

COMMON INTEREST COMMUNITY NUMBER 1047

a Condominium

PATIO HOMES OF THE LUTHERAN HOME ASSOCIATION,

A CONDOMINIUM DECLARATION

THIS DECLARATION is made this 3rd day of March, 1998, by THE LUTHERAN HOME, a/k/a THE LUTHERAN HOME ASSOCIATION, a Minnesota nonprofit corporation (hereinafter referred to as "Declarant"), pursuant to the provisions of the Minnesota Common Interest Ownership Act, Minnesota Statutes Sections 515B.1-101 to 515B.4-118 (hereinafter referred to as the "Act"), as amended.

WHEREAS, Declarant is the fee simple owner of that certain real estate situated in Scott County, Minnesota, legally described as:

That part of Lot 1, Block 1, Lutheran Home First Addition, according to recorded plat thereof on file and of record in the office of the County Recorder, Scott County, Minnesota, described as follows: Beginning at the northeast corner of said Lot 1; thence S00°02'04" E assumed bearing along the east line of said Lot 1 a distance of 156.00 feet; thence N89°58'10"W a distance of 202.54 feet; thence N00°02'04"W a distance of 156.00 feet to the north line of said Lot 1; thence S89°58'10"E along the north line of said Lot 1 a distance of 202.54 feet to beginning and there terminating.

(hereinafter referred to as the "Real Estate"); and

WHEREAS, the Real Estate is to be improved with one (1) building, containing four (4) residential units, each residential unit being located on a lot; and

WHEREAS, Declarant has reserved the option to add additional real estate parcels, which would contain an additional five (5) buildings of four (4) units per building to the Condominium;

NOW, THEREFORE, in order to establish the Real Estate as a Condominium pursuant to the Act, Declarant hereby declares that the Real Estate is subject to the covenants, restrictions, terms and conditions hereinafter set forth in this Declaration, which shall constitute covenants running with the Real Estate and shall be binding on Declarant, its successors and assigns, and on all subsequent holders of any right, title or interest in or to all or any part of the Real Estate, their grantees, successors, heirs, personal representatives, devisees, and assigns.

1. **General.** This Declaration establishes CIC Number 1047, Patio Homes of The Lutheran Home Association, a Condominium, Scott County, Minnesota, under the name **Patio Homes of The Lutheran Home Association, a Condominium**. It is a condominium and is not subject to a master association. The real estate included within this common interest community (hereinafter "**CIC**" or "**Condominium**") is legally described above. The CIC Plat for this CIC is being recorded simultaneously herewith and as a part of this Declaration.

2. **Condominium Units.** There are four (4) separate Units located on part of Lot 1, in one building, as shown on the CIC Plat certified by Dennis M. Honsa, of Bolton & Menk, Inc., Registered Land Surveyor, Minnesota Registration No. 22440, as accurately depicting all the information required by Section 515B.2-110 of the Act, which CIC Plat is a part hereof (hereinafter referred to as the "**CIC Plat**"). The unit identifier, location and boundaries of each of the Units established hereby are set forth in the CIC Plat. The boundaries of the improvements located on each Unit shall be the interior unfinished surface of the walls, floors, and ceilings thereof depicted as boundaries in the CIC Plat. Accordingly, all lath, furring, wallboard, plasterboard, and plaster constituting a part of the wall shall be deemed to be outside of the Unit and any paneling, tile, wallpaper, paint, carpeting, linoleum or other wall or floor coverings or finishings shall be deemed to be included within the Unit. All doors and windows located in the perimetrical walls of a Unit shall be deemed to be part of that Unit. Each of the Units is hereby allocated one (1) vote in the Association.

The fractions of undivided interests in the Common Elements and the fractions of the Common Expenses of the Association are hereby equally allocated to the Units. The fractions of undivided interests in the Common Elements and of the Common Expenses of the Association allocated to each Unit on such basis is the Fractional Interest set forth opposite each such unit in Exhibit A attached hereto. However, certain expenses may be assessed on a different basis, or against one or fewer than all of the Units, under the following circumstances:

A. Any common expense or portion thereof benefitting fewer than all of the Units may be assessed exclusively against the Units benefitted 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. The costs of insurance may be assessed in proportion to value, risk of coverage, and the costs of utilities may be assessed in proportion to usage.

C. Reasonable attorney fees and other costs incurred by the Association in connection with the collection of assessments and the enforcement of this Declaration, the

Bylaws, a copy of which are attached hereto as Exhibit B, Act or Rules and Regulations against an Owner or occupant or their guests may be assessed against the Owner's Unit.

D. Fees, charges, late charges, fines and interest may be assessed as provided in Section 515B.3-116(a) of the Act.

E. Assessments levied under Section 515B.3-116 of the Act 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 Expense liabilities.

F. If any damage to the Common Elements or another Unit is caused by the action or omission of any Owner or occupant or their guests, the Association may assess the costs of repairing the damage against the Owner's Unit to the extent not covered by insurance.

G. If any installment of an assessment becomes more than 30 days past due, then the Association may, upon ten (10) days written notice to the Owner, declare the entire amount of the assessment immediately due and payable in full.

H. If Common Expense liabilities are reallocated for any purpose authorized by the Act, common expense assessments and installments thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

I. Assessments described in sub-sections 2.A. through 2.G. shall not be considered as being special assessments.

3. **Common Elements.** All portions of the Real Estate other than the Units located on their respective lots are Common Elements. Certain portions of the Common Elements designed to serve a single unit are, by operation of Section 515B.2-102(d) and (f) of the Act, Limited Common Elements allocated for the exclusive use by the respective Units served thereby to the exclusion of other Units. As shown on the CIC plat, all sidewalks are Limited Common Elements assigned to the Unit adjoining thereto. The porches and garages are part of the individual Units. Additionally, the entry area and air conditioning equipment serving each Unit and the fenced yard and patio area, if any, which are accessible from each Unit are Limited Common Elements allocated for the exclusive use of each such Unit to the exclusion of the other Units.

Subject to the following provisions of this paragraph, each garage may be used and improved by the Owners of the Unit to which it is allocated in any manner desired by such Owners. Such use and improvement shall be subject to the provisions of the Act, this Declaration, the Articles and the Bylaws of the Association. Additionally, the Board of Directors shall have the power to promulgate rules and regulations relative to the garages and the use or improvement thereof provided that the same shall not prevent any use or improvement of garages unless such use or improvement is reasonably determined by the Board of Directors to create objectionable noises or odors, to damage or endanger the structure of the garages or the

buildings of which they are a part, or to create or constitute a hazardous condition. Any Owner desiring to make an improvement in the garage allocated to such Owner's Unit shall, prior to commencing construction thereof, submit plans for such improvement to the Board of Directors and secure the consent of the Board of Directors to such improvement, which consent shall not be withheld unless the Board of Directors reasonably determines that the proposed improvement will create or constitute a hazardous condition or will damage or endanger the structure of the garage or the building of which it is a part. No Owner shall alter the external appearance of the garages. The Board of Directors shall have the right, in its discretion, to require a bond or other security for the completion of the proposed improvements and the payment of all costs thereof. All damage done to a garage in connection with the construction of any such improvement shall be repaired at the cost of the Owner constructing such improvement. All costs of constructing any such improvement shall be paid by the Owner constructing the same. In the event that any mechanic's lien is filed against the Condominium or any part thereof in connection with the construction of such improvement, the Owner constructing such improvement shall immediately cause the same to be discharged at such Owner's expense. If such Owner fails to do so, the Association may, but shall not be obligated to, immediately cause the same to be discharged of record and all amounts, costs and expenses paid or incurred by the Association in connection with effecting such discharge shall be immediately due from such Owner to the Association and shall be such Owner's personal liability, a lien on such Owner's Unit and collectible by the Association, all in the same manner as set forth herein with respect to Common Expense assessments. The Owners of each Unit shall be responsible for cleaning the garage allocated to the Unit owned by them and for repairing and maintaining any improvements to the garage constructed by an Owner. The Association shall not be required to maintain any insurance with respect to any improvements to a garage constructed by an Owner. In the event that the Association incurs extraordinary expenses related to any garage on account of any use thereof or improvement thereto made by the Owner of the Unit to which such garage is allocated, the Association may assess the amount of such extraordinary expense against the Unit to which such garage is allocated.

