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**COMMON INTEREST COMMUNITY NUMBER 191
A CONDOMINIUM**

**BOULDER RIDGE TOWNHOMES
DECLARATION**

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TABLE OF CONTENTS

		<u>Page</u>
1.	Definitions.....	1
2.	Description of the CIC.....	3
3.	Description of the Association.....	4
4.	Description of the Units.....	4
5.	Description of the Common Elements.....	4
6.	Description of the Limited Common Elements.....	4
7.	Allocated Interests.....	4
8.	Special Declarant Rights.....	5
9.	Additional Real Estate.....	5
10.	Model Units and Sales and Management Offices.....	6
11.	Declarant Control of the Association.....	6
12.	Restrictions on the Use, Occupancy or Alienation of Units and Common Elements.....	7
13.	Subdivision or Conversion of Units.....	9
14.	Assessments and the Association's Lien for Unpaid Assessments.....	9
15.	Maintenance of Units and Common Elements; Improvements and Alterations to Units; and Relocation of Boundaries Between Units.....	10
16.	Easements.....	11
17.	Insurance.....	12
18.	Reconstruction and Repair of CIC.....	15
19.	Waiver of Claims.....	16
20.	Termination.....	17
21.	Eminent Domain.....	17
22.	Rights of First Mortgagees and Insurers and Guarantors of First Mortgages.....	17
23.	Amendment.....	18
24.	Compliance with Provisions.....	18
25.	General Provisions.....	18

SIGNATURES..... 21
ACKNOWLEDGMENT..... 21
CONDOMINIUM PLAT Not Attached
EXHIBIT A – LEGAL DESCRIPTION OF SUBJECT PROPERTY..... A-1
EXHIBIT B – LEGAL DESCRIPTION OF ADDITIONAL REAL ESTATE B-1

**COMMON INTEREST COMMUNITY NUMBER 191
A CONDOMINIUM
BOULDER RIDGE TOWNHOMES
DECLARATION**

Pursuant to the provisions and authority of Minnesota Statutes, Chapter 515B, Centex Homes, a Nevada general partnership ("Declarant"), makes and executes this Declaration to submit certain real property which Declarant owns in fee simple and which is legally described on the attached **Exhibit A**, together with the buildings and improvements located thereon (the "Subject Property"), to the provisions of the Minnesota Common Interest Ownership Act, Minnesota Statutes, Chapter 515B.

1. Definitions. All terms and phrases used in this Declaration or in the other Project Documents have the meanings set forth in the Act unless otherwise defined in the Project Documents.

1.1. "Act" means the Minnesota Common Interest Ownership Act, Minnesota Statutes Chapter 515B and any successor statutes.

1.2. "Additional Real Estate" means the real estate that Declarant may add to the CIC pursuant to Section 9. The Additional Real Estate is legally described on the attached **Exhibit B**.

1.3. "Affiliate of Declarant" means any Person who controls, is controlled by, or is under common control with a Declarant. A Person "controls" a Declarant if the Person (i) is a general partner, officer, director, or employer of the Declarant; (ii) directly or indirectly or acting in concert with one or more other Persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in a Declarant; (iii) controls in any manner the election of a majority of the directors of a Declarant; or (iv) has contributed more than 20 percent of the capital of the Declarant. A Person "is controlled by" a Declarant if the Declarant (i) is a general partner, officer, director, or employer of the Person; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the Person; (iii) controls in any manner the election of a majority of the directors of the Person; or (iv) has contributed more than 20 percent of the capital of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

1.4. "Articles of Incorporation" or "Articles" means the Association's articles of incorporation.

1.5. "Association" means Boulder Ridge Association of Rochester, a Minnesota nonprofit corporation organized and existing under the authority of Minnesota Statutes Chapter 317A.

1.6. "Board" means the Association's board of directors.

1.7. "Bylaws" means the Association's bylaws.

1.8. "Common Elements" means all portions of the CIC other than the Units.

1.9. "Common Expenses" means any and all expenditures made and liabilities incurred by or on behalf of the Association including, but not limited to, amounts necessary to fund scheduled deposits in reserve accounts established to provide funds to pay for the repair and replacement of Common Elements, including Limited Elements, and the repair and replacement of the portions of the Units the Association is obligated to repair and replace.

