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**COMMON INTEREST COMMUNITY NO. 403  
a Condominium**

**EAGLES LANDING**

**DECLARATION**

This Declaration (the "Declaration") is made in the County of Washington, State of Minnesota, on April 25<sup>th</sup>, 2022, by Victor Land Holdings, LLC, a Minnesota limited liability company (the "Declarant"), pursuant to the provisions of Minnesota Statutes Chapter 515B, known as the Minnesota Common Interest Ownership Act ("MCIOA"), for the purpose of creating Eagles Landing as a nonresidential condominium under MCIOA.

**WHEREAS**, Declarant is the owner of certain real property located in Washington County, Minnesota, legally described in Exhibit B attached hereto, and Declarant desires to submit said real property and all improvements thereon (collectively the "Property") to MCIOA as a condominium; and

**WHEREAS**, Declarant desires to establish on the Property, a plan for a non-residential condominium, to be owned, occupied and operated for the use and benefit of the Owners and Occupants of the Property, and for the purpose of preserving the quality and character of the Property; and

**WHEREAS**, the Property (i) is not subject to an ordinance referred to in Section 515B.1-106 of MCIOA, governing conversions to common interest ownership; (ii) is not subject to a master association as defined in MCIOA; and (iii) does not include any shoreland, as defined in Minnesota Statutes Section 103F.205.

**THEREFORE**, Declarant subjects the Property to this Declaration under the name "Eagles Landing," consisting of the Units referred to in Section 2 and the Common Elements referred to in Section 3, and declaring that this Declaration shall constitute covenants to run with the Property, and that the Property shall be owned, used, occupied and conveyed subject to the covenants, restrictions, easements, charges and liens set forth herein, all of which shall be binding

upon all Persons owning or acquiring any right, title or interest therein, and their heirs, personal representatives, successors and assigns.

## **SECTION 1 DEFINITIONS**

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

1.1 “Assessments” means and refers to all assessments levied or assessed by the Association pursuant to Section 6.

1.2 “Association” means Eagles Landing Association, a nonprofit corporation created pursuant to Minnesota Statutes Chapter 317A and Section 515B.3-101 of MCIOA, whose members consist of all Owners.

1.3 “Board” means the Board of Directors of the Association, as provided for in the Bylaws.

1.4 “Building” means one the structures or part thereof which is part of the Property and containing, contained within or constituting a part of a Unit.

1.5 “Bylaws” means the Bylaws governing the operation of the Association, as amended from time to time.

1.6 “City” means the city of Hugo, Minnesota.

1.7 “Common Elements” means all parts of the Property including all improvement thereto, except the Units.

1.8 “Common Expenses” means all expenditures made or liabilities incurred by or on behalf of the Association and incident to its operation, or otherwise identified as Common Expenses in this Declaration or the Bylaws.

1.9 “Eligible Mortgagee” means a Mortgagee who submitted a written request to the Association asking the Association to notify the Mortgagee of any action that, under the terms of the Governing Documents, requires the consent of a specific percentage of Mortgagees.

1.10 “Governing Documents” means 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” means a portion of the Common Elements allocated by this Declaration, the Plat or by operation of Section 515B.2-109(c) or (d) of MCIOA for the exclusive use of one or more, but fewer than all, of the Units.

1.12 “MCIOA” means the Minnesota Common Interest Ownership Act, Minnesota Statutes Chapter 515B, as amended.

1.13 “Member” means all Persons who are members of the Association by reason of being Owners as defined in this Declaration. The words “Owner” and “Member” may be used interchangeably in the Governing Documents.

1.14 “Maintenance Plan” means the preventative maintenance plan and schedule for the Buildings and the Common Elements prepared by the Board, or developed by a third party professional and furnished to the Board, and approved by the Board pursuant to and in accordance with the requirements of Section 515B.3-107(b) of MCIOA and the requirements of any applicable City approvals, permits, regulations and agreements.

1.15 “Mortgagee” means any Person owning a mortgage recorded against a Unit, which mortgage constitutes a first mortgage lien against the Unit.

1.16 “Occupant” means any Person or Persons, other than an Owner, in possession of or otherwise occupying all or a portion of a Unit, including tenants.

1.17 “Owner” means a Person who owns a Unit, but excluding a contract for deed vendor, Mortgagee, the holder of remainder or reversionary interest and other secured party within the meaning of MCIOA. The term “Owner” includes, without limitation, a contract for deed vendee and a holder of a life estate.

1.18 “Parking Areas” means the surface parking areas located on the Common Elements.

1.19 “Person” means a natural individual, corporation, limited liability company, partnership, limited liability partnership, trustee, or other legal entity capable of holding title to real property.

1.20 “Plat” means the recorded plat depicting the Property pursuant to the requirements of Section 515B.2-1101(c) of MCIOA, including any amended or supplemental Plat recorded from time to time in accordance with MCIOA.

1.21 “Property” means all of the real property subjected to this Declaration, now or in the future, including the Buildings and all other structures and any other improvement located thereon. The underlying legal description of the Property is set forth in Exhibit B attached hereto.

1.22 “Rules and Regulations” means the Rules and Regulations of the Association as and if approved from time to time pursuant to Section 5.6.

1.23 “Special Declarant Rights” means those exclusive rights reserved to Declarant as described in Section 15.

1.24 “Unit” means a part of the Property, other than the Common Elements, described in Section 2 and identified as Unit on the Plat, including all improvements thereto.

Any capitalized terms used in the Governing Documents, and defined in MCIOA and not in this Section, shall have the meanings set forth in MCIOA. References to Section numbers refer to the Sections of this Declaration unless otherwise indicated. References to the singular may refer to the plural, and conversely, depending upon context.

## SECTION 2

### DESCRIPTION OF UNITS, BOUNDARIES AND RELATED EASEMENTS

2.1 Units. There are a total of fourteen (14) Units, subject to the right of Declarant to subdivide, combine or convert Units in accordance with Section 15. The Units shall be used exclusively for non-residential purposes, including business, retail, service, office, parking and related purposes or any other non-residential use authorized by this Declaration and applicable governmental ordinances and regulations. Each Unit constitutes a separate parcel of real estate. Additional Units may be created by the subdivision or conversion of Units pursuant to Section 515B.2-112 of MCIOA. The Unit identifiers and locations of the Units are as shown on the Plat which is incorporated herein by reference. A schedule of the Units is set forth in Exhibit A attached hereto.

2.2 Unit Boundaries. The boundaries of each Unit are:

2.2.1 the interior, unfinished surfaces of the Unit's ceiling;

2.2.2 the interior, unfinished surfaces of the Unit's floor;

2.2.3 the interior, unfinished surfaces of the Unit's perimeter walls; and

2.2.4 the interior, unfinished surfaces of the Unit's perimeter windows, doors and door frames.

All sheet metal, paneling, tiles, wallpaper, paint, floor covering, and any other finishing materials applied to any of the interior, unfinished boundaries listed in Section 2.2 above are a part of the Unit, and all other portions of the perimeter walls, floors, ceilings, doors, windows, and door and window frames, are a part of the Common Elements. If there is a conflict between the boundaries of a Unit as described in this Section 2 and the boundary depicted on the Plat, the boundary described in this Section 2 controls. Subject to this Section and Section 3, any portion of a Building, spaces, structures and other improvements located within the boundaries of a Unit are a part of the Unit.