4. Ownership, Occupancy and Use of the Condominium. The Condominium and each of the Units shall be owned, both legal and equitable, and used and occupied in accordance with the following provisions:

4.1 General.

A. The Units within Patio Homes of The Lutheran Home Association are intended for the housing of persons 55 years of age or older. The provisions of this article are intended to be consistent with and are set forth in order to comply with the Fair Housing Amendments Act (the "Act"), 42 U.S.C. §3601 *et. seq.* (1988, as amended) and the exemption therefrom provided by 42 U.S.C. §3607(b)(2)(C) regarding discrimination based on familial status, and the corresponding regulations promulgated thereunder, as amended. The Declarant or the Association, acting through its board, shall have the power to amend this article, without the consent of the voting members or any person except Declarant, for the purpose of making this article consistent with the Act, as it may be amended, the regulations adopted pursuant

thereto, and any judicial decisions arising hereunder or otherwise relating thereto, in order to maintain the intent and enforceability of this article.

4.2 Restrictions on Occupancy.

A. Each occupied Unit within the Properties shall at all times have as a permanent occupant therein at least one person who is 55 years of age or older (the "Qualifying Occupant"); provided, in the event of the death of a person who was the sole Qualifying Occupant of a Unit, the spouse of such Qualifying Occupant may continue to occupy the Unit as long as the provisions of the Act and the regulations adopted thereunder are not violated by such occupancy. For purposes of this Section, an occupant shall not be considered a "permanent occupant" unless such occupant considers the Unit to be his or her legal residence and actually resides in the Unit for at least six months during every calendar year.

B. No Unit shall be occupied by any person under the age of 18. For purposes of this Section, a Unit shall be deemed to be "occupied" by any person who stays overnight in the Unit for more than 21 days in any 60 day period or for more than 30 days in any 12-month period.

C. Except as provided in Section 4.6, nothing in this Article is intended to restrict the ownership or transfer of title to any Unit; provided, no Owner may occupy the Unit unless the requirements of this Article are met nor shall any Owner permit occupancy of the Unit in violation of this Article. Unit Owners shall be responsible for including the statement that the Units within Patio Homes of The Lutheran Home Association are intended for the housing of persons 55 years of age or older, as set forth in Section 4.1(a) of this Article, in conspicuous type in any lease or other occupancy agreement or contract of sale relating to such Owner's Unit, which agreements or contracts shall be in writing and signed by the tenant or purchaser, and for clearly disclosing such intent to any prospective tenant, purchaser or other potential occupant of the Unit. Every lease of a Unit shall provide that failure to comply with the requirements and restrictions of this Article shall constitute a default under the lease.

D. Any Owner may request in writing that the Board of Directors make an exception to the requirements of this Section with respect to his or her Unit. The Board of Directors may, but shall not be obligated to, grant exceptions in its sole discretion, provided that the requirements for exemption from the Act would still be met.

4.3 Change in Occupancy; Notification. In the event of any change in occupancy of any Unit, as a result of a transfer of title, a lease or sublease, a birth or death, change in marital status, vacancy, change in location of permanent residence, or otherwise, the Owner of the Unit shall immediately notify the Board in writing and provide to the Board the names and ages of all current occupants of the Unit and such other information as the Board may reasonably require to verify the age of each occupant. In the event that an Owner fails to notify the Board and provide all required information within 10 days after a change in occupancy

occurs, the Association shall be authorized to levy monetary fines against the Owner and the Unit for each day after the change in occupancy occurs until the Association receives the required notice and information regardless of whether the occupants continue to meet the requirements of this Article, in addition to all other remedies available to the Association under this Declaration and Minnesota law.

4.4. Monitoring Compliance; Appointment of Attorney-in-Fact.

A. The Association shall be responsible for maintaining age records on all occupants of Units. The Board shall adopt policies, procedures and rules to monitor and maintain compliance with this Article, including policies regarding visitors, updating of age records, the granting of exemptions pursuant to Section 4.2(d), and enforcement. The Association shall periodically distribute such policies, procedures and rules to the Owners and make copies available to Owners, their tenants and Mortgagees upon reasonable request.

B. The Association shall have the power and authority to enforce this Section in any legal manner available, as the Board deems appropriate, including, without limitation, conducting a census of the occupants of Units, requiring copies of birth certificates or other proof of age for each occupant of the Unit to be provided to the Board on a periodic basis, and taking action to evict the occupants of any Unit which does not comply with the requirements and restrictions of this Article. **EACH OWNER HEREBY APPOINTS THE ASSOCIATION AS ITS ATTORNEY-IN-FACT FOR THE PURPOSE OF TAKING LEGAL ACTION TO DISPOSSESS, EVICT OR OTHERWISE REMOVE THE OCCUPANTS OF HIS OR HER UNIT AS NECESSARY TO ENFORCE COMPLIANCE WITH THIS ARTICLE.** Each Owner shall fully and truthfully respond to any and all requests by the Association for information regarding the occupancy of his or her Unit which in the judgment of the Board are reasonably necessary to monitor compliance with this Article.

C. Each Owner shall be responsible for ensuring compliance of its Units with the requirements and restrictions of this Article and the rules of the Association adopted hereunder by itself and by its tenants and other occupants of its Unit. **EACH OWNER, BY ACCEPTANCE OF TITLE TO A UNIT, AGREES TO INDEMNIFY, DEFEND AND HOLD THE ASSOCIATION HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES AND CAUSES OF ACTION WHICH MAY ARISE FROM FAILURE OF SUCH OWNER'S UNIT TO SO COMPLY.**

4.5 Restriction on Use.

A. **Use.** Subject to the provisions of Section 4.5C. below, the Condominium and each of the Units are intended for residential purposes only. No use may be made of any Unit except that of a residence for the Unit Owner thereof, their families, and social guests and no business or commercial use shall be permitted on the Real Estate except as specifically provided in this Declaration and except that the Association may maintain an office on or in any part of the Real Estate for management purposes.

B. Use for Sales Purposes. So long as Declarant owns any Unit, Declarant may maintain advertising signs on any part of the Common Elements and sales offices, management offices and models units within any Unit or Units or in or on any part of the Common Elements and such sales offices, management offices and model Units may be relocated by Declarant from time to time.

C. Easements for Encroachments. If, as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the improvements, any portion of the Common Elements encroaches upon a Unit or Units or any portion of a Unit encroaches upon the Common Elements or upon an adjoining Unit or Units, a valid easement for the encroachment and for the maintenance thereof, so long as it stands, shall and does exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Elements or on the Units for the purposes of marketability of title. In the event the Real Estate is partially or totally destroyed, and then rebuilt, the Unit Owners shall permit minor encroachment of parts of the Common Elements, and of other Units, due to reconstruction, and a valid easement for said encroachments and the maintenance thereof shall exist.

