

**COMMON INTEREST COMMUNITY NUMBER 558
Condominium**

EARLEY LAKE OFFICE PARK

DECLARATION

THIS INSTRUMENT WAS DRAFTED BY:

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**COMMON INTEREST COMMUNITY NUMBER 558
Condominium**

EARLEY LAKE OFFICE PARK

DECLARATION

THIS DECLARATION OF COMMON INTEREST COMMUNITY is executed as of this _____ day of _____, 200__, by Earley Lake Office Park, LLC, a Minnesota limited liability company (“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.

WITNESSETH:

WHEREAS, Declarant is the fee owner of certain real property herein described (“Property”); and

WHEREAS, Declarant is desirous of developing the Property as a condominium development to be hereafter known as Common Interest Community Number 558, Earley lake Office Park; and

WHEREAS, Declarant has improved said property by constructing thereon one (1) structure containing a total of eight (8) Units (as that term is later defined), together with appurtenances thereto, collectively known as Earley Lake Office Park, said structure 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 hereby establishes 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 Earley Lake Office Park Association has been created under Chapter 317A of Minnesota Statutes for the purpose of exercising the aforesaid functions; 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, *does not* include any shoreland as defined in Minnesota Statutes Section 103F.205, and *is not* subject to a master association as defined in the Act.

NOW, THEREFORE, the Declarant, as the fee owner of those certain tracts of real property (“Property”) and improvements thereon located in the County of Dakota, State of Minnesota and legally described as set forth on Exhibit A attached hereto and incorporated herein by reference, hereby makes 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 (1) structure (hereinafter, singly, each a “Building,” and collectively, “Buildings”) containing a total of eight (8) 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.

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 “Additional Real Estate” shall mean that real property legally described as set forth on Exhibit C attached hereto, which may be added to the CIC pursuant to the provisions of Section 17 hereof.
- 1.2 “Association” shall mean Earley Lake Office Park Association, 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.
- 1.3 “Board” shall mean the Board of Directors of the Association as provided for in the Bylaws.
- 1.4 “Bylaws” shall mean the Bylaws governing the operation of the Association, as amended from time to time.
- 1.5 “City” shall mean the city of Burnsville.
- 1.6 “Common Elements” shall mean all parts of the Property except the Units, including all improvements thereon.
- 1.7 “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.
- 1.8 “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.
- 1.9 “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.
- 1.10 “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.
- 1.11 “Limited Common Elements” shall mean that portion of the common elements defined in Section 3.2 of this Declaration.

- 1.12 “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.
- 1.13 “Occupant” shall mean any person or persons, other than an Owner, in possession of or residing in a Unit.
- 1.14 “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.
- 1.15 “Person” shall mean a natural individual, corporation, limited liability company, partnership, trustee, other or legal entity capable of holding title to real property.
- 1.16 “Plat” shall mean the plat depicting the Property pursuant to the requirements of Section 515B.2-110(c) of the Act, including any amended or supplemental Plat recorded from time to time in accordance with the Act.
- 1.17 “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.
- 1.18 “Rules and Regulations” shall mean the Rules and Regulations of the Association as approved from time to time pursuant to Section 5.6.
- 1.19 “Unit” shall mean the area or space contained within the perimeter walls of such Unit in a structure constructed on the Property 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 nonresidential 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 eight (8) Units, all of which are restricted exclusively to **non-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 boundaries of each Unit shall be the interior unfinished surfaces of its perimeter walls, floors and ceilings. Wallpaper, paneling, tiles and other finishing materials adhered to the interior of the Unit boundaries shall be a part of the Unit; provided, that any load bearing portions of any interior or perimeter walls, columns, ceilings or floors, and any common utility lines or other common facilities located in or passing through a Unit, shall be Common Elements. The boundaries of each Unit shall also extend along the inside unfinished surfaces of its perimeter doors and windows, and their frames, and said perimeter doors, windows and frames, and their hardware, shall be deemed to be Limited Common Elements

appurtenant to such Unit. Subject to this Section and Section 3.2, all spaces, interior partitions, and other fixtures and 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 Declarant's Easements. Declarant shall have and be the beneficiary of easements for construction and sales activities as described in Section 14.1.