2.3 Appurtenant Easements. The Property and the Units shall be subject to and benefited by the easements described in Section 12.

## SECTION 3

### COMMON ELEMENTS, LIMITED COMMON ELEMENTS AND OTHER PROPERTY

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

3.1.1 All of the Property not included within the Unit boundaries and any load bearing portions of any interior or perimeter walls, columns, ceilings or floors; and any common utility lines or other common Building systems, facilities or equipment located in or passing through a Unit that serve the Common Elements or more than one Unit shall be Common Elements and may be a Limited Common Element, as defined in Section 3.2. The Common Elements include, but are not limited to, all areas and items listed in this Section 3, and those parts of the Property designated as Common Elements on the Plat or

in MCIOA. The undivided interest in the Common Elements are allocated among the Units in accordance with Section 4.2, are appurtenant to each Unit and are inseparable from that Unit.

3.1.2 The Common Elements shall be subject to (i) the easements and restrictions described in this Declaration and any other easements recorded against the Common Elements; (ii) the specific rights of Owners and Occupants in any Limited Common Elements allocated to their respective Units; and (iii) the right of the Association to establish reasonable Rules and Regulations governing the use of the Property.

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. The rights to the use and enjoyment of the Limited Common Elements are automatically conveyed with the conveyance of such Units. The Limited Common Elements are described and allocated to the Units, as follows:

3.2.1 Those improvements, items or areas designated as Limited Common Elements on the Plat or by MCIOA are allocated to the Units indicated thereon or therein.

3.2.2 Improvements, if any, such as loading dock platforms, shutters, awnings, perimeter windows and doors and their frames, window boxes, chimneys, driveways, walks, doorsteps and stoops, vestibules, or entryways constructed as part of the original construction to serve a single Unit or Units, and replacements and modifications thereof authorized pursuant to Section 8, located wholly or partially outside the Unit boundaries, are allocated to the Unit or Units which they serve.

3.2.3 Chutes, flues, ducts, pipes, wires, conduit or other utility installations, bearing walls, bearing columns, or any other components or fixtures located wholly or partially outside the Unit boundaries that it serves and serving fewer than all of the Units, are allocated to the Unit or Units they serve. Any portion of such installations serving or affecting the function of the Common Elements is a part of the Common Elements.

3.2.4 Heating, ventilating, air conditioning, plumbing, electrical or mechanical equipment serving only a certain Unit or Units, and located wholly or partially outside the Unit boundaries that it serves is allocated to the Unit or Units served by such equipment.

3.3 Annexation of Other Property. Other real property may be annexed to the common interest community as Common Elements and subjected to this Declaration, in accordance with Section 515B.2-125 of MCIOA.

## **SECTION 4**

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

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

4.1 Membership. Each Owner shall be a Member solely by reason of owning a Unit, 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 (1) Person is an Owner of a Unit, all such Persons shall be Members, but multiple ownership of a Unit shall not alter the voting rights allocated to such Unit nor authorize the division of the voting rights.

4.2 Allocation of Voting Rights, Undivided Interests and Common Expense Obligations. Voting rights, undivided interests in the Common Elements and Common Expense obligations (subject to Section 6.4), are allocated equally among the Units. The voting rights, Common Expense obligations and undivided interests referred to in this Section 4.2 shall be reallocated among all Units based upon the above formula in the event that the number of Units changes.

4.3 Appurtenant Rights and Obligations. The ownership of a Unit shall include the voting rights, Common Expense obligations and undivided interests described in Section 4.2. Said rights, interests and obligations, 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, interests and obligations described in this Section may not be changed, except in accordance with the Governing Documents and MCIOA.

4.4 Authority to Vote. The Owner of each Unit, the Owner's designated representative if the Owner is other than a natural person or a natural person designated to act as proxy on behalf of the Owner, and who need not be an Owner, may cast the vote allocated to such Unit at meetings of the Association. However, 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.

## **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 MCIOA. The Association shall, subject to the rights and obligations of the Owners set forth in Governing Documents and MCIOA, be responsible for the operation, management and control of the Property. The Association shall have all powers described in the Governing Documents, MCIOA and the statute under which the Association 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 MCIOA. All references to the Association in the Governing Documents and the Rules and Regulations shall mean the Association acting through the Board, unless specifically stated to the contrary.

5.2 Operational Purposes. The Association shall operate and manage the Property for the purposes of (i) administering and enforcing the covenants, restrictions, easements, charges and liens set forth in the Governing Documents and the Rules and Regulations; (ii) maintaining, repairing and replacing those portions of the Property for which it is responsible; and (iii) preserving the quality 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 MCIOA shall be binding upon all Owners and Occupants, and their lessees, invitees, heirs, personal representatives, successors and assigns, and all secured parties as defined in MCIOA.

5.4 Bylaws. The Association shall have Bylaws. The Bylaws shall govern the operation and administration of the Association, and shall be binding on all Owners and Occupants. The Bylaws need not be recorded.

5.5 Management. The Board may delegate to a manager or managing agent the management of the Property, including any management duties imposed upon the Association's officers and directors by the Governing Documents and MCIOA. However, 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.

5.6 Rules and Regulations. The Property and the conduct of Persons thereon are subject to regulation, as follows:

5.6.1 The Board has the exclusive authority to approve and implement such reasonable Rules and Regulations as it deems necessary from time to time for the purpose of operating and administering the affairs of the Association and regulating the use and enjoyment of the Property; provided that the Rules and Regulations shall not be inconsistent with the Governing Documents or applicable law. 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 thirty (30) days' prior notice has been given to the Owners.

5.6.2 An Owner may establish reasonable rules relating to the internal use of such Owner's Unit and the conduct of Persons leasing, patronizing, using or visiting the Unit; provided, that the rules shall be consistent with and subject to the Governing Documents, the Rules and Regulations and applicable law.

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 credited against future Assessments or added to reserves, as determined by the Board.

## **SECTION 6 ASSESSMENTS**

6.1 General. A budget shall be established and Assessments shall be determined and assessed against the Units by the Board, in its discretion, at or prior to the conveyance of the first Unit to a purchaser other than the Declarant and annually thereafter, subject to the requirements and procedures set forth in this Section 6 and the requirements of the Bylaws. Assessments shall include annual Assessments under Section 6.2, and may include special Assessments under Section 6.3 and limited Assessments under Section 6.4. Annual and special Assessments shall be allocated in accordance with the formula set forth in Section 4.2. Limited Assessments under Section 6.4 shall be allocated to Units as set forth in that Section.

6.2 Annual Assessments. Annual Assessments shall be established and levied by the Board in accordance with the Association's established budget. Each annual Assessment shall cover all of the anticipated Common Expenses of the Association for that year which are to be shared by all Units in accordance with the allocation formula set forth in Section 4.2. Annual Assessments shall be payable in equal monthly or quarterly installments, as established by the Board. Annual Assessments may provide, among other things, for a reserve fund, in an amount determined at the discretion of the Board on an annual basis, for the replacement of the Common Elements and other parts of the Property for which the Association is responsible which are not funded by limited Assessments pursuant to Section 6.4. The provisions of Section 515B.3-1141 of MCIOA shall not apply to the Association's determination and/or budgeting for replacement reserves.