D. Rules. Each Unit Owner, occupant, or guest shall use the Units and the Common Elements only in compliance with the provisions of the Act, this Declaration, the Articles and the Bylaws of the Association, all as lawfully amended from time to time, and with all decisions, resolutions and rules promulgated by the Board of Directors. Failure to comply with any such provisions, rules, decisions or resolutions shall be grounds for an action to recover sums due for damages or for injunctive relief, or both. Additionally, in the event of any such failure to comply, the Association may levy reasonable fines in accordance with the provisions of the Act.

E. Prohibited Activities. No unlawful, noxious or offensive activities shall be carried on in any Unit or elsewhere on the Real Estate, nor shall anything be done therein or thereon which shall constitute a nuisance or which shall in the judgment of the Board of Directors cause unreasonable noise or disturbance to others. No residents or visitors may park in areas not specifically designated for parking on the CIC Plat or in this Declaration.

F. Unit Exterior. No clothing, sheets, blankets, laundry, or other articles shall be hung, displayed or stored outside the Units (except within the garages which are allocated to the Units), or which may be visible from the outside of the Units (other than draperies, curtains, or sheers of a customary nature and appearance and in any event subject to the rules and regulations of the Board of Directors). No Owner shall paint or decorate or adorn the outside of his Unit, or install outside his Unit any canopy or awning, or outside radio or television antenna, or other equipment, fixtures or items of any kind, without the prior written permission of the Board of Directors in its discretion. No Owner of a Unit shall display, hang, store (except within the garage which is allocated to his Unit) or use any sign outside his Unit, or which may be visible from the outside of his Unit without the prior written permission of the Board of Directors. The foregoing notwithstanding, an Owner shall be permitted to display a

sign of not more than three square feet in area advertising such Owner's Unit for sale or lease. Such sign shall be located in the yard area between such Owner's Unit and the road in front of such Unit.

G. **Pets.** No animal of any type shall be kept in any Unit or in the Common Elements, unless and until the Board of Directors has enacted rules and regulations specifically permitting the keeping of such type of animal. The Board of Directors shall have complete discretion as to whether or not it will permit the keeping of animals of any particular type. When deemed appropriate by the Board of Directors, it may, but shall not be required to, enact rules and regulations permitting the keeping of a specific type of animal in one or more, but not all, units when special circumstances are present. An example of the special circumstances contemplated hereby is the need for a seeing eye dog. The Board of Directors shall also have complete discretion as to the substance of any administrative rules and regulations enacted by it regarding the manner in which any permitted animal shall be kept, provided that the Board of Directors may not, in any case, permit the keeping of any animal for any commercial purpose. The Board of Directors shall have the right at any time, to change its rules and regulations relating to animals. Such right shall include the right to prohibit the keeping of any animal of a type permitted to be kept by previously enacted rules and regulations. Any animal permitted to be kept shall be kept in strict accordance with the administrative rules and regulations relating to such animals from time to time approved by the Board of Directors and in any event shall be kept in a manner so as to not constitute a nuisance to others.

H. **Trash.** Trash, garbage and other waste shall be kept only in sanitary containers, and shall be disposed of in a clean and sanitary manner as prescribed from time to time in the rules and regulations promulgated by the Board of Directors.

I. **Storage of Personal Property.** Except as provided in this Declaration or as permitted by the rules and regulations adopted from time to time by the Board of Directors in its sole discretion, no personal property of any kind whatsoever belonging to any Owner or to any guest or invitee of any Owner shall be stored, placed or kept, temporarily or permanently, in or on the Common Elements. Without limiting the generality of the foregoing, no motorized or non-motorized vehicles, boats, campers, cabs, trailers, recreational vehicles, snowmobiles, bicycles, tricycles, motorcycles or other types of recreational equipment, shall be stored on any Common Element except inside a garage. The foregoing notwithstanding, an Owner may: (i) keep personal property in the garage allocated to such Owner's Unit; (ii) park operational automobiles on the driveway allocated to such Owner's Unit; and (iii) keep normal and customary lawn and patio furniture and potted plants (but not play equipment) on the lawn and patio.

J. **Machines.** No Owner shall overload the electrical wiring in the Condominium or operate any machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Board of Directors, an unreasonable disturbance to others.

K. **Rules and Regulations.** The Board of Directors may, from time to time, promulgate rules and regulations regarding the use of the Units and the Common Elements, provided that such rules shall be reasonable in scope and shall tend to promote the use of the Real Estate for the purposes set forth herein.

L. **Gardens and Shrubs.** Except as permitted by the Board of Directors in its sole discretion, and except as provided in subsection 4.J. above, no gardens, shrubs, flowers or other plants shall be planted by any Owner on any Common Element or Limited Common Element.

M. **Visitor Parking.** Except for the garage and driveway Limited Common Elements, all parking areas in the Common Elements are reserved for guests, invitees and visitors to the Condominium and shall not be used by Owners.

N. **Blocking of Driveways.** Under no circumstances shall any Owner block access to any garage other than the garage allocated to such Owner's Unit.

O. **Utility Easement.** Each Unit and the Limited Common Elements are subject to an easement in favor of the Association, its successors and assigns for the maintenance of any utility services to each Unit.

4.6 **Right of First Refusal.** Except for transfers to Mortgagees as a result of a foreclosure or deed given in lieu of foreclosure, no Unit Owner may give, assign, sell, transfer, or convey their legal or equitable title to the Condominium Unit without first offering it to the Declarant. In the event the Unit Owner desires to give, assign, convey, sell, or transfer legal or equitable title of the Condominium to any person, individual, corporate or otherwise, the Unit Owner shall first offer the Condominium to the Declarant by written notice delivered to the Chief Executive Officer of the Declarant. Said notice shall contain the name, address, both home and office, business or occupation of the transferee, and, in the event of a sale/purchase, the purchase price and terms, and any other facts that are or would reasonably be deemed material to the proposed transfer. Declarant shall have sixty (60) days upon receipt of such notice and information as reasonably be deemed necessary by the Declarant to evaluate the transfer to acquire the Unit Owner's property upon the same terms and conditions. In the event the Declarant exercises its right to acquire the property granted to it pursuant to this right of first refusal, the Declarant shall give written notice to the Unit Owner of its intent to acquire the property within said option period. The closing shall occur as soon as reasonable in accordance with the original terms and conditions of the offer. In the event the Declarant does not exercise its right by giving written notice within said sixty (60) day period of time, then the Unit Owner shall have the right to give, assign, sell, convey, or transfer ownership interest in the Condominium to the third party, upon the same terms and conditions as offered to the Declarant.

5. Maintenance and Repair.

A. Every Unit Owner shall perform promptly all maintenance and repair work required within his own Unit and all maintenance and repair work required within the garage space assigned to his Unit and the Limited Common Elements associated with his Unit and made the Owner's responsibility under Section 3 of this Declaration which, if not performed, would affect the Common Elements or another Unit or Units. Upon the failure of any Unit Owner to perform his responsibilities under this paragraph, the Association may, but shall not be obligated to, perform the same and such Unit Owner shall be liable to the Association for all expenses incurred by the Association in performing the same and the amount thereof shall be a personal obligation of the Owner, a lien on such Owner's Unit and shall be collectible in the same manner as set forth herein with respect to Common Expense assessments. All incidental damage or liability caused to a Unit or Units or to the Common Elements by the failure of a Unit Owner to perform his obligations under this paragraph or caused in the course of performing such obligations shall be the responsibility of the Unit Owner.

B. If maintenance, repairs or replacements to the Common Elements or to the Unit of another Unit Owner are necessitated by the negligence, willful act, misuse or neglect of a Unit Owner or of anyone for whose negligence, willful act, misuse or neglect such Unit Owner is responsible, the expense thereof shall be charged to such offending or responsible Unit Owner, and the amount thereof shall be a personal obligation of the Owner, a lien on such Owner's Unit and shall be collectible in the same manner as set forth herein with respect to Common Expense assessments.

