

**COMMON INTEREST COMMUNITY NUMBER 843
A PLANNED COMMUNITY
LARPENTEUR VILLA TOWNHOMES
DECLARATION**

This Declaration is made in the County of Ramsey, State of Minnesota, on this _____ day of April, 2021, by CMQ Properties, LLC, a Minnesota limited liability company, hereinafter called "Declarant", pursuant to the provisions of Minnesota Statutes Chapter 515B known as The Minnesota Common Interest Ownership Act, hereinafter referred to as the "Act", for the purpose of creating, Common Interest Community Number 843, a planned community.

WHEREAS, the Declarant is the Owner of real property in the County of Ramsey, State of Minnesota, legally described as:

Lots 1 through 4, Block 1 and Outlot A LARPENTEUR TOWNHOMES

WHEREAS, the real property described above, located in the County of Ramsey is herein collectively referred to as the "Property",

WHEREAS, the Declarant desires to establish on the Property a plan for a permanent residential community to be owned, occupied, and operated for the use, health, safety and welfare of its resident Owners and Occupants, and for the purpose of preserving the value, structural quality, and the original architectural aesthetic character of the Property, and

WHEREAS, the Property is not subject to an ordinance referred to in Section 515B.1-106(c) of the Act, governing conversions to common interest ownership, and is not subject to a master association as defined by the Act, and

WHEREAS, it is the intention of the Declarant to construct 4 town home Lots.

NOW, THEREFORE, the Declarant hereby declares that all of the Property described above shall be subject to this Declaration set forth below and the terms and conditions of this Declaration shall run with the real Property and be binding on all parties having a right, title or interest in the above described properties or any part thereof, their heirs, successors, and assigns and shall inure to the benefit of each Owner thereof.

**ARTICLE I
DEFINITIONS**

Section 1 **"Association"** shall mean and refer to Larpenteur Villa Townhomes Association. Said Association has been incorporated under Chapter 317A of Minnesota Statutes.

Section 2 **"Board"** shall mean the Board of Directors of the Association as provided in the By-Laws.

Section 3 **"Building"** shall mean and refer to a part of a structure consisting of one or more floors designed and intended for occupancy as a single family residence and located within the boundaries of a Lot. It shall also refer to any single story structure constructed for the sole purpose of acting as a garage.

Section 4 **"By-Laws"** shall mean the By-Laws governing the operation of the Association as amended from time to time.

Section 5 **"Common Elements"** shall mean and refer to all parts of the Property except the Lots, including all improvements thereof, owned by the Association for the common benefit of the owners and occupants. The Common Elements are depicted on the Plat and include but are not limited to OUTLOT A Larpenteur Townhomes.

Section 6 **"Common Expenses"** shall mean and include all expenditures made or liabilities incurred by or on behalf of the Association and incident to its operation, including without limitation allocations to reserves and those items specifically identified as Common Expenses in the Declaration or Bylaws.

Section 7 **"Declarant"** shall mean and refer to CMQ Properties, LLC, a Minnesota limited liability company and its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 8 **"Declaration"** shall mean and refer to this Declaration applicable to this Common Interest Community recorded in the office of the Registrar of Titles, Ramsey County, Minnesota.

Section 9 **"Eligible Mortgagee"** shall mean and refer to any person owning a mortgage on any Lot which mortgage is first in priority upon foreclosure to all other mortgages that encumber such Lot, and which has requested the Association, in writing, to notify it regarding any proposed actions, which requires approval by a specified percentage of the Eligible Mortgagees.

Section 10 **"Governing Document"** shall mean and refer to this Declaration, By Laws adopted by the Association, the Articles of Incorporation of Larpenteur Villa Townhomes, and all rules and regulations adopted by the Association. In event of a conflict between the terms of the Governing Documents, the provisions of the Declaration shall supersede and override the provisions of the By Laws, the Articles of Incorporation, and rules and regulations adopted by the Association. In the event of a conflict between the provisions of the By Laws and the Articles of Incorporation the provisions of the By Laws shall supersede and override the Articles of Incorporation, and the rules and regulations adopted by the Association.

Section 11 **"Lot"** shall mean and refer to any Lot shown upon any recorded plat of town homes with the exception of public area, and shall include any buildings located on a Lot. For the purpose of this Declaration the term "Lot" shall carry the same meaning and be a substitute for the term "Unit" as defined in Minnesota Statute, Section 515B.1-103(35). The boundaries of the Lot shall be the boundaries shown on the recorded plat known as Larpenteur Townhomes, there being no upper or lower boundaries, and each Lot shall be identified by the Lot number and block number, shown on the recorded plat known as Larpenteur Townhomes.

Section 12 **"Member"** shall mean all persons who are Members of the Association by virtue of being Owners as defined by this Declaration.

Section 13 **"Occupants"** shall mean and refer to any person or persons other than an Owner in possession of or residing on a Lot.

Section 14 **"Owner"** shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any Lot, but excluding those having such interest merely as security for the performance of an obligation within the meaning of Section 515B.1-103(32) of the Act. In the event there is an outstanding contract for deed for the purchase of a Lot "Owner" shall refer to the person, whether one or more, or entities who are the contract purchasers in said contract for deed and not the holder of fee simple title. If there exists more than one outstanding contract for deed for the purchase of a Lot, "Owner" shall mean and refer to that person or entity who appears as purchaser in the last contract for deed entered into. "Owner" shall also include any person holding a life estate in any Lot.

Section 15 **"Plat"** shall mean and refer to the recorded plat depicting the Property pursuant to the requirements of Section 515B.2-1101(d) of the Act, and complying with the requirements of Minnesota Statutes Chapter 505, as applicable, including any amended or supplemental Plat recorded from time to time in accordance with the Act.

Section 16 **"Property"** shall mean and refer to all real property subject to this Declaration which is legally described as follows:

Lots 1 through 4, Block 1 and Outlot A Larpenteur Townhomes

Section 17 **"Rules and Regulations"** shall mean and refer to the Rules and Regulations of the Association as approved from time to time pursuant to Article XII hereof.

Any terms used in the governing documents, and defined in the Act and not in this Article shall have the meaning set forth in the Act.

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION

Section 1 **Property.** The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is more particularly described as follows:

Lots 1 through 4, Block 1 and Outlot A Larpenteur Townhomes.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS
IN THE ASSOCIATION

Section 1 **Membership.** Each Owner of a Lot which is subject to assessment by the Association shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of such Lot, and shall be transferred with the conveyance of the Owners interest in the Lot.

Section 2 **Voting Rights.** Each Owner shall have one vote for each Lot owned. When more than one person owns any Lot, all such persons shall be members. If more than one person owns a Lot, the vote for such Lot shall be exercised pursuant to a written proxy signed by all persons owning an interest in said Lot assigning the vote for said Lot to one person, which proxy shall be effective until it is revoked by a writing filed with the Secretary of the Association. In no event shall more than one vote be cast with respect to any Lot.

ARTICLE IV
COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

Section 1 **Common Elements.** Common elements and their characteristics are as follows:

- (a) All of the Property not included within the Lots constitutes Common Elements. Common Elements include those parts of the Property designated as Common Elements on the Plat or in the Act. The Common Elements are owned by the Association for the benefit of the Owners and Occupants. For the purpose of this declaration the common elements are legally described as OUTLOT A, Larpenteur Townhomes and all improvements located thereon.
- (b) The Common Elements shall be subject to a permanent easement for services, public and private utilities, access, use and enjoyment in favor of each Lot and its Owners and Occupants; subject to the rights of the association to establish reasonable rules and regulations governing the use of the Property.
- (c) Common Expenses for the maintenance, repair, replacement, management and operation of the Common Elements shall be assessed and collected from the Owners in accordance with Article V.