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 in accordance with the allocation formula set forth in Section 4.2, and for the purposes described in this Declaration. Special Assessments shall be used in whole or in part to (i) cover expenditures of an emergency nature; (ii) replenish underfunded replacement reserves; or (iii) cover unbudgeted capital expenditures or operating expenses.

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

6.4.1 Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element may, at the discretion of the Board, be assessed exclusively against the Unit or Units to which that Limited Common Element is allocated equally or by actual cost per Unit.

6.4.2 Any Common Expense benefiting fewer than all of the Units but not falling within Section 6.4.1 may, at the discretion of the Board, be assessed against the Unit or Units benefited equally or by actual cost per Unit.

6.4.3 The costs of insurance carried by the Association, if any, may be assessed equally or by actual cost per Unit, and the costs of common utilities may be assessed



equally, in proportion to usage, or by such other reasonable allocation as may be approved by the Board.

6.4.4 Reasonable attorneys' fees and other professional fees and costs incurred by the Association in connection with (i) the collection of Assessments, and (ii) the enforcement of the Governing Documents, MCIOA or the Rules and Regulations, against an Owner or Occupant or their invitees, may be assessed against the Owner's Unit.

6.4.5 Late charges, fines and interest may be assessed as provided in Section 13.

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

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

Assessments levied under Sections 6.4.1 through 6.4.6 may, at the Board's discretion, be assessed as a part of, or in addition to, the other Assessments levied under Section 6.

#### 6.5 Working Capital Fund.

6.5.1 Each Person that purchases a Unit from Declarant ("Purchaser") must pay to the Association, at the closing on the purchase of the Unit, an amount equal to two (2) times the amount of the monthly installment of annual Assessments due and payable with respect to the Unit being purchased for deposit in the Association's operating account as working capital. The amount a Purchaser pays to the Association pursuant to this Section is neither refundable nor considered an advance payment of Assessments. If an annual Assessment has not yet been levied as of a Purchaser's closing, the amount of the fee shall be two (2) times the amount of the monthly installment of the anticipated annual Assessments.

6.5.2 The Board may include in each annual budget a reasonable amount of working capital, based upon the anticipated needs of the Association for the year in question. The funds shall be deposited into an account of the Association (which need not be a segregated account). Funds deposited in said account may be used to fund replacement reserves or for operations of the Property or the Association.

6.6 Liability of Owners for Assessments. The obligation of an Owner to pay Assessments shall commence at the later of (i) the time at which the Owner acquires title to the Unit, or (ii) the due date of the first Assessment levied by the Board. The Owner at the time an Assessment is payable with respect to the Unit shall be personally liable for the share of the Common Expenses assessed against such Unit. Such liability shall be joint and several where there are multiple Owners of the Unit. The liability is absolute and unconditional and no Owner is exempt from liability for payment of Assessments 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 Declarant, the Association or their respective officers, directors or agents, or for their failure to fulfill any duties under the Governing Documents or MCIOA.

6.7 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 MCIOA are liens, and are enforceable as Assessments, under this Section 6. Recording of this Declaration constitutes record notice and perfection of any lien under this Section 6, and no further recording of any notice of or claim for the lien is required. The release of the lien shall not release the Owner from personal liability unless agreed to in writing by the Association.

6.8 Foreclosure of Lien; Remedies. A lien for Assessments may be foreclosed against a Unit under the laws of the state of Minnesota (i) by action, or (ii) by advertisement in a like manner as a mortgage containing a power of sale. 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 to its other remedies, 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.

6.9 Lien Priority. A lien for Assessments is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances recorded before this Declaration; (ii) any first mortgage on 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 or other Person who acquires the Owner's interest in the Unit redeems pursuant to Minnesota Statutes Chapters 580, 581, or 582; then the holder of the sheriff's certificate of sale from the foreclosure of the first mortgage or any Person who acquires title to the Unit by redemption as a junior creditor shall take title to the Unit subject to a lien in favor of the Association for unpaid Assessments or installments thereof levied pursuant to Sections 515B.3-1151(a), (e)(1) to (3), (f) and (i) of MCIOA which became due, without acceleration, during the six (6) months immediately preceding the end of the Owner's period of redemption. The amount of the unpaid Assessments shall be determined based upon the Association's then current annual budget.

6.10 Real Estate Taxes and Assessments. Real estate taxes, special assessments, and other charges and fees which may be levied against the Common Elements by governmental authorities (if any), shall be allocated among and levied against the Units equally, and shall be a lien against each Unit in the same manner as a lien for real estate taxes and special assessments levied against the Unit alone.

6.11 Voluntary Conveyances; Statement of Assessments. In a voluntary conveyance of a Unit, the transferee shall not be personally liable for any unpaid Assessments and other charges

made by the Association against the transferor or the transferor's Unit prior to the time of conveyance to the transferee, unless expressly assumed by the transferee. However, the lien of such Assessments shall remain against the Unit until released. Any transferor or transferee 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, transferor and transferee.

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

All Owners and Occupants, and all Mortgagees and other secured parties, by their acceptance or assertion of an interest in the Property, or by their occupancy of part or all of a Unit, covenant and agree that, in addition to any other restrictions which may be imposed by MCIOA, the Governing Documents, or the Rules and Regulations, 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 MCIOA, as amended from time to time. All covenants, conditions, 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 Certain Subdivisions and Conveyances Prohibited. Except as permitted by this Declaration, no Unit, nor any part of the Common Elements, may be subdivided, partitioned or converted without approval by a vote of the Owners, and the approval of the Mortgagees of any Units affected.

7.3 Permitted Uses and Restrictions. The Property shall be used for business, retail, service, office, parking and related purposes or any other use permitted by the Governing Documents, City ordinances or by agreement with the City.

7.4 Leasing. Leasing of Units or parts thereof shall be permitted, subject to the following conditions: (i) the lessee's business shall comply with requirements and restrictions of this Declaration; (ii) the lease shall be in writing; and (iii) the lease shall provide that it is subject to the Governing Documents, the Rules and Regulations and MCIOA, and that any failure of the lessee to comply with the terms of such documents shall be a default under the lease.

7.5 Storage and Parking. The use and operation of the Parking Areas shall be subject to the right of the Association to establish reasonable Rules and Regulations governing the use and operation thereof. Outdoor storage is not allowed in the Common Elements.

7.6 Signs. Signs or other displays of any type may be placed on the exterior of the Buildings only (i) at locations approved by the Board pursuant to Section 8; and (ii) in compliance with City sign ordinances. An Owner may erect and post signs within the Owner's Unit as necessary to direct traffic, identify spaces, and facilitate other internal operations of the Unit. The Owner outside whose Unit a sign identifying the Unit's business is located shall be responsible for maintaining the sign in good condition and in a manner consistent with the first-class maintenance

and design standards applicable to the Property, except that any common signs or directories identifying the Property, or the Owners and Occupants shall be maintained by the Association.

7.7 Prohibited Conduct. No Owner or Occupant shall (i) cause or permit any physical changes to their Unit that could jeopardize or impair the weather-tight soundness or safety of the Buildings, any Building system, or other improvement located on the Property; or (ii) interfere with any easement.