C. The Association is responsible for maintenance, repair, and replacement of the Common Elements. Except as provided in subsection 5.B. above, any Common Expense associated with the maintenance, repair or replacement of a Common Element shall be assessed against all the Units in accordance with the Common Expense liability allocated to each Unit hereunder and shall not be assessed solely against the Unit or Units. The Association shall keep the exterior of all improvements and the Common Areas in good repair and in an attractive appearance. Declarant reserves the right to seek legal or equitable actions to enforce the Association's obligations in this paragraph.

D. All incidental damage caused to any Unit or to any improvements constructed by an Owner in a garage pursuant to Section 3 of this Declaration as a result of any work done by the Association in accordance with its responsibilities as set forth herein or in the Act or as a result of any damage to, failure of or malfunction of anything to be maintained, repaired or replaced by the Association in accordance with the provisions hereof or in the Act, shall be the responsibility of the Association and the cost of repairing such incidental damage shall be a Common Expense.

6. Party Walls.

A. General Rules of Law to Apply. Each wall built as part of the original construction of the dwelling and located on the boundary line between Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section 6, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

B. Repair and Maintenance. The Owners of the Units which share the party wall shall be responsible for the maintenance, repair and replacement of the party wall in proportion with their use; provided (i) that any maintenance, repair or replacement necessary due to the acts or omissions of a certain Owner or Occupant sharing such party wall shall be paid for by such Owner, and (ii) that the Association may contract for and supervise the repair of damage caused by an Owner or Occupant and assess the Owners and their Units for their respective shares of the costs to the extent not covered by insurance.

C. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has use of the wall may, with the consent of the Association, restore it, and the other Owner shall promptly reimburse the Owner who restored the wall for his share of the cost of restoration thereof; provided, however, that the cost of restoration resulting from destruction or other casualty caused by the acts or omissions of certain Owners shall be the financial responsibility of such Owners, and the Association may assess the responsible Owners and their Units for their share of the costs, without prejudice to the right of an Owner to recover a larger contribution from the other Owner. Insurance claims shall be made promptly following any casualty.

D. Weatherproofing. Notwithstanding any other provision of this paragraph 6, any Owner who, by his negligent or willful act, causes a party wall to be exposed to the elements shall bear the whole cost of the repairs necessary for protection against such elements.

E. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section 6 shall be appurtenant to the Unit and shall pass to such Owner's assign and successors in title.

F. Arbitration. In the event of any dispute arising concerning a party wall, the matter shall be resolved in accordance with Section 9.

7. Architectural Standards.

A. General. The Board shall have the authority and standing, on behalf of the Association, to enforce the decisions of the committees established in Section 7.B. and 7.C. This Section 7 shall not apply to the activities of the Declarant. This Section 7 may not be amended without the Declarant's prior written consent so long as the Declarant owns and operates any facilities adjacent to the Real Estate.

No structure shall be placed, erected or installed upon any Unit, and no improvements (including the staking, clearing, excavation, grading and other site work, no exterior alteration or modification of existing improvements, and no plantings or removal of plants, trees, shrubs or other landscaping materials) shall take place except in strict compliance with this Section 7, and until the approval of the appropriate committee has been obtained.

B. **Construction Committee.** Subject to the written consent of Declarant, the Construction Committee (the "CC") shall have exclusive jurisdiction over all construction on any portion of the Property. The CC shall prepare and, on behalf of the Board with the written approval of the Declarant, shall promulgate design and development guidelines and application and review procedures. Copies shall be available from the CC for review. The guidelines and procedures shall be those of the Declarant and the Association. It shall make the guidelines and procedures available to Owners, builders and developers who seek to engage in development of or construction upon all or any portion of the Property and such Owners, builders and developers shall conduct their operations strictly in accordance therewith.

The Declarant, so long as it owns and operates any facilities adjacent to the Real Property, retains the right to appoint all members of the CC. There shall be no surrender of this right except in a written instrument in recordable form executed by the Declarant. Upon the expiration of such right, the Board shall appoint the members of the CC in the same manner as provided in Section C. for the Modifications Committee.

C. **Modifications Committee.** The Declarant may establish a Modifications Committee (the "MC"), all of whom shall be appointed by the Declarant. The MC, if established, shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing Units or structures thereon and the open space, if any, appurtenant thereto, subject to approval by written consent of the Declarant.

The MC shall promulgate detailed standards and procedures governing its areas of responsibility and practice. In addition thereto, the following shall apply. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such modifications, additions or alterations, shall be submitted to the MC for approval as to quality of workmanship and design and as to harmony of external design with existing structures, location in relation to surrounding structures, topography, and finish grade elevation. No permission or approval shall be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his Unit, or to paint the interior of his Unit any color desired. In the event that the MC fails to approve or disapprove such plans or to request additional information reasonably required within forty-five (45) days after submission, the plans shall be deemed approved.

D. **No Waiver of Future Approvals.** The approval of either the CC or MC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such committee, shall

not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

E. **Variance.** The CC, with the written approval of Declarant, may authorize variances from compliance with any of the provisions of the approved guidelines and procedures when circumstances such as topography, natural obstructions, hardship or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however when unique circumstances dictate and no variance shall (i) be effective unless in writing, (ii) be contrary to the restrictions set forth in the body of this Declaration, or (iii) estop the committee from denying a variance in other circumstances. For purposes of this Section E., the inability to obtain approval of any governmental agency, the issuance of any permit or the terms of any financing shall not be considered a hardship warranting a variance.

F. **Expenses.** Except as provided in this Section F., all expenses of the CC and the MC shall be paid by the Association and will constitute a Common Expense. The CC and the MC shall have the right to charge a fee for each application submitted for review, in an amount to be established by the Board from time to time. Such fees shall be remitted to the Association to help defray the expenses of the operations of the committees.

G. **Limitation of Liability.** Review and approval of any application under this Section 7 is made on the basis of aesthetic considerations only and neither the CC nor the MC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, any committee, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction or modifications to any Unit. In all matters, the committees and their members shall be defended and indemnified by the Association as provided in the Bylaws.

H. **Enforcement.** Any structure or improvement placed or made in violation of this Section 7 shall be deemed to be nonconforming. Upon written request from the Board or the Declarant, the Owner shall, at his own cost and expense, remove such structure or improvement and restore the Unit to substantially the same condition as existed prior to the nonconforming work.

8. **Required Insurance.** Commencing not later than the time of the first conveyance of a Unit to a Unit Owner other than Declarant, and in addition to the requirements of the Act, the Association shall maintain, to the extent reasonably available, the following insurance:

A. Fire insurance with extended coverage endorsement (including vandalism, sprinkler leakage, debris removal, cost of demolition, malicious mischief, windstorm, water damage and all other perils which are customarily covered with respect to projects similar to the

Real Estate in construction, location and use, including all other perils normally covered by the standard 'all risk' endorsement, if such is available). Such insurance shall insure all personal property belonging to the Association and all structures, fixtures, buildings and other improvements included in the Real Estate subject to this Declaration (including all building service equipment and all of the Units and the fixtures originally installed for which coverage is required by the Act, and specifically including, without limiting the generality of the foregoing, interior walls, interior doors, built-in cabinets and counters and electrical and plumbing conduits, pipes and fixtures originally installed therein, and not including improvements, fixtures, betterments and other property supplied or installed by Unit Owners). Such insurance shall cover the interest of the Association, the Board of Directors and all Unit Owners and their mortgagees, as their interests may appear, for full insurable replacement cost, as determined annually by the Board of Directors;

B. Worker's compensation insurance and insurance covering legal liability arising out of lawsuits relating to employment contracts of the Association;

C. Comprehensive public liability insurance in such amounts (but not less than \$1,000,000 for any one occurrence) and with such coverage as the Board of Directors shall from time to time determine, but at least covering events occurring anywhere on the Common Elements or arising out of or in connection with the use, ownership or maintenance of the Common Elements, and insuring each officer and member of the Board of Directors, the managing agent and each Unit Owner and with cross liability endorsement to cover liabilities of the Unit Owners as a group to a Unit Owner and with a 'Severability of Interest Endorsement' which would preclude the insurer from denying the claim of a Unit Owner for the negligent act of another Owner, occupant or the Association;

D. Director's and officer's liability insurance in such amounts as the Board of Directors shall, from time to time, reasonably determine; and

E. Such other insurance as the Board of Directors may determine. If reasonably available, the policy or policies of fire and extended coverage shall contain a stipulated amount clause, or determinable cash adjustment clause, or similar clause to permit a cash settlement covering specified value in the event of destruction and a decision not to rebuild and an inflation guard endorsement.

