding, shrubs, trees, and plantings); sprinkler systems; or other improvement not a part of your Home;

b) damage to real property which is not part of your Home;

c) damage to or defects in concrete floors of attached garages that are built separate from foundation walls or other structural elements of your Home;

d) bodily or personal injury of any kind (including physical or mental pain and suffering and emotional distress), medical, hospital, rehabilitation or other incidental or consequential expenses, damage to personal property, or damage to any property of others;

e) any loss or damage which you have not taken appropriate action to minimize as soon as practicable;

f) any defect in material or work supplied by anyone other than your Builder or its employees, agents or subcontractors, and any covered defect which was caused by defective material or work supplied by anyone other than your Builder or its employees, agents or subcontractors;

g) any and all consequential loss or damages;

h) defects in any property which was not included in the original Home delivered for the original final sales price;

i) any damage to the extent it is caused or made worse by:

1.) Negligence, improper maintenance or improper operation by anyone other than your Builder or its employees, agents or subcontractors;

2.) Your failure to give prompt and proper notice to HBW of any defects;

3.) Changes of the grading of the ground that do not comply with accepted grading practices, including your failure to maintain the original grade;

4.) Loss or damage not caused by a defect or deficiency in the design or construction of your Home by your Builder, or its employees, agents or subcontractors;

5.) Changes in the level of the underground water table which were not reasonably foreseeable at the time of construction of your Home;

6.) Subsidence or soil movement which was not reasonably predictable through reasonable soil testing or other geological investigation at the time of construction of your Home (This exclusion does not apply to any Home that has an original FHA Loan still in effect);

7.) Dampness or condensation due to your failure to adequately maintain ventilation, caulking, flashing or gutters;

8.) Failure by you, or anyone other than your Builder or its employees, agents or subcontractors, to comply with the warranty requirements of manufacturers of appliances, equipment or fixtures;

j) loss or damage externally caused, including, but not limited to: acts of God, riot or civil commotion, hurricane, tornado or other windstorm, fire, explosion, smoke, water, hail, lightning, falling trees or other objects, aircraft, vehicles, flood, mud slides, earthquakes, volcanic eruption, radon or other gases, abuse or use of your Home, or any part thereof, beyond the reasonable capacity of such part for such use, or by any other external cause;

k) any loss, damage, defect, cost or expense which is caused, in whole or in part, by any peril or occurrence for which compensation is provided by state legislation, or which is covered by other insurance or public funds (Note: see the final paragraph of #2 above);

l) rotting of any kind and occurring from any cause, insect damage, vermin, radiation, pollution, or toxic substances of any kind;

m) any loss or damage which arises while your Home is being used primarily for nonresidential purposes;

n) any condition which does not result in actual physical damage to your Home;

o) costs of shelter, transportation, food, moving, storage, or other incidental expenses related to relocation during repair, or any other costs due to loss of use, inconvenience or annoyance;

p) normal wear and deterioration;

q) failure of your Builder to complete construction;

r) glass breakage;

s) failure of your Builder to perform any washing, cleaning or clean-up of any kind;

t) structural slab foundation systems that may have experienced some movement but are within the foundation's design performance criteria;

u) violations of local or national building codes, ordinances or standards;

v) since this warranty covers only those defects which first occur during the Warranty Term, any preexisting conditions you knew about, such as "walk-through" or "punch-list" items are not covered;

w) any complaint or claim received by HBW after an unreasonable delay (which includes your failure to inform HBW of any complaints that remain unresolved for sixty (60) days or more or later than thirty (30) days after the expiration of this warranty;

x) outside sillcocks and other hose connections;

y) loss or damage resulting from any failure to comply with federal, state, local or other elevation requirements, including but not limited to:

(a) failure of the lowest floor elevation of the home to meet or exceed the base flood elevation established by the Federal Emergency Management Agency and applicable community floodplain management ordinances; or,

(b) errors in connection with the collection and certification of elevation information, whether committed by the builder or agent of the builder, or by any person authorized by state or local law or ordinance to provide floodplain management information, or by any other person; and,

z) claims made for damages to the home when it has been vacant for a period of ninety days or more.

