



18007

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration is made by ASSOCIATED PROPERTIES AND INVESTMENTS, INC., (the "Declarant").

RECITALS:

1. The Declarant is the owner of the Property, as described in Section 2, and intends to construct a two-family residential building thereon.

2. The Declarant desires to provide for the maintenance of the Property and the easements necessary to the use and efficient operation thereof.

NOW, THEREFORE, the Declarant hereby declares that the Property is made subject to the covenants, conditions, restrictions and easements hereinafter set forth.

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

(a) "Property" shall mean all real property subject to this Declaration as defined in Section 2.

(b) "Lot" shall mean any of Tracts C and D, REGISTERED LAND SURVEY NO. 98, Files of the Registrar of Titles, Carver County, Minnesota.

(c) "Owner" shall mean the record Owner, whether one or more Persons, of the fee simple title to any Lot, excluding, however, all contract for deed sellers, and including in lieu thereof each contract for deed purchaser entitled to possession of the Lot.

(d) "Mortgage" shall mean any mortgage of record or other security instrument by which a Lot or any part thereof is encumbered.

(e) "Mortgagee" shall mean any Person named as mortgagee under any Mortgage or any successors to the interest of such Person under such Mortgage.

(f) "Living Unit" shall mean any portion of a building situated upon a Lot and intended for use and occupancy as a residence by a single family.

(g) "Person" shall mean an individual, trust, estate, partnership, association, company or corporation.

2. PROPERTY SUBJECT TO THIS DECLARATION. The property which shall be held, conveyed and occupied subject to this Declaration is legally described as follows, to-wit:

Tracts C and D, REGISTERED LAND SURVEY NO. 98, Files of the Registrar of Titles, Carver County, Minnesota.

3. COVENANTS FOR INSURANCE. (a) Maintenance of Insurance by Owners. Each Owner of a Lot, including the Declarant, by acceptance of a deed therefor, whether or not expressed in such deed or other conveyance, covenants to carry, maintain and timely pay the premium on a policy of fire, extended coverage, vandalism and malicious mischief with all-risk endorsement insurance. The insurance shall cover a minimum of the entire replacement cost of the Living Unit located on each such Lot.

(b) Repair of Living Unit After Insured Loss. If any Living Unit is destroyed or damaged by causes covered by the insurance in Section 3(a), all insurance proceeds shall be payable to the Owner and the first Mortgagee of record of the Living Unit. The insurance proceeds shall be applied and administered as follows:

(i) All insurance proceeds paid to the Owner and the first Mortgagee of record shall be deposited by them in escrow with a mutually acceptable title insurance company to be held and disbursed as hereinafter provided.

(ii) The Owner of the destroyed or damaged Living Unit shall, within thirty (30) days after the insurance proceeds are deposited with the title insurance company under Section 3(b)(i), enter into a firm contract with a qualified builder for the reconstruction or remodeling of the Living Unit to substantially the same condition as it existed immediately prior to the insured loss; provided, however, that no contract shall be entered into by the Owner for an amount in excess of the insurance proceeds then held by the title insurance company for the Living Unit until additional funds are deposited by the Owner sufficient to pay all construction costs as determined by the title insurance company. The reconstruction or remodeling shall be commenced and completed with due diligence and in no event shall the work be completed later than one hundred eighty (180) days after the insurance proceeds are deposited in escrow. The Owner of the Living Unit shall be obligated to deposit the additional funds in excess of the insurance proceeds required to permit construction as herein provided.

(iii) If the Owner of the destroyed or damaged Living Unit fails to enter into a contract for the reconstruction or remodeling of the Living Unit as provided in Section 3(b)(ii), or if the reconstruction or remodeling is not commenced or completed as provided in Section 3(b)(ii), then the first Mortgagee of record of the destroyed or damaged Living Unit or the Owner of the contiguous Living Unit, with the consent of the first Mortgagee of the destroyed or damaged Living unit, shall have the right to have the insurance proceeds applied in satisfaction of any obligations incurred under such contracts, without liability of any kind to the Owner of the destroyed or damaged Living Unit.