Section 2 **Limited Common Elements.** The Limited Common Elements are those parts of the Common Elements reserved for the exclusive views of the Owners and Occupants of the Lots to which they are allocated, and their rights to the use and enjoyment thereof are automatically conveyed with the conveyance of such Lots. The Limited Common Elements are described and allocated to the Lots as follows:

- (a) Shoots, flues, ducts, pipes, wires, conduits and other utilities installation, utility or bearing walls, bearing columns or any other component or fixture lying partially within and partially outside the boundaries of a Lot and serving only the Lot, are allocated to the Lot they serve. Any portion of such installations serving or affecting the functions of all Lots or any portion of the Common Elements is a part of the Common Elements, but is not a Limited Common Element.
- (b) Improvements, if any, located outside the Lot's boundaries, such as decks, utility closets, patios, balconies, shutters, awnings, window boxes, door steps, stoops, perimeter doors and windows, constructed as part of the original construction to serve a single Lot and authorized replacements and modifications thereof, are Limited Common Elements allocated exclusively to the Lot served.

Section 3 **Association Rights and Duties.** The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management, control, repair and maintenance of the Common Elements and all improvements thereon, and to the degree hereinafter specified to the exteriors of buildings and the yard areas. For the purpose of preserving the architectural character, quality and uniform high standards for appearance of the property, the Association shall (i) provide for exterior maintenance upon the building located on each Lot which is subject to assessment as follows: paint and exterior siding, repair and replace roof, gutters, down spouts, garage doors (except hardware), exterior doors (except hardware) and exterior siding and other building services; (ii) provide for lawn, shrub and tree maintenance on all Lots, included but not limited to, watering, (iii) provide for all driveway, walkway and private street maintenance, and (iv) provide for maintenance of all personal property located on the Common Elements, including but not limited to all playground equipment.

Section 4. **Services.** The Association may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for proper operation whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Property or the enforcement of this Declaration. The Association shall arrange trash collection, snow removal, and other common services to Owners, and to maintain exteriors, yard areas and driveways.

Section 5 **Personal Property for Common Use.** The Association may acquire and hold for the beneficial use and enjoyment of all of the Owners, tangible and intangible personal property, and may dispose of the same by sale or otherwise.

ARTICLE V
COVENANTS FOR ANNUAL ASSESSMENTS
AND SPECIAL ASSESSMENTS

Section 1 **Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned by it within the Property hereby covenants, and each Owner of any Lot subject to this Declaration by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be and hereby is deemed to covenant and agrees to pay the Association: (a) annual assessments or charges; (b) special assessments, and (c) insurance assessments to be fixed, levied, established and collected from time to time as hereinafter provided. The annual, special, and insurance assessments, together with fees, charges, late charges, fines, interest imposed by the Association pursuant to Section 515B.3-102(a) (10) (11) and (12) of the Act, costs of collection thereof and reasonable attorney's fees, shall be a charge on each such Lot and shall be a continuing lien on each such Lot against which such assessment is made. Each such assessment, together with interest thereon, costs of collection thereof and reasonable attorney's fees, shall be a personal obligation of the person or legal entity who was the Owner of each such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to such Owner's successor in title to the Lot against which such assessment was made unless expressly assumed by such successor. Filing of this Declaration constitutes record notice and perfection of any lien under this Article, and no further filing of any notice of or claim for the lien is required.

Section 2 **Purpose of Assessments.** The assessments for Common Expenses levied by the Association shall be used exclusively for the purposes of promoting the pleasure, health, safety and welfare of the residents of the properties and, in particular, for the maintenance of the Property, services and facilities devoted to this purpose and related to the use and enjoyment of the improvements erected upon each Lot. An adequate reserve fund shall be maintained for maintenance, repairs and replacement of the Common Elements of the Property which must be maintained, repaired or replaced by the Association on a periodic basis, including, without limitation, roofs, exterior wall surfaces and driveways.

Section 3 **Basis of Annual Assessments.** Annual assessments shall be levied on the basis of number of Lots assuming one building per Lot.

Section 4 **Maximum Annual Assessments.** Until January 1, 2022, the maximum annual assessment shall be \$1,200.00 per Lot. From and after January 1, 2022, the maximum annual assessment may be increased each year by the greater of six percent (6%) or the percentage increase during the previous 12 month period (as measured from the date on which the Board of Directors fixes such annual assessment pursuant to Section 8 hereof) in the

Consumer Price Index. "All Urban Consumers", published for the Minneapolis/St. Paul metropolitan area by the U.S. Department of Commerce, Bureau of Labor Statistics ("CPI") or such other index as may be published in the future by the Federal Government as replacement for the CPI, provided, however, that such maximum annual assessment may be increased above the amount of any such increase on the CPI by a vote of members holding two-thirds (2/3) of the votes of the membership who are voting in person, by proxy, or by mail at a meeting duly called for that purpose. The Board of Directors may fix the annual assessment at any amount not in excess of the maximum

Section 5 **Special Assessments.** In addition to the annual assessment authorized above and insurance authorized below, the Association may levy, in any assessment year, special assessments applicable to that year only for the purpose of defraying, in whole or in part, the cost of maintaining the properties which are to be maintained by the Association; provided, however, that any such assessment shall have the assent by a vote of members holding two-thirds (2/3) of the voting membership who are voting in person, by proxy or by mail at a meeting duly called for this purpose.

Section 6 **Insurance Assessments.** In addition to the annual assessments and special assessments authorized above there shall be an assessment for the purpose of providing a reserve from which all premiums for those insurance policies required by Article IX of this Declaration shall be paid. Said assessment for each Owner shall be set by the Association first determining the insurance premium necessary to provide for the insurance required by Minn. Stat. 515B.3-113. The assessment shall then be set by the Association at a rate which will create a reserve equal to 1.5 times said insurance premium.

Section 7 **Notice and Quorum Requirements for Any Action Authorized Under Sections 4 and 5.** Written notice of any meeting called for the purpose of taking any action authorized under Section 4 or 5 of this Article V shall be sent to all members not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting, excluding the day of the meeting. At any such meeting called, the presence of members, of proxies, and of mailed ballots of members entitled to cast sixty percent (60%) of all of the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting.

Section 8 **Uniform Rate.** As applied to each Lot, annual assessments, insurance assessments, and special assessments must be fixed at a uniform rate for all Lots. Any assessment or portion thereof benefitting fewer than all of the Lots may be assessed exclusively against the Lots 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 Lot. If Common Expense liabilities are reallocated for any purpose authorized by the Act, Common Expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense liabilities.

Section 9 **Commencement of Assessments**, The assessments provided for herein shall commence upon the execution and filing of this Declaration.

Section 10 **Duties of Board of Directors**. At least thirty (30) days in advance of each annual assessment period, but no later than November 30 of the year preceding the year in which the assessment is to be collected. The Association's Board of Directors shall fix the amount of the annual assessment against each Lot, establish due dates for such assessment, and send written notice of such annual assessments and due dates thereof to every Owner subject thereto. At this time, the Board of Directors shall also prepare a roster of the Lots and all assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by all Owners. The annual assessment period shall commence on January 1st and run to December 31st of the next succeeding year. The Board of Directors shall hold this meeting annually.

The Board of Directors shall also fix the due date of any special assessment to be levied against each Lot in any assessment year. The Board shall send written notice of such special assessments and the due dates thereof to every Owner subject thereto within thirty (30) days after the Owners have approved such special assessment pursuant to Section 5 of this Article V.

The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of issuance.

Section 11 **Effect of Non-Payment of Assessment**. If the assessments are not paid on the date when due, then such assessments shall become delinquent and shall, together with interest thereon, all reasonable attorney's fees incurred, and costs of collection thereof hereinafter provided, become a continuing lien on the Lot. Said lien on the Lot may be enforced and foreclosed by action at law in the same manner as a mortgage. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest at the highest rate permitted by the Minnesota Law for mortgages on a single family Residential property in force on the due date of the assessment from the due date, and the Association may bring an action at law or a suit in equity against the Owner personally obligated to pay the same, or may foreclose the lien against the Lot pursuant to Minnesota Statutes Chapter 580 and 581. There shall also be added to the amount of such assessment the cost of preparing and filing the Complaint in such action, and in the event that judgment is obtained, such judgment shall include interest on the assessment as above provided, and reasonable attorney's fees to be fixed by the Court, together with other costs of the action. Fees, charges, late charges, fines and interest may be assessed as provided in Section 515B.3-116(a) of the Act.

No Owner may waive or otherwise avoid liability for the assessments provided for herein by abandonment of his or her Lot.