The Board of Directors may from time to time designate an insurance trustee to receive proceeds.

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

Each Unit Owner may maintain such insurance as he shall desire for his own benefit insuring his personal liability, and his carpeting, drapes, wallcovering, fixtures, furniture, furnishings, personal property, and improvements, fixtures, betterments and other property supplied or installed by him or a previous Unit Owner or tenant, provided that all such policies shall contain waivers of subrogation and further provided 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 Unit Owner.

In addition to the foregoing powers, and not in limitation thereof, the Board of Directors shall have the authority at all times without action by the Unit Owners to obtain and maintain in force any other coverage or endorsements which are required under the Act or which the Board of Directors deems necessary or desirable.

Insurance premiums for any blanket property insurance coverage and the other insurance coverage purchased by the Association shall be Common Expenses to be paid by assessments levied by the Association, and such assessments shall be held in an account of the Association and used solely for the payment of the blanket property insurance premiums and other insurance premiums as such premiums become due.

9. **Rights of First Mortgagees.** The following provisions shall take precedence over all other provisions of this Declaration, and in the event of any inconsistency or contradiction, the following provisions shall control:

A. A first mortgagee of a unit or its assigns, upon request, will be entitled to written notification from the Association of: (i) any default in the performance by the Unit Owner of any obligation under this Declaration or the Bylaws of the Association which is not cured within thirty (30) days; (ii) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; or (iii) any proposed action which, pursuant to this Declaration or the Act, requires the consent of a specified percentage of the first mortgagees of the Units.

B. In addition to statutory requirements for amendment of this Declaration and Bylaws of the Association, unless at least sixty-seven (67%) percent (or such higher percentage as is required by law or this Declaration) of the first mortgagees of the Units or their assigns (based upon one vote for each first mortgage owned), and of the Unit Owners (other than any sponsor, developer, or builder including Declarant) of the Units have given their prior written approval, the Association shall not be entitled to:

i. By act or omission, seek to abandon, 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 shall not be deemed such a transfer).

ii. Use hazard insurance proceeds for losses to any Condominium property (whether to Units or to Common Elements) for other than the repair, replacement or reconstruction of such Condominium property, except as provided by statute in case of substantial loss to the Units and/or Common Elements of the Condominium.

iii. Effect any decision by the Association to terminate professional management and assume self-management of the Condominium.

iv. Partition or subdivide any Unit or the Common Elements.

v. Add or amend any material provision of this Declaration or the Articles or Bylaws of the Association which establishes, provides for, governs or regulates any of the following:

a. Voting;

b. Assessments for Common Expenses, assessment liens or subordination of such liens;

c. Reserves for maintenance, repair and replacement of the Common Elements;

d. Insurance or Fidelity Bonds;

e. Rights to use of the Common Elements;

f. Responsibility for maintenance and repair of the several portions of the Condominium;

g. Expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium;

h. Boundaries of any Unit;

i. The interests in the Common Elements or Limited Common Elements;

j. Convertability of Units into Common Elements or of Common Elements into Units;

k. Leasing of Units;

1. Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his Unit;

m. Any provisions which are for the express benefit of the holders of first mortgages on the Units.

Any such addition or amendment shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. Similarly, any addition or amendment to this Declaration, Articles or Bylaws of the Association which is made for the purpose of adding any one or more of the Additional Real Estate Parcels pursuant to Section 10 below shall not be considered material.

C. Any holder of a first mortgage on a Unit in the Condominium or such holder's designee will, upon request, be entitled to: (i) inspect the books, records and financial statements of the Association and current copies of this Declaration, the Bylaws of the Association and the rules and regulations of the Association, as the same may, from time to time, be amended or promulgated, during normal business hours; and (ii) receive an annual reviewed financial statement of the Condominium within 90 days following the end of any fiscal year of the Condominium; and (iii) written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

D. Condominium assessments for Common Expenses shall include an adequate reserve fund for maintenance, repair and replacement of those Common Elements that must be maintained, repaired or replaced on a periodic basis, and shall, when practicable, be payable in regular installments rather than by special assessments.

E. No provision of this Declaration or of the Bylaws shall be deemed to give a Unit Owner, or any other party, priority over any rights of first mortgagees of Units, or their successors in interest, pursuant to their mortgages in the case of a distribution to the Unit Owners of insurance proceeds or condemnation awards or settlements for losses to or a taking of Units and/or Common Elements. In the event of substantial damage to or destruction of any Unit or any part of the Common Elements, the holder of any first mortgage on a Unit will be entitled to timely written notice of any such damage or destruction. If any Unit or portion thereof or the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the holder of any first mortgage on a Unit will be entitled to timely written notice of any such proceeding or proposed acquisition. Upon the request of the holder of a first mortgage on any Unit, the Association shall agree in writing to notify such holder, any entity servicing such mortgage, and/or any other entity having an interest in such mortgage whenever damage to the Unit covered by such mortgage exceeds \$1,000 and whenever damage to the Common Element exceeds \$10,000.

F. The right of a Unit Owner to sell, transfer, or otherwise convey the Owner's Unit will not be subject to any right of first refusal or any similar restriction in favor of the Association.

G. If the Owner of a first mortgage of record on a Unit or a purchaser at a mortgage foreclosure obtains title to, or comes into possession of, a Unit pursuant to the remedies provided in the mortgage or by foreclosure of the first mortgage or by deed or assignment in lieu thereof, such acquirer of title or possession, his successors and assigns shall acquire such title or possession free of any claims, and shall not be liable, for the share of the unpaid Common Expenses or assessments chargeable to such Unit which accrued prior to the acquisition of title or possession to such Unit by such acquirer, except as provided in the Act. Such unpaid share of the Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Unit Owners, including such acquirer, his successors and assigns.

10. Special Declarant Right to Add to Condominium. Pursuant to Minn. Stat. § 515B.2-106, Declarant shall have the option ("Option") without the consent or joinder of the Unit Owners, the Association, any holder of an interest as security for an obligation or any other person or entity, to add to Common Interest Community Number 1047, Patio Homes of The Lutheran Home Association, a Condominium, any one or more of the parcels of land (hereinafter referred to as the "Additional Real Estate Parcels") described in Exhibit C attached hereto and located in the City of Belle Plaine, County of Scott, State of Minnesota.

Such Option shall be subject to the terms and conditions hereinafter set forth:

A. Duration of Option. The Option will expire on that date which is ten (10) years after the date upon which this Declaration is recorded. There are no circumstances that will terminate the Option before the expiration of said ten (10) year period. However, Declarant or anyone to whom Declarant has assigned said Option as hereinafter set forth, may terminate said Option as to any one or more of the Additional Real Estate Parcels above described by executing a writing to such effect and recording the same in the same manner as a deed of the Additional Real Estate Parcel or Additional Real Estate Parcels so affected.