1.10. "CIC" means Boulder Ridge Townhomes, Common Interest Community Number 191, Olmsted County, Minnesota including any Additional Real Estate subsequently added to the CIC.

1.11. "CIC Plat" means that part of this Declaration that constitutes the drawing of the layout of the Common Interest Community.

1.12. "Declarant" means Centex Homes, a Nevada general partnership; any person who executes an amendment to the Declaration adding Additional Real Estate to the CIC, other than persons holding interest in the real estate solely as security for an obligation, or any person who succeeds under the provisions of the Act to any Special Declarant Rights.

1.13. "Declaration" means this document, the CIC Plat and all amendments hereto.

1.14. "Eligible Mortgage" means a first mortgage held by a mortgagee who has submitted a written request to the Association asking the Association to notify the mortgagee of any action that, under the terms of the Declaration, requires the consent of a specific percentage of mortgagees.

1.15. "Fractional Allocation" means the fraction assigned to each Unit in Section 7 of this Declaration which determines: the undivided interest in the Common Elements appurtenant to the Unit and the share of the Association's Common Expenses the Board may assess against the Unit.

1.16. "FHA" means the Federal Housing Administration.

1.17. "FNMA" means the Federal National Mortgage Association.

1.18. "Limited Common Elements" means any part of the Common Elements the Declaration or the Act allocate for the exclusive use of one or more but fewer than all Units.

1.19. "Member" means the Person or Persons with membership rights in the Association. If a Person is the sole owner of a Unit, the Person is a Member of the

Association. If more than one Person owns a Unit, all Persons who own the Unit are considered to be, collectively, a single Member of the Association.

1.20. "Owner" means any Person, including a Declarant and contract for deed vendee, who own a Unit, but does not include a Secured Party.

1.21. "Person" means an individual, corporation, limited liability company, partnership, trustee under a trust, personal representative, guardian, conservator, government, governmental subdivision or agency, or other legal or commercial entity capable of holding title to real estate.

1.22. "Project Documents" means this Declaration, the Association's Articles of Incorporation and Bylaws and the rules and regulations of the Association, if any, as the same may be amended from time to time.

1.23. "Purchaser" means a person, other than a Declarant, who by means of a voluntary transfer acquires a legal or equitable interest in a Unit other than a leasehold interest of less than 20 years, including renewal options, or a security interest.

1.24. "Secured Party" means a Person owning a perfected interest in a portion of the CIC, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a mortgagee's interest in a mortgage, a vendor's interest in a contract for deed, a lessor's interest in a lease intended as security, a holder's interest in a sheriff's certificate of sale during the period of redemption, an assignee's interest in the assignment of leases or rents intended as security, a lender's interest in a cooperative share loan, a pledgee's interest in the pledge of an ownership interest, or any other interest intended as security for an obligation under a written agreement.

1.25. "Special Declarant Rights" means the rights reserved to Declarants in Section 8 of the Declaration.

1.26. "Subject Property" means the real property legally described on **Exhibit A** which is the property this Declaration subjects to the provisions of the Act; and any Additional Real Estate Declarant adds to the CIC pursuant to Section 9 and the Act, and any improvements or fixtures located thereon.

1.27. "Unit" means a physical portion of the CIC the boundaries of which are described in this Declaration and which is intended for separate ownership.

2. Description of the CIC. The name of the CIC is Boulder Ridge Townhomes. The CIC is a Condominium. The Olmsted County Recorder has assigned CIC Number 191 to the CIC. The CIC is located in the City of Rochester, Olmsted County, Minnesota, on the real estate legally described on Exhibit A. There are 8 Units in the CIC. The Unit is restricted to residential use. Declarant has reserved the right to add additional Units to the CIC as set forth in Section 9.

3. Description of the Association. Declarant has incorporated a Minnesota non-profit corporation under Minnesota Statutes Ch. 317A to administer the CIC. The corporation's

name is Boulder Ridge Association of Rochester. The duties and powers of the Association and the Board are set forth in the Act, the Articles of Incorporation, the Bylaws and this Declaration.

4. Description of the Units. The CIC Plat depicts the location of each Unit and sets forth the Unit Identifier assigned to and the dimensions of each Unit. The boundaries of the Units are the interior, unfinished surfaces of the perimeter walls, floors and ceilings of the Unit. All paneling, tiles, wallpaper, paint, floor coverings, and any other materials applied to the interior surfaces of the perimeter walls, floors or ceilings are part of the Unit, and all other portions of the perimeter walls, floors and ceilings, including perimeter doors and windows, and their frames, are part of the Common Elements. All spaces, interior partitions, and any fixtures and improvements located entirely within the described boundaries of a Unit are part of the Unit.