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

2.9 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.

2.10 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. The Common Elements shall be subject to appurtenant easements for services, public and private utilities, access, use and enjoyment as described in this Declaration, 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.

- c. Except as otherwise expressly provided in the Governing Documents, and 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.
- d. 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(s) served, and serving only such Unit or Units, 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 decks, patios, circular stairs, balconies, shutters, awnings, window boxes, doorsteps, stoops, 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. Heating, ventilating, air conditioning, and all other mechanical equipment serving only a certain Unit or Units, and located outside the Unit's or Units' boundaries, shall be allocated to the Unit or Units which the equipment serves.
- e. 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, undivided interest in the Common Elements, and Common Expenses of the Association shall be allocated equally, as set forth on Exhibit B, except that limited allocations of Common Expenses shall be permitted as provided in Section 6.

4.3 Appurtenant Rights and Obligations. The ownership of a Unit shall include the voting rights, ownership interests 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 Declarant Control. Notwithstanding the vote of any Unit Owner to the contrary, the Declarant hereby reserves a period of Declarant control of the Association during which the Declarant, or persons designated by the Declarant, may appoint and remove the officers and directors of the Association. Said reservation of Declarant control is subject to the following:

- (a) The maximum period of Declarant control may extend from the date of the first conveyance of a Unit to a Unit Owner other than a Declarant for a period not exceeding five (5) years.
- (b) Notwithstanding subsection (a) above, the period of Declarant control shall terminate upon the earlier of (i) surrender of control by the Declarant, or (ii) sixty (60) days after conveyance of seventy-five percent (75%) of the Units to Unit Owners other than Declarant.
- (c) If fifty percent (50%) of the Units that Declarant is authorized under this Declaration to create have been conveyed to Unit Owners other than Declarant or an affiliate of Declarant prior to the termination of the period of Declarant control, a meeting of the Unit Owners shall be held at which not less than thirty three and one-third percent (33 1/3%) of the members of the board shall be elected by Unit Owners other than Declarant or an affiliate of Declarant.
- (d) Not later than the termination of Declarant control, the Unit Owners shall elect a Board of Directors of at least three (3) members, or such number as set forth in the Bylaws. Thereafter, a majority of the directors shall be Unit Owners other than Declarant or an affiliate of Declarant. The remaining directors need not be Unit Owners unless required by the Articles of Incorporation or Bylaws. All Unit Owners, including the Declarant and its affiliates, may cast the votes allocated to any Unit owned by them. The Board shall elect the officers. The directors and officers shall take office upon election.

- (e) In determining whether the period of Declarant control has terminated under subsection (b) or whether Unit Owners other than a Declarant are entitled to elect members of the Board of Directors under subsection (c), the percentage of the Units which have been conveyed shall be calculated using as a numerator the number of Units conveyed and as a denominator the number of Units subject to this Declaration plus the number of Units which the Declarant is authorized by this Declaration to create on the Additional Real Estate.
- (f) 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.

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 Rules and Regulations 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 Rules and Regulations, (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 Rules and Regulations. The Board shall have exclusive authority to propose, approve and implement such reasonable Rules and Regulations as it deems necessary from time to time for the purpose of operating and administering the affairs of the Association and regulating the use of the Property; provided that the Rules and Regulations shall not be inconsistent with the Governing 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, or any combination thereof, as determined by the Board. Upon sale of a Unit by the Declarant, the Declarant shall be entitled to a refund by the Association of any assessments prepaid by the Declarant with respect to the Unit sold.