B. Timing. Each of the Additional Real Estate Parcels above described may be added at different times. The various Additional Real Estate Parcels may be added in any order.

C. Maximum Number of Units. The maximum number of units that may be created within the Additional Real Estate Parcels is twenty (20), four (4) each located in five additional buildings. All of such units will be restricted exclusively to residential use and shall contain restrictions as qualifying senior communities under the Fair Housing Amendments Act, as amended.

D. **Buildings.** Any buildings and units that may be erected upon any Additional Real Estate Parcel which is added to Patio Homes of The Lutheran Home Association, a Condominium, will be compatible with the buildings and units originally constituting a part of Patio Homes of The Lutheran Home Association, a Condominium, in terms of architectural style, quality of construction, principal materials employed in construction, and size.

E. **Applicability of Restrictions.** All restrictions in this Declaration affecting the use, occupancy, and alienation of units will apply to units created in any Additional Real Estate Parcel which is added to Patio Homes of The Lutheran Home Association, a Condominium.

F. **Improvements in Common Elements.** It is presently contemplated that the Common Elements in any Additional Real Estate Parcel added to the Condominium will be substantially comparable to those originally constituting a part of Patio Homes of The Lutheran Home Association, a Condominium. Declarant reserves the right to construct such other, additional improvements as a part of the Common Elements of one or more of the Additional Real Estate Parcels as Declarant may hereafter determine; but in no event shall Declarant have any obligation to construct any improvements to the Common Elements of any of the Additional Real Estate Parcels.

G. **No Assurances.** Nothing herein contained shall bind Declarant to add any of the Additional Real Estate Parcels to the Condominium or to adhere to any particular plan of development or improvement for any portion of the Additional Real Estate Parcels not added to the Condominium. Declarant has reserved the right to add the Additional Real Estate Parcels to the Condominium but is not obligated to add any Additional Real Estate Parcels. None of the assurances set forth in subsections 10.C., 10.D., 10.E. or 10.F. above will apply to any Additional Real Estate Parcel which is not added to the Condominium.

H. **Exercise of Option.** Declarant may exercise its option to add one or more of the additional Real Estate Parcels by securing the execution and recording of one or more amendments to this Declaration in the manner specified in Section 515B.2-111 of the Act. Such Amendment shall allocate one (1) vote in the Association to each Unit formed in the Additional Real Estate Parcel or Parcels being added and shall reallocate undivided interests in the Common Elements and the fractional interests of the Common Expenses of the Association among the Units equally. Contemporaneously with the filing of such Amendment, Declarant shall record supplemental CIC plats in accordance with the provisions of Section 515B.2-110(c) of the Act.

The Amendment as to any Additional Real Estate Parcel may not be recorded unless all structural components and mechanical systems serving more than one Unit of all buildings containing or comprising any Units thereby added to the Condominium are substantially completed. All installments of real estate taxes previously coming due and payable with respect to any Additional Real Estate Parcel added to the Condominium and all special

assessments levied against such Additional Real Estate Parcel shall be paid by Declarant prior to adding such Parcel to the Condominium.

I. **Assignment of Option.** The Option described in this Section 10 may be assigned by Declarant insofar as it affects any Additional Real Estate Parcel herein described to the owner of any such Parcel, if other than Declarant. Any such assignment shall be in writing, shall be recorded among the real estate records in the same manner as a conveyance of the Additional Real Estate Parcel and shall be subject to all of the terms and conditions of this Section 10.

J. **Reservation of Easements.** Declarant hereby reserves the right, in the event that one or more of the Additional Real Estate Parcels are not added to the Condominium (whether due to lapse of time or termination pursuant to subsection 10.A. above) to create the following perpetual, non-exclusive easements appurtenant to the Additional Real Estate Parcel or Parcels which may not be added to the Condominium in, over, upon, and under portions of the Common Elements within the Condominium and within such Additional Real Estate Parcel or Parcels as have or may be added to the Condominium pursuant to this Section 10:

i. Non-exclusive easements for the following purposes:

a. to connect any improvements constructed on the Additional Real Estate Parcel or Parcels which are not added to the Condominium (hereinafter referred to as the "Excluded Parcels", whether one or more) to any natural gas, storm sewer, water, sanitary sewer, electrical, telephone or other utility line, pipe, wire or other facilities, including the right to connect any improvements constructed on the Excluded Parcels into, and the right to utilize, such utility lines, pipes, wires or other facilities which are or may be located within and/or which may serve the Condominium and/or any such Additional Real Estate Parcel or Parcels as have or may be added to the Condominium;

b. to obtain natural gas, water, electricity, telephone and other utility services from, and to discharge storm and sanitary waste into, all such lines, pipes, wires or other facilities;

c. to install, repair, maintain, operate and replace all such natural gas, storm sewer, water, sanitary sewer, electrical, telephone or other utility lines, pipes, wires, or other facilities; and

d. to do such other acts or things as are necessary in order to connect into and/or to utilize such utility facilities to serve any improvements constructed or to be constructed on the Excluded Parcels,

provided, however, that Declarant, its successors or assigns, as the owner or owners of the Excluded Parcels benefitted by the easements hereby reserved, shall be responsible for the restoration of any damage done or sustained in connection with the use of such easements.

ii. Non-exclusive easements for the purposes of:

a. affording the Excluded Parcels and any improvements constructed or to be constructed thereon with access to and from a public road;

b. installing, repairing, maintaining, surfacing, resurfacing, grading, replacing and extending drives, lanes, streets, roads or any rights-of-way over which the easements hereby reserved are or may be located; and

c. to do such other acts or things as are necessary in order to afford any improvement constructed or to be constructed on the Excluded Parcels with access to a public road.

provided, however, that Declarant, its successors or assigns, as the owner or owners of the Excluded Parcels benefitted by the easements hereby reserved, shall be responsible for the restoration of any land, drives, streets, roads or rights-of-way which are disturbed in connection with the use of such easements, and provided further, however, that the location of the easements hereby reserved shall, to the extent practicable, be limited to the location of the private drives, lanes, streets, roads, and rights-of-way existing within the Common Elements at the time or times that the easements hereby reserved are created.

The easements herein reserved may be created in the event that, and from time to time as, one or more Excluded Parcels are created due to lapse of time or termination pursuant to subsection A of this Section 10. As evidence of the creation of one or more of the easements reserved in this subsection 10.J., the then owner or owners of the Excluded Parcels for whose benefit the easement is created shall execute and cause to be filed for record a Declaration of Easements setting forth a description of the easements thereby created and a description of the Excluded Parcels so benefitted by the easements thereby created. No consent or joinder of the Association or any Unit Owner or any mortgagee or other holder of an interest in any Unit or Excluded Parcel as security for the performance of an obligation, nor any release therefrom, shall be required to effect or to evidence the creation of the easements hereby reserved. In addition, the owner of an Excluded Parcel or of a platted lot within an Excluded Parcel may at any time waive or terminate any easement hereby reserved or hereafter created for the benefit of such Owner's Excluded Parcel of platted lot within an Excluded Parcel, as the case may be, by the execution and recording of an instrument specifying such waiver or termination, and without the necessity of any consent or joinder by the Association, any Unit

Owner, or any mortgagee or other holder of an interest in any Unit or Excluded Parcel or platted lot within an Excluded Parcel as security for the performance of an obligation, or any release therefrom. In the event that easements reserved in this subsection 10.J. are created, the Unit Owners and the owner or owners of the Excluded Parcels benefitted by such easements shall, so long as the easements reserved herein are in existence, share all expenses of maintaining, repairing and replacing the private drives, lanes, streets, roads, or rights-of-way, and the utility lines, pipes, wires and other facilities, which may be commonly used pursuant to the easements herein reserved in the following manner. A portion of any such costs and expenses equal to a fraction, the numerator of which is the number of Units in the Condominium and the denominator of which is the total number of Units in the Condominium and the total number of units, lots or other individual parcels within the Excluded Parcels benefitted by such easements, shall be paid by the Unit Owners of the Condominium. The balance of any such costs or expenses shall be paid by the owner or owners of the Excluded Parcels benefitted by such easements. Any portion of the costs and expenses to be paid by the Unit Owners of the Condominium shall be paid by the Association as a Common Expense. Notwithstanding the foregoing, if one or more Excluded Parcels benefitted by such easements are used for other than residential purposes, then such costs and expenses shall be apportioned to, and shared by the Unit Owners and the owner or owners of such Excluded Parcel or Parcels on any fair and equitable basis.