7.8 Enjoyment. All Owners and Occupants and their invitees shall have a right of reasonable use and enjoyment in their respective Units, subject to the rights of other Owners and Occupants to reasonable use of their respective Units and to the normal and customary sights, sounds, odors and activity generated by vehicular and pedestrian traffic, Building mechanical systems and the activities commonly associated with the operation and patronage of businesses such as those located in the Units subject to Section 7.3. Given the foregoing considerations, Owners and Occupants shall use the Property in such a manner as will not cause a nuisance, nor unduly restrict, interfere with or impede the use and reasonable enjoyment of the Property by other Owners and Occupants and their invitees.

7.9 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.

7.10 Time Shares Prohibited. The time share form of ownership, or any comparable form of lease, occupancy rights, ownership, or right-to-use plans, which has the effect of dividing the ownership or occupancy of a Unit into separate time periods, is prohibited.

7.11 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.

## SECTION 8 ARCHITECTURAL STANDARDS

8.1 Restrictions on Alterations. One of the purposes of this Declaration is to ensure that the Property is kept substantially uniform in appearance. Therefore, subject to applicable state and federal law, the following restrictions and requirements shall apply to alterations on the Property:

8.1.1 No modifications, improvements, repairs or replacements of any type, temporary or permanent, structural, aesthetic or otherwise (collectively referred to as "alterations"), including but not limited to, any structure, building, addition, wall, enclosure, window, exterior door, antenna or other type of sending or receiving apparatus, sign, flag, display, decoration, or color change, shall be made, or caused or allowed to be made, by any Owner or Occupant, or their invitees, in any part of the Common Elements, the Limited Common Elements or in any part of a Unit which affects the Common Elements or another Unit, or which is visible from the exterior of the Buildings, unless and

until the plans and specifications showing the nature, kind, shape, height, color, materials and locations of the alterations shall have been approved in writing by the Board. Declarant's written consent shall also be required for alterations until the Declarant no longer owns a Unit for initial sale.

8.1.2 The Board shall have authority to establish reasonable forms and procedures for applying for authorization for alterations, and reasonable requirements for alterations. The Board may impose standards for design, appearance or construction which are greater or more stringent than standards prescribed by the Governing Documents or by governmental laws, codes or regulations; provided that such standards shall be consistent with the architectural character and use of the Property existing as of the date of this Declaration. The Board shall be the sole judge of whether such criteria are satisfied, and its determination shall be final and binding upon the Owners, Occupants and any other Person holding or acquiring any interest in the Unit.

8.1.3 Approval of alterations which cause a minor encroachment upon the Common Elements shall create an appurtenant easement for such encroachment in favor of the Unit with respect to which the alterations are approved, notwithstanding any contrary requirement in the Governing Documents or MCIOA. A file of the Board resolutions approving or denying all applications for alterations shall be maintained permanently as a part of the Association's records.

8.2 Remedies for Violations. The Association may undertake any measures, legal, equitable or administrative, to enforce compliance with this Section and shall be entitled to recover from the Owner causing or permitting the violation all attorneys' and other professional fees and costs of enforcement incurred by the Association, regardless of the type of action taken (if any). Such attorneys' and other 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 Common Elements, Limited Common Elements or 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 Owner and a lien against the Owner's Unit.

8.3 Owner Responsibility/Indemnity. The Owner who causes an alteration to be made, regardless of whether the alteration is approved by the Board, shall be responsible for the construction work and any claims, damages, losses or liabilities arising out of the alterations. The Owner shall hold harmless, indemnify and defend Declarant, the Association, and their respective officers, directors and committee members, from and against any expenses, claims, damages, losses or other liabilities, including without limitation attorneys' fees and other professional fees and costs, arising out of (i) any alteration which violates any governmental laws, codes, ordinances or regulations; (ii) the adequacy of the specifications or standards for construction of the alterations; (iii) the construction of the alterations; and (iv) any mechanics', materialmen's and other liens arising in connection with such alterations.

8.4 Declarant Exemption. This Section 8 shall not apply to alterations or changes to the Property made by or at the request of the Declarant in exercising its Special Declarant Rights under Section 15.

## SECTION 9 MAINTENANCE AND REPAIR

9.1 Association Obligations. Except as otherwise provided in this Section or Section 9.2, the Association shall provide for all maintenance, repair or replacement of the Common Elements, and Limited Common Elements in accordance with the Maintenance Plan and the following provisions and subject to the following qualifications:

9.1.1 Subject to Section 9.1.2, the costs associated with the Association's maintenance obligations under this Section 9.1 shall be funded by Assessments determined and levied in accordance with Sections 4.2 and 6.

9.1.2 The Association may, upon reasonable notice, assign to an Owner the obligation for maintenance of a Limited Common Element allocated to the Owner's Unit, or Common Elements benefiting only that Unit. However, if the Owner fails to perform the maintenance to the standards established by the Association, the Association may enter the Unit or Limited Common Element, perform the maintenance and assess the Owner's Unit for the costs; provided that reasonable notice and an opportunity to cure the violation shall first be given to the Owner.

9.1.3 The Association may, upon reasonable notice, elect to maintain, repair or replace mechanical, structural or other components within the Units and assess the costs against the Unit, if the failure or impairment of the component could result in damage to the Common Elements or other Units, impair the function of any Building system, or could create a health or safety hazard.

9.1.4 The Association shall be responsible for incidental damage caused to a Unit or its Limited Common Elements by work undertaken by the Association pursuant to this Section.

9.1.5 If damage is caused to the Common Elements, Limited Common Elements or other Units by an Owner or Occupant, or their invitees, or by any condition in the Unit, Common Elements or Limited Common Elements which the Owner or Occupant has caused or allowed to exist, then the Association may repair the damage or correct the condition and assess the cost thereof against the responsible Owner's Unit.

9.1.6 The Association shall maintain, repair and replace the Common Elements in accordance with the requirements of the Association's Maintenance Plan and applicable City approvals, permits, regulations and agreements.

9.2 Owner Obligations. Each Owner shall, at its expense, undertake the following obligations for maintenance, repair and replacement:

9.2.1 Each Owner shall maintain, repair, and replace the Owner's Unit in good, clean and sanitary condition and repair.

9.2.2 Each Owner shall perform maintenance of the Limited Common Elements allocated to such Owner's Unit to the extent the Association assigns such obligations to the Owner.

9.2.3 Each Owner shall perform its maintenance obligations promptly and in such manner as not to damage the Property, nor unreasonably disturb or cause a hazard to Persons occupying or otherwise using the Property. The Board may require that the Owners perform their maintenance obligations in accordance with the Maintenance Plan and other standards established by the Board from time to time.

9.2.4 An Owner shall promptly pay or reimburse the Association for any costs incurred by the Association for the repair of any damage to the Common Elements, Limited Common Elements or other Units, caused by such Owner or Occupant, or their invitees, or caused by any condition in the Unit or Limited Common Elements which the Owner or Occupant has allowed to exist.