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 Sections 6.2 and 6.3, and the requirements of the Bylaws. Assessments for Common Expenses shall include annual assessments and may include special assessments. 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 Rules and Regulations, 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 annual assessments and not by extraordinary Special Assessments. In addition, there shall be a working capital fund for the initial months of operation of the CIC equal to two (2) months' installments of the estimated Common Expense assessment then in effect for the Unit being conveyed. Notwithstanding anything to the contrary contained herein,

the funds in the working capital account may be used to fund the reserve account, at the discretion of the Board of Directors.

6.2 Annual Assessments. Annual assessments shall be established and levied by the Board, subject only to the limitations set forth in Sections 6.2 and 6.3. Each annual assessment shall cover all of the anticipated Common Expenses of the Association for the year. Annual assessments shall provide, among other things, for contributions to a separate reserve fund sufficient to cover the periodic cost of maintenance, repair and replacement of the Common Elements and those parts of the Units for which the Association is responsible.

6.3 Special Assessments. In addition to annual 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.

6.4 Liability of Owners for Assessments. Until an assessment is levied, Declarant shall pay all accrued expenses of the CIC. 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, subject to the Declarant's alternative assessment liability described in Section 6.9. 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 respective 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 13, in addition to any remedies provided elsewhere in the Governing Documents or by law, for the purpose of enforcing its rights hereunder.

6.5 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.

6.6 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.

6.7 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 this 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.

6.8 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.

6.9 Declarant's Alternative Assessment Program. The following alternative assessment program is established pursuant to Section 515B.3-115(a)(2) of the Act. Notwithstanding anything to the contrary in this Section 6, if a Common Expense assessment has been levied, any Unit owned by Declarant for initial sale shall be assessed at the rate of 25% of the assessment, exclusive of replacement reserves, levied on other Units of the same type until a certificate of occupancy has been issued with respect to such Unit by the municipality in which the Unit is located. This reduced assessment shall apply to each Unit owned by Declarant at the time that the Unit is created, and shall continue until the issuance of the certificate of occupancy as previously described. This alternative assessment program will not affect the allocated share of replacement reserves required for Units owned by the Declarant. However, there are no assurances that this alternative assessment program will have no effect on the level of services for items set forth in the Association's budget. The Declarant shall be obligated, within sixty days following the termination of the period of Declarant control, to make up any operating deficit incurred by the Association during the period of Declarant control.

6.10 Deficiency Contributions. For every calendar year during which Declarant remains in control of the Association, Declarant shall contribute to the Association all funds in excess of the budgeted and collected assessments which shall be necessary to defray the costs properly paid or incurred by it for the purposes for which annual assessments may be collected all without limitation to the maximum amounts provided herein. Declarant's contribution for the calendar year during which Declarant's control terminates shall be prorated to the date of such termination.

For purposes hereof, the establishment of reserves pursuant to this Declaration does not constitute payment or incurring of costs by the Association and Declarant's deficiency contribution shall not be required to be applied to the establishment of reserves.

6.11 Date of Commencement of Annual Assessments, Due Dates, Budget. The annual assessments provided for herein shall commence for any Unit within the Property or any phase thereof annexed to the Property on the later of (i) the day of conveyance of the first Unit in the Property or such phase, and shall be prorated for the month of said conveyance, or (ii) the date specified by the Board of Directors, at its discretion. The Board of Directors shall fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each assessment period and in lieu thereof, the amount of the prior year's annual assessment shall be the fixed amount. Written notice of any changed amount of the annual assessment shall be sent to every Owner subject thereto. The due dates when said annual assessments are due and payable shall be established by the Board of Directors.

6.12 Levy of Assessment Allocated to Replacement Reserves. That part of any assessment that is allocated to replacement reserves referred to in Section 515B.3-114 of the Act shall be fully levied against a Unit, including any Unit owned by Declarant, on the substantial completion of the exterior of the Building containing the Unit.

