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Office of the County Recorder  
Hennepin County, Minnesota

Martin McCormick, County Recorder

Mark V. Chapin, County Auditor and Treasurer

Deputy 89

Pkg ID 1054124C

**Doc Name: CIC Declaration and Plat**

Plat Fee \$56.00

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**Document Total** \$56.00

**PID(s)**

12-118-23-14-0068

No delinquent taxes

Current year taxes for whole parcel are paid

Transfer Entered

Dec 11, 2013 12:00 PM

Hennepin County, Minnesota

Mark V. Chapin

County Auditor and Treasurer

SEE THE CIC PLAT FILED AS  
PART OF THIS DECLARATION

**COMMON INTEREST COMMUNITY NUMBER 1993  
Condominium**

**MEDINA RIDGE CONDOMINIUMS**

**DECLARATION**

**THIS INSTRUMENT WAS DRAFTED BY:**

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Hellmuth & Johnson, PLLC  
8050 West 78th Street  
Edina, Minnesota 55439  
(952) 941-4005**

**COMMON INTEREST COMMUNITY NUMBER 1993  
Condominium**

**MEDINA RIDGE CONDOMINIUMS**

**DECLARATION**

THIS DECLARATION OF COMMON INTEREST COMMUNITY is executed as of this 10th day of December, 2013, by The Gramercy Club at Elm Creek, a Minnesota Cooperative, on behalf of the owners of the Property (as that term is hereinafter defined), and by Medina Ridge Condominium Association, Inc., a Minnesota nonprofit corporation ("Declarant"), pursuant to Minnesota Statutes Section 515B.1-101 to 515B.4-118, commonly known as the Minnesota Common Interest Ownership Act (hereinafter the "Act") and laws amendatory thereof and supplemental thereto, for purposes of creating Common Interest Community Number 1993, Medina Ridge Condominiums, a condominium.

**WITNESSETH:**

WHEREAS, there is recorded in the office of the Hennepin County Recorder a certain Amended Declaration of Common Interest Community Number 1245, The Gramercy Club at Elm Creek, which was recorded on January 28, 2008, as Document No. 9090280 (the "Original Co-Op Declaration"), which Original Co-Op Declaration established The Gramercy Club at Elm Creek Cooperative as a residential cooperative located upon that certain real estate legally described on Exhibit A attached hereto and incorporated herein by reference ("Property"); and

WHEREAS, The Gramercy Club at Elm Creek, a cooperative and Unit Owners desired to change the form of the common interest community ("CIC") from a cooperative to a condominium, in accordance with the provisions of Minnesota Statutes Section 515B.2-123; and

WHEREAS, The Gramercy Club at Elm Creek obtained the written consent to the change in form from (i) Unit Owners to which at least eighty percent (80%) of the votes in the Association are allocated; (ii) eighty percent (80%) of the secured parties holding interests in share loan encumbering the Units or members; and (iii) eighty percent (80%) of holders of first mortgagees of record (notwithstanding the fact that the cooperative is a personal property cooperative), all in compliance with Section 515B.2-123 of the Act; and

WHEREAS, the Property has been improved by construction thereon various structures containing a total of eighty-seven (87) Units (as that term is later defined), together with appurtenances thereto, collectively known as Medina Ridge Condominium Association, Inc., said structures having been constructed in accordance with a common interest community plat, which plat ("CIC Plat"), is made a part hereof and is incorporated herein by this reference; and

WHEREAS, the Declarant and Unit Owners hereby establish this Declaration as a plan for the individual ownership of the real property estates consisting of the area or space contained in each of the Units (as later defined) in said structures and the co-ownership by the individual and separate owners thereof, as tenants in common, of all of the remaining real property which is hereinafter defined and referred to as the "Common Elements"; and

WHEREAS, in order to effectuate policies and programs to maintain, administer and enforce the terms contained herein and to collect and disburse assessments and charges hereafter created, a corporation known as Medina Ridge Condominium Association, Inc., has been created under Chapter 317A of Minnesota Statutes for the purpose of exercising the aforesaid functions; and

WHEREAS, in conjunction with their desire to change the form of the common interest community to establish a condominium on the Property, the Declarant and Owners further desire to subject the Property to the Act as a condominium, and to subject the Property to the covenants, restrictions, easements, charges and liens set forth herein, pursuant to the requirements and procedures prescribed by Section 515B.1-102(d) of the Act, and to terminate the effect of the Original Co-Op Declaration, and

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

WHEREAS, the Property does include shoreland as defined in Minnesota Statutes Section 103F.205; and

WHEREAS, Declarant desires and intends to establish Medina Ridge Condominium Association, Inc. as a senior residential community providing housing for older persons, pursuant to Title 42 of the United States Code, Section 3607(b)(2)(C) known as the Housing for Older Persons Act of 1995 ("HOPA") and Title 42 of the United States Code, Sections 3601-3619, known as the Fair Housing Act (the "Fair Housing Act"), and to operate in compliance with HOPA, the Fair Housing Act and Minnesota Statutes, Chapter 363 ("MHRA").

NOW, THEREFORE, the Unit Owners, as the fee owner of the Property, hereby make the following declaration to the Act as to divisions, covenants, restrictions, limitations, conditions and uses to which the above-described real property and improvements thereon above described, consisting of one structure (hereinafter, a "Building,") containing a total of eighty-seven (87) separate units (singly, each a "Unit," and collectively, "Units"), and other appurtenances, may be put, hereby specifying that said Declaration shall constitute covenants which shall run with the land and shall be binding on the Declarant, its successors and assigns, and all subsequent owners of all or any part of said real property and improvements, together with their grantees, successors, heirs, executors, administrators, devisees or assigns, and that the Original Co-Op Declaration shall be revoked and superseded in its entirety by this Declaration upon its recording.

Terms not otherwise defined herein shall have the meaning ascribed to them in the Act.

## **SECTION 1 DEFINITIONS**

The following words when used in the Governing Documents shall have the following meanings (unless the context indicates otherwise):

- 1.1 "Association" shall mean Medina Ridge Condominium Association, Inc., a nonprofit corporation which has been created pursuant to Chapter 317A of the laws of the State of Minnesota and Minnesota Statutes Section 515B.3-101, whose members consist of all Owners as defined herein.
- 1.2 "Board" shall mean the Board of Directors of the Association as provided for in the Bylaws.
- 1.3 "Bylaws" shall mean the Bylaws governing the operation of the Association, as amended from time to time.
- 1.4 "City" shall mean the city of Medina.

- 1.5 "Common Elements" shall mean all parts of the Property except the Units, including all improvements thereon.
- 1.6 "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 this Declaration or the Bylaws.
- 1.7 "Common Interest Community" (also sometimes referred to herein as "CIC") shall mean the contiguous or noncontiguous real estate described on Exhibit A attached hereto that is subject to this Declaration, as more fully described in Section 515B.1-103(10) of the Act.
- 1.8 "Declarant" shall mean The Gramercy Club at Elm Creek, a Minnesota Cooperative.
- 1.9 "Dwelling" shall mean a part of a building consisting of one or more floors, designed and intended for occupancy as a single family residence, and located within the boundaries of a Unit. The Dwelling includes any garage attached thereto or otherwise included within the boundaries of the Unit in which the Dwelling is located.
- 1.10 "Eligible Mortgagee" shall mean any Person owning a mortgage on any Unit, which mortgage is first in priority upon foreclosure to all other mortgages that encumber such Unit, and which has requested the Association, in writing, to notify it regarding any proposed action which requires approval by a specified percentage of Eligible Mortgagees.
- 1.11 "Governing Documents" shall mean this Declaration, and the Articles of Incorporation and Bylaws of the Association, as amended from time to time, all of which shall govern the use and operation of the Property.
- 1.12 "Limited Common Elements" shall mean that portion of the Common Elements defined in Section 3.2 of this Declaration.
- 1.13 "Member" shall mean all persons who are members of the Association by virtue of being Owners as defined in this Declaration. The words "Owner" and "Member" may be used interchangeably in the Governing Documents.
- 1.14 "Occupant" shall mean any person or persons, other than an Owner, in possession of or residing in a Unit.
- 1.15 "Owner" shall mean a Person who owns a Unit, but excluding contract for deed vendors, mortgagees and other secured parties within the meaning of Section 515B.1-103(30) of the Act. The term "Owner" includes, without limitation, contract for deed vendees and holders of a life estate.
- 1.16 "Person" shall mean a natural individual, corporation, limited liability company, partnership, trustee, other or legal entity capable of holding title to real property.
- 1.17 "Plat" shall mean the plat depicting the Property pursuant to the requirements of Section 515B.2-1101 of the Act, including any amended or supplemental Plat recorded from time to time in accordance with the Act.

- 1.18 "Property" shall mean all of the real property submitted to this Declaration, including all improvements located thereon now or in the future. The Property as of the date of this Declaration is legally described in Exhibit A attached hereto.
- 1.19 "Members Guide" shall mean the Rules and Regulations of the Association as approved from time to time pursuant to Section 5.6.
- 1.20 "Unit" shall mean the area or space encompassed within the structure constructed on each parcel, including, the porch, as more particularly depicted in the CIC plat. Units shall be identified by number (e.g., "Unit Number \_\_\_\_\_"), as set forth in Exhibit B attached hereto. All Units are restricted to residential use.

