

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR
THE POINTE HOMEOWNERS ASSOCIATION, INC.**

THIS DECLARATION made this 28th day of March, 1996, by Hans Hagen Homes, Inc. a Minnesota corporation, hereinafter called "Declarant";

W I T N E S S E T H :

WHEREAS, Declarant is the owner of that certain real estate legally described on Exhibit A hereto attached, all which above-described land together constitutes and is hereinafter referred to as the "Property"; and

WHEREAS, the Property is the subject of a proposed single family residential development, and Declarant intends to improve the Property or portions thereof and any additions thereto from time to time: and

WHEREAS, Declarant desires to subject the Property to this Declaration at this time; and

WHEREAS, the real estate subjected hereby or which subsequently may be subjected to this Declaration and the improvements, including any Common Area, constructed thereon, will require uniform and continuing care and maintenance for the benefit and enjoyment of persons residing in the Property; and

WHEREAS, The Pointe Homeowners Association, Inc., a Minnesota nonprofit corporation (hereinafter referred to as "Association"), has been formed as an agency to receive the power to attend to and effectuate policies and programs that will enhance the pleasure and value of the development, to hold title to, maintain and administer the Common Area, to maintain the Landscape Easement Area hereinafter described, and Public Medians, as may exist, to preserve and enhanced the Property, to administer and enforce the covenants and restrictions; and to collect and to disburse the assessments and charges hereinafter created;

NOW, THEREFORE, Declarant declares that the Property described in Article II hereof, and such additions thereto as hereafter may be made pursuant to the annexation provisions contained in the Article entitled "General Provisions", is and shall be held, transferred, conveyed, sold, leased, occupied, and developed, subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, which are for the purpose of protecting the value, desirability and attractiveness of the Property, and which shall run with the Property, and be binding upon all parties having any right, title

or interest in the Property, their heirs, successors and assigns, and which shall inure to the benefit of each Owner thereof, and their heirs, successors and assigns of each Owner. This Declaration contemplates a general plan for the individual ownership of residential real property estates. The purpose of this Declaration is to provide for the maintenance and administration (and in the case of the Common Area, the ownership) of certain defined area and facilities which benefit the development within and adjacent to the Property. Every conveyance of any part of the Property, or any interest therein, shall be and is subject to these easements, covenants, conditions and restrictions, as follows:

ARTICLE I

DEFINITIONS

Section 1. The following words when used in this Declaration, or any supplemental declaration (unless the context shall prohibit) shall have the following meanings:

A. "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract seller, but excluding those having such interest merely as security for the performance of an obligation.

B. "Property" shall mean and refer to that certain real property described and defined in Article II and Exhibit A hereinbelow and such additions thereto as hereafter may be expressly brought within the jurisdiction of the Association, but shall not include and Lots or Outlots within said subdivision not so expressly named.

C. "Association" shall mean The Pointe Homeowners Association, Inc., a Minnesota nonprofit corporation.

D. "Lot" shall mean and refer to any separate platted lot within the Property intended for or containing a single living unit.

E. "Common Area" shall mean that certain portion of the Property legally described on Exhibit B hereto attached, including all improvements thereon including common property, and such additions thereto (by way of easement or other grant from Declarant or others) as have been or may be granted to the Association for the common used and enjoyment of the Owners. Said initial common area will be conveyed to the Association prior to the first conveyance of a Lot to an Owner other than the Declarant.

F. "Landscape Easement Area" shall mean and refer to each and all of those certain portions, if any, of the Property legally described on Exhibit C hereto attached, or any such additions thereto (by way of grant from Declarant or other).

G. "Public Medians" shall mean and refer to the landscaped medians existing from time to time within the public rights of way of the Property and adjacent to the Property.

H. "Member" shall mean any person or entity holding a membership in the Association as provided in Article III hereof.

I. "Declarant" shall mean Hans Hagen Hoes, Inc., a Minnesota corporation, its successors and assigns if such successors and assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

J. "Mortgage" shall mean any mortgage or other security instrument by which a Lot or any part thereof or any structure thereon is encumbered.

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

L. "Eligible Mortgage Holder" shall mean a holder of a first Mortgage who has advised the Association in writing of its name and address and the address of the Lot covered by such Mortgage, and in said writing has requested the Association to notify it of any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders.

M. "Proposed Development Area" shall mean that certain real estate legally described on Exhibit D hereto attached.

N. "FHA" shall mean Federal Housing Administration, Department of Housing and Urban Development.

O. "VA" shall mean Veterans Administration.

P. "FHLMC" shall mean Federal Home Loan Mortgage Corporation.

Q. "FNMA" shall mean Federal National Mortgage Association.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the City of Savage, County of Scott, State of Minnesota, and is more particularly described in Exhibit A hereto attached.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 1. Membership. Every owner of a Lot subject to assessment, except as herein provided to the contrary, shall be entitled and required to be a member of the Association. If title to a Lot is held by more than one person, each of such persons shall be a member. An Owner of more than one Lot shall be entitled to one membership for each such Lot. Each such membership shall be appurtenant to the Lot upon which it is based and shall transfer automatically by voluntary or involuntary conveyance of the title of that Lot. No person or entity other than an Owner or Declarant may be a member of the Association, and a membership in the Association may not be transferred except in connection with the transfer of title to that Lot.

