

COMMON INTEREST COMMUNITY NUMBER 240

MOUNT CURVE CONDOMINIUM

SECOND AMENDMENT TO RESTATED DECLARATION

THIS SECOND AMENDMENT TO THE RESTATED DECLARATION OF COMMON INTEREST COMMUNITY NO. 240 is executed as of this 21 day of December 2017, by Mount Curve Owners' Association, Inc., a Minnesota nonprofit corporation (the "Association"), pursuant to Minnesota Statutes Section 515B.1-101 to 515B.4-118, commonly known as the Minnesota Common Interest Ownership Act and laws amendatory thereof and supplemental thereto (hereinafter the "Act").

RECITALS

The original Declaration creating Condominium (now Common Interest Community) No. 240, MOUNT CURVE CONDOMINIUM (this "Condominium") was recorded with the County Recorder for Hennepin County, Minnesota as Document No. 4578433, together with the Apartment Ownership Floor Plans that were recorded as Document No. 4578434.

The original Declaration was replaced by the Restated Declaration, dated July 16, 2003, and recorded with the County Recorder for Hennepin County, Minnesota as Document No. 8248577 on December 10, 2003 (the "Declaration").

The Declaration was amended by the First Amendment to Restated Declaration, Document No. 8362800, recorded with the County Recorder for Hennepin County, Minnesota on May 27, 2004.

The Association deems that the health and safety of its members and residents requires that action be taken to amend the Declaration to restrict smoking within the confines of its building, based upon the following facts, among others:

The U.S. Surgeon General has conclusively determined that there is no risk free level of exposure to secondhand smoke;

The American Society of Heating, Refrigerating and Air-Conditioning Engineers has issued a position document on environmental tobacco smoke concluding that "the only means of effectively eliminating health risk associated with indoor exposure is to ban smoking activity"; and

Careless smoking is the leading cause of fire deaths in Minnesota; cigarette-caused residential fires result in almost 1,000 deaths nationwide each year.

This Condominium continues to not be subject to an ordinance referred to in Section 515B.1-106 of the Act, governing conversions to common interest ownership, does not include

shoreland as defined in Minnesota Statutes Section 103F.205, and is not subject to a master association as defined in the Act.

NOW THEREFORE, the Association, with the written agreement of its unit owners to which at least sixty-seven percent (67%) of the voting interest of the Association is allocated, hereby agrees to amend the Declaration as follows:

- A. The defined terms used in the Declaration and the Act shall have the same meanings when used herein, except that the following definitions will be added as subparagraphs 1.01 (m) and (n), as follows:

“(m) “Business invitee” shall include, but is not limited to, any contractor, agent, household worker, or other person hired by the Association, unit owner, tenant or resident to provide a service or product to the Association, unit owner, tenant or resident.

(n) “Smoking” means inhaling or exhaling smoke from any lighted cigar, cigarette, pipe, or any other lighted tobacco or plant product. Smoking also includes carrying a lighted cigar, cigarette, pipe, or any lighted tobacco or plant product intended for inhalation.

Article 17 of the Declaration is amended to add section 17.05, which shall read as follows:

17.05 Smoking Prohibited.

- a. Smoking is prohibited everywhere on the Condominium, including, but not limited to, the individual units, indoor and outdoor limited common elements, and in all indoor and outdoor common areas.
- b. No unit owner, tenant, or resident shall engage in the act of smoking, or permit smoking by any occupant, agent, tenant, business invitee, guest, friend or family member within the Condominium.
- c. All unit owners are required to provide to prospective buyers of their units a Resale Disclosure Certificate, in the statutorily prescribed form, together with copies of the Association’s Articles of Incorporation, Bylaws, Declaration, Rules and Regulations, current budget and current financial statements. The Resale Disclosure Certificate must include a description of the smoking prohibition and a reference to the smoke-free policy, and Owners selling their units must advise their real estate agents and prospective buyers of the smoking prohibition prior to the time that a purchase agreement for the unit is fully-executed.
- d. Any Owner who rents or leases or otherwise allows someone other than the Owner to reside within or occupy the unit shall disclose to all persons who reside within the unit that smoking is prohibited at the Condominium.
- e. **Enforcement:** Smoking in violation of this section shall constitute an act which adversely affects the common elements, the other units and their Owners, pursuant to