9.2.5 If an Owner fails or refuses to perform the Owner's duty to maintain, repair or replace the Owner's Unit or any Limited Common Elements allocated to the Unit, the Association shall have authority to undertake the necessary work and assess the Owner's Unit for the cost thereof; provided that reasonable notice and an opportunity to cure the violation shall first be given to the Owner.

9.3 Optional Maintenance by Association. In addition to the maintenance described in Section 9.1, the Association may, with approval of the Board, undertake to provide additional maintenance to the Units.

9.4 Duty to Report Defects. The Association shall regularly inspect the Common Elements in accordance with the Maintenance Plan and as otherwise as needed for the purpose of evaluating the need for maintenance, repair or replacement. Owners or Occupants shall promptly report to the Association any material defect in the Common Elements or Limited Common Elements which may require maintenance, repair or replacement.

9.5 Easements for Inspection, Maintenance, Repair and Replacement. Each Unit, the Common Elements and the Limited Common Elements are subject to the inspection, maintenance, repair and replacement easements described in Section 12.

## **SECTION 10 INSURANCE**

10.1 Association Insurance. The Association shall obtain and maintain the following insurance relating to the Property:

10.1.1 The Association shall, at a minimum, maintain property insurance under a "special form" form of policy in an amount equal to one hundred percent of the insurable "replacement cost" of the Property, less deductibles; but excluding (i) land, footings, excavation and other items normally excluded from coverage, and (ii) items such as ceiling or wall finishing materials, floor coverings, plumbing, lighting and other interior fixtures, built-in equipment, business equipment, or any other improvement or betterment installed

within the Units. The policy or policies shall also cover personal property owned by the Association. The policy or policies shall also contain "Inflation Guard" and "Agreed Amount" endorsements, if reasonably available. The Association may enter into an agreement with a Mortgagee or a guarantor, insurer or servicer of a mortgage, obligating the Association to keep other coverages or endorsements in effect. The Association may also enter into agreements among all Owners as to the allocation of insurance proceeds among their Units.

10.1.2 Commercial general liability insurance covering the use, operation and maintenance of the Common Elements, with a minimum limit of one million dollars 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 Declarant shall be included as an additional insured in its capacity as an Owner or a member of the Board. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. 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 cover claims of one or more insured parties against other insured parties.

10.1.3 Such other types and amounts of insurance as may be determined by the Board to be necessary or desirable, including but not limited to officers and directors' liability insurance, workers' compensation insurance, and insurance or fidelity bonds covering dishonest acts by those Persons having control or custody of the Association's funds.

10.2 The insurance policies carried pursuant to Section 10.1.1 and 10.1.2 must:

10.2.1 include a waiver of the insurer's right to subrogation under the policy against any Owner and against the Association and members of the Board;

10.2.2 provide that no act or omission of an Owner or Mortgagee will void the policy or be a condition to recover under the policy unless the Owner is acting within the scope of authority on behalf of the Association;

10.2.3 provide that, if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same property which the Association's policy covers, the Association's policy is primary insurance; and

10.2.4 obligate the insurer to issue certificates or memoranda of insurance, upon request, to any Owner or Mortgagee; and

10.2.5 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, the insureds and all Eligible Mortgagees.



10.3 Conflicts with MCIOA. In the event of a conflict between this Section 10 and MCIOA, this Section 10 shall control, it being the intention of Declarant that the Association and the Owners shall have authority and discretion to deal with the unique insurance needs of the Owners and the requirements of Mortgagees.

10.4 Owners' Insurance/Indemnity. Each Owner shall obtain and maintain the following insurance and provide the described indemnities:

10.4.1 Property insurance insuring any insurable improvement within the Owner's Unit for the full insurable replacement value of such improvement.

10.4.2 Commercial general liability insurance covering the Owner's Unit, and the activities of the Owner, and its officers, directors, employees and agents in connection with the Owner's occupancy, operation, management and use of the Unit, including any additional coverages customarily carried for unique or hazardous activities arising out of a business or activities conducted on the Unit. Said liability insurance (i) shall be in the minimum amounts of \$1,000,000 for an accident affecting more than one person in or resulting from one occurrence and \$1,000,000 property damage for each occurrence, (ii) shall name the Association as an additional insured, and (iii) shall not be cancelable except after sixty (60) days written notice to the Association. Each Owner shall provide to the Association, upon request, the policy or policies of such insurance or certificates thereof, or other acceptable evidence that such insurance is in effect.

10.4.3 Each Owner shall hold harmless, indemnify and defend Declarant, other Owners and the Association, and their respective officers, directors and employees, from and against all claims, actions, damages and other liabilities, including attorneys' fees, other professional fees and costs, arising out of incidents occurring within such Owner's Unit or arising out of the conduct of the Owner or Occupants of the Unit or their employees, agents, contractors and invitees, unless caused by the intentional or negligent act or omission of the party to be indemnified.

10.4.4 The Owner's insurance shall be primary as against the Association's insurance for damages to any interior improvement to the Units, and there shall be no right of contribution against the Association's insurance, with respect to damage or activities within the Owner's Unit.

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

11.1 Reconstruction. The obligations and procedures for the repair, reconstruction or disposition of the Property following damage or destruction thereof shall be governed by MCIOA and this Declaration. Any repair or reconstruction shall be commenced as soon as practicable after the casualty and shall be substantially in accordance with the plans, specifications and design of the Property as initially constructed and subsequently improved.

11.2 Eminent Domain. In the event of a taking of any part of the Property by condemnation or eminent domain, the provisions of MCIOA shall govern; provided, (i) that notice shall be given as provided in Section 11.4 and 18.4; (ii) that the Association shall be the attorney-

in-fact to represent the Owners in any related proceedings, negotiations, settlements or agreements; and (iii) that any awards or proceeds shall be payable to the Association for the benefit of the Owners and the Mortgagees of their Units, as their interests may appear.

11.3 Termination and Liquidation. The termination of the common interest community, and the distribution of any proceeds therefrom, shall be governed by MCIOA, except that any distributions shall be allocated based upon the value of the Units as unanimously agreed upon by the Owners of the Units, or by appraisers agreed upon in writing by a majority of the Owners and Mortgagees, and shall be made to Owners and their Mortgagees as their interests may appear.

11.4 Notice. The Association shall give written notice of any condemnation proceedings or substantial destruction of the Property to the Mortgagees within ten (10) business days after the casualty or first legal notice of condemnation.

11.5 Association's Authority. In all cases involving reconstruction, condemnation, eminent domain, termination or liquidation of the common interest community, the Association may (i) act on behalf of the Owners in all proceedings, negotiations and settlement of claims, or (ii) delegate the authority to act to an Owner or Owners of the affected Units if the casualty affects fewer than all Units. If such authority is retained and exercised by the Association, then all proceeds shall be payable to the Association to hold and distribute for the benefit of the Owners and their Mortgagees. Mortgagees are entitled to priority for awards and distributions in accordance with the priorities established by MCIOA and their mortgage loan documents, as their interests may appear.

## **SECTION 12**

### **EASEMENTS AND RESTRICTIONS**

Each Unit and the Common Elements, and the rights of the Owners and Occupants therein, shall be subject to the appurtenant easements, restrictions, and rights granted and reserved in this Section 12.