Section 2. Transfer. A membership in the Association shall not be transferred, pledged or alienated in any way, except upon the transfer of the record title of a Lot and then only to such transferee by assignment, intestate succession, testamentary disposition, foreclosure of mortgage of record, or other legal process. It shall be the responsibility of each Owner, upon becoming entitled to membership, so to notify the Association in writing, and until so notified, the Association may continue to carry the name of the former owner as a member, in its sole discretion. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his name to the transferee of the title of such Lot, the Association shall have the right to record the transfer upon the books of the Association and issue a new membership to the transferee and thereupon the old membership outstanding in the name of the transferor shall be null and void as though the same had been surrendered.

Section 3. Voting. The Association shall have two classes of voting membership.

A. Class A. Class A members shall be all Owners of Lots, with the exception of the Declarant prior to termination of Class B membership, and shall be entitled to one vote for each Lot owned. When more than one person holds title to any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot. There can be no split vote. Prior to or at the time of any meeting at which a vote is to be taken, each co-Owner or other person entitled to a vote at such meeting shall file with the Secretary of the Association the name of the voting co-Owner or other person entitled to a vote at such meeting, unless the co-Owner or other person has filed a general voting authority with the Secretary applicable to all votes until rescinded.

B. Class B. The Class B member shall be the Declarant, who shall be entitled to three votes for each Lot owned. The Class B membership shall cease and be

converted to Class A membership on the happening of either of the following events, whichever occurs first:

- i) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- ii) The eighth anniversary of the recording of this Declaration.

Section 4. Suspension of Voting Rights. In the event any Owner shall be in arrears in the payment of any amount due under any of the provisions of this Declaration for a period of thirty (30) days, such Owner's rights to vote as a member of the Association shall be suspended and shall remain suspended until all payments are brought current and all defaults remedied.

ARTICLE IV

PROPERTY RIGHTS

Section 1. Easements, Covenants; Amendments. All easements described in this Declaration are permanent easements appurtenant, running with the land. They shall at all times inure to the benefit of and be binding on the Owner and the Mortgagee, from time to time, of any lots and on the owner and mortgagee, if any, from time to time, of the Common Area, and their respective heirs, successors, personal representatives or assigns.

Section 2. Right of Enjoyment. Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Area, which right and easement shall include, but not be limited to, easements for utility, water and sewer easements, and use and enjoyment of open spaces and all other parts of the Common Area. Such right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

A. The right of the Association to pass reasonable rules with respect to the Common Area, for the health, comfort, safety and welfare of persons using same;

B. The right of the Association to suspend the voting rights and right of the use of recreational facilities (if any) situated upon the Common Area by an Owner for any period during which assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for an infraction of its published rules and regulations;

C. The right of the Association to levy assessments as provided in this Declaration;

D. The right of an Owner of each Lot to a reciprocal easement where necessary for access over adjoining Lots for the maintenance and upkeep of the walls, fences, or other improvements;

E. The rights of the Association and Declarant reserved under Article IV, Section 4 and 5 herein below.

Section 3. Delegation of Enjoyment. Any Owner may delegate, in accordance with the By-laws of the Association, his right of enjoyment to the Common Area to residents of his Lot, including the members of his family, his tenants, or contract purchasers, and and the invitees thereof (except that the Board of Directors may restrict or regulate use of recreational facilities by non-residents).

Section 4. Associations Rights.

A. The Association shall have the right to manage, build, reconstruct, repair, maintain and improve (including by way of example, but not limited to, landscaping, to place, maintain, and replace on such lawn areas, hedges, trees and other plantings and decorative fences, walls and project signage; to apply fertilizers and agents for the control of weeds, dandelions and crabgrass; to install and maintain an irrigation system; to maintain the ornamental street lighting; and to adopt reasonable rules regarding the use of such area for the purpose of preserving a neat and well-maintained appearance) the Common Area, Landscape Easement Area and Public Medians.

B. The Association shall have the right to mortgage all or any portion of the Common Area for the purpose of securing a loan of money to be used for any of the purposed specified in subsection 4.A. next herein above, provided that the rights of such mortgagee in the Common Area shall be subordinate to the rights of the Owners under this Declaration, and provided further, that the mortgage shall have received the prior written approval specified in Article VIII herein below.

C. The Association shall have the right to dedicate or transfer all or any part of the Common Area to any governmental subdivision or public agency or utility, and to grant permits, licenses, and easements over the Common Area for utilities, roads, and other purposes necessary or useful for the proper maintenance or operation of the project, subject to any prior written approval required by Article VIII herein below.

D. The Property shall be subject to easements of record on the data hereof and any easements in the Common Area which may hereinafter be granted by the Association (subject to the approval referred to in the preceding paragraph) to any public or private utilities or governmental bodies for the installation and maintenance of electrical, telephone, cable television and data conduit and lines, gas pipes, sewers or water pipes, coaxial cable, or any other utility services serving any Lot or the Common Area. Lots also shall be subject to unintentional encroachments of the Common Area improvements as described in Section 7 below.

E. Anything apparently to the contrary notwithstanding, no abandonment, partition, subdivision, encumbrance, sale or transfer of the Common Area or other common property or any part thereof shall be effective unless it shall have received the prior written approval specified in Article VIII herein below.