Section 12 **Subordination of Lien to First Mortgage**. The lien of the assessments provided for herein shall be subordinate to the lien held by any First Mortgagee now or hereafter

placed upon a Lot subject to assessments; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the sale or transfer of a Lot and the expiration of the period of redemption from a mortgage foreclosure sale or conveyance by deed in lieu of foreclosure. The purchaser at a foreclosure sale of a first mortgage shall, upon expiration of the period of redemption, hold title to the Lot free and clear of any existing lien for such assessments unless such purchaser specifically assumes such assessments. Such sale or transfer shall not release a Lot from the lien of any assessments which thereafter become due.

Section 13 **Judgment.** Assessments levied under Section 515B.3-116 of the Act to pay a judgment against the Association may be levied only against the Lots existing at the time the judgment was entered, in proportion to their common expense liabilities.

ARTICLE VI **EASEMENTS**

Section 1 **General.** In addition to the easements, covenants, restrictions and conditions of Article VIII concerning exterior controls, all Lots shall be subject to easements and covenants hereinafter specifically described for the benefit of the specified adjoining Lots, all as more fully set forth hereinafter in this Article. The easements set forth in this Article shall supplement and not limit any easements described elsewhere in this Declaration or recorded, and shall include reasonable access to the easement areas through the Lots in the Common Elements for purpose of maintenance, repair, replacement and reconstructions.

Section 2 **Owners' Right to Support.** Each Owner shall have the right to lateral support for his or her Lot and such right shall be appurtenant to and pass with the title to each Lot.

Section 3 **Delegation of Use.** Any Owner may delegate, in accordance with the By-Laws and Association Rules and Regulations, his or her right of enjoyment of the Common Elements and facilities to the members of his or her family, his or her tenants, or contract purchasers who reside on the Lot.

Section 4 **Utilities.** The property shall be subject to a non-exclusive appurtenant easement for all utilities, water and sewer, and similar services, which exist from time to time, as constructed or referred to in the Plat, or as otherwise described in this Declaration or any other duly recorded instrument. Each Lot and the rights of the Owners and Occupants thereof, shall be subject to a non-exclusive easement in favor of the other Lots for all such services, including without limitation, any gas, electrical, sewer or water lines servicing other Lots. Each Lot shall also be subject to a non-exclusive easement for maintenance, repair and replacement of utility facilities, including but not limited to utility metering devices, which easement shall run in favor of the Association, all utility companies including governmental entities, which provide services to the Lots.

Section 5 **Easement for Overhangs and Porches.** As part of the original construction of a building the Declarant intends to construct porches, fireplaces, and other overhangs which may encroach upon the Common Elements. The Owners of any Lot to which is attached a porch, fireplace or other overhang which encroaches on the Common Elements shall be granted an exclusive easement over and across the Common Elements to maintain the encroachment. An easement shall be granted for any encroachment resulting from any reconstruction, alternations allowed pursuant to Article VIII hereof, repair, settlement or movement. Use of any porch, fireplace or other overhang which encroaches shall be limited solely to the Owner and Occupant of the Lot to which it is attached.

Section 6 **Access and Parking.** Every Owner shall have the right and non-exclusive easement over across Common Elements for the purpose of ingress to and egress from their Lot by both vehicular and pedestrian traffic. In addition, thereto, each Owner shall have a non-exclusive easement for the purpose of parking any vehicle on that portion of the Common Elements which is paved and designated for the purpose of vehicular parking. No vehicle shall be parked in any manner which obstructs the use of the Common Elements by other Owners for the purpose of ingress and egress. No boat, trailer, recreational equipment or any other item shall be parked or stored in any portion of the Common Elements designated for the purpose of vehicular parking for a period of longer than 24 hours in any seven day period, and shall be parked in a manner which does not obstruct the use of the Common Elements by other owners for the purpose of ingress and egress. All private and public entities which provide emergency services, including but not limited to police, fire and ambulance services shall have a non-exclusive easement over and across the Common Elements for the purpose of ingress and egress are both vehicular and pedestrian traffic.

Section 7 **Owners Easements of Enjoyment.** Every Owner shall have the right and easement in and to the Common Elements which shall be appurtenant to and shall pass with the title to every Lot subject to the following conditions:

- a. The right of the Association to suspend the voting rights of an Owner for any period during which assessments against his or her Lot remain unpaid; and for a period not to exceed sixty (60) days for any infraction of its published Rules and Regulations.
- b. The right of the Association to dedicate or transfer all or any part of the Common Elements to any public agency, authority, utility for such purposes and subject to such conditions as may be agreed to by the Members.

No such dedication or transfer shall be effective unless an instrument signed by two-thirds of the Members agreeing to such dedication or transfer has been recorded in the office of the Ramsey County Registrar of Titles.

Section 8 **Emergency Access Easement.** All public or private entities, including but

not limited to, the City of Saint Paul, which provide emergency medical or fire services, shall have a nonexclusive easement over and across the Common Elements for the purpose of ingress to and egress from any Lot.

ARTICLE VII **PARTY WALLS**

Section 1 **General Rules of Law to Apply.** Each wall which is built as part of the original construction of the buildings upon the properties and placed upon the dividing line between the Lots, shall constitute a party wall and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2 **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3 **Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the Owners thereafter make use of the wall, they shall contribute to the cost of restoration, after all available, insurance proceeds have been exhausted, thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4 **Weatherproofing.** Notwithstanding any other provisions of this Article, any Owner who, by his or her negligent or willful act, causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

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

Section 6 **Encroachments.** If, for whatever reason, a wall intended to be a party wall is not precisely constructed on the dividing line between two Lots, during the life of the building containing such wall, the Lot upon which such party wall encroaches shall be subject to easement for the life of such building which shall be in favor of and appurtenant to the other Lot, to the end that for all purposes of this Declaration, such wall shall be treated as if it were centered precisely upon the common Lot line.

Section 7 **Arbitration.** In the event of any dispute arising concerning a party wall, under the provisions of this Article, and if the dispute is not resolved within 30 days of the event causing the dispute, each party shall choose one arbitrator and such arbitrators shall choose one additional arbitrator and, the decision of a majority of all of the arbitrators shall be final and conclusive on the question involved. The arbitration shall be binding and conducted under the

Rules of the American Arbitration Association, and all the costs of the arbitration shall be borne equally by such parties.

ARTICLE VIII
ARCHITECTURAL AND EXTERIOR CONTROLS

Section 1 **Architectural Control and Committee Authority.** Except for those made by the Declarant in consideration of its initial sale, no exterior additions, removals or alterations (including changes in color or appearance) to any Lot, additional fences, shrubbery, hedges, walls, walkways, material topographical or landscaping changes, and other structures, temporary or permanent, shall be commenced, erected or maintained, until the plans and specifications showing the nature, kind, shape, height, materials, location and approximate costs of same shall have been submitted to and approved in writing as to harmony of the external design and location in relation to surrounding buildings erected upon the properties by an architectural control committee composed of the Board of Directors of the Association or by three (3) or more representatives appointed by the Board of Directors. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, such approval shall be deemed to have been given. If no application has been made to the architectural control committee or its representatives, or if such application has been rejected, a suit to enjoin or remove such additions, alterations, or changes may be commenced unless reasonable visible unapproved improvements have been completed for a period of six (6) months and no written notice of the violation of this Section has been given to the Owner of the altered Lot by either the Board of Directors, the Architectural Control Committee or another Owner, such improvements having been deemed to have approved by the Architectural Control Committee. Members of the Architectural Control Committee shall not be entitled to any compensation for the service performed pursuant to this section, but compensation may be allowed to independent professional advisors retained by the Architectural Control Committee to advise said Committee on plan specifications submitted to the Architectural Control Committee. Any plans submitted for construction or alteration of a Building shall include a foundation with an area of not less than 600 square feet; an overall area of not less than 900 square feet.