Any terms used in the Governing Documents, and defined in the Act and not in this Section, shall have the meaning set forth in the Act.

## **SECTION 2 DESCRIPTION OF UNITS AND APPURTENANCES**

2.1 Units. There are eighty-seven (87) Units, all of which are restricted exclusively to residential use. Each Unit constitutes a separate parcel of real estate. No additional Units may be created by the subdivision or conversion of Units pursuant to Section 515B.2-112 of the Act. The Unit identifiers and locations of the Units are as shown on the Plat, which is incorporated herein by reference, and a schedule of Units is set forth on Exhibit B attached hereto.

2.2 Unit Boundaries. The front, rear and side boundaries of each Unit shall be the boundary lines of each Unit as depicted on the CIC Plat upon which the Dwelling is located as shown on the Plat. The porch is part of the Unit for the Dwelling to which it is attached. Subject to this Section 2 and Section 3.2, all spaces, walls, and other improvements within the boundaries of a Unit are a part of the Unit.

2.3 Access Easements. Each Unit shall be the beneficiary of an appurtenant easement for access to a public street or highway on or across the Common Elements, subject to any restrictions set forth in this Declaration.

2.4 Use and Enjoyment Easements. Each Unit shall be the beneficiary of appurtenant easements for use and enjoyment on and across the Common Elements, and for use and enjoyment of any Limited Common Elements allocated to the Unit, subject to any restrictions authorized by this Declaration.

2.5 Utility and Maintenance Easements. Each Unit shall be subject to and shall be the beneficiary of appurtenant easements for all services and utilities servicing the Units and the Common Elements, and for maintenance, repair and replacement as described in Section 12.

2.6 Encroachment Easements. Each Unit shall be subject to and shall be the beneficiary of the appurtenant easements for encroachments as described in Section 12.

2.7 Recorded Easements. The Property shall be subject to such other easements as may be recorded against it or as otherwise shown on the Plat.

2.8 Easements are Appurtenant. All easements and similar rights burdening or benefiting a Unit or any other part of the Property shall be appurtenant thereto, and shall be permanent, subject only to termination in accordance with the Act or the terms of the easement.

Any recorded easement benefiting or burdening the Property shall be construed in a manner consistent with, and not in conflict with, the easements created by this Declaration.

2.9 Impairment Prohibited. No person shall materially restrict or impair any easement benefiting or burdening the Property; subject to this Declaration and the right of the Association to impose reasonable rules and regulations governing the use of the Property.

### **SECTION 3 COMMON ELEMENTS AND LIMITED COMMON ELEMENTS**

3.1 Common Elements. The Common Elements and their characteristics are as follows:

- a. All of the Property not included within the Units constitutes Common Elements, and the undivided interest therein are allocated among the Units based upon the percentages set forth on Exhibit B attached hereto. The Common Elements include, but are not limited to, all the areas and items listed in this Section 3 or designated as Common Elements on the Plat or by the Act. The undivided interest in the Common Elements allocated to a Unit is appurtenant to such Unit and is inseparable from that Unit.
- b. Each Unit shall be allocated at least one (1) parking space, with allocation determined by the Board. Once a parking space has been allocated to a particular Unit, then such space shall be allocated to such Unit from that point forward unless such space shall be reallocated to another Unit by the Board, provided, however, that no parking space shall be re-allocated to another Unit without the prior written consent of the Owner of the Unit to which the parking space had been previously allocated.
- c. Each Unit shall be allocated at least one (1) storage space, with allocation determined by the Board. Once a storage space has been allocated to a particular Unit, then such space shall be allocated to such Unit from that point forward unless such storage space shall be reallocated to another Unit by the Board, provided, however, that no storage space shall be re-allocated to another Unit without the prior written consent of the Owner of the Unit to which the storage space had been previously allocated.
- d. The Common Elements shall be subject to appurtenant easements for services, public and private utilities, access, use and enjoyment as described in this, in favor of each Unit and its Owners and Occupants, and for maintenance, repair and landscaping in favor of the Association; subject to (i) the specific rights of Owners and Occupants in Limited Common Elements appurtenant to their respective Units and (ii) the right of the Association to establish reasonable Rules and Regulations governing the use of the Property.
- e. Subject to Sections 5, 6 and 9, all maintenance, repair, replacement, management and operation of the Common Elements shall be the responsibility of the Association.
- f. 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 Section 6.

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

- a. Those areas and items designated as Limited Common Elements on the Plat or by the Act.
- b. Chutes, flues, ducts, pipes, wires, conduit or other utility installations, bearing walls, bearing columns, or any other components or fixtures lying partially within and partially outside the boundaries of a Unit or Units served, and serving only such Unit(s), are allocated to the Unit(s) they serve. Any portion of such installations serving or affecting the function of any portion of the Common Elements is a part of the Common Elements, but is not a Limited Common Element.
- c. Improvements such as porches, patios, balconies, shutters, awnings, window boxes, perimeter doors (including frames and hardware) and windows (including frames, sashes and hardware), constructed as part of the original construction to serve a single Unit, and authorized replacements and modifications thereof, *if located outside the Unit's boundaries*, are Limited Common Elements allocated exclusively to that Unit.
- d. Common Expenses for the maintenance, repair and replacement of the Limited Common Elements shall be assessed and collected from the Owners in accordance with Section 6.

#### **SECTION 4**

#### **ASSOCIATION MEMBERSHIP: RIGHTS AND OBLIGATIONS**

Membership in the Association, and the allocation to each Unit of a portion of the votes in the Association and a portion of the Common Expenses of the Association shall be governed by the following provisions:

4.1 Membership. Each Owner shall be a member of the Association by virtue of Unit ownership, and the membership shall be transferred with the conveyance of the Owner's interest in the unit. An Owner's membership shall terminate when the Owner's ownership terminates. When more than one Person is an Owner of a Unit, all such Persons shall be Members of the Association, but multiple ownership of a Unit shall not increase the voting rights allocated to such Unit nor authorize the division of the voting rights.

4.2 Undivided Interest, Voting and Common Expenses. Voting rights in the Association shall be allocated on an equal basis, as set forth on Exhibit B. Common expense allocations shall be allocated on an equal basis, as set forth on Exhibit B, except that limited allocations of Common Expenses shall be permitted as provided in Section 6. Undivided interests shall be allocated equally among the Units, based upon the fractional interests in Exhibit B.

4.3 Appurtenant Rights and Obligations. The ownership of a Unit shall include the voting rights and Common Expense obligations described in Section 4.2. Said rights, obligations and interests, and the title to the Units, shall not be separated or conveyed separately, and any conveyance, encumbrance, judicial sale or other transfer of any allocated interest in a Unit separate from the title to the Unit shall be void. The allocation of the rights, obligations and



interests described in this Section may not be changed, except in accordance with the Governing Documents and the Act.

4.4 Authority to Vote. The Owner, or some natural person designated to act as proxy on behalf of the Owner, who must also be an Owner, may cast the vote allocated to such Unit at meetings of the Association; provided, that if there are multiple Owners of a Unit, only the Owner or other Person designated pursuant to the provisions of the Bylaws may cast such vote. The voting rights of Owners are more fully described in Section 3 of the Bylaws.

4.5 Board of Directors Meetings Open to Unit Owners. Except as otherwise provided in this subsection, meetings of the Board of Directors must be open to all Unit Owners. To the extent practicable, the Board shall give reasonable notice to the Unit Owners of the date, time and place of a Board meeting. If the date, time and place of meetings are provided for in this Declaration, the Articles of Incorporation or Bylaws of the Association, were announced at a previous meeting of the Board, posted in a location accessible to the Unit Owners and designated by the Board from time to time, or if an emergency requires immediate consideration of a matter by the Board, notice is not required. "Notice" has the meaning given in Minnesota Statutes Section 317A.011, subdivision 14. Meetings may be closed to discuss the following:

- (1) personnel matters;
- (2) pending or potential litigation, arbitration or other potentially adversarial proceedings between Unit Owners, between the Board or Association and Unit Owners, or other matters in which any Unit Owner may have an adversarial interest, if the Board determines that closing the meeting is necessary to discuss strategy or to otherwise protect the position of the Board or Association or the privacy of a Unit Owner or occupant of a Unit; or
- (3) criminal activity arising within the CIC if the Board determines that closing the meeting is necessary to protect the privacy of the victim or that opening the meeting would jeopardize the investigation of the activity.

The minutes of any part of a meeting that is closed under this subsection may be kept confidential at the discretion of the Board. Nothing in this subsection imposes a duty upon the Board to provide special facilities for meetings. The failure to give notice as required by this subsection shall not invalidate the Board meeting or any action taken at the meeting.

4.6 Age Restrictions. It is intended that Medina Ridge Condominium Association, Inc. provide housing for older persons in compliance in all respects with the letter and spirit of HOPA, the Fair Housing Act and MHRA. Accordingly, the following restrictions shall apply to membership in the Association and the ownership, occupancy and sale of the Units.