12.1 Access and Parking. Each Unit shall be the beneficiary of nonexclusive easements for (i) access, ingress to and egress from public roadways and walkways on and across those portions of the Common Elements designated for use as driveways or walkways; and (ii) parking on those portions of the Common Elements designated for use as parking spaces, all as originally constructed, shown on the Plat or otherwise designated by the Association, subject to any restrictions authorized by the Governing Documents or the Rules and Regulations, or any governmental authority.

12.2 Use and Enjoyment. Each Unit shall be the beneficiary of nonexclusive easements for use and enjoyment on and across the Common Elements and any Limited Common Element allocated to the Units, subject to any restrictions authorized or imposed by the Governing Documents.

12.3 Structural Support. Each Unit and the Common Elements shall be subject to and the beneficiary of nonexclusive easements for structural support in all walls, columns, joists, girders and other structural components located in or passing through or shared with another Unit or the Common Elements.

12.4 Encroachments. Each Unit and the Common Elements, and the rights of the Owners and Occupants therein, shall be subject to a nonexclusive easement in favor of the adjoining Unit or Units for encroachments caused by the construction, reconstruction, repair, shifting, settlement or movement of any part of the Buildings or the Property, and for any alteration made in compliance with Section 8. If there is an encroachment upon the Common Elements, as a result of any of the aforementioned causes, an easement shall exist for the encroachment, for the use, enjoyment and habitation of any encroaching Unit or improvement, and for the maintenance thereof. Any improvement or alteration added pursuant to Section 8 shall be limited to minor encroachments, and no easement shall exist unless the proposed alteration or improvement has 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.

12.5 Inspection, Maintenance, Repair and Replacement. Each Unit, and the rights of the Owners and Occupants thereof, and the Common Elements and Limited Common Elements, shall be subject to and benefited by a nonexclusive easement in favor of the Association for the inspection, maintenance, repair and replacement of the Common Elements, the Limited Common Elements, the Units and improvements related thereto, and the utilities serving the Units, to the extent necessary for the Association to fulfill its obligations under the Governing Documents. Each Owner shall afford to the Association and its management agents and employees, access at reasonable times and upon reasonable notice, to and through the Unit and its Limited Common Elements for inspection, maintenance, repair and replacement; provided that access may be had without notice and at any time in case of emergency.

12.6 Utilities and Services. The Common Elements and the Units shall be subject to and benefited by nonexclusive easements in favor of the Association, the City and all utility companies and other service providers for the installation, use, maintenance, repair and replacement of all utilities, services and common operating systems, such as natural gas, electricity, telephone, cable TV, internet and other electronic communications, water, sewer, septic systems, wells, and similar services, irrigation systems, fire control systems heating, ventilating and air conditioning systems and other common operating systems, and metering and control devices, which exist, which are approved by the City, which are approved by the Association under authority contained in the Governing Documents or MCIOA, or which are described or referred to in the Plat, this Declaration or other recorded instruments. Each Unit, and the rights of the Owners and Occupants thereof, shall also be subject to and benefited by a non-exclusive, easement in favor of the other Units, the Common Elements and the Association for all such utilities, services, and systems installed in accordance with the foregoing provision of this Section. Utilities and related services or systems shall be installed, used, maintained and repaired so as not to interfere with the use and quiet enjoyment of the Units by the Owners and Occupants, nor affect the structural or architectural integrity of the Buildings, Units or Common Element improvements.

12.7 Emergency Access to Units. In case of emergency, all Units and Limited Common Elements are subject to an easement for access, without notice and at any time, by the Association's officers and/or management agents, and by fire, police or other public safety personnel.

12.8 Project Signs. The Association shall have a non-exclusive easement and right to erect and maintain temporary and permanent signs and related monuments identifying the Property on the Common Elements and on Units owned by Declarant, subject to the restrictions set forth in

this Declaration. Those parts of the Property on which permanent signs or any related improvements are located in accordance with the applicable provisions of this Declaration shall be subject to non-exclusive easements in favor of the Association and the applicable Unit or Units for the continuing use, maintenance, repair and replacement of said signs and any improvement.

12.9 Continuation, Scope and Conflict of Easements. The easements set forth in this Section (i) shall run with the land and shall be appurtenant to the benefited Property; (ii) shall supplement and not limit any easements described elsewhere in this Declaration, or otherwise recorded; (iii) shall be permanent, subject only to termination in accordance with the terms of the easement; (iv) shall be subject to reasonable regulation by the Association and shall be subject to such reasonable limitations as to location and routing as may be established by the Association or any governmental authority; and (v) shall include reasonable access to the easement areas over and through the Property for purposes of construction, maintenance, repair, replacement and reconstruction.

12.10 Non Interference; Impairment Prohibited. All Persons exercising easement rights shall (i) do so in a reasonable manner so as not to materially interfere with the operation of the Property or cause damage to the Property; (ii) shall promptly repair any damage to the Property which they or their employees or agents caused; (iii) be financially liable for all costs of repair of any part of the Property which is damaged by the Person's exercise of the easement rights; and (iv) hold harmless, indemnify and defend the Association and other Owners, and their officers and directors, from and against all claims, damages, losses and other liabilities arising out of the exercise of the easement rights. No Person shall impair, obstruct or cause damage to any easement area, or improvements or equipment installed therein. Notwithstanding anything in this Declaration to the contrary, no Owner or Occupant shall be denied reasonable access to his or her Unit or the right to utility services thereto.

12.11 Other Easements. The Property shall be subject to such other easements as may be authorized by the Association under authority contained in the Governing Documents or MCIOA or recorded against the Property.

12.12 Benefit of Easements. All easements benefiting a Unit shall benefit the Owners and Occupants of the Unit, and their invitees.

## **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 MCIOA, the Governing Documents, the Rules and Regulations, and such amendments thereto as may be made from time to time, and the decisions of the Association. 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 or MCIOA.

13.1 Entitlement to Relief. Legal relief may be sought by the Association, at its discretion, against any Owner, or by an Owner against the Association or another Owner, to enforce compliance with the Governing Documents, the Rules and Regulations, MCIOA 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 MCIOA, as a measure to enforce such Owner's position, or for any other reason.

13.2 Remedies. In addition to any other remedies or sanctions, expressed or implied, administrative or legal, the Association shall have the right (or the obligation if so indicated) to implement any one or more of the following actions against Owners and Occupants and/or their invitees, who violate the provisions of the Governing Documents, the Rules and Regulations or MCIOA:

13.2.1 Commence legal action for damages or equitable relief in any court of competent jurisdiction, subject to Section 13.8.

13.2.2 Impose late charges in the amount determined by the Board from time to time, for each past due Assessment or installment thereof, and impose interest at the highest rate permitted by law accruing beginning on the first day of the month after the Assessment or installment was due. In the absence of a Board resolution establishing a late charge and/or interest rate, the late charge shall be one hundred dollars (\$100.00) for each late payment and the interest rate shall be twelve percent (12%) per annum, each of which shall be automatically imposed.

13.2.3 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 levied against the Unit owned by the defaulting Owner, together with any late payment charges, interest, attorneys' and other professional fees and costs, may be accelerated by the Board and shall then be payable in full if not paid within ten (10) days after receipt of notice from the Association.

13.2.4 Impose and levy reasonable fines, penalties or charges for each violation of MCIOA, the Governing Documents or the Rules and Regulations.