8) YOUR OBLIGATIONS. The warranty coverage pays for the cost of labor and materials to correct a covered defect. Your obligations are to care for your Home in such a way as to rule out or minimize damage to it, and to pay your own expenses, should you elect to incur them, of pursuing claims against your Builder or NHIC, whether for professional services or for any other cost. You should be aware that all new homes go through a period of settlement and movement. During this period, your Home may experience some minor material shrinkage, cracking and other events which are normal and customary. Remember that YOU ARE RESPONSIBLE FOR PROPER MAINTENANCE OF YOUR HOME INCLUDING MAINTAINING BUILDER-SET GRADES AROUND HOME. ANY DAMAGE CAUSED OR MADE WORSE BY YOUR NEGLIGENCE, IMPROPER MAINTENANCE OR CHANGES, ALTERATIONS OR ADDITIONS PERFORMED BY ANYONE OTHER THAN YOUR BUILDER OR HIS/HER AGENTS, IS EXCLUDED FROM COVERAGE UNDER THIS WARRANTY.

9) DEFINITIONS. **You** means the person(s) who holds title to the Home, **Home** means the dwelling and does not include outbuildings nor any appurtenant structure or attachments to the dwelling, other than attached garages or carports (see #7 Exclusion (a)) and **Builder** means the Builder as listed on the Application for Home Enrollment Form #202. **HBW** means a warranty administration company which performs certain tasks for NHIC. **Warranty Term** is the period during which a warranted defect must first occur in order to be covered hereunder, and is that period which begins on the effective date of warranty as defined in paragraph 1) and ends ten years thereafter. **Application for Home Enrollment** means the Application for Home Enrollment Form #202 signed by you and your Builder. **NHIC** means National Home Insurance Company (A Risk Retention Group). **Structural Defect** is defined as a) actual physical damage b) to those load- bearing elements of Home which are listed in this paragraph c) which damage is caused by failure of such load-bearing elements d) to the extent that your Home becomes unsafe, unsanitary, or otherwise unlivable. ALL FOUR PARTS OF THIS DEFINITION MUST BE SATISFIED IN ORDER FOR A CONDITION TO QUALIFY AS A STRUCTURAL DEFECT. This coverage is the same as that contained in regulations of the Department of Housing and Urban Development. **THIS IS COVERAGE FOR CATASTROPHIC FAILURE OF LOAD-BEARING ELEMENTS OF YOUR HOME.** THE ONLY COVERED load-bearing elements are:

1. Foundation systems and footings;
2. Beams;
3. Girders;
4. Lintels;
5. Columns;
6. Roof sheathing only if your Home has original FHA financing still in effect ;
7. Walls and partitions;
8. Floor systems; and
9. Roof framing systems;
10. ***State of Colorado Only:** Basement slabs for the first four years of the structural warranty period only if your Home has original FHA-insured financing, and the Application for Enrollment shows that the additional amount has been paid.

Examples of elements not covered by this structural warranty which are deemed NOT to have Structural Defect potential are:

(a) non-load-bearing partitions and walls;
(b) wall tile or paper, etc.;
(c) plaster, laths, or drywall;
(d) flooring and sub-flooring material;
(e) brick, stucco, stone or veneer;
(f) any type of exterior siding;
(g) roof shingles, sheathing, and tar paper;
(h) heating, cooling, ventilating, plumbing, electrical and mechanical systems;
(i) appliances, fixtures or items of equipment;

(j) doors, trim, cabinets, hardware, insulation, paint, stains;
(k) basement and other interior floating, ground-supported concrete slabs;
(l) leaks (in and of themselves).

Common Element Stairways and Landings are defined as areas that are maintained by the Homeowners Association or someone other than the owner/occupant of the particular residence.