4.6.1 On and after the date of recording of this Declaration, at least 80% of the occupied Units must be occupied by one or more natural persons age 55 or older, alone or together with one or more persons between the ages of 44 and 55. Unless otherwise required by law, no person under age 45 may occupy a Unit at any time, except (i) as a temporary guest where the person's cumulative guest occupancy does not exceed a total of thirty days during any twelve month period or any longer period authorized in writing by the Board, or (ii) as a personal care assistant to a member of an otherwise qualifying household. No person under the age of 45 occupying a Unit as a personal care assistant for a member of that Unit's household shall continue to occupy the Unit following the termination of

occupancy by the person receiving the personal care. An occupied Unit as used in this Section 4.6 means (i) a Unit actually occupied by a person or persons as a full or part-time permanent residence (except a Unit occupied by a community caretaker), and (ii) any temporarily vacant Unit which a person age 55 or older has occupied as a full or part-time permanent residence at some time during the prior twenty-four months and intends to return and occupy as such.

4.6.2 The Board shall adopt, implement, enforce and adhere to policies and procedures that are consistent with the letter and spirit of this Section 4.6 and HOPA, the Fair Housing Act and MHRA, and demonstrate the intent to qualify as a community providing housing for older persons, pursuant to Title 42 of the United States Code, Section 3607(b)(2)(C), including but not limited to: (i) describing the common interest community as housing for older persons or an age 55 or older community to prospective Owners and Occupants of Units; (ii) posting information in the Common Elements consistent with the policies (if practicable), (iii) approving Member Guide consistent with the policies; (iv) requiring all leases to contain provisions with respect to the policies; (v) developing and implementing age screening and verification procedures consistent with the policies; (vi) requiring statements in Unit purchase agreements and resale disclosure documents with respect to the age restrictions; and (vii) providing information with respect to the age restrictions to real estate agents and other persons dealing in the sale, leasing or financing of Units. The Association and the Owners and Occupants of Units shall otherwise comply with the rules relating to verification of age and/or occupancy issued by the Department of Housing and Urban Development as contemplated by Title 42 of the United States Code, Section 3607(b)(2)(C)(iii).

## **SECTION 5 ADMINISTRATION**

The administration and operation of the Association and the Property, including but not limited to the acts required of the Association, shall be governed by the following provisions:

5.1 General. The operation and administration of the Association and the Property shall be governed by the Governing Documents, the Member Guide and the Act. The Association shall, subject to the rights of the Owners set forth in the Governing Documents and the Act, be responsible for the operation, management and control of the Property. The Association shall have all powers described in the Governing Documents, the Act and the statute under which it is incorporated. All power and authority of the Association shall be vested in the Board, unless action or approval by the individual Owners is specifically required by the Governing Documents or the Act. All references to the Association shall mean the Association acting through the Board unless specifically stated to the contrary.

5.2 Operational Purposes. The CIC shall be operated and managed for the purposes of (i) administering and enforcing the covenants, restrictions, easements, charges and liens set forth in the Governing Documents and the Member Guide, (ii) maintaining, repairing and replacing those portions of the Property for which the Association is responsible, and (iii) preserving the value and architectural uniformity and character of the Property.

5.3 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 in the Act.

5.4 Bylaws. The Association shall have Bylaws. The Bylaws and any amendments thereto shall govern the operation and administration of the Association, and shall be binding on all Owners and Occupants.

5.5 Management. The Board may delegate to a 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. Such professional management shall be by a managing agent appropriately licensed by the applicable governmental or quasi-governmental agencies.

5.6 Member Guide. The Board shall have exclusive authority to approve and implement such reasonable rules and regulations in a Member Guide 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 Documents 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.

5.7 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 (i) credited against future assessments, (ii) added to reserves, or (iii) offset against operating expenses of the Association, as determined by the Board.

5.8 Resale Disclosure Certificates. Pursuant to Section 515B.4-107 of the Act, in the event of a resale of a Unit by an Owner other than Declarant, that Owner shall furnish to the purchaser a resale disclosure certificate containing the information required by Section 515B.4-107(b) of the Act. Pursuant to Section 515B.4-107(d) of the Act, the Association shall, within ten days after a request by an Owner or the Owner's authorized representative, furnish the resale disclosure certificate. The Association may charge a reasonable fee for furnishing the resale disclosure certificate and any documents related thereto.

## **SECTION 6 ASSESSMENTS FOR COMMON EXPENSES**

6.1 **General.** Assessments for Common Expenses shall be determined and assessed against the Units by the Board, in its discretion; subject to the limitations set forth in this Section 6 and the requirements of the Bylaws. Assessments for Common Expenses shall include general assessments under Section 6.2 and may include special assessments under Section 6.3. Assessments shall be allocated among the Units according to the Common Expenses allocations set forth in Section 4.2, subject to the following qualifications:

- a. Any Common Expenses associated with the maintenance, repair, or replacement of a Limited Common Element undertaken by the Association may be assessed exclusively against the Unit or Units to which that Limited Common Element is assigned, on the basis of (i) equality, (ii) square footage of the area being maintained, repaired or replaced, or (iii) the actual cost incurred with respect to each Unit.
- b. Any Common Expense or portion thereof benefiting fewer than all of the Units (including Limited Common Elements allocated to a particular Unit) may be assessed exclusively against the Units benefited on the basis of (i) equality, (ii) square footage of the area being maintained, repaired or replaced, or (iii) the actual cost incurred with respect to each Unit.
- c. The costs of insurance will be assessed in proportion to the fractional interest as set forth in Exhibit B, except for improvements on Limited Common Elements, and the costs of utilities may be assessed in proportion to usage.
- d. Reasonable administrative, attorneys' fees and other costs of incurred by the Association in connection with (i) the collection of assessments, and (ii) the enforcement of the Governing Documents, the Act, the Member Guide, against an Owner or Occupant or their guests, may be assessed against the Owner's Unit.
- e. Fees, charges, late charges, fines and interest may be assessed as provided in Section 13.
- f. Assessments levied under Section 515B.3-116 of the Act to pay a judgment against the Association may be levied only against the Units existing at the time the judgment was entered, in proportion to their Common Expense liabilities.
- g. If any damage to the Common Elements or another Unit is caused by the act or omission of any Owner or Occupant, or their guests, the Association may assess the costs of repairing the damage exclusively against the Owner's Unit to the extent not covered by insurance.
- h. If any installment of an assessment becomes more than thirty (30) days past due, then the Association may, upon ten (10) days written notice of the Owner, declare the entire amount of the assessment immediately due and payable in full.
- i. 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.

- j. Assessments under Subsections 6.1.a-h shall not be considered special assessments as described in Section 6.3.
- k. Annual assessments for Common Expenses shall include an adequate reserve fund for replacement of those portions of the CIC which the Association is obligated to replace. Said fund shall be funded by general assessments (payable monthly or quarterly installments, as provided herein, subject to Section 6.1h hereof) and not by extraordinary special assessments.

6.2 General Assessments. General Assessments shall be established and levied by the Board, subject only to the limitations set forth in Sections 6.2 and 6.3. Notwithstanding the foregoing, the increase in the annual assessment for any year (exclusive of increases resulting from increases in insurance premiums) shall not exceed five percent (5%) of the total annual assessment for the Association's previous fiscal year unless such increase is approved by the vote of a majority of those Owners voting, in person or by proxy, at a meeting called for that purpose. Written notice of the meeting shall be sent to all Owners not less than 21 days nor more than 30 days in advance of the meeting. The levying of the initial general assessment shall be at the discretion of the Board. Each general assessment shall cover all of the anticipated Common Expenses of the CIC for the year. General assessments shall provide, among other things, for contributions to a separate reserve fund sufficient to cover the periodic cost of replacement of those parts of the CIC for which the Association is responsible. The general assessments shall be due and payable on the first day of each fiscal year provided, however, that the Board may allow for payment in equal monthly or quarterly installments, as determined by the Board (and subject to Section 6.1(h), above).

6.3 Special Assessments. In addition to general assessments, and subject to the limitations set forth hereafter, the Board may levy in any assessment year a special assessment against all Units for the purpose of defraying in whole or in part (i) the cost of any unforeseen or unbudgeted Common Expense, (ii) general or specific reserves for maintenance, repair or replacement, and (iii) the maintenance, repair or replacement of any part of the Property, and any fixtures or other property related thereto. Notwithstanding the foregoing, any special assessment shall be subject to approval by the vote of a majority of those Owners voting, in person or by proxy, at a meeting called for that purpose. Written notice of the meeting shall be sent to all Owners not less than 21 days nor more than 30 days in advance of the meeting

6.4 Limited Assessments. In addition to annual Assessments and special Assessments, the Board may levy and allocate limited Assessments among only one or more, but not all, Units in accordance with the following requirements and procedures:

6.4.1 Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element shall be assessed exclusively against the Unit or Units to which that Limited Common Element is allocated equally, in proportion to their relative percentage interests set forth in Exhibit A attached hereto or by actual cost per Unit, unless otherwise determined by resolution of the Board.