5. Description of the Common Elements. The Common Elements consist of all the real property and fixtures included in the CIC except for the real property and fixtures which are part of a Unit. The Common Elements include the Limited Common Elements. The Common Elements include, without limitation, all foundations, columns, girders, beams, supports, exterior walls, interior loadbearing walls, walls separating Units, corridors, stairs, yards, retaining walls, gardens, recreational areas and facilities, private roads, parking areas, driveway areas, central and appurtenant installations for utility services and all water, sanitary sewer and storm sewer mains, pipes and lines, and related fittings, which are located within the CIC but which are not part of a Unit and which are not publicly owned and maintained. Any portion of any chute, flue, duct, pipe, wire, conduit, bearing wall, bearing column, or other fixture that serves more than one Unit or any portion of the Common Elements is part of the Common Elements.

6. Description of the Limited Common Elements. All improvements such as driveways, shutters, awnings, window boxes, doorsteps, stoops, balconies, decks, patios, perimeter doors and windows, enclosed or unenclosed porches, constructed as a part of the original construction or subsequently constructed thereafter with the consent of the Board that serve a single Unit, and authorized replacements and modifications thereof, if located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit. Any portion of chute, flue, duct, pipe, wire, conduit, bearing wall, bearing column, or other fixture that lies partially within and partially outside the designated boundaries of a Unit that serves only that Unit is a Limited Common Element allocated solely to that Unit.

7. Allocated Interests. Each Unit is hereby assigned a Fractional Allocation. The Fractional Allocation assigned to a Unit determines the undivided interest in the Common Elements appurtenant to the Unit and the share of Common Expenses the Association may levy against the Unit. Each Unit's Fractional Allocation is a fraction the numerator of which is one and the denominator of which is the total number of Units in the CIC. For example, if there were six Units in the CIC, each Unit would be assigned a Fractional Allocation of 1/6th; the Owner of each Unit would own an undivided 1/6th interest in the Common Elements; and each Unit would be responsible for 1/6th of the Common Expenses. Fractional Allocations are equal for all Units. Declarant has reserved the right to create additional Units on the Additional Real Estate as set forth in Section 9. If Declarant executes and records one or more amendments to this Declaration adding Additional Real Estate to the CIC, each Unit's Fractional Allocation is automatically recalculated upon the recording of each amendment. The new Fractional Allocation assigned to each Unit after the recording of an amendment is a fraction, the numerator

of which is one and the denominator of which is the total number of Units in the CIC after the execution and recording of the amendment. For example, if there were 6 Units in the CIC, each Unit having a Fractional Allocation of 1/6th, and the Declarant recorded an amendment adding 6 Units to the CIC, the new Fractional Allocation assigned to each Unit after the recording of the amendment would be 1/12th. The reallocation of the Fractional Allocation of the Units does not alter or affect the amount of any liens for unpaid installments of annual or special assessments levied before the reallocation or an Owner's obligation to pay future installments of special assessments levied before the recording of the amendment.

8. Special Declarant Rights. Except for the Special Declarant Rights described in this Section 8, Declarant's rights and obligations with respect to any Units Declarant owns are the same as any other Unit Owner. Declarant reserves, for the benefit of any Declarant, the right to:

8.1. Complete improvements depicted on the CIC Plat;

8.2. Add Additional Real Estate to the CIC pursuant to Section 9 below;

8.3. Maintain sales offices, management offices, signs advertising the CIC and models pursuant to Section 10 below;

8.4. Appoint or remove and appoint replacements for the Association's directors and officers pursuant to Section 11; and

8.5. Use easements through the Common Elements for the purpose of making improvements within the CIC or on any Additional Real Estate pursuant to Section 16.2.

9. Additional Real Estate.

9.1. Declarant reserves the right to record one or more amendments to this Declaration adding all or any part of the Additional Real Estate to the CIC. The right to add Additional Real Estate will expire on the date which is seven years after the date the Declarant records this Declaration. If, prior to the expiration of the seven year period, Declarant determines that it will not add all or any portion of the Additional Real Estate to the CIC, Declarant may record a statement to that effect in the county land records, and upon the recording of the statement, Declarant's right to add the Additional Real Estate described in the statement to the CIC terminates.