All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding on Declarant, its successors and assigns, and any Unit Owner, purchaser, mortgagee or other person having an interest in said land, or any part or portion thereof.

11. Dispute Resolution and Limitation on Litigation.

A. **Agreement Avoid Costs of Litigation and to Limit Right to Litigate Disputes.** The Association, the Declarant, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, the Bound Parties) agree to encourage the amicable resolution of disputes involving the Property, and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Bound Party agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving grievance or disputes between such Bound Party and any other Bound Party involving the Property, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the Bylaws or the Rules (collectively, a Claim) except for those Claims authorized in Section 11.B., shall be subject to the procedures set forth in Section 11.C.

B. **Exempt Claims.** The following Claims (the Exempt Claims) shall be exempt from the provisions of Section 11.C:

- i. Any suit by the Association against any Bound Party to enforce the provisions of Sections 2 and 12;

ii. Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Sections 4 and 7; and

iii. Any suit between the Owners (other than the Declarant) seeking redress on the basis of a Claim which would constitute a cause of action under the law of Minnesota in the absence of a claim based on the Declaration, Bylaws or Rules and Regulations, if the amount in controversy exceeds \$5,000.00.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in section 11.C, but there shall be no obligation to do so.

C. **Mandatory Procedures for All Other Claims.** Any Bound Party having a Claim (the Claimant) against any other Bound Party (the Respondent), other than a Claim exempted from this provision by Section 11.B. shall not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of such Claim until it has complied with the following procedures:

i. **Notice.** The Claimant shall notify each Respondent in writing of the Claim (the Notice), stating plainly and concisely:

a. The nature of the Claim, including date, time, location, persons involved, Respondent's role in the Claim and the provisions of this Declaration, the Bylaws, the Rules and Regulations or other authority out of which the Claim arises;

b. The basis of the Claim (i.e., the provision of the Declaration, Bylaws or Rules and Regulations triggered by the Claim);

c. What Claimant wants Respondent to do or not do to resolve the Claim; and

d. That Claimant wishes to resolve the Claim by mutual agreement with Respondent, and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

ii. **Negotiation.**

a. Each Claimant and Respondent (the Parties) shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

b. Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

iii. **Mediation.**

a. If the Parties do not resolve the Claim through negotiation within 30 day of the date of the Notice (or within such other person as may be agreed upon by the Parties) (the Termination of Negotiations), Claimant shall have 30 additional days within which to submit the Claim to mediation.

b. If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceeding.

iv. **Final and Binding Arbitration.**

a. If the Parties do not resolve the Claim through mediation, the Claimant shall have 30 days following termination (as determined by the mediator) of mediation proceedings (the Termination of Mediation) to submit the Claim to arbitration or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

b. This Section 11.C.iv is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration law of Minnesota. The arbitration award (the Award) shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of Minnesota.

D. **Allocation of Costs of Resolving Claims.**

i. Each Party shall bear all of its own costs incurred prior to and during the proceedings described in Sections 11.C. i., ii., and iii., including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator pursuant to Section 11.C.

ii. Each Party shall bear all of its own costs (including the fees of its attorney or other representative) incurred after the Termination of Mediation under Section 11.C. iii. and shall share equally in the costs of conducting the arbitration proceeding (collectively, the Post Mediation Costs), except as otherwise provided in this Section 11.D. ii., provided, however, if the Claim is rejected in whole or in part, the Claimant shall pay all Post Mediation Costs, including the costs incurred by the Respondent.

E. **Enforcement of Resolution.** If the Parties agree to resolve any Claim through negotiation or mediation in accordance with Section 11.C. and any Party thereafter fails to abide by the terms of such agreement, or if the Parties agree to accept the Award following arbitration and any Party thereafter fails to comply with such Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 11.C. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys fees and court costs.

12. **Assessments.**

A. **General Provisions.** Section 515B.3-115 of the Act specifies how assessments are assessed and collected. Section 515B.3-116 of the Act specifies how the lien for assessments is created and enforced, and to which interests it is either superior or subordinate. There is no alternative assessment program for Declarant.

B. **Special Assessments.** In addition to the annual general assessments, 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 Elements, including fixtures and personal property related thereto, any unforeseen or unbudgeted common expense, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.

C. **Date of Commencement of Assessments.** The general annual assessment provided for herein shall commence as to all Units on the first (1st) day of the month following the conveyance by Declarant of a Unit.

The first general annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of such assessments against each Unit at least thirty (30) days in advance of each annual assessment period. Written notice of such assessments shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors of the Association. The Association shall, upon demand, and for a reasonable charge, furnish a

certificate signed by an authorized representative of the Association setting forth whether the assessments on a specified Unit have been paid. A properly executed certificate of the Association as to the status of assessments on a Unit is binding upon the Association as of the date of its issuance.

13. **Special Declarant Rights.** In addition to such other rights reserved and granted to Declarant pursuant to the terms of this Declaration, Declarant hereby reserves the following rights (referred to in the Act as Special Declarant Rights), for its benefit:

A. the right to complete improvements indicated on the CIC plat, including the right to decide to construct the improvements and the timing for construction of such improvements, solely at Declarant's discretion, the right to establish, maintain, and control an architectural control committee to ensure that the maintenance and repair of any structures built, Condominium and improvements shall be consistent with Declarant's overall architectural plan for the CIC;

B. the right to create units by this Declaration;

C. the right to maintain sales offices, management offices, signs advertising the common interest community, and models on the Real Estate;

D. the right to use easements through the common elements for the purpose of making improvements within the CIC;

E. the right to appoint or remove any officer or director of the Association during the period of Declarant control, which shall expire on the earliest of the following events:

- i. surrender of the right of control by Declarant;
- ii. sixty (60) days after the conveyance of seventy-five (75%) percent of the Units to owners other than Declarant; or
- iii. five (5) years from the first conveyance of a unit to an owner other than Declarant.

14. **Statutory Requirements.** In accordance with the requirements of Section 515B.2-105 of the Act, Declarant hereby states the following:

A. The number of the Common Interest Community created hereby is the number set forth on the first page of this Declaration.

B. The name of the Association is **Patio Homes of The Lutheran Home Association, a Condominium.** The Association has been incorporated pursuant to the provisions of Minnesota Statutes Chapter 317A.

C. The common interest community created hereby is a condominium.

D. The legal description of the Property included within the common interest community created hereby (including all appurtenant easements) is set forth in the preamble to this Declaration.