6.4.2 Any Common Expense benefiting fewer than all of the Units but not falling within Section 6.4.1 may, at the Board's discretion, be assessed against the Unit or Units benefited equally, in proportion to their relative percentage interests set forth in Exhibit A attached hereto or by actual cost per Unit, subject to the requirements of Section 6.5.5.

6.4.3 Reasonable attorneys' fees and other professional costs incurred by the Association in connection with (i) the collection of Assessments, and (ii) the

enforcement of the Governing Documents, the Act, or the Member Guide against an Owner or Occupant or their guests, may be assessed against the Owner's Unit.

6.4.4 Late charges, fines and interest may be assessed as provided in Section 12.

6.4.5 Assessments levied under Section 515B.3-116(a) of the Act to pay a judgment against the Association may be levied only against the Units existing at the time the judgment was entered, in proportion to their Common Expense liabilities.

6.4.6 If any damage to the Common Elements, Limited Common Elements or another Unit or any portion of the Owner's Unit that the Association is obligated to maintain hereunder is caused by the act or omission of any Owner or Occupant, or their guests, the Association may assess the costs of repairing the damage exclusively against the Owner's Unit to the extent not covered by insurance.

6.4.7 If Common Expense liabilities are reallocated for any purpose authorized by the Act, Assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense liabilities.

Assessments levied under Sections 6.4.1 through 6.4.6 may, at the Board's discretion, be assessed as a part of, or in addition to, the Assessments levied under Section 6.1 or 6.2.

6.5 Replacement Reserves. The Association shall include in its annual budgets replacement reserves projected by the Board to be adequate, together with past and future contributions to replacement reserves, to fund the replacement of those components of the Units and Common Elements, the Association is obligated to replace by reason of ordinary wear and tear or obsolescence, subject to the following:

6.5.1. The amount annually budgeted for replacement reserves shall be adequate, together with past and future contributions to replacement reserves, to replace the components as determined based upon the estimated remaining useful life of each component; provided that portions of replacement reserves need not be segregated for the replacement of specific components, except as otherwise provided herein.

6.5.2. The annual budget need not include reserves for the replacement of (i) components that have a remaining useful life of more than 30 years, or (ii) components whose replacement will be funded by limited Assessments or by special Assessment, if approved pursuant to Section 6.5.5.

6.5.3. The replacement reserve funds shall be maintained in an account or accounts separate from operating funds. None of the replacement reserve funds shall be used or borrowed from to fund operating expenses. The Association may, however, pledge the replacement reserves as security for a loan to the Association.

6.5.4. The adequacy of the replacement reserves shall be reevaluated at least every third year after recording of this Declaration.

6.5.5. Subject to approval (i) by the Board and (ii) by Owners of Units to which 51 percent of the votes in the Association are allocated, the Association need not annually assess for replacement reserves to replace those components whose replacement is planned to be paid by special Assessment pursuant to Section 6.3 or by limited Assessment pursuant to Section 6.4. The approval provided for in the preceding sentence shall be effective for no more than the Association's



current and three following fiscal years, subject to modification or renewal by the same approval standards.

6.6 Operating Reserve Fund. There shall be established an operating reserve fund to meet unforeseen expenditures or to purchase additional equipment or services for the Association. The Board may include in each subsequent annual budget a reasonable amount of working capital, based upon the anticipated needs of the Association for the year in question. There shall be contributed, on a one-time basis for each Unit sold by Declarant (except for Unit conveyances pursuant to the Order), an amount equal to two months installments of the estimated annual Assessments for the Unit. The contribution shall be paid by the purchasers of the Units at the time of closing of the initial sales of the Units by Declarant. The contributions to this fund are in addition to the regular installments of annual Assessments. The funds shall be deposited into a segregated Association account. Funds deposited in said account shall not be used to defray any of Declarant's expenses, reserve contributions or construction costs, nor to make up any budget deficits during the Declarant Control Period.

6.7 Liability of Owners for Assessments. The obligation of an Owner to pay assessments shall commence at the later of (i) the time at which the Owner acquires title to the Unit; or (ii) the due date of the first assessment levied by the Board. The Owner at the time an assessment is payable with respect to the Unit shall be personally liable for the share of the Common Expenses assessed against such Unit. Such liability shall be joint and several where there are multiple Owners of the Unit. The liability is absolute and unconditional. No Owner is exempt from liability for payment of his or her share of Common Expenses by right of set-off, by waiver of use or enjoyment of any part of the Property, by absence from or abandonment of the Unit, by the waiver of any other rights, or by reason of any claim against the Association or its officers, directors or agents, or for their failure to fulfill any duties under the Governing Documents or the Act. The Association may invoke the charges, sanctions and remedies set forth in Section 14, in addition to any remedies provided elsewhere in the Governing Documents or by law, for the purpose of enforcing its rights hereunder.

6.8 Assessment Lien. The Association has a lien on a Unit for any assessment levied against that Unit from the time the assessment becomes due. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due. Fees, charges, late charges, fines and interest charges imposed by the Association pursuant to Section 515B.3-102(a)(10), (11), and (12) of the Act are liens, and are enforceable as assessments, under this Section. Recording of this Declaration constitutes record notice and perfection of any lien under this Section, and no further recordation of any notice of or claim for the lien is required. Release of the lien shall not release the Owner from personal liability unless agreed to in writing by the Association.

6.9 Foreclosure of Lien; Remedies. A lien for Common Expenses may be foreclosed against a Unit under the laws of the State of Minnesota (i) by action, or (ii) by advertisement as a lien under a mortgage containing a power of sale, provided, however, that in a foreclosure by advertisement, the foreclosing party shall be entitled to costs and disbursements of foreclosure and attorneys fees authorized by the declaration or bylaws, notwithstanding the provisions of Minn. Stat. Section 582.01, subdivisions 1 and 1a. (In a foreclosure by action, the foreclosing party shall be entitled to costs and disbursements of foreclosure and attorneys fees as the court shall determine.) The Association, or its authorized representative, shall have the power to bid in at the foreclosure sale and to acquire, hold, lease, mortgage and convey any Unit so acquired. The Owner and any other Person claiming an interest in the Unit, by the acceptance or assertion of any interest in the Unit, grants to the Association a power of sale and full authority to accomplish the foreclosure. The Association shall, in addition, have the right to pursue any other remedy at law or in equity against the Owner who fails to pay any assessment or charge against the Unit.

6.10 Lien Priority; Foreclosure; A lien under this Section is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances recorded before the Original Co-op Declaration, (ii) any first mortgage encumbering the fee simple interest in the Unit, and (iii) liens for real estate taxes and other governmental assessments or charges against the Unit. Notwithstanding the foregoing, if (i) a first mortgage on a Unit is foreclosed, (ii) the first mortgage was recorded on or after the date of recording of this Declaration, and (iii) no Owner redeems during the Owner's period of redemption provided by Chapters 580, 581, or 582, then the holder of the sheriff's certificate of sale from the foreclosure of the first mortgage shall take title to the Unit subject to a lien in favor of the Association for unpaid assessments for Common Expenses levied pursuant to Sections 515B.3-115(a), (e)(1) to (5), (f), and (i) of the Act which became due, without acceleration, during the six (6) months immediately preceding the first day following the end of the Owner's period of redemption.

6.11 Real Estate Taxes and Assessments. Real estate taxes, special assessments, and other charges and fees which may be levied against the Common Elements by governmental authorities, shall be allocated among and levied against the Units based upon their respective percentage interests as set forth in Exhibit A, and shall be a lien against each Unit in the same manner as a lien for real estate taxes and special assessments levied against the Unit alone.

6.12 Voluntary Conveyances; State of Assessments. In a voluntary conveyance of a Unit the buyer shall not be personally liable for any unpaid assessments and other charges made by the Association against the seller or the seller's Unit prior to the time of conveyance by the buyer, unless expressly assumed by the buyer. However, the lien of such assessments shall remain against the Unit until satisfied. Any seller or buyer shall be entitled to a statement, in recordable form, from the Association setting forth the amount of the unpaid assessments against the Unit, including all assessments payable in the Association's current fiscal year, which statement shall be binding on the Association, seller and buyer.

## **SECTION 7 RESTRICTIONS ON USE OF PROPERTY**

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 Unit, covenant and agree that, in addition to any other restrictions 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:

7.1 General. 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 Development, and shall run with the Property and be a burden and benefit to all Owners and Occupants and to any other Person acquiring or owning an interest in the Property, their heirs, personal representatives, successors and assigns.

7.2 Compliance with Governing Documents. Each Unit Owner, tenant or occupant of a Unit shall comply with the provisions of the Governing Documents and Member Guide of the Association or its representative, as lawfully amended from time to time, and failure to comply with any such provisions, rules or regulations, shall be grounds for action to recover sums due, for damages, or for injunctive relief.



7.3 Use of Common Elements. There shall be no obstruction, littering, defacement or misuse of Common Elements nor shall anything be stored in the Common Elements except in areas designated for such storage by the Board.

7.4 Subdivision Prohibited. Except as permitted by the Act and Section 14 of this Declaration, no Unit 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 Units.