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 Property, 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 rules and regulations 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 Exterior Appearance of Building. 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), on the outside of exterior doors, or on the outside walls or roof of such buildings; 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 (except for Declarant's right to place signs pursuant to Section 14 hereof). No Unit Owner or Occupant of any Unit shall hang, display or place anything on any portion of a Unit visible from the Common Elements (including, but not limited to, the exterior side of doors into common hallways, if any), nor shall any personal belongings be hung, displayed or placed in any portion of the Common Elements (exclusive of Limited Common Elements), including, but not limited to, common hallways (if any) adjacent to a Unit, without the prior written approval of the Board of Directors.

7.5 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.

7.6 Non-Residential Use. The Units shall be used by Owners and Occupants and their guests exclusively as private, non residential purposes, but not for transient or hotel purposes.

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) all leases shall be in writing; (iii) all leases shall provide that they are subordinate and subject to the provisions of the Governing Documents, the Rules and Regulations and the Act, and that any failure of the lessee to comply with the terms of such documents shall be a default under the lease; and (iv) no lease shall be for a term of less than one (1) year. The Association may impose such reasonable Rules and Regulations as may be necessary to implement procedures for the leasing of Units, consistent with this Section and the Rules.

7.8 Parking. Driveways and 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. No boats, trailers, inoperable automobiles, recreational vehicles or other motor equipment, licensed or unlicensed, shall be stored or parked anywhere on the Property. Temporary guest parking and overnight parking on public streets are subject to the ordinances of the City. The Board may allocate certain parking spaces for the use of the Owners and Occupants of specific Units and their respective guests. In such event, the Association shall post such parking restrictions in a manner the Board deems appropriate. Other than such allocation of parking by the Board, no surface parking spaces are allocated to or reserved for use by any particular Unit or Building.

7.9 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 rules and regulations, 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.

7.10 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.

7.11 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.

7.12 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.

7.13 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.

7.14 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, 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. No lock may be installed on any entry door to a Unit which is not in compliance with the master key system in place in the CIC.

7.15 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. 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 that structural integrity or mechanical systems or lessen the support of any portion of the CIC.

7.16 Cable, Satellite Television Services. If the Association so chooses, it may elect to contract for cable or satellite television service on a bulk rate basis, the cost of which would be a Common Expense.

7.17 Heating of Units. For the purpose of preventing damage and breakage of water, sewer and other utility lines and pipes in a Unit which might result in damage to an adjoining Unit, all Owners shall maintain the temperature in their Units, 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.

7.18 Waivers/Variances. 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, deck, 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, without prior written approval of the Board of Directors.
- b. Cosmetic changes to the interior of a Unit, and not generally visible from the exterior of a Unit are exempt from the approval requirements of this Section.
- 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 deck or patio other than as originally constructed shall be approved by resolution of the Board of Directors and a file of such resolutions shall be maintained permanently as a part of the Association's records.
- 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.
- e. The Board may promulgate guidelines for alterations, and shall have authority to amend such guidelines from time to time, as it deems necessary.
- f. 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 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.

8.3 Modification to Allow Access to the Disabled. Subject to the provisions of applicable law, 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 8.3 must satisfy the requirements of Section 515B.2-113(a) (i), (ii), (iii) and (iv) of the Act.

8.4 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, losses 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, including, without limitation, exterior maintenance, to the extent necessary, upon any Unit that is subject to assessment as follows: paint and replace roofs, gutters, downspouts, and exterior siding and other building surfaces; (ii) provide for lawn, shrub and tree maintenance; (iii) provide for maintenance of the parking areas; and (iv) provide for maintenance of the private streets within the Property. The Association's obligation to maintain exterior building surfaces shall *exclude* windows, sashes, and frames; doors and door hardware; and any other items not specifically referred to in this Section, unless otherwise approved under Section 9.3. 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 9, 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 maintenance of water and sewer systems within the Units.

9.3 Maintenance by Owner. Except for the exterior maintenance and maintenance of the Common Elements, including the parking areas and private streets, required to be provided by the Association under Section 9.1 or 9.2, all maintenance of the Units shall be the sole responsibility and expense of the Owners thereof. Such maintenance shall include, but not be limited to, maintenance of the heating, air conditioning and ventilation systems serving each Unit. 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.