(iv) Disbursements of the funds on deposit under Section 3(b)(i) for reconstruction or remodeling contracts entered into under Section 3(b)(ii) and (iii) shall be made by the title insurance company, subject to the following:

(aa) Section 5 entitled "Architectural Control" shall apply to the reconstruction or remodeling.

(bb) The prior receipt by the title insurance company of written consent of any party holding a lien or encumbrance on the Living Unit.

(cc) The prior receipt by the title insurance company of such sworn construction statements, lists of subcontractors, lien waivers and receipts as it shall determine to be appropriate. Disbursement may be by periodic or progress payments, and the title insurance company may make such inspections and withhold such payments as it deems necessary to insure completion in compliance with the plans and specifications. The title insurance company shall be entitled to charge, and the Owner of the damaged or destroyed Living Unit shall pay, a reasonable fee for the services rendered by the title insurance company.

(dd) If a contract is entered into under Section 3(b)(ii), the written consent of the Owner to the payment or payments.

(v) Nothing contained in this Section 3(b) shall be construed to make the first Mortgagee of record, if any, or any other Person other than the Owner of the destroyed or damaged Living Unit responsible for collection or noncollection of any insurance proceeds. Such first Mortgagee or other Persons shall be responsible solely and exclusively for the insurance proceeds which

come into their hands. The Owner of each destroyed or damaged Living Unit shall collect or cause to be collected from the insurance carrier involved, the proceeds of the policy covering his Living Unit for deposit with the title insurance company as aforesaid.

(vi) If a remodeling or reconstruction contract is, for any reason, not entered into under the provisions of Section 3(b)(ii) and (iii) within one hundred eighty (180) days after deposit of the insurance proceeds for a destroyed or damaged Living Unit with the title insurance company, the title insurance company shall disburse the insurance proceeds to each Mortgagee of record of the affected Lot or Living Unit, as their interests may appear, to retire any indebtedness secured by any such Mortgage, and disburse the remaining proceeds, if any, to the Owner.

(c) Waiver of Subrogation. To the extent permitted by the standard Minnesota form of fire and extended coverage insurance with all-risk endorsements and to the extent benefits are paid under such a policy, the Owner of each Lot or Living Unit upon the Property does hereby release the Owner of the contiguous Lot or Living Unit from all claims for damage or destruction of their respective physical properties if such damage or destruction is covered by the standard Minnesota form of fire and extended coverage insurance.

(d) Priority Over Insurance Proceeds. No provision contained in this Declaration shall be construed to give, nor shall any Owner have, priority over any first Mortgagee of record with respect to the distribution for or on behalf of any Lot of any insurance proceeds. The distribution of insurance proceeds for any reason whatsoever shall be made to the Owner only after securing in each individual case the specific consent to such distribution by the first Mortgagee of record on his Lot.

4. PARTY WALL. (a) General Rules of Law to Apply. Each wall which is built as part of the original construction of the Living Units on the Property and placed on the dividing line between the Lots shall constitute a party wall and to the extent not inconsistent with the provisions of this Section 4, the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

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

(c) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, either Owner who has used the wall may restore it. If the other Owner thereafter makes use of the wall, he shall contribute to the cost

of restoration thereof in proportion to such use without prejudice, however, to the right of any Owner to call for a larger contribution from the other under any rule regarding liability for negligent or willful acts or omissions.

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

(e) Right to Contribution Runs With the Land. The right of any Owner to contribution from any other Owner under this Section 4 shall be appurtenant to the Lot and shall pass to such Owner's successors in title.

5. ARCHITECTURAL CONTROL. (a) Restrictions Applicable to Replacement and Restoration. The Owner of a Living Unit shall replace or repair the exterior components of his Living Unit with similar components of the same design, quality and color, and shall paint or stain the exterior of his Living Unit with paint or stain of the same quality and color of the existing exterior. Such Owner may not, either in the course of ordinary replacement, remodeling or restoration after damage or destruction, employ different siding or roofing material or a different color scheme without the consent of the Owner of the contiguous Living Unit.