7.5 Residential Use. The Units 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 non-residential purposes, except as provided in Section 7.6. The number of occupants per Dwelling shall be restricted in accordance with the Building Officials and Code Administration (BOCA) occupancy restrictions. Any lease of a Unit (except for occupancy by guests with the consent of the Owner) for a period of less than seven (7) days, or any occupancy which includes services customarily furnished to hotel guests, shall be presumed to be for transient purposes.

7.6 Business Use Restricted. No business, trade, occupation or profession of any kind, whether carried on for profit or otherwise, shall be conducted, maintained or permitted in any Unit or the Common Elements; except (i) an Owner or Occupant residing in a Unit may keep and maintain his or her business or professional records in such Unit 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 Unit and do not involve any observable business activity such as signs, advertising displays, bulk mailings, deliveries, or visitation or use of the Unit by customers or employees, (ii) the Association may maintain offices on the Property for management and related purposes. By way of explanation, and not intended to supercede the information contained elsewhere in this Section 7, generally, any business which could not be conducted, maintained or permitted on property classified by zoning regulations of the City as residential may not be conducted, maintained or permitted on the Property.

7.7 Leasing. Leasing of Units shall be allowed, subject to reasonable regulation by the Association, and subject to the following conditions: (i) no Unit shall be leased for transient or hotel purposes; (ii) no Unit may be subleased; (iii) all leases shall be in writing; (iv) all leases shall provide that they are subordinate and subject to the provisions of the Governing Documents, the Member Guide 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) no lease shall be for a term of less than one (1) year. The Association may impose such reasonable Member Guide as may be necessary to implement procedures for the leasing of Units, consistent with this Section.

7.8 Parking. Parking areas on the Property shall be used only 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 driveways and other parking areas on the Property, and the types of vehicles and personal property permitted thereon, shall be subject to regulation by the Association, including without limitation the right of the Association to tow illegally parked vehicles or to remove unauthorized personal property at the vehicle owner's expense.

7.9 Parking of Recreational Vehicles and Equipment. Subject to the provisions of Section 7.8 hereof, recreational vehicles, trucks and other vehicles (other than automobiles) rated at more than three-quarter ton will not be allowed to be parked on the Property, except for short periods of time for loading and unloading. Boats and/or recreational equipment of any kind including, without limitation, tractor trailers, other trailers of all types, recreational vehicles, motor homes, trucks in excess of three-quarter ton, bicycles, motorcycles, boats, all terrain vehicles and

snowmobiles are not allowed to be parked or stored on the Property at any time, except within a garage. The Board shall have the exclusive authority to regulate, by the Member Guide, the parking and storage of recreational vehicles and equipment on the Property.

7.10 Animals. No animal may be bred, or kept or maintained for business or commercial purposes, anywhere on the Property. However, the Board shall have the exclusive authority to prohibit, or to allow and regulate, by the Member Guide, the keeping of animals on the Property. The word "animal" shall be construed in its broadest sense and shall include all living creatures except humans.

7.11 Quiet Enjoyment; Interference Prohibited. All Owners and Occupants and their guests shall have a right of quiet enjoyment in their respective Units, 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.

7.12 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 any Owner or Occupant.

7.13 Alterations. No alterations, changes, improvements, repairs or replacements of any type, temporary or permanent, structural, aesthetic or otherwise (collectively referred to as "alterations") shall be made, or caused or allowed to be made, by any Owner or Occupant, or their guests, in any part of the Common Elements, or in any part of the Unit which affects the Common Elements or another Unit or which is visible from the exterior of the Unit, without the prior written authorization of the Board, or a committee appointed by it, as provided in Section 8. The Board, or the appointed committee if so authorized by the Board, shall have authority to establish reasonable criteria and requirements for alterations, and shall be the sole judge of whether the criteria are satisfied.

7.14 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 Unit into separate time periods, is prohibited.

7.15 Access to Units. In case of emergency, all Units and Limited Common Elements are subject to entry, without notice and at any time, by an officer or member of the Board of the Association, by the Association's management agents or by any public safety personnel. Entry is also authorized for maintenance purposes under Section 9 and for enforcement purposes under Section 13.

7.16 Hazardous Activities and Waste: Alterations. Nothing shall be done or kept in any Unit or any Common Elements which will increase the rate of insurance on the CIC, or the contents thereof, or result in increased water, sewer or other utility charges, without the prior written consent of the Board of Directors of the Association. No Unit Owner or occupant of a Unit shall permit anything to be done or kept in any Unit or in the Common Elements which will result in the cancellation of insurance on the CIC, or contents thereof, or which will be in violation of applicable law or ordinance. No waste shall be committed in the Common Elements. No Unit Owner shall make any improvement or alterations to his or her Unit that impair the structural integrity or mechanical systems or lessen the support of any portion of the CIC. Written approval may be conditioned upon (i) the furnishing to the Association of complete plans and specifications for such alteration or improvement prepared by a licensed architect or engineer, and (ii) the furnishing to the Association of financial guarantees or assurances

satisfactory to the Association that all claims for labor or material furnished in connection with such alternation or improvement will be fully paid and that no claims or liens will arise therefrom.

7.17 "Small Dish" Satellite-Type and Any Other Antennae. No "small dish" satellite antennae in excess of eighteen inches in diameter or any other type of antennae shall be affixed to any portion of the CIC, nor shall any C-band antennae be erected on or affixed to any portion of the CIC, without prior written consent of the Board. The Board of Directors of the Association may provide guidelines regarding the use, installation and location of "small dish" satellite-type or other types of antennae, however, any such guideline shall be reasonable, shall not impair or degrade reception and shall conform to the Federal Telecommunications Act of 1996, and regulations imposed thereunder.

7.18 Exterior Appearance of Units and Dwellings.

- a. No Owner or Occupant shall allow storage boxes, refuse or trash to accumulate in his or her Unit. Personal property may not be stored outside of a Dwelling, or on or beneath a porch, or elsewhere outside a Dwelling. Such prohibition shall apply to, without limitation, bicycles, garbage cans, motorcycles, and snowmobiles, all of which must be stored in the Dwelling or garage.
- b. No Unit Owner or Occupant of any Unit shall cause or permit anything to be hung, displayed, or placed on the outside windows of any Building (with the exception of draperies, blinds and shades); use of blankets, sheets, etc., as window coverings is prohibited.
- c. No Unit Owner or Occupant of any Unit shall cause or permit anything to be hung, displayed, or placed on the outside of exterior doors, or on the outside walls or roof of such buildings. No clothes, sheets, blankets, laundry or other articles shall be hung out or exposed on any part of the Common Elements, balconies, or patios of Dwellings.
- d. No exterior awnings, shutters, canopies, radio or television antennas shall be erected nor any signs affixed to or placed upon exterior walls or roofs or any part thereof or other parts of the Common Elements.
- e. Subject to regulation by the Board, lawn furniture and/or grills may be stored on porches or patios through the winter months.

7.19 Doors; Locks. There shall be no alteration of any lock or installation of any new lock, door knocker, peephole or other attachment, or any sign, decorative trim, re-staining, painting or any other change to any hallway, balcony or patio door to any Dwelling without prior written consent of the Board.

7.20 Residents. A maximum number of persons who shall be permanent occupants in any Dwelling shall be four (4), all of whom must be either Owners or caregivers of Owners.

7.21 Guests. A guest may remain on the Property no longer than fourteen (14) consecutive days. Guests may remain on the Property no more than twenty-eight (28) days within any one-year period of time, subject to Board approval.

7.22 Smoke Detectors. Every Unit owner shall maintain, at such Unit Owner's cost and expense, at least one smoke detector in his or her Dwelling, which detector shall meet the

requirements of Underwriter Laboratories, Inc., or be approved by International Conference of Building Officials.

7.23 Heating of Units. For the purpose of preventing damage and breakage of water, sewer and other utility lines and pipes in a Dwelling which might result in damage to an adjoining Unit, all Owners shall maintain the temperature in their Dwellings, at all times, at least at fifty-five degrees Fahrenheit (55° F.) or such other reasonable temperature or standard established by a Rule, subject, however, to the inability to maintain such temperature due to causes beyond the Owner's reasonable control.

7.24 Waivers/Variations. Any request by an Owner or Occupant for a waiver or variance of any kind from the foregoing restrictions, the Rules or for any special consideration of any kind, shall be made in writing to the Board, accompanied by appropriate written verification or documentation stating the reasons therefor. In the case of special accommodations requested pursuant to the Americans with Disabilities Act, such request shall be accompanied by a written statement of a licensed professional qualified to diagnose the illness or condition covered by said act.