13.2.5 Enter any Common Elements, Unit or Limited Common Elements and restore any portions of the Common Elements, Unit or Limited Common Elements used, damaged or altered, or allowed to be used, damaged or altered, by any Owner or Occupant or their invitees in violation of the Governing Documents, and to assess the cost of such restoration against the responsible Owners and their Units.

13.2.6 Enter any Unit, Common Elements or Limited Common Elements in which or as to which a violation or breach of the Governing Documents or the Rules and Regulations exists which materially affects, or is likely to materially affect, the safety or soundness of any Unit, the Buildings or other part of the Property. The Association may summarily abate and remove, at the expense of the offending Owner or Occupant, any structure, thing or condition in the Unit, Common Elements or Limited Common Elements which is causing the violation; provided, that any improvement which is a part of a Unit may be altered or removed only pursuant to a court order or with the agreement of the Owner.

13.2.7 Foreclose any lien arising under the provisions of the Governing Documents or under law, in the manner provided by MCIOA and Section 6.

13.3 Rights to Hearing. Before the imposition of any of the remedies authorized by Section 13.2.4, 13.2.5 or 13.2.6, the Board shall, upon written request of the offender, grant to the offender an opportunity for a fair and equitable hearing as contemplated by the Governing Documents and MCIOA. 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 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 ten (10) days prior written notice to the offender. If the offender fails to timely request a hearing or 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 ten (10) days following the hearing, if not delivered to the offender at the hearing. If the Board delegates the hearing duties described in this Section to a committee, then references in this Section to the Board's hearing duties shall refer to the committee.

13.4 Lien for Charges, Penalties Etc. Any charges, fines, expenses, penalties, interest or other impositions 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 makes a written decision at or 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 Association's right to pursue any others.

13.5 Costs and Fees. With respect to any collection measures, or any other measure or action, legal, administrative, or otherwise, which the Association takes pursuant to the provisions of MCIOA, the Governing Documents or Rules and Regulations, whether or not finally determined by a court or arbitrator, the Association may assess the Unit owned by the violator with any expenses incurred in connection with such enforcement, including without limitation fines or charges previously imposed by the Association, reasonable attorneys' fees and other professional fees, costs and interest on the delinquent amounts owed to the Association. Such expenses shall also include any collection or contingency fees or costs charged to the Association by a collection agency or other Person acting on behalf of the Association in collecting any delinquent amounts owed to the Association by an Owner or Occupant. The foregoing fees and costs shall be the personal obligation of the Owner of the Unit and shall be a lien against such Owner's Unit.

13.6 Liability for Acts of Owners and Occupants. 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 invitees in the Owner's Unit, to the extent that such expense is not covered by the proceeds of insurance carried by the Association, if any, or such Owner or Occupant. However, any insurance deductible amount and/or increase in insurance rates carried by the Association, if any, 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 Owners to enforce the provisions of the Governing Documents, the Rules and Regulations, and MCIOA as provided therein.

13.8 Pre-Litigation Requirement. Notwithstanding anything to the contrary contained herein, any litigation, administrative proceeding or other legal action instituted or intervened in by or in the name of the Association involving a construction defect claim as defined in Section 515B.1-103(11a) of MCIOA requires compliance with Sections 515B.3-102(d) and (e), and 515B.4-116(c) of MCIOA prior to commencement.

## **SECTION 14 RIGHTS OF MORTGAGEES**

It is important that individual mortgage loans on the Units be available to Owners and prospective Owners, and that, in order to enhance the availability of such financing, the Governing Documents contain qualification provisions that are acceptable to lenders, guarantors and insurers of Unit mortgage loans. Accordingly, Mortgagees shall have the rights and protections set forth in this Section 14, which rights and protections shall control as against any other provisions of the Governing Documents.

14.1 Consent to Certain Amendments and Actions. In addition to any additional requirements imposed by this Declaration or by law, the consent of Eligible Mortgagees representing at least fifty-one percent (51%) of the votes allocated to Units that are subject to first mortgages held by Eligible Mortgagees (based upon one vote per Unit financed) shall be required for (i) any amendment to this Declaration or other Governing Documents of a material adverse nature to Mortgagees; and (ii) any action to terminate the common interest community after substantial destruction or condemnation occurs or other reasons agreed to by the foregoing percentage of Mortgagees. A Mortgagee shall be deemed to consent to and approve of any such amendment or action in the event the Mortgagee fails to submit a written objection to the Association within sixty (60) days after the Mortgagee receives notice of the same from the Association, by registered or certified mail, with a return receipt requested.

14.2 No Limitations on Sale/Right of First Refusal. The right of a Mortgagee to foreclose or accept a deed in lieu of foreclosure on a Unit, or to sell, lease, transfer, or otherwise convey a Unit which it acquires by foreclosure or deed in lieu of foreclosure, shall not be subject to any right of first refusal or similar restrictions by the Association.

14.3 Priority of Lien. Any Mortgagee that comes into possession of a Unit by foreclosure of its first mortgage on a Unit, or by deed or assignment in lieu of foreclosure of the first mortgage on the Unit, 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 Mortgagee, (i) except as provided in Section 6.9 or in MCIOA, (ii) except that the Mortgagee will be liable for any fees or costs of collection of the unpaid Assessments if the Association's lien priority includes such fees and costs, and (iii) except that any unreimbursed Assessments or charges may be reallocated among all Units in accordance with their interests in the common interest community.

14.4 Priority of Taxes and Other Charges. All governmental taxes, assessments, and charges which may become liens against Units prior to the first mortgage under state law shall relate only to the individual Units and not to the common interest community as a whole.

14.5 Priority for Insurance/Condemnation Proceeds. No provision of this Declaration or any other Governing Documents shall give an Owner, or any other Person, priority over any rights of the Mortgagee of a 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 Mortgagees of any condemnation or eminent domain proceeding affecting the common interest community, promptly upon receipt of notice from the condemning authority, in accordance with Section 14.6.

14.6 Notice Requirements. Mortgagees, upon written request to the Association (which request must state the name and address of the holder, insurer or guarantor and the Unit number subject to the mortgage held, insured or guaranteed) shall be entitled to timely written notice of:

14.6.1 a condemnation loss or any casualty loss which affects a material portion of the common interest community or the Unit securing the mortgage;

14.6.2 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;

14.6.3 a lapse, cancellation, or material modification of any insurance policy maintained by the Association, if any; and

14.6.4 a proposed action which requires the consent of a specified percentage of Eligible Mortgagees pursuant to Section 14.1

## **SECTION 15 SPECIAL DECLARANT RIGHTS**

Declarant hereby reserves exclusive and unconditional authority to exercise the following Special Declarant Rights within the meaning of Section 515B.1-103 of MCIOA or in any future amendment to MCIOA, and other rights reserved to Declarant elsewhere in this Declaration, for as long as Declarant owns a Unit or for such other period as may be specifically indicated herein or in MCIOA:

15.1 Complete Improvements. Declarant shall have the exclusive right and authority to complete the Buildings, all Units and other improvements indicated on the Plat, or otherwise included in Declarant's development plans or authorized by the City or this Declaration, and to make alterations in the Units owned by Declarant and the Common Elements to accommodate the exercise of any Special Declarant Rights, exempt from the requirements of Section 8.