Section 2 **Maintenance and Repairs.** In order to preserve the uniform and high standards of appearance of the Property, the Association shall provide and be solely responsible for the maintenance repair of the building exterior, and the walks, yard area, and driveways on the Lots, which responsibility shall include, but not be limited to, the following: maintenance and repair of the exterior surfaces of all buildings on the properties, including, but not without limitation, the painting of the same as often as necessary, the replacement of trim and caulking, the maintenance and repair of roofs, gutters, down spouts and overhangs that were part of the original construction, (but excluding all maintenance and repair to glass and other window surfaces and screens, window frames, patios, entry doors, door hardware, and air conditioning equipment), mowing, trimming, watering and other care of grass, trees and other plants, the

maintenance and repair of driveway aprons, driveways and walkways, including snow removal from driveways, and garbage and trash removal. The Association shall have the right to draw water from exterior hose taps of buildings for purposes of watering and care of grass, trees and other plants, provided, however, that reasonable reimbursement to Owners shall be made pursuant to rules and regulations adopted by the Association. The Association shall also provide maintenance and repair to all utility lines outside the boundary lines of a building constructed on a Lot which serves more than one Lot, to the extent the same is not furnished by the applicable utility company.

All maintenance and repair of individual buildings constructed on a Lot shall be the sole obligation, responsibility and expense of the individual Owners thereof, except to the extent that exterior maintenance and repair or maintenance of water and sewer systems within the Lots is provided by the Association as approved by a majority of votes cast in person or by proxy at a meeting called for such purposes. In the event that any maintenance or repair to any part of the properties is necessitated by willful or negligent acts of any Owner, his or her family, guests, or invitees, the cost of all such maintenance, repairs, attorneys fees and costs of enforcement, shall be added to and become part of the assessments to which the Lot of such Owner is subject. The Association shall be responsible for all damage done to the Lots and the improvements thereon in the course of such maintenance and repairs and shall perform or pay for the restoration of and repairs to such improvements. In addition, the Association shall have the right to enter the Owners Lot and to restore any part of the building or Lot to its prior condition if the alterations were made in violation of this Article, and the costs of said restoration shall be a personal obligation of the Owner and a lien against the Owner's Lot.

ARTICLE IX **INSURANCE**

Section 1 **Required Coverage.** The Association shall obtain and maintain, at a minimum, a master policy or policies of insurance in accordance with the insurance requirements set forth in the Act and the additional requirements set forth herein, issued by a reputable insurance company or companies authorized to do business in the State of Minnesota, as follows:

- a. Property insurance in broad form covering all risks of physical loss in an amount equal to one hundred percent (100%) of the insurable "replacement cost" of the property, less deductibles, exclusive of land, footings, excavation and other items normally excluded from coverage (but including all building service equipment and machinery). The policy or policies shall cover personal property owned by the Association. The policy or policies shall also contain "Inflation Guard" and "Agreed Amount" endorsements, if reasonably available. Such policy or policies to the foregoing and other hazards as may be required from time to time by the regulations of the Federal Housing Administration ("FHA") or

Federal National Mortgage Association ("FNMA") as a precondition to their insuring, purchasing or financing a mortgage on a Lot. The Board may also, on behalf of the Association, enter into binding written agreements with a mortgagee, insurer or servicer, including without limitation the FHA or FNMA, obligating the Association to keep certain specified coverage or endorsements in effect. The purpose of this policy is to provide for coverage to any and all damages to which the Association is required to maintain under the provisions of Minn. Stat. ' 515B.3-113. The Association is not required to maintain coverage on personal property owned by the occupants of any Building.

- b. Comprehensive public liability insurance covering the use, operation and maintenance of the Common Elements, with minimum limits of \$1,000,000.00 per occurrence, against claims for death, bodily injury and property damage, and such other risks as are customarily covered by such policies for projects similar in construction, location and use to the property. The policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner or Occupant because of negligent acts of the Association or other Owners or Occupants. The policy shall include such additional endorsements, coverage and limits with respect to such hazards as may be required by the regulations of the FHA or FNMA as a precondition to their insuring, purchasing or financing a mortgage on a Lot.

- c. Fidelity bond or insurance coverage against dishonest acts on the part of directors, officers, managers, trustees, employees or persons responsible for handling funds belonging to or administered by the Association if deemed to be advisable by the Board or required by the regulations of the FHA or FNMA as a precondition to the purchase or financing of a mortgage on a Lot. The fidelity bond or insurance shall name the Association as the named insured and shall, if required by the regulations of the FHA or FNMA as a precondition to their insuring, purchasing or financing of a mortgage on a Lot, be written in an amount equal to the greater of (i) the estimated maximum of Association funds, including reserves, in the custody of the Association or management agent at any given time while the bond is in force, or (ii) a sum equal to three months aggregate assessments on all Lots plus reserves. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers, or a waiver of defense based upon the

exclusion of persons serving without compensation shall be added.

- d. Workers' compensation insurance as required by law.
- e. Directors and officers liability insurance with such reasonable limits and coverage as the Board shall determine from time to time.
- f. Such other insurance as the Board may determine from time to time to be in the best interests of the Association and the Owners.

Section 2 **Premiums; Improvements; Deductibles.** All insurance premiums shall be assessed and paid pursuant to Section 6 of Article V of this Declaration. The insurance need not cover improvements and betterments to the Lots installed by Owners, but if improvements and betterments are covered, any increased cost may be assessed against the Lots affected. The Association may, in the case of a claim for damage to a Lot, (i) pay the deductible amount as a common expense, (ii) assess the deductible amount against the Lots affected in any reasonable manner, or (iii) require the Owners of the Lots affected to pay the deductible amount directly.

Section 3 **Loss Payee; Insurance Trustee.** All insurance coverage maintained by the Association shall be written in the name of, and the proceeds thereof shall be payable to, the Association (or a qualified insurance trustee selected by it) as trustee for the benefit of the Owners and secured parties, including eligible mortgagees, which suffer loss. The Association, or any insurance trustee selected by it, shall have exclusive authority to negotiate, settle and collect upon any claims or losses under any insurance policy maintained by the Association.

Section 4 **Waivers of Subrogation.** All policies of insurance shall contain waivers of subrogation by the insurer against the Association, or an Owner, members of the Owner's household, officers or directors, as applicable, and, if available, waivers of any defense based on co-insurance or of invalidity from any acts of the insured.

Section 5 **Cancellation; Notice of Loss.** All policies of property insurance and comprehensive liability insurance maintained by the Association shall provide that the policies shall not be canceled or substantially modified, for any reason, without at least 90 days prior written notice to the Association, to the FHA or FNMA (if applicable), all of the insured's and all eligible mortgagees.

Section 6 **Restoration in Lieu of Cash Settlement.** All policies of property insurance maintained by the Association shall provide that, despite any provisions giving the insurer the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable (i) without the prior written approval of the Association (or any insurance trustee) or (ii) when in conflict with the provisions of any insurance trust agreement to which the Association may be a party, or any requirement of law.

Section 7 **No Contribution.** All policies of insurance maintained by the

Association shall be the primary insurance where there is no other insurance in the name of the Owner covering the same property, and may not be brought into contribution with any insurance purchased by the Owners or the eligible mortgagees.

Section 8 **Effect of Acts Not Within the Association's Control.** All policies of insurance maintained by the Association shall provide that the coverage shall not be voided by, or conditioned upon (i) any act or omission of an Owner, eligible mortgagee, unless acting within the scope of authority on behalf of the Association, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the property over which the Association has no control.

Section 9 **Owner's Personal Insurance.** Each Owner may obtain additional personal insurance coverage at his or her own expense covering fire and other casualty to the Lot, personal property or personal liability. All insurance policies maintained by the Owners shall provide that they are without contribution as against the insurance purchased by the Association.

ARTICLE X **USE RESTRICTIONS**

Section 1 **Waste.** No damage to, or waste of, the properties or the buildings situated thereon, shall be committed by any Owner or any invitees of any Owner, and each Owner agrees to indemnify and hold harmless the Association and other Owners from and against all loss resulting from any such damage or waste caused by him or her or his or her invitee. No noxious, destructive or offensive activity shall be allowed on any Lot, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to any other Owner or person at any time lawfully residing in any Building.

Section 2 **Restriction.** All Owners and Occupants, and all secured parties, by their acceptance or assertion of an interest in the property, or by their occupancy of a Lot, covenants and agrees that, in addition to any other restriction which may be imposed by the Act or the governing documents, the occupancy, use, operation, alienation and conveyance of the property shall be subject to the following restrictions contained in this Article. The property shall be owned, conveyed, encumbered, leased, used and occupied subject to the governing documents and the Act, as amended from time to time. All covenants, restrictions and obligations set forth in the governing documents are in furtherance of a plan for the property, and shall run with the property and be a burden and benefit to all the Owners and Occupants and to any other person acquiring or owning an interest in the property, their heirs, personal representatives, successors and assigns.