## **SECTION 8 ARCHITECTURAL CONTROL**

8.1 Restrictions on Alterations. The following restrictions and requirements shall apply to alterations on the Property:

- a. Except as expressly provided in this Section 8, no structure, building, addition, porch, patio, patio enclosure, fence, wall, enclosure, window, exterior door, sign, display, decoration, color change, shrubbery, material topographical or landscaping change, nor any other exterior improvements to or alteration of any Unit which is visible from the exterior of the Unit (collectively referred to as "alterations"), shall be commenced, erected or maintained in a Unit, unless and until the plans and specifications showing the nature, kind, shape, height, color, materials and locations of the alterations shall have been approved in writing by the Board or a committee appointed by it.
- b. The criteria for approval shall include and require, at a minimum, (i) substantial uniformity of color, size, location, type and design in relation to existing improvements and topography, (ii) comparable or better quality of materials as used in existing improvements, (iii) ease of maintenance and repair, (iv) adequate protection of the Property, the Association, Owners and Occupants from liability and liens arising out of the proposed alterations, and (v) compliance with governmental laws, codes and regulations.
- c. Approval of alterations which encroach upon another Unit or the Common Elements shall create an appurtenant easement for such encroachment in favor of the Unit with respect to which the alterations are approved; provided, that any easement for a porch or patio other than as originally constructed shall be approved by resolution of the Board and a file of such resolutions shall be maintained permanently as a part of the Association's records.
- d. The Board may appoint, supervise and disestablish an architectural control committee ("ACC"), and specifically delegate to it part or all of the functions which the Board exercises under this Section, in which case the referenced to the Board shall refer to the ACC where appropriate. The ACC shall be subject to the supervision of the Board.



8.2 Review Procedures. The following procedures shall govern requests for alterations under this Section:

- a. Detailed plans, specifications and related information regarding any proposed alteration, in form and content acceptable to the Board, shall be submitted to the Board at least sixty (60) days prior to the projected commencement of construction. No alterations shall be commenced prior to approval.
- b. The Board shall give the Owner written notice of approval or disapproval. If the Board fails to approve or disapprove within sixty (60) days after receipt of said *complete* plans and specifications and all other information requested by the Board, the approval will be deemed rejected.
- c. If no request for approval is submitted, approval is denied.
- d. All fees and costs incurred by the Association in conjunction with any such request for approval, including attorneys' fees and costs or fees and costs of other professionals, shall be borne by the requesting party. Any such fee or cost which the requesting party fails to pay shall be assessed to the subject Unit and Owner of such Unit, and shall be a lien against such Unit and the personal obligation of such Unit Owner in the same manner and with the same priority and effect as assessments under Section 6 hereof.

8.3 Remedies for Violations. The Association may undertake any measures, legal or administrative, to enforce compliance with this Section and shall be entitled to recover from the Owners causing or permitting the violation all attorneys' fees and costs of enforcement, whether or not a legal action is started. Such attorneys' fees and costs shall be a lien against the Owner's Unit and a personal obligation of the Owner. In addition, the Association shall have the right to enter the Owner's Unit and to restore any part of the Unit to its prior condition if any alterations were made in violation of this Section, and the cost of such restoration shall be a personal obligation of the Owners and a lien against the Owner's Unit.

8.4 Modification to Allow Access to the Disabled. Subject to the provisions of applicable law and Section 7.24 hereof, an Owner, at Owner's expense, may make improvements or alterations to a Unit as necessary for the full enjoyment of the Unit by any person residing in the Unit who has a handicap or disability, as provided in the Fair Housing Amendments Act, United States Code, Title 42, Section 3601, *et seq.*, and the Minnesota Human Rights Act, Chapter 363, and any amendments to those acts. The Association may not prohibit such improvements or alterations referred to in this Section 8.4, but may reasonably regulate the type, style and quality of the improvements or alterations as they relate to health, safety and architectural standards. In addition, improvements or alterations made pursuant to this Section 8.4 must satisfy the requirements of Section 515B.2-113(a) (i), (ii), (iii) and (iv) of the Act.

8.5 Hold Harmless. The Owner who causes an alteration to be made, regardless of whether the alteration is approved by the Board, shall be solely responsible for the construction standards and specifications relating to the alteration, and the construction work. The Owner, and not the Association, is responsible for determining whether any alteration is in violation of any restrictions imposed by any governmental authority having jurisdiction over the Property. In no event shall the Association's review or approval of plans, specifications or related information be deemed to constitute an opinion or statement by the Association as to the adequacy or structural soundness of the alterations or their compliance with governmental laws, codes, ordinances or regulations. The Owner shall hold the Association harmless and indemnify the Association, and its officers and directors, from and against any expenses, claims, damages,

loses or other liabilities, including, without limitation, attorneys' fees and costs of litigation, arising out of (i) any alteration which violates any governmental laws, codes, ordinances or regulations; (ii) the adequacy of the specifications for construction of the alterations; and (iii) the construction of the alterations.

## **SECTION 9 MAINTENANCE**

9.1 Maintenance by Association. The Association shall provide for all maintenance, repair or replacement (collectively referred to as "maintenance") of the Common Elements, including the Limited Common Elements. In addition, for the purpose of preserving the architectural character, quality, and uniform and high standards for appearance of the Property, the Association shall (i) provide for exterior maintenance upon the Dwelling in each Unit that is subject to assessment as follows: paint and replace roofs, gutters, downspouts, porches, patios, entry doors (including door hardware) and exterior siding and other building surfaces; and (ii) provide for lawn, shrub and tree maintenance on all Units, except for watering.

The Association shall have easements as described in Section 12 to perform its obligations under this Section 9.

The Association shall have the authority, by and through its Board, to make such rules and regulations as it deems appropriate for the maintenance provided in this Section.

9.2 Optional Maintenance by Association. In addition to the maintenance described in this Section, the Association may, with the approval of a majority of votes cast in person or by proxy at a meeting called for such purposes, undertake to provide additional exterior maintenance to the Units or Dwellings.

9.3 Maintenance by Owner. Except for the exterior maintenance required to be provided by the Association under Section 9.1 or 9.2, all maintenance of the Dwellings and Units shall be the sole responsibility and expense of the Owners thereof. Such maintenance shall include, but not be limited to, sliding glass doors, screens and locks and porches (and included within the boundaries of each Unit, as depicted on the CIC Plat). Any alteration to a Unit shall be maintained at the Owner's sole cost and expense unless the Association undertakes to provide for such maintenance in accordance with the provisions of Section 9.2, above. The Owners and Occupants shall have a duty to promptly notify the Association of defects in or damage to those parts of the Property which the Association is obligated to maintain. The Association may require that any exterior maintenance to be performed by the Owner be accomplished pursuant to specific uniform criteria established by the Association. The Association may also undertake any exterior maintenance which the responsible Owner fails to or improperly performs and assess the Unit and the Owner for the cost thereof.

9.4 Damage Caused by Owner. Notwithstanding any provision to the contrary in this Section, if, in the judgment of the Association, the need for maintenance of any part of the Property is caused by the willful or negligent act or omission of any Owner or Occupant, or their guests, or by a condition in a Unit which the Owner or Occupant has willfully or negligently allowed to exist, the Association may cause such damage or condition to be repaired or corrected (and enter upon any Unit to do so), and the cost thereof may be assessed against the Unit of the Owner responsible for the damage.

9.5 Maintenance Responsibilities Defined by Board of Directors. Notwithstanding any provisions to the contrary, the Board of Directors shall have the sole and exclusive authority to define the scope of maintenance and repair to be provided by the Association. The Board of Directors is hereby vested with the authority to interpret the Governing Documents and rule on

any ambiguities contained therein. The Owners shall be legally bound by any decisions of the Board of Directors pertaining to the determination of the Association's maintenance obligations and the scope and extent thereof.

## **SECTION 10 INSURANCE**

10.1 Required Coverage. The Association shall obtain and maintain in the name of the Association, or cause to be obtained and maintained, 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 (including Units and Common Elements), 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 *may, but need not*, cover the following items within Units: (i) ceiling or wall finishing materials; (ii) floor covering; (iii) cabinetry; (iv) finished millwork; (v) electrical or plumbing fixtures serving a single Unit; (vi) built-in appliances; or (vii) other improvements and betterments, regardless of when installed. 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 shall include such additional endorsements, coverages and limits with respect 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 Unit. 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 coverages or endorsements in effect.
- b. Comprehensive public liability insurance covering the use, operation and maintenance of the Common Elements, with minimum limits of \$1,000,000 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, coverages 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 Unit.
- c. Fidelity bond, crime 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 purchasing or financing of a mortgage on a Unit. 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 Unit, 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 Units 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 coverages 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.

10.2 Premiums; Improvements; Deductibles. All insurance premiums shall be assessed and paid as a Common Expense. The insurance need not cover improvements and betterments to the Units installed by Owners, but if improvements and betterments are covered, any increased cost may be assessed against the Units affected. The Association may, in the case of a claim for damage to a Unit, (i) pay the deductible amount as a Common Expense, (ii) assess the deductible amount against the Units affected in any reasonable manner, or (iii) require the Owners of the Units affected to pay the deductible amount directly. The Association's decision as to who shall be charged with paying the deductible amount may, but need not, be based on fault.

10.3 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.

10.4 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. Nothing in this section shall prohibit any Owner from subrogating his or her individual insurance coverage (as differentiated from the insurance obtained and maintained by the Association) against the individual insurance coverage of another Owner.

10.5 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 thirty (30) days prior written notice to the Association, to the FHA or FNMA (if applicable), all of the insureds and all Eligible Mortgagees.