(b) Restrictions Applicable to Exterior Improvements. From and after the sale of the first Lot within the Property, no building, fence, wall, walkway, patio or other structure shall be commenced, erected or maintained upon any Lot; nor shall any exterior addition to or change or alteration be made to any Living Unit; nor shall any shrubs, trees or bushes be placed within a Lot or any thing of a permanent nature be placed, planted or constructed within a Lot, exterior to the Living Unit located thereon, 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 the surrounding structures and topography by, the Owner of the contiguous Living Unit. If the Owner of the contiguous Living Unit fails to approve or disapprove such design and location within thirty (30) days after submission of the plans and specifications to him; or in the event that no action to enjoin the addition, alteration or change has been commenced prior to the completion thereof, approval will not be required by this Section 5(b) shall be deemed to have been fully complied with. The prevailing party in an action brought by the Owner of the contiguous Living Unit under this Section 5(b) shall be entitled to recover from the other party reasonable attorney's fees together with the costs and disbursements incurred in connection therewith.

(c) Commencement of Action to Enjoin Addition or Change. The failure to submit plans and specifications to the Owner of the contiguous Living Unit under Section 5(b) shall constitute grounds for an action to enjoin any such addition, alteration or change, provided that the action for injunctive relief is commenced prior to the completion of the addition, alteration or change.

6. EXTERIOR MAINTENANCE. (a) General Maintenance Obligation. Each Owner shall maintain, in good condition and repair, his Lot and all exterior improvements thereon, including, but not limited to, the exterior building surfaces, roofs, gutters, downspouts, walkways, driveways and individual utility installations on or serving his Living Unit. If either Owner fails to perform his obligations under this Section 6(a), or if the need for repair or maintenance is caused by the negligent or willful acts or omissions of the Owner, and upon ten (10) days written notice to such Owner, the Owner of the contiguous Living Unit shall have the right, but not the obligation, to enter the Living Unit of the defaulting Owner and make or perform the repairs or maintenance. In such event, the defaulting Owner shall immediately reimburse the Owner of the contiguous Living Unit for all expended or incurred amounts in making or performing the repairs or maintenance, together with reasonable attorney's fees and costs of collection thereof.

(b) Access for Emergency Repairs. In case of an emergency originating in or threatening any Lot or Living Unit, the Owner of the contiguous Living Unit shall have an immediate right of entry on or in the Lot or Living Unit of the other Owner. The Owner of the contiguous Lot or Living Unit, in making such entry on or in such Lot or Living Unit, shall use reasonable care to avoid unnecessary damage to the entered Lot or Living Unit. Any cost or expense incurred to remove the emergency condition shall be the sole and exclusive obligation of the Owner of the entered Lot or Living Unit, who shall indemnify and hold the entering Owner harmless from any and all liability therefor. All such entries shall be made and done so as to cause as little inconvenience as possible to the Owner of the entered Lot or Living Unit.

7. EASEMENTS AND RIGHT OF LATERAL SUPPORT. (a) Unintentional Encroachment Easement. If the centerline of the party wall between the Living Units is not coincident with the dividing line between the Lots upon which the Living Units are constructed for the length of the party wall, then the Owner of the Lot with a Living Unit encroaching upon the contiguous Lot shall have an exclusive encroachment easement over the contiguous Lot for such encroachment.

(b) Owner's Right of Lateral Support. Each Owner shall have the right to lateral support for the Living Unit on his Lot.

(c) Duration of Easements and Owner's Rights. The easements and right of lateral support created hereby shall be appurtenant to and pass with the title to each Lot.

8. BUILDING AND USE RESTRICTIONS. (a) Residential Use. Each Lot shall be used for residential purposes only; subject to the right of the Declarant to maintain a model home and a sales office upon the Property for marketing purposes.

(b) Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot; provided that dogs, cats and other household pets may be kept, if they are not kept, bred or maintained for any commercial purpose.