Section 5. Declarant's Rights. Declarant shall have the same rights as any other Owner as to Lots owned by it from time to time, except as otherwise specified herein. In addition, until the last Lot is conveyed to an Owner other than Declarant, Declarant shall have the right and easement over the Common Area for the construction and completion of improvements and making repairs to improvements (where on the Common Area or upon Lots) and the right to maintain and use facilities and signs upon the Common Area, Landscape Easement and Public Medians for the purpose of marketing units, and to invite and escort the public thereon for such purpose. Without limiting the generality of the foregoing, Declarant shall have the right (until the last Lot is so conveyed, to construct, relocate, remove, and alter improvements on the Common Area, including paths, driveways, parking areas, utilities, lighting, walls, fences, and landscaping, and to cut, fill and reshape land contours.

Section 6. Non-dedication to Public Uses. Nothing contained in this Declaration shall be construed or be deemed to constitute a dedication, express or implied, of any part of the Common Area to or for any public use or purpose whatsoever.

Section 7. Easement for Unintentional Encroachment. Notwithstanding any other provisions contained herein, in the event any wall, fence or landscaping encroaches upon any part of the Common Area or upon any Lot, as a result of construction, reconstruction, repair, shifting, settlement or movement of any part of the Property, then a perpetual easement appurtenant to such encroaching Lot or Common Area shall exist for the continuance of any such encroachment for so long as the encroachment shall exist.

Section 8. Landscape Easement Area. The Association shall have a non-exclusive right and easement in and to the Landscape Easement Area, if any, for the purpose of maintaining and preserving the same to uniform and high standards of landscaping and appearance. Such rights shall include, but not be limited to, the right: to place, maintain and replace on such area lawns, hedges, trees and other plantings and decorative fences, walls and project signage; to apply fertilizers and agents for the control of weeds, dandelions and crabgrass; to install and maintain an irrigation system; to install and maintain ornamental lighting; and to adopt reasonable rules regarding the use of such area for the purpose of preserving a neat and well-maintained appearance. No Owner may do any of the following within the Landscape Easement Area without the prior written consent of the Association: change, remove, add to or obstruct any landscaping, plantings or improvements maintained by the Association; change land contours; deposit trash, garbage or yard debris; store furniture, vehicles, sporting equipment or other personal property, planters, erect structures, walls, fences, bird baths, sculptures, planters or other objects, either decorative or utilitarian; or interfere with the Association or its agents in the exercise of Association rights.

ARTICLE V

ASSESSMENTS

Section 1. Personal Obligation. Declarant, for each Lot owned by it within the Property, hereby covenants, and each Owner of a Lot by acceptance of a deed, or other conveyance therefor, whether or not it shall be so expressed therein, shall be and is deemed to covenant and hereby agrees to pay to the Association: (a) annual assessments or charges, which shall be payable in regular installments and shall include, but not be limited to, hazard and liability insurance for common property, maintenance of lawns and landscaping and other activities of the Association described below in the Article entitled "Other Rights and Obligations of the Association", and an adequate reserve fund for the periodic maintenance, repair and replacement of those improvements and elements of the common property that must be replaced on a periodic basis and which the Association may be obligated to maintain, and (b) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. Any assessments authorized herein, together with interest, costs and reasonable attorneys' fees, shall be a continuing lien from the first day of January (for annual assessments) and from the date the first installment is payable (for special assessments) against the Lot assessed. Such annual assessments shall be due and payable in two equal semi-annual installments due on the first day of each and every January and July commencing on the first day of January of each year. Each attorney's fees, also shall be the personal obligation of the person who was the Owner of such Lot on the date said assessment became due and payable. Said personal obligation of an Owner shall not pass to his successors in title or interest unless expressly assumed by them or unless, prior to such transfer, a statement of lien for such assessments shall have been filed in writing with the County Recorder for Scott County, Minnesota. No Owner shall escape liability for the assessments which fell due while he was the Owner by reason of non-use of the Common Area or non-use, transfer or abandonment of his Lot.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and the residents of the Property, and to construct, manage, improve, maintain, repair and administer the common Area, Landscape Easement Area, Public Medians and for repair and replace of uniform mailboxes on Lots within the Property. An adequate reserve fund shall be maintained for working capital and for the periodic maintenance, repair and replacement of those improvements and elements of the common property that must be replaced on a periodic basis. Such fund shall be maintained out of the regular assessments.

Section 3. Annual Assessments. Until December 31, 2000, the maximum annual monthly assessment shall be at a rate fixed by the Board of Directors, but not to exceed the monthly rate of \$12.50 per Lot, not including assessments for the common expense

insurance premiums under Article IX hereinbelow. Thereafter, the Board of Directors may fix said annual assessments to cover any and all expenses and projected expenses.

- A. From and after December 31, 2000, the maximum annual assessment may be increased each year not more than 5% (or the rate of increase in the Revised Consumer Price Index for Urban Wage Earners and Clerical Workers for All Items for Minneapolis-St. Paul ("CHI") as published by the U.S. Department of Labor, if greater than 5%).
- B. From and after December 31, 2000, the maximum annual assessment may be increased above 5% (or the rate of increase in the CHI, if greater than 5%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting called for this purpose.
- C. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, Landscape Easement Area or Public Medians, including fixtures and personal property related thereto, and the repair and replacement of uniform mailboxes provided that any such assessment shall have the assent of not less than two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 of this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the opening of such meeting, the presence in person or by proxy of Members entitled to cast sixty percent (60%) of the votes of each class of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Rate of Assessment. Annual assessments shall be collected on a semi-annual basis and special assessments shall be collected as the Board determines. Both annual and special assessments must be fixed at a uniform rate for all Lots except that Lots owned by the Declarant for which not certificate of occupancy has been issued by the City shall be assessed at one-fourth (1/4) the full rate until the first day of the month following the issuance of such certificate, at which time such Lot shall be assessed the full rate. The Declarant may unilaterally waive and relinquish this reduced rate of assessment prospectively at any time by executing and recording a written waiver to that effect.