10.6 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 provisions of any insurance trust agreement to which the Association may be a party, or any requirement of law.



10.7 No Contribution. All policies of insurance maintained by the Association shall be the primary insurance where there is other insurance in the name of the Owner covering the same property, and may not be brought into contribution with any insurance purchased by Owners or their Eligible Mortgagees. Nothing in this section shall prohibit an Owner's individual insurance coverage (as differentiated from the insurance obtained and maintained by the Association) from providing "gap coverage" for any deductible under the Association's policy assessed to an Owner pursuant to Section 10.2 hereof.

10.8 Effect of Acts Not Within 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 or 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.

10.9 Owner's Personal Insurance. Each Owner shall obtain additional personal insurance coverage at his or her own expense covering fire and other casualty to the Unit, personal property or personal liability. Each Owner shall be responsible for any deductible or related expenses to said personal property or personal liability insurance coverage. All insurance policies maintained by Owners shall provide that they are without contribution as against the insurance purchased by the Association.

## **SECTION 11 RECONSTRUCTION, CONDEMNATION AND EMINENT DOMAIN**

11.1 Reconstruction. The obligations and procedures for the repair, reconstruction or disposition of the Property following damage to or destruction thereof shall be governed by the Act. Any repair or reconstruction shall be substantially in accordance with the plans and specifications of the Property as initially constructed and subsequently improved. The Association shall have all authority necessary to cause the Property to be reconstructed, including without limitation the authority (i) to require the Owners to enter into reconstruction contracts on their respective Units within a reasonable period of time as established by the Board, or (ii) to contract for the reconstruction of the Units on behalf of the Owners. Notice of substantial damage or destruction shall be given pursuant to Section 15.10.

11.2 Condemnation and Eminent Domain. In the event of a taking of any part of the Property by condemnation or eminent domain, the provisions of the Act shall govern; provided, that notice shall be given pursuant to Section 15.10. Eligible Mortgagees shall be entitled to priority for condemnation awards in accordance with the priorities established by the Act and the Governing Documents, as their interest may appear.

11.3 Notice. All Eligible Mortgagees shall be entitled to receive notice of any condemnation proceedings or substantial destruction of the Property, and the Association shall give written notice thereof to all Eligible Mortgagees pursuant to Section 15.10.

## **SECTION 12 EASEMENTS**

12.1 Easement for Encroachments. Each Unit and the Common Elements, and the rights of the Owners and Occupants therein, shall be subject to an exclusive easement for encroachments in favor of the adjoining Units for fireplaces, walls, roof overhangs, air conditioning systems, porches, balconies, patios, utility installations and other appurtenances (i) which are part of the original construction on the adjoining Unit or the Property, or (ii) which are added pursuant to Section 8. If there is an encroachment by an improvement located in a Unit, Medina Ridge

upon another Unit as a result of the construction, reconstruction, repair, shifting, settlement or movement of any part of the Property, an appurtenant easement for the encroachment, for the use, enjoyment and habitation of any encroaching improvement, and for the maintenance thereof, shall exist; provided that with respect to improvements or alterations added pursuant to Section 8, no easement shall exist unless the same have been approved and constructed as required by this Declaration. Such easements shall continue for as long as the encroachment exists and shall not affect the marketability of title.

12.2 Easement for Maintenance, Repair, Replacement and Reconstruction. Each Unit, and the rights of the Owners and Occupants thereof, shall be subject to the rights of the Association to an exclusive, appurtenant easement on and over the Units for the purposes of maintenance, repair, replacement and reconstruction of the Units, and utilities serving the Units, to the extent necessary to fulfill the Association's obligations under the Governing Documents. In addition, the Common Elements shall be subject to a non-exclusive easement in favor of the Association for the operation, repair, replacement, maintenance and landscaping thereof.

12.3 Utility Easements. The Property shall be subject to non-exclusive, appurtenant easements for all utilities, including water, sewer, natural gas, electricity, cable television, telephone, other electronic communications 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 Unit, and the rights of the Owners and Occupants thereof, shall be subject to a non-exclusive easement in favor of the other Units for all such utilities and services, provided that the utilities and services shall be installed, used, maintained and repaired so as not to interfere with the use and quiet enjoyment of the Units by the Owners and Occupants, nor affect the structural or architectural integrity of the Units. Each Unit shall also be subject to an exclusive easement in favor of the Association and all utilities companies providing service to the Units for the installation and maintenance of utilities metering devices.

12.4 Easement for Irrigation System. The Common Elements shall be subject to non-exclusive, appurtenant easements for water irrigation lines servicing the Property in the location the same shall have initially been constructed or installed incident to the initial construction of the improvements on the Property or such other location as may be approved by the Board.

12.5 Continuation and Scope of Easements. Notwithstanding anything in this Declaration to the contrary, in no event shall an Owner or Occupant be denied reasonable access to his or her Unit or the right to utility services thereto. The easements set forth in this Section 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 Units and the Common Elements for purposes of maintenance, repair, replacement and reconstruction.

## **SECTION 13 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 Member Guide, 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.

13.1 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 Member Guide, 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 Member Guide or the Act, as a measure to enforce such Owner's position, or for any other reason.

13.2 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 Member Guide or the Act:

- a. Commence legal action for damages or equitable relief in any court of competent jurisdiction.
- b. Impose late charges as determined by the Board for each past due assessment or installment thereof, and interest at up to the highest rate permitted by law.
- 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 Unit 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. Ten (10) days' 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 Member Guide 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 Limited Common Elements or porch, balcony, or patio easements, appurtenant to the Unit, and those portions of the Common Elements providing utilities service and access to the Unit. 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 thirty (30) days thereafter, for each violation.
- f. Restore any portions of the Common Elements or Limited 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 Units.
- g. Enter any Unit or Limited Common Element in which, or as to which, a violation or breach of Governing Documents exists which materially affects, or is likely to materially affect in the near future, the health or safety of the other Owners or Occupants, or their guests, or the safety or soundness of any part of the Property or the property of the Owners or Occupants, and to summarily abate and remove, at the expense of the offending Owner or Occupant, any structure, thing or condition in the Unit or Limited Common Elements which is causing the violation; provided, that any improvements which are a part of a Unit may be altered or demolished only pursuant to a court order or with the agreement of the Owner.

- h. Foreclose any lien arising under the provisions of the Governing Documents or under law, in the manner provided for the foreclosure of mortgages by action or under a power of sale in the state where the Property is located.

13.3 Rights to Hearing. In the case of imposition of any of the remedies authorized by Section 13.2d., e. or f. of this Section, 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 ten (10) days within which to request a hearing. The hearing shall be scheduled by the Board and held within thirty (30) days of receipt of the hearing request by the Board, and with at least five (5) 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 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 a reasonable time following the hearing, if not delivered to the offender at the hearing.

13.4 Lien for Charges, Penalties, Etc. Any assessments, charges, fines, penalties or interest imposed under this Section shall be a lien against the Unit 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 Section 6. 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.

13.5 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, the Governing Documents or Member Guide, whether or not finally determined by a court or arbitrator, the Association may assess the violator and his or her Unit with any expenses incurred in connection with such enforcement, including without limitation fines or charges previously imposed by the Association, reasonable attorneys' fees, and interest (at the highest rate allowed by law) on the delinquent amounts owed to the Association.

13.6 Liability for Owners' and Occupants' Acts. An Owner shall be liable for the expense of any maintenance, repair or replacement of the Property rendered necessary by such Owner's acts or omissions, or by that of Occupants or guests in the Owner's Unit, 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 Owner's acts or omissions may be assessed against the Owner responsible for the condition and against his or her Unit.

13.7 Enforcement by Owners. The provisions of this Section shall not limit or impair the independent rights of other Owners to enforce the provisions of the Governing Documents, Member Guide, and the Act as provided therein.

## **SECTION 14 AMENDMENTS**

This Declaration may be amended by the consent of (i) Owners of Units to which are allocated at least sixty seven percent (67%) of the votes in the Association, and (ii) the percentage of Eligible Mortgagees (based upon one vote per first mortgage owned) required by Section 15 as to matters prescribed by said Section. Consent of the Owners may be obtained in writing or at a meeting of the Association duly held in accordance with the Bylaws. Consents of Eligible Mortgagees 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 recording of the amendment.

## **SECTION 15 RIGHTS OF 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 protections:

15.1 Consent to Certain Amendments. The written consent of at least fifty-one percent (51%) of all Eligible Mortgagees of the Units 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 this Declaration which causes any change in the following: (i) voting rights; (ii) increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%); (iii) assessment liens, or priority of assessment liens; (iv) reductions in reserves for maintenance, repair and replacement of Common Elements; (v) responsibility for maintenance and repairs; (vi) reallocation of interests in the Common Elements or Limited Common Elements, or rights to their use; (vi) redefinition of any Unit boundaries; (viii) convertibility of Units into Common Elements or vice versa; (ix) expansion or contraction of the Property or the addition, annexation or withdrawal of property to or from the Property; (x) hazard or fidelity insurance requirements; (xi) leasing of Units; (xii) imposition of any restrictions on the leasing of Units; (xiii) restoration or repair of the Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents; (xiv) any action to terminate the legal status of the condominium after substantial destruction or condemnation occurs; or (xv) any provisions that expressly benefit mortgage holders or insurers or guarantors of mortgages. Notwithstanding the foregoing, implied approval of a proposed amendment shall be assumed when an Eligible Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided that the notice was delivered by certified mail with a return receipt requested.