9.2. Declarant may add portions of the Additional Real Estate at different times. Declarant makes no assurances regarding the configuration or boundaries of the portions of the Additional Real Estate Declarant may add to the CIC; Declarant makes no assurances as to the order in which Declarant will add portions of Additional Real Estate to the CIC; and Declarant makes no assurances that Declarant will add any of the Additional Real Estate to the CIC.

9.3. Declarant may create a maximum of 134 Units on the Additional Real Estate. All Units created on the Additional Real Estate are restricted to residential use.

9.4. Any and all buildings and Units on the Additional Real Estate, when and if added will be compatible with the other buildings and Units in the CIC in terms of the quality of construction and will be substantially complete before the Additional Real Estate is added to the CIC. In recognition of ongoing developments in the field of housing construction and energy supply and changes in consumer demand for housing, Declarant makes no assurance with regard to the architectural style, the principal materials which may be employed in the construction or the size of the Units or buildings, if any, erected upon the Additional Real Estate when and if the Additional Real Estate is added to the CIC.

9.5. All restrictions contained in this Declaration which affect the use, occupancy or alienation of Units will apply to all Units created on any Additional Real Estate which Declarant adds to the CIC. An amendment which adds Additional Real Estate to the CIC may contain additional restrictions as may be necessary to reflect the different character of the Additional Real Estate which is the subject of the amendment. Any additional restrictions contained in an amendment to this Declaration affect only the Additional Real Estate described in the amendment.

9.6. Before recording an amendment adding Additional Real Estate to the CIC, Declarant must serve notice of its intention to add Additional Real Estate as provided for in the Act and must, if applicable, obtain all written approvals the FHA or the VA require. If Declarant complies with the Act and the Declaration, Declarant may add the Additional Real Estate without the approval or consent of the Association or any Owner. Any assurances set forth in this Declaration regarding Additional Real Estate do not apply to the Additional Real Estate if Declarant does not add the Additional Real Estate to the CIC. If an Amendment adding Additional Real Estate to the CIC creates additional Units, the Fractional Allocation assigned to each Unit is reallocated pursuant to Section 7.

10. Model Units and Sales and Management Offices. Declarant reserves the right to maintain sales offices, management offices and model units in Units, on Common Elements or on the Additional Real Estate. Declarant will initially use Units numbered 0107 and 0108 for sales offices and model units. Declarant reserves the right to increase or decrease the number of units Declarant uses as sales offices or models; to relocate the sales offices or models to Units, or other Additional Real Estate or to use a unit constructed on the Additional Real Estate as a management office. Declarant further reserves the right to maintain signs on the Common Elements and in or on models advertising the CIC, including the advertisement and promotion of the sales of Units. Notwithstanding anything to the contrary in this Declaration, so long as Declarant owns at least one Unit in the CIC for sale, the Association shall not take any action that adversely affects Declarant's ability to sell the Unit or Units without prior written consent of Declarant.

11. Declarant Control of the Association. Declarant designated the Association's initial Board in the Articles of Incorporation. The Board has three members. The Declarant, or any Person the Declarant designates, has the exclusive right to appoint the three current members of the Board and to remove one or more of the three directors, at will, and appoint their successors, until the earlier of:

- 11.1. five years from the date of the filing of the Declaration;
- 11.2. Declarant's voluntary surrender of Declarant's right to appoint the three directors: or
- 11.3. the date 60 days from the date Declarant has conveyed 75% of the Units to Purchasers.

So long as Declarant has the right to appoint and remove directors, the Declarant may also appoint and remove the Association's officers. Within 60 days of the date Declarant has conveyed 50% of the Units to Purchasers, the Board must call and hold an annual or special meeting of the Members. At that meeting, the Members must elect two additional directors. From and after that election, the Board consists of five directors. Within 60 days after the date a Declarant has conveyed 75% of the Units to Purchasers, the Board must call and hold an annual or special meeting of the Members. At that meeting, the terms of all five directors expire, and the Members may elect individuals to fill all five director positions. The term of office of two directors is fixed for three years; the term of office of two directors is fixed at two years; and the term of office of one director is fixed at one year. Thereafter, all directors are elected for three year terms. Directors may take office upon election and hold office until they resign, the Members remove them pursuant to the Bylaws or their terms expire and the Members elect successor directors. To calculate the percentage of Units a Declarant has sold to Purchasers, the number of Units the Declarant has sold to Purchasers is divided by the total number of Units the Declarant has built or has reserved the right to build and add to the CIC.