Section 7. Surcharges. The Association in accordance with reasonable and uniform standards may add to the assessments for a particular Lot a surcharge for maintenance or utility expenses benefiting that Lot but less than all of the Lots.

Section 8. Commencement of Initial Annual Assessments. The annual assessments provided for herein shall commence as to all Lots no later than one month after the conveyance of the Common Area to the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year.

Section 9. Commencement of Annual Assessments. By November 30 of each year the Board shall fix the amount of annual assessments against each Lot for the following fiscal year and shall send written notice thereof to each Owner. The due date for payment of annual assessments shall be as set by the Board. At the time the Board fixes the amount of annual assessments it shall adopt a budget for the following fiscal year and cause a copy of such budget in reasonable detail to be furnished to each Owner.

Section 10. Proof of Payment. Upon written demand of an Owner or Mortgagee, at any time and for a reasonable charge, the Association shall furnish a written certificate signed by an officer of the Association setting forth whether there are any then-unpaid annual or special assessments levied against such Owner's or Mortgagee's Lot. Such certificate shall be conclusive evidence of payment of any annual or special assessments not stated therein as unpaid.

Section 11. Nonpayment of Assessments. Any assessments which are not paid when due shall be deemed delinquent. If an assessment is not paid within thirty (30) days after the delinquency date, it shall bear interest from the delinquency date at the rate of eight percent (8%) per annum and shall become a continuing lien in favor of the Association on the Lot against which assessed and the improvements thereon, and the Association (or any Owner acting in the name and for the benefit of the Association) may bring an action in law or in equity against the person personally obligated to pay the same, including interest, costs and reasonable attorney's fees for any such action, which shall be added to the amount of such assessment and included in any judgment rendered in such action, and the Association may also enforce and foreclose any lien it has or which may exist for its benefit.

Section 12. Recording and Enforcement of Liens. To evidence a lien for sums assessed pursuant to this Article, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot, the name of the person personally obligated to pay the same, and a description of the Lot. Such a notice shall be signed by an officer of the Association, and it or a notice of lien or adverse claim thereof may be recorded in the office of the County Recorder for Scott County, Minnesota. No notice of lien shall be recorded until there is a delinquency in payment of the assessment for thirty (30) days.

Upon such a delinquency for thirty (30) days, the Association shall proceed promptly to enforce the lien or, in its discretion, to sue the person personally liable to pay the lien for the delinquency. Such lien shall be enforced by action in the same manner which mortgages on real property may be foreclosed in Minnesota. In any such foreclosure, the person personally obligated to pay the lien shall be required to pay all costs of foreclosure including interest, costs, and reasonable attorneys' fees. All such interests, costs and expenses shall be secured by the lien being foreclosed. The person personally obligated to pay the lien also shall be required to pay to the Association any assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the foreclosed interest in the Lot as the Owner thereof.

The Association shall upon written request report to any encumbrancer of a Lot any assessments remaining unpaid for longer than thirty (30) days after the same shall have become due, provided, however, that such encumbrancer first shall have furnished to the Association written notice of such encumbrance.

Section 13. Subordination of Lien. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and to tax liens and liens for special assessment in favor of any taxing and assessing unit of government. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or remedies provided in the mortgage, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to charges which accrued prior to such sale or transfer. No such sale or transfer shall relieve a Lot from liability for any assessments thereafter becoming due or from the lien thereof or shall relieve the person personally obligated to pay the lien of personal liability for assessments due prior to such sale or transfer of acquisition of premises. Any delinquent assessments the lien for which is extinguished by reason of this provision may be reallocated and assessed to all Lots as a common expense.

ARTICLE VI

OTHER RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. The Common Area, Landscape Easement Area, Public Medians and Uniform Mailboxes. The Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for, and be vested with, the exclusive management and control of the Common Area, Landscape Easement Area, Public Medians and all improvements thereon (including ornamental lighting, furnishings and equipment related thereto), and the uniform mailboxes on each Lot and shall keep the same in good, clean, attractive and sanitary condition, order and repair, SUBJECT ALSO HOWEVER, to the limitations of the easement rights hereinabove created with respect to the Landscape Easement Area, and to the rights of the public and the City of Savage with respect to Public Medians. Such responsibility may include, but not be limited to, the following:

(a) construct, maintain, and reconstruct permanent developing identification signs on the Common Area (b) place, maintain, trim, cut, fertilize and replace sod, flowers, shrubs, trees or other plantings (c) maintain, clean, replace and alter recreations structures (if any) (d) maintain and replace and pay for electricity used for all common ornamental lighting on the Common Area, Landscape Easement Area and Public Medians (e) repair and replace the uniform mailboxes on Lots as required (f) maintain, repair and replace any improvements created by the Association located on the Common Area.

Section 2. Services. The Association may obtain and pay for the services of any persons or entities, to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Property, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Property or the enforcement of this Declaration. Any agreement for professional management of the Property, or any other contract providing for services by Declarant or any entity owned or controlled by the same persons as Declarant, must provide for termination by either party without payment of a termination fee on ninety (90) days or less written notice without cause and by either party upon thirty (30) days or less written notice for cause, and shall have a maximum contract term of three years, but may be renewable by agreement of the parties for successive terms.