15.2 Consent to Certain Actions. The written consent of all Eligible Mortgagees of the Units that are subject to first mortgages (based upon one vote per first mortgage owned) shall be required to abandon or terminate the common interest community, subject to any greater requirements contained in the Act.

15.3 Consent to Subdivision. No Unit may be partitioned or subdivided without the prior written approval of the Owner and Eligible Mortgagees thereof, and the Association.

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

15.5 Priority of Lien. Any holder of a first mortgage on a Unit or any purchaser of a first mortgage at a foreclosure sale, that comes into possession of a Unit by foreclosure of the first mortgage or by deed or assignment in lieu of foreclosure, takes the Unit free of any claims for unpaid assessments or any other charges or liens imposed against the Unit by the Association which have accrued against such Unit prior to the acquisition of possession of the Unit by said first mortgage holder or purchaser (i) except as provided in Section 6.7 and the Act, and (ii) except that any unpaid assessments or charges with respect to the Unit may be reallocated among all Units in accordance with their interest in the Common Elements.



15.6 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 Units and not to the Property as a whole.

15.7 Priority for Condemnation Awards. No provision of the Governing Documents shall give an Owner, or any other party, priority over any rights of the Eligible Mortgagees of the Unit 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 Unit and/or the Common Elements. The Association shall give written notice to all Eligible Mortgagees of any condemnation or eminent domain proceeding affecting the Property promptly upon receipt of notice from the condemning authority.

15.8 Service Agreement Requirements. The term of any agreement for services provided to the Association may not exceed three (3) 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.

15.9 Access to Books and Records/Audit. 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 one hundred twenty (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 Unit, 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.

15.10 Notice Requirements. Upon written request to the Association identifying the name and address of the holder, insurer or guarantor of a mortgage on a Unit, and the Unit 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 Unit securing the mortgage;
- b. a sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of a Unit on which it holds a mortgage;
- c. a lapse, cancellation or material modification of any insurance policy maintained by the Association; and
- d. a proposed action which requires the consent of a specified percentage of Eligible Mortgagees.

## **SECTION 16 RIGHTS TO RELOCATE UNIT BOUNDARIES AND ALTER UNITS**

16.1 Rights to Relocate Boundaries and Alter Units. Existing or future Units may be altered and Unit boundaries may be relocated only in accordance with the following conditions:

- a. Combining Units. An Owner may make improvements or alterations to such Unit or, may, after acquiring an adjoining Unit, remove or alter any intervening partition or create apertures therein in accordance with Section 515B.2-113 of the Act and Subsection d of this Section.

- b. Relocation of Boundaries. The boundaries between adjoining Units may be relocated in accordance with Section 515B.2-114 of the Act and Subsection d of this Section.
- c. Subdivision or Conversion. No additional Units may be created by the subdivision or conversion of a Unit (within the meaning of the Act) into two or more Units, nor into other Units, Common Elements of Limited Common Elements.
- d. Requirements. The alteration, relocation of boundaries or other modification of Units or the Dwellings or other structures located therein (collectively referred to herein as "alteration" or "alterations") pursuant to this Section, Section 8, and the Act may be accomplished only in accordance with the following conditions:
- (1) No Unit may be altered if, thereafter, the Dwelling located therein, or any other Dwelling affected by the alteration, would no longer be habitable or practicably usable 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. Where required, such consent shall be requested in writing by each Owner whose Unit 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 Unit. 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 Units 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 or Occupants; (iv) that the Property, the first mortgagees, the Association and the 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 Units to be altered pay all costs of processing and documentation for the request and the preparation and recording of any necessary amendment to the Governing Documents, including without limitation such costs as filing, architects' and attorneys' fees, incurred by the Association in connection with the alterations.

## **SECTION 17 MISCELLANEOUS**

17.1 Severability. If any term, covenant, or provision of this instrument or any exhibit attached hereto is held to be invalid or unenforceable for any reason whatsoever, such determination shall not be deemed to alter, affect or impair in any manner whatsoever any other portion of this instrument or exhibits.

17.2 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 section thereof, shall be deemed to include any statutes amending or replacing the Act, and the comparable sections thereof.

17.3 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 Bylaws shall be effective upon receipt by the Association.

17.4 Conflicts Among Documents. In the event of any conflict among the provisions of the Act, this Declaration, the Bylaws or any Member Guide approved by the Association, the Act shall control. As among this Declaration, the Bylaws and Member Guide, this Declaration shall control, and as between the Bylaws and the Member Guide, the Bylaws shall control.

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IN WITNESS WHEREOF, the undersigned has executed this Declaration the day and year first written above.

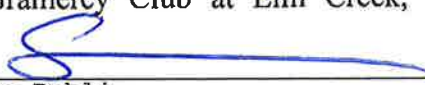
THE GRAMERCY CLUB AT ELM CREEK

By:   
Ed Murphy  
Its: President

STATE OF MINNESOTA    )  
                                  ) ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of December, 2013, by Ed Murphy, the President of The Gramercy Club at Elm Creek, a Minnesota cooperative, on behalf of the cooperative.



  
Notary Public  
MEDINA RIDGE CONDOMINIUM  
ASSOCIATION, INC.

By:   
Frederick W. Webber  
Its: President

STATE OF MINNESOTA    )  
                                  ) ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of December, 2013, by Frederick W. Webber, the President of Medina Ridge Condominium Association, Inc., a Minnesota nonprofit corporation, on behalf of the corporation.

  
Notary Public



1644332\_1

**EXHIBIT A TO DECLARATION**  
**COMMON INTEREST COMMUNITY NUMBER 1993**  
**Condominium**

**MEDINA RIDGE CONDOMINIUMS**

**LEGAL DESCRIPTION**

Lot 1, Block 1, Gramercy Club at Elm Creek, Hennepin County, Minnesota

**EXHIBIT B TO DECLARATION**  
**COMMON INTEREST COMMUNITY NUMBER 1993**  
**Condominium**

**MEDINA RIDGE CONDOMINIUMS**

**ALLOCATION OF COMMON ELEMENT INTEREST,  
COMMON EXPENSE LIABILITIES AND VOTING RIGHTS**

As provided in Section 515B.2-108 of the Minnesota Common Interest Ownership Act, this Declaration allocates the undivided interests in the Common Element Interests, Common Expense Liability and the Voting Rights to the Units on an equal basis, based upon the number of Units in the Association, provided, however, that a Common Expense assessment may be assessed against fewer than all Units as allowed under Section 515B.3-115(e)(2) of the Act. The Common Element Interests, Common Expense Liability and Voting Rights are allocated equally among the Units as follows:

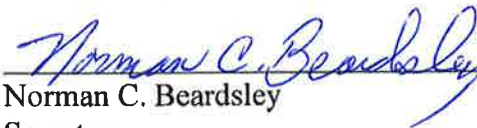
Unit No.	Unit No.	Unit No.	Unit No.	Unit No.	Unit No.	Unit No.	Unit No.
101	113	125	208	220	303	315	327
102	114	126	209	221	304	316	328
103	115	127	210	222	305	317	329
104	116	128	211	223	306	318	
105	117	129	212	224	307	319	
106	118	201	213	225	308	320	
107	119	202	214	226	309	321	
108	120	203	215	227	310	322	
109	121	204	216	228	311	323	
110	122	205	217	229	312	324	
111	123	206	218	301	313	325	
112	124	207	219	302	314	326	

## AFFIDAVIT OF SECRETARY

STATE OF MINNESOTA   )  
  ) ss.  
COUNTY OF HENNEPIN   )


The undersigned, Secretary of Medina Ridge Condominium Association, Inc., a Minnesota nonprofit corporation, being first duly sworn and upon oath, hereby swears and certifies, pursuant to the applicable provisions of Minnesota law and the Original Co-Op Declaration, that the Declaration of Common Interest Community Number 1993, Medina Ridge Condominiums, has been duly approved by a vote of the Board of Directors of the Association, and by the requisite number and percentage of Owners, secured parties and mortgagees, as evidenced by the Association's files and records, all in compliance with the requirements of Minnesota law and the Original Co-Op Declaration.

Medina Ridge Condominium  
Association, Inc.

  
Norman C. Beardsley  
Secretary

STATE OF MINNESOTA   )  
  ) ss  
COUNTY OF HENNEPIN   )

The foregoing was acknowledged before me this 10<sup>th</sup> day of December, 2013, by Norman C. Beardsley, Secretary of Medina Ridge Condominium Association, Inc., a Minnesota nonprofit corporation, on behalf of the corporation.

  
Notary Public

This instrument drafted by:

**HELLMUTH & JOHNSON, PLLC**  
**8050 WEST 78TH STREET**  
**EDINA, MN 55439**  
**(952) 941-4005**