12. Restrictions on the Use, Occupancy or Alienation of Units and Common Elements. The Units and the Common Elements are subject to the following restrictions:

12.1. The Units may be occupied and used only for residential purposes. Only Owners, their families, guests and tenants may occupy and use Units. Units may not be used in a manner that violates Federal law, State law or local ordinances.

12.2. Except as provided in Minn. Stat. §515B.3-112, any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Unit to which that interest is allocated is void. Owners may not lease their Units for any period less than 30 days. Other than the foregoing restriction, Owners have the absolute right to lease their Units provided the Owner and the tenant have a written lease agreement; the lease agreement obligates the tenant to observe each of the restrictions and perform each of the covenants the Project Documents impose upon an Owner; the lease agreement expressly states that the Association is an intended third party beneficiary of tenant's obligation to observe the terms of the Project Documents; and the Owner delivers a copy of the lease to the Association before commencement of the lease term.

12.3. No Owner, tenant or occupant may obstruct the Common Elements or store anything in or on the Common Elements without the Board's prior, written consent. No Owner, tenant, or occupant may keep or store any trailers or major recreational equipment, including, but not limited to, camper trailers, pick-up campers, motorized

self-propelled motor homes, boats, boat trailers, snowmobiles or snowmobile trailers on any portion of the Units or the Common Elements. No Owners, tenants or occupants may store anything in the garage portion of a Unit that prevents use of the garage portion of the Unit for storage of the Owner's, tenant's or occupant's personal automobile.

12.4. The occupation and use of Units and the Common Elements is subject to rules and regulations the Board establishes pursuant to Article III of the Bylaws. If, during the period Declarant control, Units are subject to mortgages the FHA or VA insures or guaranties, the Board must acquire any necessary approvals from the VA and FHA before enforcing any rules and regulations.

12.5. No one may do or keep anything in any Unit or in the Common Elements that will increase the rate of insurance on the CIC without the Board's prior written consent. No Owner may permit anything to be done or kept in his or her Unit or in or on the Common Elements that will result in the cancellation of insurance on the buildings or contents thereof.

12.6. Owners, tenants and occupants may not cause or permit anything, including, but not limited to signs, awnings, canopies, shutters, window boxes, decks, patios, balconies, porches or radio or television antenna to be affixed to or placed on the exterior walls, roof or any other exterior part of the Units, or on the Common Elements without the Board's prior written consent. No clothes, sheets, blankets, laundry or any kind of other articles shall be hung out or exposed on any part of the Units or Common Elements.

12.7. No owner, tenant or occupant may raise, breed or keep animals (including, but not limited to, dogs, cats, reptiles, rabbits, livestock, fowl or poultry of any kind) in any Unit or in the Common Elements, except that Owners, tenants and occupants may keep dogs, cats or other household pets in Units, subject to all rules and regulations the Board adopts regarding the keeping of pets. The Owner, tenant or occupant may not keep, breed or maintain dogs, cats or other household pets for any commercial purpose. The Owner, tenant or occupant must permanently remove any pet causing or creating a nuisance or unreasonable disturbance from the CIC upon 3 days written notice from the Board.

12.8. No one may carry out any noxious or offensive activity in any Unit or in or on the Common Elements, nor may anyone do anything therein, either willfully or negligently, which may be a nuisance to the other Owners, tenants or occupants. No Owner, tenant or occupant may overload the electric wiring in the buildings, or operate any machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Board, an unreasonable disturbance to others or connect any machines, appliances, accessories or equipment to the heating or plumbing system, without the Board's prior written consent.

12.9. Except as otherwise provided herein, no Owner, tenant or occupant may conduct, maintain, or permit any industry, business, trade, occupation or profession of any kind, commercial, educational, religious, or otherwise, in any Unit or on the

Common Elements. Nothing herein contained shall be construed in such a manner as to prohibit an Owner, tenant or occupant from:

12.9.1. maintaining his or her professional library;

12.9.2. keeping his or her personal business or professional records or accounts therein; or

12.9.3. handling his or her personal business or professional telephone calls or correspondence therefrom.