Section 3 **Animals.** Owners shall be permitted to keep dogs, cats or other household pets subject to the conditions and restrictions contained in the By-Laws as well as any written rules or regulations established by the Association. The total number of pets kept by an Owner

shall not exceed two (2), and the cumulative weight of all pets shall not exceed fifty (50) pounds. However, no such pet shall be kept, bred or maintained for any commercial purposes. No animals other than those described in this Section are allowed under the written rules and regulations of the Association shall be raised, bred or kept in or upon any Lot or on any part thereof. The word "animal" shall be construed in its broadest sense and shall include all living creatures except humans.

Section 4 **Signs.** No signs of any kind shall be displayed to the public on any residential Lot. However, the Declarant reserves the right to post signs advertising the property for sale.

Section 5 **Storage.** The Association shall have the right to adopt rules and regulations regarding long-term outside storage of any vehicle on any of the properties. However, in no event shall boats, trailers, recreational equipment, or any other item be parked or stored outside a building in any manner. However, a boat, trailer, recreational equipment, or other item may be temporarily parked outside a building for a period not to exceed twenty-four hours and not exceed more than seven days in any calendar year.

Section 6 **Parking.** Garages and parking areas on the property shall be used for parking of vehicles owned or leased by Owners and Occupants and their guests, and such other incidental uses as may be authorized in writing by the Association. The use of garages, driveways and other parking areas on the property, and the type of vehicles and personal property permitted thereon, shall be subject to a regulation by the Association, including without limitation the right of the Association to tow illegally parked vehicles or to remove unauthorized personal property. No vehicles shall be parked on the property except in a garage or designated parking area.

Section 7 **Residential Only.** Buildings shall be used by Owners and Occupants and their Guests exclusively as private, single-family, residential dwellings, and not for transient, hotel, commercial, business or other nonresidential purposes. Any lease of a building (except for occupancy by guests with the consent of the Owner) for a period of less than seven days or any occupancy which includes services customarily furnished to hotel guests, shall be presumed to be for transient purposes. Leasing of a building shall be allowed subject to reasonable regulation by the Association, and subject to the following conditions: (i) that no building shall be leased for transient or hotel purposes with a rental period of less than six months, (ii) that no building may be sub-leased, (iii) that all leases shall be in writing, (iv) that all leases shall provide that they are subordinate and subject to the provisions of the governing documents, the rules and regulations and the Act, and that any failure of the Lessee to comply with the terms of such documents shall be a default under the Lease, and (v) any Owner leasing said building shall notify the Board of Directors and provide it with a copy of the written lease agreement at least seven days prior to the commencement of the lease term. The Association may impose reasonable rules and regulations as may be necessary to implement procedure for the leasing of Lots, consistent with this Section. No business, trade, occupation or profession of any kind, whether carried on for profit or otherwise, shall be conducted, maintained or permitted in any building or the Common

Elements; except (i) an Owner or Occupant residing in a building may keep and maintain his or her business or professional records in such building and handle matters relating to such business by telephone or correspondence therefrom, provided that such uses are incidental to the residential use, do not involve physical alteration of the building and do not involve any observable business activity such as signs, advertising displays, bulk mailings, deliveries, or visitation or use of the building by customers or employees, and (ii) the Association may maintain offices on the property for management and related purposes.

Section 8 **Subdivision.** Except as permitted by the Act, no Lot nor any part of the Common Elements may be subdivided or partitioned without the prior written approval of all Owners and all secured parties holding first mortgages on the Lots. In no event shall the number of Lots exceed six (6).

Section 9 **Garbage Containers.** All garbage containers shall be stored within the boundaries of the Building constructed on any Lot within the Property. The Owner or Occupant of a Lot shall arrange for private garbage pickup service unless the Association has arranged for said service on behalf of the Owners or Occupants.

Section 10 **Time Shares Prohibited.** The time share form of ownership, or any comparable form of lease, occupancy rights or ownership which has the effect of dividing the ownership or occupancy of a Lot into separate time periods, is prohibited.

Section 11 **Quiet Enjoyment; Interference Prohibited.** All Owners and Occupants and their guests shall have a right of quiet enjoyment in their respective Lots, and shall use the property in such a manner as will not cause a nuisance, nor unduly restrict, interfere with or impede the use of the property by other Owners and Occupants and their guests.

Section 12 **Compliance with Law.** No use shall be made of the property which would violate any then existing municipal codes or ordinances, or state or federal laws, nor shall any act or use be permitted which could cause waste to the property, cause a material increase in insurance rates on the property, or otherwise cause any unusual liability, health or safety risk, or expense, for the Association or the Owner or Occupant.

ARTICLE XI **NON-DISCRIMINATION**

Section 1 **Discrimination.** Each Owner agrees that neither he nor she nor anyone authorized to act for him or her will refuse to sell, after making of a bona fide offer, or refuse to negotiate for the sale of, or otherwise make available or deny, any of the property owned by him or her in the properties to any person because of race, color, religion, sex or national origin. Any restrictive covenant affecting the property covered by this Declaration relating to race, color, religion, sex or national origin which is inconsistent with this Article is recognized as being illegal and void and is specifically disclaimed.

ARTICLE XII
GENERAL PROVISIONS

Section 1 **Compliance and Remedies.** Each Owner and Occupant, and any other Person owning or acquiring any interest in the Property, shall be governed by and comply with the provisions of the Act, the Governing Documents, the Rules and Regulations, the decisions of the Association, and such amendments thereto as may be made from time to time. A failure to comply shall entitle the Association to the relief set forth in this Section, in addition to the rights and remedies authorized elsewhere by the Governing Documents and the Act.

1.1 **Entitlement to Relief.** The Association may commence legal action to recover sums due, for damages, for injunctive relief or to foreclose a lien owned by it, or any combination thereof, or an action for any other relief authorized by the Governing Documents or available at law or in equity. Legal relief may be sought by the Association against any Owner, or by an Owner against the Association or another Owner, to enforce compliance with the Governing Documents, the Rules and Regulations, the Act or the decisions of the Association. However, no Owner may withhold any assessments payable to the Association, or take (or omit) other action in violation of the Governing Documents, the Rules and Regulations or the Act, as a measure to enforce such Owner's position, or for any other reason.

1.2 **Sanctions and Remedies.** In addition to any other remedies or sanctions, expressed or implied, administrative or legal, the Association shall have the right, but not the obligation, to implement any one or more of the following actions against Owners and Occupants and/or their guests, who violate the provisions of the Governing Documents, the Rules and Regulations or the Act:

- a. Commence legal action for damages or equitable relief in any court of competent jurisdiction;
- b. Impose late charges of up to 15% of each late payment of an assessment or installment thereof;
- c. In the event of default of more than thirty (30) days in the payment of any assessment or installment thereof, all remaining installments of assessments assessed against the Lot owned by the defaulting Owner may be accelerated and shall then be payable in full if all delinquent assessments, together with all costs of collection and late charges, are not paid in full prior to the effective date of the acceleration. Reasonable advance written notice of the effective date of the acceleration shall be given to the defaulting Owner.
- d. Impose reasonable fines, penalties or charges for each violation of

the Act, the Governing Documents or the Rules and Regulations of the Association.

- e. Suspend the rights of any Owner or Occupant and their guests to use any Common Elements amenities; provided, that this limitation shall not apply to any deck, balcony, or patio easements, appurtenant to the Lot, and those portions of the Common Elements providing utilities services and access to the Lot. Such suspensions shall be limited to periods of default by such Owners and Occupants in their obligations under the governing documents, and for up to 30 days thereafter, for each violation.
- f. Restore any portion of the Common Elements damaged or altered, or allowed to be damaged or altered, by any Owner or Occupant or their guests in violation of the Governing Documents and to assess the cost of such restoration against the responsible Owners and their Lots.