Section 3. Personal Property for Common Use. The Association may acquire and hold for the use and benefit of all of the Owners tangible and intangible personal property and may dispose of the same by sale or otherwise. Such beneficial interest shall not be transferable except with the transfer of title to a Lot, provided that an Owner may delegate his right of enjoyment of such personal property to residents of his Lot. A transfer of title to a Lot shall transfer to the transferee ownership of the transferor's beneficial interest in such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Lot under foreclosure shall entitle the purchaser to the beneficial interest in such personal property association with the foreclosed Lot.

Section 4. Hazard and Liability Insurance for Common Property. The Association shall procure fire and extended coverage on insurable common property on a current replacement cost basis in an amount not less than 100% of the insurable value (based on current replacement only), and shall use the proceeds of such hazard insurance solely for the repair, replacement or reconstruction of such insurable common property including insured improvements. The cost of such insurance shall be assessed as provided in Article V above. First mortgagees of Lots, jointly or single, may pay overdue premiums on hazard insurance policies, or may secure new hazard insurance coverage on the lapse of a policy, for the common property, and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. The

Association is authorized to enter into an agreement in favor of all first mortgagees of Lots establishing entitlement to such reimbursement.

ARTICLE VII

GENERAL RESTRICTIONS, OBLIGATIONS AND RIGHTS OF OWNERS

Section 1. Common Area Restrictions. No industry, business, trade, occupation or profession of any kind shall be conducted, maintained or permitted on any part of the Common Area, nor shall any "for sale" or "for rent" signs be maintained or permitted on any part thereof, except that Declarant reserves the right for itself or its agents during the construction and sales period until the last Lot (including lots subsequently annexed) is sold, to place "for sale", or any other signs on any part of the Common Area.

Section 2. Obstructions. There shall be no obstruction of the Common Area, nor shall anything except construction materials and equipment be kept or stored on any part of the Common Area during the construction period without the prior written consent of the Association or except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from the Common Area except upon the prior written consent of the Association.

Section 3. Prohibition of Damage and Certain Activities. Nothing shall be done or kept on any Lot or in the Common Area or any part thereof which would increase the rate of insurance on the Property or any part thereof over what the Association, but for such activity, would pay, without the prior written consent of the Association. Nothing shall be done or kept on any Lot or in the Common Area or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement or any governmental body. No damage to, or waste of, the Common Area or any part thereof shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused to the Association or other Owners by him or his invitees. No noxious, destructive or offensive activity shall be allowed in the Common Area or any part thereof, nor shall anything be done thereon which may be or may become a nuisance to any other Owner or to any other person at any time lawfully residing on the Property.

Section 4. Animals. The Common Area is subject to the right of the Board of Directors to prohibit or restrict pets and other animals from the Common Area by rule adopted or amended from time to time.

Section 5. Structures. The Association may maintain on the Common Area a storage shed to be used by the Association for the storage of lawn maintenance equipment and other common property. The Association may license the erection on the Common Area of temporary party tents for weddings, parties, and the like.

Section 6. Storage. No furniture, vehicles, sporting equipment or other personal property may be stored on any part of the Common Area without the express written approval of the Board of Directors, which may be withheld without stated reason.

Section 7. Parking of Vehicles. No boats, snowmobiles, trailers, camping vehicles, busses, camper tops, "all terrain vehicles", tractor/trailers, trucks in excess of 9,000 pounds gross weight or unlicensed or inoperable vehicles shall at anytime be stored or parked on any Lot outside of a house or grage or on any part of the Common Area. No vehicle may be parked outside of a house or garage or on any part of the Common Area for more than 7 consecutive days.

Section 8. Uniform Mailboxes. Declarant will be supplying one uniform mailbox to each Lot at the time of occupancy. The mailbox shall be placed in accordance with the United States Postal Services regulations. The maintenance, repair and replacement of the mailbox shall be completed by the Association in order to keep the mailboxes uniform within the Property. Owners shall not be permitted to replace the mailboxes without the written approval of the Association.

Section 10. Rules and Regulations. The Board from time to time shall adopt such other rules and regulations governing the use and enjoyment of the Common Area, Landscape Easement Area and Public Medians as the Board in its sole discretion deems appropriate or necessary.

ARTICLE VIII

RIGHTS FOR THE PROTECTION OF FIRST MORTGAGES

Section 1. Precedence. The provisions of this Article take precedence over any other conflicting provisions of this Declaration.

Section 2. Notice of Action. All eligible Mortgage Holder and any insurer or guarantor of a first Mortgage on a Lot who has advised the Association in writing of its name and address and the address of the Lot covered by such Mortgage, and in said written has requested the Association to notify it of any of the following, will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the project or any Lot on which there is a first mortgage held, insured, or guaranteed by such mortgage holder or insurer or guarantor, as applicable;

(b) Any delinquency in the payment of assessments or charges owed, or any other default in the performance of any obligation under the Declaration, by-laws, or Articles of Incorporation by an Owner of a Lot subject to a first mortgage held, insured, or guaranteed by such holder or insurer or guarantor, which remains uncured for a period of 6 days;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) Any proposed action which would require the consent of a specified percentage of mortgage holders as specified in this Article.

Section 3. No Right of First Refusal. The right of an Owner to sell, transfer, or otherwise convey his Lot will not be subject to any right of first refusal or any similar restriction in favor of the Association or other Owners.