10.10 Modification or Waiver of Insurance Provisions. The Board of Directors, in its reasonable discretion, may modify or waive the provisions of this Section 10, pursuant to the provisions of Section 515B.3-113(k) of the Act. In the event of a waiver or modification of the provisions of this Section 10, the Board of Directors shall provide written notice of such modification or waiver to all Owners and Eligible Mortgagees at least forty-five (45) days in advance of the effective date of such modification or waiver.

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 16.9.

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 16.9. 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 16.9.

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, decks, balconies, porches 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, 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 repairs 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 Rules and Regulations, the decisions of the Association, and such amendments thereto as may be made from time to time. A failure to comply shall entitle the Association to the relief set forth in this Section, in addition to the rights and remedies authorized elsewhere by the Governing Documents and the Act.

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 Rules and Regulations, the Act or the decisions of the Association. However, no Owner may withhold any assessments payable to the Association, or take (or omit) other action in violation of the Governing Documents, the Rules and Regulations or the Act, as a measure to enforce such Owner's position, or for any other reason.

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, Rules and Regulations or the Act:

- a. Commence legal action for damages or equitable relief in any court of competent jurisdiction.
- b. Impose late charges 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 Rules and Regulations of the Association.

- e. Suspend the rights of any owner or occupant and their guests to use any Common Elements amenities; provided, that this limitation shall not apply to Limited Common Elements or deck, balcony, porch 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 Rules and Regulations, 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, the Rules and Regulations and the Act as provided therein.

SECTION 14 SPECIAL DECLARANT RIGHTS

14.1 Special Declarant Rights. The Declarant expressly reserves the following special declarant rights, as the term is used in Section 515B.1-103(32) of the Act for as long as it owns a Unit, or for such shorter period as may be specifically indicated:

- (a) To elect, or cause persons designated by it to elect, the officers and members of the Board of Directors of the Association in accordance with Section 4 hereof.
- (b) To complete improvements (if any) indicated on the CIC Plat, planned by the Declarant consistent with the disclosure statement or authorized by the City, under Section 515B.2-110 of the Act.
- (c) To add Additional Real Estate to the Property as described in Section 17.
- (d) To relocate boundaries between Units and to otherwise alter Units owned by it.
- (e) To erect and maintain signs and other sales displays offering the Units for sale or lease, in or on any Unit owned by the Declarant on the Common Elements.
- (f) To maintain sales offices, management offices, signs advertising the CIC, and models, under Section 515B.2-116 of the Act (which models may be any Unit owned from time to time by Declarant).
- (g) To have and use easements, for itself, its employees, contractors, representatives, agents and prospective purchasers through and over the Common Elements for the purpose of exercising its special declarant rights.
- (h) To create Units, Common Elements or Limited Common Elements within the CIC.
- (i) To subdivide Units or convert Units into Common Elements, Limited Common Elements and/or Units.
- (j) To create a master association and provide for the exercise of authority by the master association over the CIC or its Unit Owners.

- (k) To merge or consolidate the CIC with another common interest community of the same form of ownership.

SECTION 15 AMENDMENTS

Except as limited by Section 515B.2-118(a)(3) of the Act requiring additional agreement in the case of alteration of Limited Common Elements, and except insofar as a higher voting requirement may be otherwise required under this Declaration or the Act, this Declaration may be amended by the consent of (i) Owners of Units to which are allocated at least fifty one percent (51%) of the votes in the Association, and (ii) the percentage of Eligible Mortgagees (based upon one vote per first mortgage owned) required by Section 16 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. So long as Declarant owns any unsold Unit for sale, Declarant's written consent shall be required for any amendment to the Governing Documents or Rules and Regulations which directly or indirectly affects or may affect Declarant's rights under the Governing Documents. 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 16 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:

16.1 Consent to Certain Amendments. The written consent 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 the Governing Documents 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; (vii) 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.