1.3 Rights to Hearing. In the case of imposition of any of the remedies authorized by this Article and Articles V, VIII and XV of this Declaration, the Board shall, upon written request of the offender, grant to the offender a fair and equitable hearing as contemplated by the Act, the offender shall be given notice of the nature of the violation and the right to a hearing, and at least 10 days within which to request a hearing. The hearing shall be scheduled by the Board and held within 30 days of receipt of the hearing request by the Board, and with at least 10 days prior written notice to the offender. If the offending Owner fails to appear at the hearing, then the right to a hearing shall be waived and the Board may take such action as it deems appropriate. The decision of the Board and the rules for the conduct of the hearings established by the Board shall be final and binding on all parties. The Board's decision shall be delivered in writing to the offender within 10 days following the hearing, if not delivered to the offender at the hearing.

1.4 Lien for Charges, Penalties, Etc. Any assessments, charges, fines, penalties or interest imposed under this Section shall be a lien against the Lot of the Owner or Occupant against whom the same are imposed and the personal obligation of such Owner in the same manner and with the same priority and effect as assessments under Article V. The lien shall attach as of the date of imposition of the remedy, but shall not be final as to violations for which a hearing is held until the Board gives written notice following the hearing. All remedies shall be cumulative, and the exercise of, or failure to exercise, any remedy shall not be deemed a waiver of the right to pursue any others.

1.5 Costs of Proceeding and Attorneys Fees. With respect to any collection measures, or any measures or action, legal, administrative, or otherwise, which the Association takes to enforce the provisions of the Act, Governing Documents or Rules and Regulations, whether or not finally determined by a court or arbitrator, the Association may assess the violator

and his or her Lot with any expenses incurred in connection with such enforcement, including without limitation fines or charges previously imposed by the Association, reasonable attorney's fees, and interest (at the highest rate allowed by law) on the delinquent amounts owed to the Association.

1.6 Liability for Owners' and Occupants' Acts. Any Owner shall be liable for the expense of any maintenance, repair or replacement of the property rendered necessary by such Owners' acts or omissions, or by that of Occupants or guests in the Owners' Lot, to the extent that such expense is not covered by the proceeds of insurance carried by the Association or such Owner or Occupant. However, any insurance deductible amount and/or increase in insurance rates resulting from the Owners' acts or omissions may be assessed against the Owner responsible for the condition and against his or her Lot.

1.7 Enforcement by Owners. The provisions of this Article shall not limit or impair the independent rights of other Owners to enforce the provisions of the Governing Documents, the Rules and Regulations, and the Act as provided therein.

Section 2 Access. Solely for the purpose of performing the maintenance authorized by this Declaration, the Association, or its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot and into any building located on a Lot for the purpose of performing the maintenance required or permitted by this Declaration.

Section 3 Severability. The invalidation of any one of these covenants or restrictions by legislation, judgment or Court Order shall in no way affect any other provision which shall remain in full force and effect.

Section 4 Amendments. Subject to the provisions of Section 515B.2-118 of the Act, this Declaration may be amended, with the exception of Section 7 of Article X, by the consent of (i) Owners of Lots to which are allocated at least 67% of the votes in the Association, (ii) the percentage of eligible mortgagees (based upon one vote per first mortgage owned) required by Article XVI as to the matters prescribed by said Article; and (iii) consent of the Declarant to certain Amendments as provided in Article XIV. Section 7 of Article X may only be amended by the consent of (i) Owners of Lots to which are allocated at least 75% of the votes in the Association, (ii) the percentage of eligible mortgagees (based upon one vote per first mortgage owned) required by Article XVI as to matters described by said Article; and (iii) consent of the Declarant, if the Declarant is still the Owner of a Lot. Consent of the Owners may be obtained in writing or at a meeting of the Association duly held in accordance with the By-Laws. Consents of eligible mortgagees and Declarant shall be in writing. Any Amendment shall be subject to any greater requirements imposed by the Act. The Amendment shall be effective when recorded as provided in the Act. An affidavit by the Secretary of the Association as to the outcome of the vote, or the execution of the foregoing agreements or consents shall be adequate evidence thereof for all purposes, including without limitation, the filing of the Amendment.

Section 5 **Construction.** Where applicable the masculine gender of any word used herein shall mean the feminine or neutral gender, or vice versa, and the singular of any word used herein shall mean the plural, or vice versa. References to the Act, or any article thereof, shall be deemed to include any statutes amending or replacing the Act, and the comparable articles thereof.

Section 6 **Tender of Claims.** In the event that any incident occurs which could reasonably give rise to a demand by the Association against Declarant for indemnification pursuant to the Act, the Association shall promptly tender the defense of the action to its insurance carrier, and give Declarant written notice of such tender, the specific nature of the action and an opportunity to defend against the action.

Section 7 **Notices.** Unless specifically provided otherwise in the Governing Documents or the Act, all notices required to be given by or to the Association, the Board of Directors, the Association officers or the Owners or Occupants shall be in writing and shall be effective upon hand delivery, or mailing if properly addressed with postage prepaid and deposited in the United States mail; except that registrations pursuant to Section 2.2 of the By-Laws shall be effective upon receipt by the Association.

Section 8 **Operational Purposes.** The Association shall operate and manage the property for the purposes of (i) administering and enforcing the covenants, restrictions, easements, charges and liens set forth in the Governing Documents and the Rules and Regulations (ii) maintaining, repairing and replacing those portions of the property for which it is reasonable and (iii) preserving the value and architectural uniformity and character of the property.

Section 9 **Binding Effect of Actions.** All agreements and determinations made by the Association in accordance with the powers and voting rights established by the Governing Documents or the Act shall be binding upon all Owners and Occupants, and their lessees, guests, heirs, personal representatives, successors and assigns, and all secured parties as defined by the Act.

Section 10 **By-Laws.** The Association shall have By-Laws. The By-Laws and any amendments thereto shall govern the operation and administration of the Association. Amendments to the By-Laws must be made in conformity with the Conditional Use Permit applicable to the property.

Section 11 **Management.** The Board may delegate to the manager or managing agent the management duties imposed upon the Association's officers and directors by the Governing Documents and the Act; provided, however, that such delegation shall not relieve the officers and directors of the ultimate responsibility for the performance of their duties as prescribed by the Governing Documents and by law.

Section 12 **Rules and Regulations.** The Board shall have exclusive authority to approve and implement such reasonable Rules and Regulations as it deems necessary from time to time for the purpose of operating and administering the affairs of the Association and regulating the use of the property; provided that the Rules and Regulations shall not be inconsistent with the Governing Document or the Act. The inclusion in other parts of the Governing Documents of authority to approve Rules and Regulations shall be deemed to be in furtherance, and not in limitation, of the authority granted by this Section. New or amended Rules and Regulations shall be effective only after reasonable notice thereof has been given to the Owners.

Section 13 **Association Assets; Surplus Funds.** All funds and real or personal property acquired by the Association shall be held and used for the benefit of the Owners for the purposes stated in the Governing Documents. Surplus funds remaining after payment of or provision for common expenses and reserves shall be credited against future assessments or added to reserves, as determined by the Board.

Section 14 **Conflicts Among Documents.** In the event of any conflict among the provisions of the Act, this Declaration, the By-Laws or any Rules or Regulations approved by the Association, the Act shall control. As among this Declaration, the By-Laws and Rules and Regulations, this Declaration shall control, and as between the By-Laws and the Rules and Regulations, the By-Laws shall control.

Section 15 **Shoreland.** The Property contains no Shoreland as defined by Minnesota Statute Section 103F.205 subd. 4.

ARTICLE XIII **CONDEMNATION, LOSS OR DESTRUCTION OF PROPERTY**

Section 1 **Procedure.** If all or any portion of the properties except Party Wall, to the extent provided for in Article VII of this Declaration, is damaged or destroyed or taken by the power of eminent domain, or by deed in lieu thereof, the following applies:

- A. If less than one-half of the buildings are destroyed the restoration or repair shall be performed and comply with the requirements of Section 4 of this Article XIII of this Declaration and must be made to harmonize, as much as possible, with the remaining buildings and shall be completed within 180 days from the date of damage. However, if at least seventy-five percent (75%) of the eligible mortgagees, based upon one vote for each eligible mortgage held, give their prior written approval within thirty (30) days of the date of the damage, the restoration or reconstruction may be performed without need to comply with the requirements of Article VIII of this Declaration, or Section 4 of this Article XIII of this

Declaration.