(c) Signs. No sign of any kind shall be displayed to the public view on any Lot, except that a "For Sale" or "For Rent" sign may be displayed; subject to the right of the Declarant to erect and maintain such signs as it deems appropriate to advertise the Property for marketing purposes.

(d) Storage or Disposal of Garbage. Garbage, rubbish and trash shall not be kept on a Lot except in sanitary containers. All incinerators or other equipment used or kept for the storage or disposal of such material shall be kept in a clean and sanitary condition.

(e) Noxious and Offensive Activities. 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.

(f) Unauthorized Residences. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other building shall be used on either Lot at any time as a residence, either temporarily or permanently.

(g) Improvements. No improvement or structure whatsoever, other than the Living Units and any garage, fence, patio, walkway, driveway or other structure accessory to the Living Units as originally constructed or as approved under Section 5 may be erected, placed or maintained on the Lots. The term "improvement" shall include, but not be limited to, exterior modifications to a Lot, the exterior lighting of a Lot, exterior art work and/or sculptures placed on a Lot, and the painting of any part of a Lot.

(h) Exterior Storage; Nuisances. All sporting equipment, toys, outdoor cooking equipment (except permanent installations), and other equipment and supplies necessary or convenient to residential living shall be enclosed or shall be screened from view. The storage or collection of rubbish of any character whatsoever, any material that emits foul or obnoxious odors, the growing of any noxious weed or other natural substance, and the harboring of the source of noise or activity



which disturbs the peace, comfort or serenity of any Owner is prohibited. No Lot shall be used for the storage of materials not customary to, or necessary and convenient for, residential living. Exterior antenna shall not be placed on either Lot without the approval of the Owner of the contiguous Lot.

9. GENERAL PROVISIONS. (a) Mechanic's Liens. Each Owner agrees to indemnify and hold the Owner of the contiguous Lot or Living Unit harmless from any mechanic's liens arising from work done or material supplied to make repairs or replacements on the Lot or Living Unit for which such Owner is responsible.

(b) Duration of Covenants and Restrictions. 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 Owner of any Lot subject to this Declaration, and his respective heirs, devisees, legal representatives, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded with the Carver County Registrar of Titles, after which time the covenants and restrictions shall be automatically renewed for successive periods of ten (10) years.

(c) Amendment. This Declaration may be amended only by the written consent of all Owners and first Mortgagees. Any amendment to this Declaration shall be made in recordable form and shall be effective on the date that a duly executed copy thereof is recorded with the Carver County Registrar of Titles.

(d) Enforcement. Any Owner shall have the right to enforce, by any proceeding at law or in equity, or both, any and all of the covenants and restrictions of this Declaration. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity, or both, against any Person violating or attempting to violate any covenant or restriction to restrain such violation and/or recover damages resulting from such violation. The failure of an Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

(e) Miscellaneous. The singular shall be deemed to include the plural, and the plural may be read as the singular, wherever appropriate, and unless the context clearly indicates to the contrary.

(f) Gender. The masculine gender may be read as the feminine gender or as the neuter gender, wherever appropriate, and unless the context clearly indicates to the contrary.

(g) Joint and Several Liability. The obligations of the Owners of any Lot shall be joint and several, except where the context otherwise requires.

(h) Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration, or the intent of any provisions thereof.

(i) Severability. The invalidation of any of the covenants or restrictions contained in this Declaration by judgment or court order shall not effect any of the other provisions herein which shall remain in full force and effect.

1984 EXECUTED IN WITNESS HEREOF this 7<sup>th</sup> day of December,

ASSOCIATED PROPERTIES AND INVESTMENTS, INC.

BY [Signature]  
ITS PRESIDENT

STATE OF MINNESOTA)  
COUNTY OF Carver )ss.

7<sup>th</sup> The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of December, 1984, by Gary A. Gibbish, the President of ASSOCIATED PROPERTIES AND INVESTMENTS, INC., a Minnesota corporation, on its behalf.

[Signature]  
Notary Public

This instrument was drafted by:

BRYCE D. HUOMOELLER  
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NOTARY PUBLIC  
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