Section 4. Liability for Unpaid Assessments. Any first mortgagee who obtains title to or comes into possession of a Lot pursuant to the remedies provided in the mortgage or by foreclosure of the mortgage or by deed or assignment in lieu of foreclosure, and any purchases at a foreclosure sale shall not be liable for the unpaid assessments of the Lot which accrue prior to the acquisition of title or possession to such Lot by the mortgage.

Section 5. Certain Amendments: FHLMC Clause. In addition to all other requirements set forth herein, unless at least seventy-five percent (75%) (or such higher percentage as is required by law or this Declaration of the first mortgagees of the Lots or their assigns (based upon one vote for each first mortgage owned), and at least seventy-five percent (75%) (or such higher percentage as is required by law or this Declaration) of the Owners (other than any sponsor, developer, or builder, including the Declarant) of the Lots (based upon one vote for each Lot) have given their prior written approval, neither the Association nor the Owners shall be entitled to:

(a) Terminate the legal status of the project (except in accordance with procedures set forth in these Declaration and by-laws in the event of amendment or termination made as a result of destruction, damage or condemnation);

(b) Use hazard insurance proceeds for losses to any common property other than the repair, replacement or reconstruction of such common property;

(c) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the maintenance of the common property.

(d) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area shall not be deemed a transfer).

Section 6. Certain Amendments: FNMA Clause. In addition to all other requirements set forth herein, the written joinder of Owners representing at least 75% (or

such higher percentage as is required by law or this Declaration) of the total allocated votes, and the written consent of Eligible Mortgage holders representing at least 51% (or such higher percentage as is required by law or this Declaration) of the votes of Lots that are then subject to mortgages held by Eligible Mortgage Holders shall be required to add or amend any material provisions of the constituent documents of the project. A change to any of the following would be considered material:

- (a) Voting rights;
- (b) Assessments, assessment liens or subordination of such liens;
- (c) Reserves for maintenance, repair and replacement of the Common Area, Landscape Easement Area and Public Medians;
- (d) Insurance or Fidelity Bonds;
- (e) Reallocation of interests in the Common Area, or rights to their use.
- (f) Responsibility for maintenance and repair of the several portions of the project;
- (g) Expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the project;
- (h) Boundaries of any Lot;
- (i) Convertibility of Lots into Common Area or of Common Area into Lots.
- (j) Leasing of Lots;
- (k) Imposition of any right of first refusal or any other restrictions on the right on an Owner to sell, transfer, or otherwise convey his or her Lot;
- (l) Any provisions that expressly benefit mortgage holders, insurers or guarantors;
- (m) A decision by the Association to establish self-management when professional management had been required previously by an eligible mortgage holder;
- (n) Restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than that specified in the Declaration and by-laws;
- (o) Any action to terminate the legal status of the project after substantial destruction or condemnation occurs; (except in accordance with procedures set for in these Declaration and by-laws in the event of amendment or termination made as a result of destruction, damage or condemnation or with respect to a reallocation of

interests in the Common Areas which might occur pursuant to any plan of expansion or phased development contained in the original constituent documents).

In each instance of an addition or amendment that is not a material change (such as the correction of a technical error or the clarification of a statement), an Eligible Mortgage Holder who is given the written proposal for such amendment and from whom, no response is received within 30 days after notice of the proposal is given, shall be deemed to have approved such proposal.

Section 7. Termination Not In Consequence of Destruction or Condemnation. When Owners are considering termination of the legal status of the project for reasons other than substantial destruction or condemnation of the Property, the Eligible Mortgage Holders representing at least 67% of the votes of the mortgaged Lots must consent to any such action in writing before the action can take effect.

Section 8. Declarant's Joinder. In addition to the other requirements for amendment of this Declaration and the by-laws contained herein, the written joinder and consent of the Declarant shall be required for any amendment of either the Declaration or by-laws which shall abolish, diminish or restrict Declarant's rights hereunder to complete improvements, to annex additional property, to maintain sales and management offices and models, to maintain signs and advertise the project, or to use easements through Common Areas for purposes of constructing improvements or marketing the project, until the last conveyance of a Lot to an Owner other than Declarant. This right may be waived in whole or part at any time by recording a written waiver executed and acknowledged by Declarant.

Section 9. Examination of Books and Records. First mortgagees and holders, insurers and guarantors of first mortgages shall have the right to examine the books and records of the Association, as set forth more fully in the by-laws.

Section 10. Payment of Taxes and Insurance. First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which have or may become a charge against any common property, and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the common property, and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. The Association is authorized to enter into any agreement in favor of all first mortgages of Lots establishing entitlement to such reimbursement.

Section 11. Distribution of Insurance Proceeds and Condemnation Awards. No provision of the Declaration or by-laws shall be construed as giving to the Owner or to any other party priority over any rights of the first mortgagees of Lots pursuant to their mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of common property.

Section 12. Designation of Representative. Any holder of a first mortgage on a Lot may designate a representative to attend meetings of members.