- B. In the event more than one-half of the buildings are destroyed, taken or deeded in lieu of taking, provisions shall be made for restoration or reconstruction within 180 days from the date of damage unless within 60 days of the date of damage at least seventy-five percent (75%) of the members and seventy-five percent (75%) of the eligible mortgagees, based upon one vote for each first mortgage held, give their prior written approval of a decision not to rebuild or restore.

Section 2 **Non-Restoration.** In the event that owners of Lots to which at least 80% of the votes in the Association are allocated and 80% of the first mortgagees of Lots (each mortgagee having one vote per Lot financed) have decided not to restore or rebuild, the Board of Directors shall file for record with the Registrar of Titles a notice setting forth such decision.

Upon filing the Notice:

- A. This Declaration shall be considered terminated and the Property shall be free of all covenants, conditions and restrictions contained in this Declaration except as provided for in Clause E hereof.
- B. The Property, except for the Lots and all funds which the Association has collected pursuant to Article V of this Declaration hereinafter referred to as "Funds", shall be deemed to be owned in common by the Owners, each with an equal and undivided interest.
- C. Any lien affecting any Lot shall be deemed to be transferred with the same priority to the undivided interest in the Common Elements, and funds attributable to such Lots as provided for in this Declaration.
- D. The Property (except the Lots) and funds shall be subject to an action for partition at the suit of any holder of an interest therein. In which case the funds; net proceeds, if any, from the sale of the Property (except Lots); not insurance proceeds, damage or settlement proceeds, if any, received for damage to the Property (except Lots) shall be considered one fund. Said fund shall be used first to satisfy all liens on the Property (except Lots), with the balance of the fund to be divided in equal shares among the Lots for the benefit of those who hold an interest in a Lot and distributed to those who hold any interest therein, after there has been deducted from the share of said Lot any assessment, levied under Article V of this Declaration against said Lot which is due

and owing as of the date of the distribution. For the purpose of this paragraph the term "funds" shall refer to the balance in all bank accounts held by the Association.

- E. In the event a majority of the members, whose Lots have not been taken or destroyed or could be restored pursuant to Section 4 of this Article, and first mortgagees, based upon one vote for each mortgage held, who hold first mortgages on the Lots entitled to vote under this paragraph, give their prior written approval within ninety (90) days of the date of damage, those Lots shall continue to be subject to the covenants, conditions and restrictions of this Declaration and the undivided share of the Property (except Lots) funds, as defined in clause B set out above. However, before said funds and proceeds are redeposited, all liens, including all annual, special, insurance and special exterior maintenance, and assessments which have been assessed against each Lot which is subject to this paragraph, which have a claim to said funds and proceeds belonging to all Owners of Lots subject to this paragraph are not enough to pay the outstanding liens which have a claim to said funds and proceeds belonging to all Owners of Lots subject to this paragraph, a special assessment shall be levied pursuant to Section 5 of Article V of this Declaration against each Lot which is subject to the provisions of this paragraph. The Association shall open a new bank account which will contain only redeposited funds and proceeds remaining after all liens have been paid and those assessments which become due and payable on or after the effective date of the notice of non-restoration shall set out the legal description of all Lots belonging to those members who elect to remain subject to the covenants, conditions and restrictions of this Declaration.

Section 3 **Restoration or Reconstruction Assessment.** If the insurance proceeds, damages or settlement proceeds are not enough to defray the estimated or actual cost of restoration or reconstruction, a special assessment shall be made against all Lots in sufficient amounts to pay the estimated actual cost of such restoration and reconstruction. Sections 5 and 8 of Article V shall not apply to any special assessment levied under this Article XIII. Any special assessment shall be apportioned equally among all Lots.

Section 4 **Lots.** In the event of damage, destruction or taking, as long as one Owner does not suffer a total loss of his or her Lot, that is, the insurer or commissioner in condemnation holds that the Lot can be restored to its original condition then said Lot shall be reconstructed. The plans for reconstruction of a Lot or buildings must be approved in writing by the Architectural Control Committee set out in Section 1 of Article VIII of this declaration. The size, quality of materials and exterior design shall be consistent with the remaining Lots.

Restoration shall be completed within 180 days of the date of damage. The Owner and Owners of said Lot shall, prior to the commencement of construction, secure a bond running in favor of the Association guaranteeing that restoration will be completed in the time allowed and will conform to the approved plans. However, if the taking makes restoration impossible because of any Lot left after the taking is not large enough to permit restoration of the Lot to its original dimensions, then the Owner is not governed by this Section and may decide not to restore pursuant to clause A and B of Section 1 of this Article XIII.

Section 5 **Association Powers.** The Association shall represent all Owners in any proceeding involving the properties, other than a Lot, and shall have the power to negotiate any settlement or agreement involving insurance or condemnation proceeds. The Association shall hold any and all proceeds as trustee for the use and benefit of the Owners and their mortgagees as their interest may appear. The Association may, if the Board of Directors feels it is necessary, hire a trustee to hold any proceeds it may receive and in the event of any restoration or reconstruction, hire an escrow agent to handle the construction disbursements. The Association shall enter into a firm contract with a qualified contractor for the restoration and reconstruction of all properties, except Lots and party walls to the extent provided for in Article VIII of this Declaration and Section 4 of this Article, to substantially the same condition as existed immediately prior to the insured loss or taking; provided, however, that the contract amount shall not exceed the insurance or condemnation proceeds plus additional funds deposited pursuant to the special assessment set out in Section 3 of this Article.

ARTICLE XIV **SPECIAL DECLARANT RIGHTS**

Section 1 **Declarant Rights.** Declarant hereby reserves exclusive and unconditional authority to exercise the following special declarant rights within the meaning of Section 515B.1-103(33b) of the Act for as long as it owns a Lot, or for such shorter period as may be specifically indicated.

Section 2 **Complete Improvements.** To complete all the Lots and other improvements planned by the Declarant or authorized by the City of St. Paul or allowed by this Declaration, and to make alterations in the Lots and Common Elements to accommodate its sales facilities.

Section 3 **Relocate Boundaries and Alter Lots.** To relocate boundaries between Lots and to otherwise alter Lots owned by it, to the extent permitted by Article XV.

Section 4 **Sales Facilities.** To construct, operate and maintain a sales office, management office, model Lots and other development, sales and rental facilities within the Common Elements and any Lots owned by Declarant from time to time, located anywhere on the property.

Section 5 **Signs.** To erect and maintain signs and other sales displays offering the Lots for sale or lease, in or on any Lot owned by Declarant and on the Common Elements.

Section 6 **Easements.** To have and use easements, for itself, its employees, contractors, representatives, agents and prospective purchasers through and over the Common Elements for the purpose of exercising its special declarant rights.

Section 7 **Control of Association.** To control the operation and administration of the Association, including without limitation, the power to appoint and remove the members of the Board pursuant to Section 515B.3-103 of the Act, until the earliest of (i) voluntary surrender of control by Declarant; (ii) an Association meeting which shall be held within sixty (60) days after conveyance to Owners other than a Declarant of seventy-five percent (75%) of the total number of Lots authorized to be included in the property or (iii) the date three (3) years following the date of the first conveyance of a Lot to an Owner other than Declarant. Notwithstanding the foregoing, the Owners, other than a Declarant, shall have the right to nominate and elect not less than thirty-three and one-third percent (33 1/3%) of the directors at a meeting of the Owners which shall be held within sixty (60) days following the conveyance by Declarant of fifty percent (50%) of the total number of Lots authorized to be included in the property.

Section 8 **Consent to Certain Amendments.** As long as Declarant owns any unsold Lot, Declarant's written consent shall be required for any amendment to the Governing Documents or Rules and Regulations which directly or indirectly affect or may affect Declarant's rights under the Governing Documents.

ARTICLE XV
RIGHTS TO RELOCATE LOT BOUNDARIES AND ALTER LOTS

Section 1 **Rights to Relocate Boundaries and Alter Lots.** Existing or future Lots may be altered and Lot boundaries may be relocated only in accordance with the following conditions:

- a. **Combining Lots.** The Declarant, pursuant to the Provisions of Section 515B.2-112(a) of the Act, and the Owner, pursuant to the Provision of Section 515B.2-112(a) of the Act, may make improvements or alterations to such Lot or, may, after acquiring an adjoining Lot, remove or alter any intervening partition or create apertures therein in accordance with Section 515B.2-114 of the Act and Subsection d of this Article.