E. The description of the boundaries of each Unit created by this Declaration, including the unit identifier for each Unit, is set forth on the CIC Plat, which plat has been filed for recording with the office of the Scott County Registrar of Titles and is hereby incorporated herein by reference.

F. The allocated interests are assigned equally to each Unit, subject to the provisions of this Declaration. Each Unit shall have one (1) vote in the affairs of the Association. Except as provided in subsection 2.A. through 2.H., each unit shall share the Common Expenses equally.

G. The common interest community created hereby shall consist of four (4) Units, all of which shall be restricted to residential use.

H. No additional units may be created by the conversion of Units, however, twenty (20) additional Units may be created by additions to the subdivision.

I. The use restrictions to which the Units are subject are located in Sections 3 and 4. There is no restriction on the sale price of a unit. The amount to be received upon the condemnation, casualty loss or termination of the common interest community are set forth in subsection 15.A., subsection 15.D., and Section 8.

J. Time shares are not permitted.

K. Matters relating to Special Declarant Rights are contained in Sections 11 and 13 hereof. Matters relating to the use of the Common Elements are contained in Sections 3 and 4 hereof. Matters relating to the care and maintenance of the Common Elements are contained in Section 5 hereof. Matters relating to assessments for Common Expenses are contained in Section 12 hereof. Matters relating to Limited Common Elements are contained in Section 3 hereof.

15. Miscellaneous.

A. Termination. Except in the case of a taking of all of the Units by eminent domain, this Condominium may be terminated only by the written agreement of all Unit Owners and of all first mortgagees of Units, and may not be abandoned, nor may such termination or abandonment be sought by act or omission, without such unanimous consent.

B. Right of Association to Hold Unit. Subject to the provisions of the Bylaws, the Board of Directors, acting on behalf of the Association, shall have the power to acquire, hold, lease, mortgage, and convey a Unit, including the power to purchase a Unit at the foreclosure sale for unpaid assessments.

C. Remedies of Association. In the event of the failure of any Unit Owner to comply with the provisions of this Declaration, the Articles or Bylaws or the Association, or the decisions, regulations or rules of the Association, the Association or any aggrieved Unit Owner may in addition to any other right or remedy available to the Association or such aggrieved Unit Owner, bring an action for the recovery of damages, injunctive relief or both. Suit to recover a money judgment for unpaid Common Expenses or for other amounts owing the Association may be maintained by the Association without foreclosing or waiving the lien securing the same. In the event of any such suit or action, the prevailing party shall be entitled to recover from the losing party, an amount equal to all costs, including attorney fees, incurred by such prevailing party in the preparation for and prosecution of such suit or action.

D. Condemnation. Subject to the provisions of the Act, the Association shall have control over any condemnation proceedings, negotiations, settlements and agreements with the condemning authority relating to the acquisition by the condemning authority of the Common Elements or any part thereof. The Association shall represent all unit owners with respect to any condemnation involving all or any part of the condominium, including condemnation proceedings, and any negotiations, settlements or agreements as part of the condemnation or in lieu of the condemnation, and all proceeds shall be payable in the first instance to the Association or an insurance trustee, for the benefit of the owners and mortgage holders.

E. Supplemental to Law. The provisions of this Declaration shall be in addition to and supplemental to the Act and all other provisions of law. This Condominium is not subject to an ordinance provided for in Section 515B.1-106 of the Act.

F. Definition of Terms. As used in this Declaration or in the Bylaws, any words or terms defined in the Act shall have the meaning there ascribed to them. The singular shall be deemed to include the plural wherever appropriate and each reference to a male pronoun shall include the female and neutral; and unless the context clearly indicates to the contrary, any obligation imposed shall be joint and several.

i. The "Association" shall mean Patio Homes of The Lutheran Home Association, a Condominium, a Minnesota non-profit corporation.

ii. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Unit which is a part of the Real Estate, including contract buyers, but excluding those having such interest merely as security for the performance of an obligation. Where any such Unit is being sold by the fee owner to a contract buyer who is entitled to possession of the Unit, the contract buyer shall be considered to be the owner of the Unit if:

(1) the rights of the contract seller hereunder are delegated to the buyer under such contract for deed; and (2) the buyer shall furnish proof of such delegation to the Association.

iii. **"Declaration"** shall mean and refer to this Declaration of Common Interest Community Number 1047, Patio Homes of The Lutheran Home Association, a Condominium.

iv. **"Articles"** or **"Articles of Incorporation"** shall mean and refer to the Articles of Incorporation of the Association recorded in the Office of the Secretary of State of the State of Minnesota.

v. **"Bylaws"** shall mean and refer to the Bylaws of the Association.


G. **Administration.** The Owners of Units in the Condominium covenant and agree that the administration of the Condominium shall be in accordance with the provisions of the Act, this Declaration, and the Bylaws of the Association. In the event of any conflict among the provisions of the Act, this Declaration, the Bylaws of the Association or any Rules and Regulations adopted by the Association, the documents shall control in the following order of priority: (i) the Act; (ii) this Declaration; (iii) the Bylaws and (iv) the Rules and Regulations.

H. **Joinder of Declarant.** During any period of Declarant control, the written consent of Declarant, the Federal Housing Administration, and the U.S. Department of Veterans Affairs shall be required for any amendment of either this Declaration or the Bylaws of the Association if the Condominium has received approval from the Federal Housing Administration or the Department of Veterans Affairs.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed the date and year first above written.


DECLARANT:

The Lutheran Home, a/k/a The Lutheran Home Association, a Minnesota nonprofit corporation

By 
Its Executive Vice President CF.

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

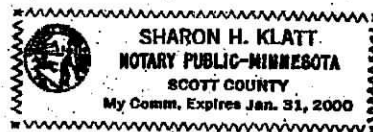
On this 3rd day of March, 1998, before me, a Notary Public within and for said County, personally appeared Charles Carlsson, to me personally known, who, being by me duly sworn did say that he is the Executive VP & CFO of The Lutheran Home, a/k/a The Lutheran Home Association, a Minnesota nonprofit corporation, the corporation named in the foregoing instrument, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and said Executive VP & CFO acknowledged said instrument to be the free act and deed of said corporation.



Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

Lommen, Nelson, Cole & Stageberg, P.A.
1800 IDS Center (GRK)
80 South 8th Street
Minneapolis, MN 55402-2123
(612) 339-8131



**EXHIBIT A TO DECLARATION
COMMON INTEREST COMMUNITY NUMBER 1047
PATIO HOMES OF THE LUTHERAN HOME ASSOCIATION, INC.**

Fractional Interest

Unit Number

Fractional Interest

1	1/4th
2	1/4th
3	1/4th
4	1/4th

Total: 1

**EXHIBIT B TO DECLARATION
COMMON INTEREST COMMUNITY NUMBER 1047
PATIO HOMES OF THE LUTHERAN HOME ASSOCIATION, INC**

[Bylaws]

**EXHIBIT C TO DECLARATION
COMMON INTEREST COMMUNITY NUMBER 1047
PATIO HOMES OF THE LUTHERAN HOME ASSOCIATION, INC**

[Additional Real Estate Parcels]

The additional real estate located upon the following described property designated as: That part of Lot 1, Block 1, Lutheran Home First Addition, according to recorded plat thereof on file and of record in the office of the County Recorder, Scott County, Minnesota, EXCEPT the parcel of land described as follows: Beginning at the northeast corner of said Lot 1; thence S00°02'04" E assumed bearing along the east line of said Lot 1 a distance of 156.00 feet; thence N89°58'10"W a distance of 202.54 feet; thence N00°02'04"W a distance of 156.00 feet to the north line of said Lot 1; thence S89°58'10"E along the north line of said Lot 1 a distance of 202.54 feet to beginning and there terminating.