ARTICLE IX

INSURANCE

Section 1. Maintenance of Insurance. Commencing not later than the time of the first conveyance of a Lot to an Owner other than Declarant, the Association shall maintain, to the extent reasonably available, the following insurance:

- (a) Workers' Compensation insurance (if the Association has eligible employees);
- (b) Comprehensive public liability insurance in such amounts and with such coverage as the Board of Directors shall from time to time determine, but at least:
 - (i) covering events occurring anywhere on the Common Area (and Landscape Easement Area (and any other areas that are under its supervision) or arising out of or in connection with the use, ownership or maintenance thereof;
 - (ii) covering, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Area, Landscape Easement area, and any other areas, that are under its supervision, and legal liability arising out of lawsuits related to employment contracts of the Association, and such other coverages as are customarily covered with respect to projects similar in construction, location, and use;
 - (iii) insuring each officer and member of the Board of Directors, the managing agent and each Owner and with cross liability endorsement to cover liabilities of the Owners as a group to an Owner and with a "Severability of Interest Endorsement" which would preclude the insurer from denying the claim of an Owner for the negligent act of another Owner, occupant or the Association; and
 - (iv) in amounts generally required by private institutional mortgage investors for projects similar in construction, location and use. (However, such coverage shall be for at least \$1,000,000 for bodily injury, including deaths of persons and property damage arising out of a single occurrence.)
- (c) Such other insurance as the Board of Directors may determine.
- (d) All such policies must provide that they may not be canceled or substantially modified by any party without at least 10 days' prior written notice to the Association and to each holder of a first mortgage which is listed as a scheduled holder of a first mortgage in the insurance policy.

Section 2. Additional Coverages. In addition and supplement to the foregoing powers, and not in limitation thereof, the Board of Directors shall have the authority at all times without action by the Owners to obtain in force all Common Areas or Association coverages and endorsements required by either Federal National Mortgage Association or Federal Home Loan Mortgage Corporation for the acceptance of mortgages on Lots, as such requirements are amended from time to time.

Section 3. Proceeds. Proceeds of casualty insurance on common property shall be used only for the purpose of rebuilding of functionally replacing such common property.

Section 4. Insurance Premiums. Insurance premiums for any blanket property insurance coverage and the other insurance coverages purchased by the Association shall be common expenses to be paid by assessments levied by the Association and used solely for the payment of the blanket property insurance premiums and other insurance premiums as such premiums become due.

Section 5. Fidelity Bonds. The Association shall maintain blanket fidelity bonds for all officers, directors, trustees, and employees of the Association and all other persons handling or responsible for funds of or administered by the Association. Furthermore, where the Association has delegated some or all of the responsibility for the handling of funds to a management agent, such bonds shall be required for the agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. The total amount of fidelity bond coverage required shall be based upon best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three months aggregate assessments on all Lots plus reserve funds. Fidelity bonds required herein must meet the following requirements:

- (a) Fidelity bonds shall name the Association as obligee;
- (b) The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions;
- (c) The premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Association as a common expense;
- (d) The bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least 10 days'

prior written notice to the Association or to any Insurance Trustee and to each Servicer on behalf of FNMA.

ARTICLE X

EMINENT DOMAIN

Section 1. The Association shall represent the owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area, or part thereof, and by acceptance of a deed for its unit, each owner appoints the Association as attorney-in-fact for such purposes. In the event of a taking or acquisition of part or all of the Common Area by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or other trustee (such as a bank or title insurance company appointed as such by the Association), for the use and benefit of the Owners and their mortgagees as their interests may appear.

Section 2. Reconstruction. In the event of a partial taking of the Common Area (or conveyance in lieu thereof) the Association promptly shall cause the remaining portions of the Common Area to be restored functionally and aesthetically to reasonably the same condition as before the taking, using so much of the proceeds of such taking for such purpose as shall be reasonably necessary. In the event of a total taking of the Common Area (or conveyance in lieu thereof), the proceeds shall be allocated equally among each Lot, payable jointly to the respective Owners and mortgage holders thereof.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Enforcement. Enforcement of these covenants and restrictions and of the provisions contained in the Articles of Incorporation and by-laws of the Association (and of decisions made by the Association pursuant thereto) may be by any proceeding at law or in equity instituted by the Association or by any Owner against any person (including the Association) violating or attempting to violate any covenant or restriction, either to restrain violation, to compel compliance, or to recover damages, and against the land, to enforce any lien created by these covenants; and failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Attorneys' fees and costs of any such actions to restrain violation or to recover damages as determined by the Court shall be assessable against and payable by any persons violating the terms contained herein.

Section 2. Mergers. Upon a merger or consolidation of the Association with another corporation as provided in its Articles and by-laws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or corporation, or, alternatively, the properties rights and obligation or

another corporation may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established upon any other properties as one entity. No such merger or consolidation, however, shall effect any revocation, change or additions to the covenants established by this Declaration within the Property, except as hereinabove provided.

Section 3. Severability. Invalidation of any one of these covenants or restrictions by legislation, judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 4. Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or the Owner of any lot subject to this Declaration, their respective personal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time the covenants and restrictions shall be automatically renewed for successive periods of ten (10) years.

Except as elsewhere herein provided, this Declaration may be amended during the first twenty-year period by an instrument signed by not less than ninety percent (90%) of each class of the Owners and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Owners. Any amendment must be recorded. Certain amendments also require additional approval as specified in the Article entitled "Rights for the Protection of First Mortgagees."

Notwithstanding the foregoing, however, Declarant shall have the right to amend this Declaration by recording an amendment executed solely by it which recites that it is for the purpose of conforming to requirements or comments of the FHA, until the happening of one of the following events, whichever occurs earliest:

- (a) the recording of such an amendment evidencing approval by the Federal Housing Administration or the Veterans Administration;
- (b) the eighth anniversary of the recording of the Declarations
- (c) the recording of Declarant's waiver of the right.