- b. **Relocation of Boundaries.** The boundaries between adjoining Lots may be relocated in accordance with Section 515B.2-114 of the Act and Subsection d of this Article.

c. Subdivision or Conversion. No additional Lots may be created by the subdivision or conversion of a Lot (within the meaning of the Act) into two or more Lots, nor into other Lots, or Common Elements, unless the subdivision or conversion complies with the provisions in Section 8, Article X of this Declaration.

d. Requirements. The alteration, relocation of boundaries or other modification of Lots or the buildings or other structures located therein (collectively referred to herein as "alteration" or "alterations") pursuant to this Section, Article VIII, and the Act may be accomplished only in accordance with the following conditions:

(1) No Lot may be altered if, thereafter, the building located therein, affected by the alteration, would no longer be habitable or practically unusable for its intended purpose or would violate any law, code or ordinance of any governmental authority having jurisdiction over the property.

(2) No alteration may be made which adversely affects the structural or functional integrity of any building system or the structural support or weather-tight integrity of any portion of any building or other structure.

(3) The prior written consent of the Association shall be required for any alteration, except alterations by Declarant. Where required, such consent shall be requested in writing by each Owner whose Lot is proposed to be altered, accompanied by such explanation, drawings and specifications relating to the proposed alterations as may be reasonably required by the Association or the first mortgagee of the Lot. The Association shall give such Owner(s) notice in an expeditious manner, granting, denying or qualifying its consent.

(4) As a precondition to consenting to alterations the Association may require, among other things, the following: (i) that all alterations will be done in a workmanlike manner and without impairing the structural, mechanical or weather-tight integrity of the building; (ii) that the Common Elements and altered Lots will be repaired and/or restored in the future as required by the Association; (iii) that the construction of the alterations will not create dangerous conditions for any Owners and Occupants; (iv) that the property, the first mortgagees and Owners and Occupants will be protected from liens and other liability arising from the alterations; and (v) that the alterations will be done in compliance with the applicable laws, regulations and ordinances of the governmental authorities having jurisdiction over the property.

(5) The Association may require that the Owners of the Lots to be altered pay all costs of processing and documentation for the request and the preparation

and filing of any necessary amendment to the Governing Documents, including without limitation such costs as filing, architects, surveyors and attorneys fees incurred by the Association in connection with the alterations.

ARTICLE XVI
RIGHTS OF ELIGIBLE MORTGAGEES

Section 1 **Eligible Mortgagees.** Notwithstanding anything to the contrary in the Governing Documents, and subject to any greater requirements of the Act or other laws, eligible mortgagees shall have the following rights and protection.

Section 2 **Consent to Certain Amendments.** The written consent of eligible mortgagees representing at least fifty-one percent (51%) or any greater percentage required by the Act of the Lots that are subject to first mortgages held by eligible mortgagees (based upon one vote per first mortgage owned) shall be required for any amendment to the Governing Documents which causes any change in the following: (i) voting rights; (ii) assessments, assessment liens, or priority of assessment liens; (iii) reserves for maintenance, repair and replacement of Common Elements; (iv) responsibility for maintenance and repairs; (v) reallocation of interest in the Common Elements or rights to their use; (vi) redefinition of any Lot boundaries; (vii) expansion or contraction of the property or the addition, annexation or withdrawal of property to or from the property; (viii) insurance or fidelity bonds; (ix) leasing of Lots; (x) imposition of any restrictions on an Owner's right to sell or transfer his or her Lot; (xi) a decision by the Association to establish self management when professional management is in effect as required previously by the Governing Documents or an eligible mortgagee; (xii) restoration or repair of the property (after hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents; (xiii) any action to terminate the legal status of the Common Interest Community after substantial destruction or condemnation occurs; and (xiv) any provisions that expressly benefit eligible mortgagees, or insurers or guarantors of mortgages.

Section 3 **Consent to Certain Actions.** The written consent of eligible mortgagees representing at least sixty-seven percent (67%), or any greater percentage required by the Act of the Lots that are subject to first mortgages held by eligible mortgagees (based upon one vote per first mortgage owned) shall be required to (i) abandon or terminate the Common Interest Community; (ii) change the allocation of voting rights or Common Expense obligations; (iii) partition or subdivide a Lot except as permitted by statute; (iv) abandon, partition, subdivide, encumber or sell the Common Elements; (v) use hazard insurance proceeds for other than the repair, replacement or reconstruction of the property; or (vi) any amendment to Section 7 of Article X except as otherwise provided by law.

Section 4 **Consent to Subdivision.** No Lot may be partitioned or subdivided without the prior written approval of the Owner and eligible mortgagee thereof, and the

Association.

Section 5 **No Right of First Refusal.** The right of an Owner to sell, transfer or otherwise convey his or her Lot shall not be subject to any right of first refusal or similar restrictions.

Section 6 **Priority of Lien.** Any holder of a first mortgage on a Lot or any purchaser of a first mortgage at a foreclosure sale, that comes into possession of a Lot by foreclosure of the first mortgage or by deed or assignment in lieu of foreclosure, takes the Lot free of any claims for unpaid assessments or any other charges or liens imposed against the Lot by the Association which have accrued against such Lot prior to the acquisition of possession of the Lot by said first mortgage holder or purchaser; (i) except as provided in Article V, Section 12 of this Declaration and the Act and (ii) except that any unreimbursed assessments or charges may be reallocated among all Lots in accordance with their interests in the Common Elements, in the event non-restoration has been selected pursuant to Section 2 Article XIII of this Declaration.

Section 7 **Priority of Taxes and Other Charges.** All taxes, assessments and charges which may become liens prior to the first mortgage under state law shall relate only to the individual Lots and not to the property as a whole.

Section 8 **Priority for Condemnation Awards.** No provision of the Governing Documents shall give an Owner, or any other party, priority over the rights of the eligible mortgagee of the Lot pursuant to its mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Lot and/or the Common Elements. The Association shall give written notice to all eligible mortgagees of any condemnation or eminent domain proceedings affecting the property promptly upon receipt of notice from the condemning authority.

Section 9 **Requirements; Management; Agreements.** The term of any agreement for professional management of the property may not exceed two (2) years. Any such agreement must provide at a minimum for termination without penalty or termination fee by either party, (i) with cause upon thirty (30) days prior written notice, and (ii) without cause upon ninety (90) days prior written notice.

Section 10 **Access to Books and Records/Audits.** Eligible mortgagees shall have the right to examine the books and records of the Association upon reasonable notice during normal business hours, and to receive free of charge upon written request, copies of the Association's Annual Reports and other financial statements. Financial statements, including those which are audited, shall be available within 120 days of the end of the Association's fiscal year. If a request is made by FNMA or any institutional guarantor or insurer of a mortgage loan against a Lot, for an audit of the Association's financial statements for the preceding year, the Association shall cause an audit to be made and deliver a copy to the requesting party.

Section 11 **Notice Requirements.** Upon written request to the Association

identifying the name and address of the holder, insurer or guarantor of a mortgage on a Lot, and the Lot number or address, the holder, insurer or guarantor shall be entitled to timely written notice of:

- a. a condemnation loss or any casualty loss which affects a material portion of the property or the Lot securing the mortgage;
- b. a 60 day delinquency in the payment of assessments or charges owed by the Owner of a Lot on which it holds a mortgage;
- c. a lapse, cancellation or material modification of any insurance policy maintained by the Association.
- d. a proposed action which requires the consent of a specified percentage of eligible mortgagees.

IN WITNESS WHEREOF, the undersigned has executed this instrument this ____ day of April, 2021 in accordance with the requirements of the Act.

CMQ PROPERTIES, LLC, a Minnesota limited liability company

By _____
Christopher Quinn, Chief Manager

STATE OF MINNESOTA)
)ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of April, 2021 by Christopher Quinn, Chief Manager of CMQ Properties, LLC, a Minnesota limited liability company, on behalf of the company

Notary Public

This instrument drafted by:
KELLY & LEMMONS, P.A.

Chad D. Lemmons, Esq.
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