12.10. No "For Sale" or "For Rent" signs, advertising signs or other displays may be maintained on any part of the Units or Common Elements except with consent of the Board or pursuant to rules and regulations the Board adopts; provided however, that nothing contained herein limits Declarant's rights as provided in Section 10.

12.11. Nothing shall be constructed on or removed from the Common Elements and the Common Elements may not be altered or disturbed without the prior written consent of the Board.

12.12. The Units shall not be subject to Time Shares, as that term is defined in the Act.

13. Subdivision or Conversion of Units. Owners, including Declarant, may not subdivide Units or convert Units to Common Elements as contemplated in Section 515B.2-112 of the Act.

14. Assessments and the Association's Lien for Unpaid Assessments.

14.1. The Board must levy annual assessments and may levy special assessments for Common Expenses against each Unit pursuant to the procedures stated in Article V of the Bylaws. Owners may not withhold payment of annual or special assessments or reduce the amount of the Owner's payments as a set-off against claims which the Owner asserts against the Association. If an Owner fails to pay any installment of an annual or special assessment, in full, within 10 days of the date due, the payment becomes diligent and begin to accrue interest without any notice to the Owner and without any action by the Board. Interest accrues as of the date the payment was first due at the judgment rate of interest as determined by Minnesota Statutes Section 549.09. In addition, the Board has the right to charge a late fee if assessment payments are not made when due. The Board must establish and may modify the amount of the late fee by resolution. If any installment of an assessment becomes more than sixty (60) days past due, 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. In the foreclosure of the Association's lien for unpaid assessments, either by action or by advertisement, or a suit to recover a money judgment for unpaid assessments, the Association may recover all unpaid annual and special assessments, interest and late charges as described above and all costs of collection including actual attorneys' fees and costs.

14.2. Each Owner is personally liable for all assessments levied against the Owner's Unit. If more than one individual or entity owns a Unit, all Owners of the Unit are jointly and severally liable for annual and special assessments.

14.3. The Association has a lien on a Unit for the amount of any assessment the Board levies against the Unit. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due. The Association's lien has priority over all other liens except:

14.3.1. liens and encumbrances recorded before the recordation of this Declaration;

14.3.2. the lien of a recorded, first mortgage on the Unit; and

14.3.3. liens for real estate taxes and other governmental assessments levied against the Unit.

If a first mortgage on a Unit is foreclosed and no Owner or junior lienholder redeems the Unit from foreclosure during the period of redemption provided for in Minn. Stat. Chs. 580, 581 or 582, the holder of the Sheriff's Certificate of Sale from the foreclosure of the first mortgage takes title to the Unit subject to unpaid assessments for Common Expenses to the extent provided for in Minn. Stat. § 515B.3-116. If the holder of the first mortgage that the VA guarantees accepts a deed in lieu of foreclosure of the first mortgage, the mortgagee accepting the deed in lieu of foreclosure takes title to the Unit free of the lien of unpaid assessments for Common Expenses except the mortgages title to the Unit as subject to the Association's lien. In general, Minn. Stat. § 515B.3-116 states that the holder of the Sheriff's Certificate of Sale from the foreclosure of the first mortgage takes title to the Unit subject to unpaid assessments for Common Expenses which become due, without acceleration, during the six months immediately preceding the first day following the end of the Owner's period of redemption, except for Common Expenses levied pursuant to Sections 2(e), 2(f) and 2(h) of Article V of the Bylaws.

14.4. The Association is subject to Minn. Stat. § 515B.3-116(d), as the same may be amended from time to time. The Statute currently provides that proceedings to enforce an assessment must be instituted within three (3) years after the last installment of the assessment becomes payable or are barred.

14.5. The Board may foreclose the Association's lien for assessments in like manner as a mortgage of real property containing a power of sale pursuant to Minn. Stat. Ch. 580, or by action pursuant to Minn. Stat. Ch. 581. The Association shall have a power of sale to foreclose the lien pursuant to Minn. Stat. Ch. 580. The period of redemption for Unit Owners is 6 months from the date of sale.

15. Maintenance of Units and Common Elements; Improvements and Alterations to Units; and Relocation of Boundaries Between Units.

15.1. The Association must maintain, repair and replace, in the manner and to the extent the Board deems necessary, the Common Elements, including the Limited