Section 5. Annexations. Subject to the Article entitled "rights for Protection of First Mortgagees" hereinabove, additional residential property, Common Area and Landscape Easement Area may be annexed to the Property with the consent of 75% of the Owners. Additional land within the Proposed Development Area may be annexed by the Declarant (or in the event that the holder of a mortgage on land within the Proposed Development Area acquires title to such land by foreclosure or by deed in lieu thereof, then by such holder or its assignee) without the consent of the other owners or of mortgage holders of Lots within 8 years of the date of recording of this Declaration,

provided that (1) the FHA or VA determine that the annexation is in accord with the general plan of development heretofore approved by them, or (2) Declarant (or such holder) then avers that neither the FHA or the VA has then approved such a general plan for this development. The Declarant may unilaterally waive or restrict any part of this right of annexation at any time by recording with the County Recorder or Registrar of Titles (as applicable) a written instrument thereof executed by it, except that such waiver or restriction shall not be effective against any land within the Proposed Development Area which is then subject to a mortgage of record unless and within the Proposed Development Area which is then subject to a mortgage of record unless and until the holder of such mortgage consents to such waiver or restriction in writing. Such annexation shall be accomplished by means of one or more Supplemental Declarations which shall state which portions, if any, of the added land shall be added to the Common Area and Landscape Easement Area) executed by Declarant (or such holder) and recorded with the County Recorder or Registrar of Titles (as applicable) for Scott County, Minnesota. Votes and other rights of Owners shall adhere to the Lots so annexed from and after the date of recording of the respective Supplemental Declarations. Assessments with respect to all Lots added by each respective Supplemental Declaration shall commence on a rate fixed by the Board of Directors no later than 60 days following the conveyance of the first such Lot to an Owner other than Declarant. All intended common area improvements in future phases so annexed must be substantially completed prior to annexation. All taxes and other assessments relating to the property added to such annexation and covering any period prior to such annexation, must be paid at the time of annexation. All future improvements submitted to this Declaration by such future annexation must be consistent in terms of quality of construction with the initial improvements constructed on the Property as originally defined in this Declaration.

Section 6. Notices. Any notice required to be sent to any Member of the Association (or Owner) under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such Member appearing on the records of the Associations at the time of such mailing. In the case of multiple Owners of a Lot, notice to any one of such Owners shall be deemed notice to all.

Section 7. Captions. The Article and Section headings and intended for convenience only are shall not be given any substantive effect.

Section 8. Construction. In the event of an apparent conflict between this Declaration and the by-laws, the provisions of this Declaration shall govern. The use of pronouns such as "his", and "him" are for literary purposes and mean whenever applicable to the plural and female forms.

ARTICLE XII

FHA APPROVAL

So long as there is Class B membership, the following actions will require the prior written approval (or waiver of this requirement) by the FHA (or the affidavit of Declarant that as of the date of such amendment neither the project nor any part thereof had been submitted to, or had been given project approval by, the FHA): annexation of additional property, mergers and consolidations, mortgaging of Common Area, dedication of Common Area, dissolution and amendment of this Declaration.

ARTICLE XIII

Section 1. The maintenance of each Lot shall be the responsibility of the Owner of that Lot. The maintenance of the Common Area, Landscape Easement Areas and Public Medians shall be the responsibility of the Association.

IN WITNESS WHEREOF, the said Hans Hagen Homes, Inc., a Minnesota corporation, was caused this document to be executed as of the day and year first above written.

Hans Hagen Homes, Inc.
A Minnesota Corporation

By _____
Its _____

By _____
Its _____

STATE OF MINNESOTA
COUNTY OF ANOKA

The foregoing instrument was acknowledged before me this ____ day of _____ 1996, by _____ and _____ respectively the _____ and _____ of Hans Hagen Homes, Inc., a Minnesota Corporation, on behalf of the corporation.

Notary Public

This instrument was drafted:
Hans Hagen Homes, Inc.
941 N.E. Hillwind Road, #300
Fridley, Minnesota 55432

EXHIBIT A
PROPERTY

Lots 1 through 10, both inclusive, Block 1, The Pointe First Addition
Lots 1 through 3, both inclusive, Block 2, the Pointe First Addition

EXHIBIT B
COMMON AREA

There is no Common Area being added at this time.

EXHIBIT C
LANDSCAPE EASEMENT AREA

An easement for landscape purposes over, under and across the north 10.00 feet of Lot 1, Block 1, THE POINT FIRST ADDITION, Scott County, Minnesota together with that part of said Lot 1 lying northwesterly of a line described as beginning at a point on the west line of said Lot 1 distant 60.00 feet south from the northwest corner of said Lot 1; thence northeasterly to a point on the north line of said Lot 1 distant 60.00 feet east from said northwest corner and said line there terminating.

An easement for landscape purposes over, under and across the north 10 feet of Lot 2, Block 1, THE POINT FIRST ADDITION, Scott County, Minnesota.

An easement for landscape purposes over, under and across the north 10.00 feet of Lot 5, Block 1, THE POINT FIRST ADDITION, Scott County, Minnesota.

An easement for landscape purposes over, under and across the northerly and northeasterly 10.00 feet of Lot 6, Block 1, THE POINTE FIRST ADDITION, Scott County, Minnesota.

An easement for landscape purposes over, under and across that part of Lot 1, Block 2, THE POINT FIRST ADDITION, Scott County, Minnesota lying northwesterly of the southeasterly 91.00 feet.

EXHIBIT D
PROPOSED DEVELOPMENT AREA

Outlot C, Outlot E, and Outlot G, the Pointe First Addition.