16.2 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.

16.3 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.

16.4 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.

16.5 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.

16.6 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.

16.7 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.

16.8 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.

16.9 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 17 FLEXIBLE COMMON INTEREST COMMUNITY

17.1 Option of Declarant to Add Additional Real Estate. Declarant hereby reserves an option to add additional real estate to the CIC. The option to add additional real estate will lapse seven (7) years after the date on which this Declaration is recorded. Said time period may be extended by an amendment to the Declaration approved in writing by the Declarant and by vote or written agreement of Unit Owners, other than the Declarant or its affiliate, to whose Units are allocated at least 51% of the votes of the Association. There are no circumstances that will terminate the option prior to the expiration of such seven year period. Except as otherwise provided in this Section, there shall be no other restriction on the options to add real estate to the CIC. The legal description of each portion of the Additional Real Estate is set forth in Exhibit C attached hereto and incorporated herein.

17.2 Manner of Adding Additional Real Estate. The parcels constituting the Additional Real Estate may be added separately or simultaneously to the CIC and no assurances are made by the Declarant with respect to the order in which parcels may be added; such property shall be added by the method prescribed in Section 515B.2-111 of the Act.

17.3 Maximum Number of Units; Type of Construction. Based upon Declarant's good faith estimate, a maximum number of thirty seven (37) Units may be created in the Additional Real Estate to be used exclusively for nonresidential use. While it is Declarant's intent that all or any portion of such Units which may be constructed upon any portion of the additional real estate be substantially similar to and compatible with the other buildings and Units in the CIC in terms of architectural style, floor plan, quality of construction, principal materials employed in construction, and size, Declarant gives no assurances as to such matters; further, Declarant reserves the right to employ different materials and design as may be required by law or as may economically facilitate construction without substantially reducing the value of existing Units or increasing common expenses for existing Units. All other improvements and Common Elements that may be made or created upon or within the Additional Real Estate or each portion thereof shall be similar to those existing in the CIC, except that they may, but need not, include roadways and additional recreational or other facilities. The assurances contained in this paragraph shall not apply to any Additional Real Estate which is not added to the CIC.

17.4 Application of Declaration. All restrictions in the Declaration affecting use, occupancy and alienation of Units will apply to Units created in the Additional Real Estate. In the event that the additional real estate or any portion thereof is not added to the CIC, the Additional Real Estate shall in no way be affected by or subject to the terms of this Declaration.

SECTION 18 MISCELLANEOUS

18.1 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.

18.2 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

EXHIBIT A TO DECLARATION
COMMON INTEREST COMMUNITY NUMBER 558
Condominium
EARLEY LAKE OFFICE PARK

LEGAL DESCRIPTION

Lot 1, Block 1, Earley Lake Office Park, Dakota County, Minnesota.

EXHIBIT B TO DECLARATION
COMMON INTEREST COMMUNITY NUMBER 558
Condominium

EARLEY LAKE OFFICE PARK

**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 Voting Rights, undivided interests in the Common Element Interests, Common Expense Liability 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 among the Units as follows:

Unit Identifier	Portion of Undivided Interest In Common Elements	Portion of Common Expense Liability	Portion of Votes in The Association
1	1/8	1/8	1/8
2	1/8	1/8	1/8
3	1/8	1/8	1/8
4	1/8	1/8	1/8
5	1/8	1/8	1/8
6	1/8	1/8	1/8
7	1/8	1/8	1/8
8	1/8	1/8	1/8
TOTAL	1.0	1.0	1.0

EXHIBIT C TO DECLARATION
COMMON INTEREST COMMUNITY NUMBER 558
Condominium

EARLEY LAKE OFFICE PARK

Legal Description of Additional Real Estate

Lots 2 through 5, inclusive, Block 1,

Earley Lake Office Park, Dakota County, Minnesota.

AND

Outlot A, Southcross Village 4th Addition, Dakota County, Minnesota.