15.2 Relocate Boundaries and Alter Units. Declarant shall have the exclusive right and authority to (i) relocate the boundaries of any adjoining Units owned by it pursuant to Section 515B.2-114 of MCIOA, or (ii) create additional Units, Common Elements and Limited Common Elements, or any combination thereof, by the subdivision, conversion or combining of any Unit owned by it, pursuant to Section 515B.2-112 of MCIOA. The maximum number of additional



Units that may be created within the common interest community by the subdivision or conversion of Units by Declarant pursuant to this Section is ten (10).

15.3 Leasing, Sales and Rental Facilities. Declarant shall have the exclusive right and authority to engage in the sale and leasing of Units, and to construct, operate and maintain a sales office, management office, model Units, and other development, sales and rental facilities within the Common Elements, and within any Units owned or leased by Declarant from time to time, located anywhere on the Property.

15.4 Signs. Declarant shall have the exclusive right and authority to erect and maintain signs and other sales displays offering the Units for sale or lease and/or for other business or construction related purposes, in or on any Unit owned by Declarant and on the Common Elements.

15.5 Easements. Declarant shall have the exclusive right and authority to have and use easements, for itself, its employees, contractors, representatives, agents, prospective purchasers or other invitees through and over the Common Elements and the Units for the purpose of exercising its Special Declarant Rights reserved herein.

15.6 Control of the Association. Declarant shall have the exclusive right and authority to control the operation and administration of the Association, including without limitation the power to appoint and remove the members of the Board pursuant to Section 515B.3-103 of MCIOA, until the earliest of: (i) voluntary surrender of control by the Declarant; (ii) the conveyance to Owners other than the Declarant of seventy five percent (75%) of the total number of Units authorized to be included in the Property; or (iii) the date three (3) years following the date of the first conveyance of a Unit to an Owner other than the Declarant. Thereafter, Declarant shall retain the power to appoint and remove one (1) member of the Board until such time as Declarant no longer owns a Unit. Upon termination of Declarant's appointment right or Declarant's voluntary surrender of such right, all members of the Board shall be elected by the Owners. Notwithstanding the foregoing, the Owners other than Declarant shall have the right to nominate and elect not less than thirty three and one-third percent (33 1/3%) of the directors at a meeting of the Owners which shall be held within sixty (60) days following the conveyance by Declarant of fifty percent (50%) of the total number of Units authorized to be included in the Property. The turnover by the Declarant of control of the Board shall not affect the Declarant's right to exercise any other Special Declarant Rights granted to it by this Declaration or by law.

15.7 Consent to Certain Amendments. Declarant shall have the exclusive right and authority to approve or withhold approval of any amendment to the Governing Documents or Rules and Regulations which affect the Declarant's rights or obligations under the Governing Documents.

15.8 Consent to Certain Improvements. Declarant shall have the exclusive right and authority to approve or withhold approval for certain improvements to the Property, Units or Common Elements as described in Section 8.

15.9 Other Rights. Declarant shall have the exclusive right and authority to have and exercise such other rights as are afforded Declarant under the terms of this Declaration or identified, now or in the future, as special declarant rights in Section 515B.1-103 of MCIOA.

15.10 Transfer of Rights. Declarant shall have the exclusive right and authority to transfer and assign, in whole or in part, the Special Declarant Rights described in this Section 15 as provided by MCIOA.

Subject to any other limitations provided in the Declaration or MCIOA, all Special Declarant Rights terminate ten (10) years after the date of the first conveyance of a Unit to a person other than a Declarant unless extended by a vote of the Owners.

## **SECTION 16 AMENDMENTS**

16.1 Approval Requirements. Except as otherwise provided in MCIOA, this Declaration may be amended only by the approval of:

16.1.1 Owners of Units to which are allocated at least sixty-seven percent (67%) of the total votes in the Association;

16.1.2 The percentage of Eligible Mortgagees (based upon one vote per Unit financed) as and if required by Section 14; and

16.1.3 Declarant pursuant to Section 15.7.

16.2 Procedures. If any provision of this Declaration, the Bylaws, or the Articles requires the vote or consent of the Owners as a condition for the approval or effectiveness of an amendment to this Declaration, the Bylaws, or the Articles, the affirmative vote or consent of an Owner shall be deemed to be granted if the Association sends notice and a copy of the amendment, by certified United States mail, postage prepaid and return receipt requested, and (i) if a vote is conducted, the Owner's vote is not cast against the proposed amendment, or (ii) if consent is requested, the Owner's written refusal to consent is not received by the Association within sixty (60) days after notice is mailed. Subject to the foregoing, approval of the Owners of Units may be obtained in writing, by authenticated electronic communication, or at a meeting duly held in accordance with the Bylaws. Consent of Mortgagees or Declarant shall be in writing or by authenticated electronic communication. Any amendment shall be subject to any greater requirements imposed by MCIOA. The amendment shall be effective when recorded as provided in MCIOA. 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 17 INDEMNIFICATION**

Each Owner shall be responsible and 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 invitees in the Owner's Unit. Each Owner shall hold harmless, indemnify and defend

Declarant, other Owners and the Association, and their respective officers, directors and employees, from and against all claims, actions, damages and other liabilities, including attorneys' fees, other professional fees and costs, arising out of incidents occurring within or upon such Owner's Unit or arising out of the conduct of the Owner or Occupants of the Unit or their employees, agents, contractors and invitees.

## **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 Declaration or exhibits attached hereto.

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

18.3 Tender of Claims. In the event that any incident occurs which could reasonably give rise to a demand by the Association against Declarant for indemnification pursuant to MCIOA, the Association shall promptly tender the defense of the action to its insurance carrier, and give Declarant (i) written notice of such tender; (ii) written notice of the specific nature of the action; and (iii) an opportunity to defend against the action.

18.4 Notices. Unless specifically provided otherwise in the Governing Documents or MCIOA, all notices required to be given by or to the Association, the Board, the Association officers, or the Owners or Occupants shall be (i) in writing and shall be effective upon hand delivery, or mailing if properly addressed with postage prepaid and deposited in the United States mail, or (ii) by electronic communication and shall be effective when sent, as and if authorized by the Bylaws and Minnesota Statutes Chapter 317A; except that registrations pursuant to Section 2.2 of the Bylaws shall be effective upon receipt by the Association.

18.5 Conflicts Among Documents. In the event of any conflict among the provisions of MCIOA, this Declaration, the Bylaws and any Rules or Regulations, MCIOA shall control unless it permits one or more of the documents herein referenced to control. As among this Declaration, the Bylaws and any Rules and Regulations, this Declaration shall control. As between the Bylaws and any Rules and Regulations, the Bylaws shall control.

18.6 Duration of Covenants. The covenants, conditions, restrictions, easements, liens and charges contained in this Declaration shall be perpetual, subject only to termination as provided in this Declaration and MCIOA.

*[SIGNATURE PAGE TO FOLLOW]*

**IN WITNESS WHEREOF**, the undersigned has executed this Declaration the day and year first set forth above in accordance with the requirements of MCIOA.

VICTOR LAND HOLDINGS, LLC, a  
Minnesota limited liability company

By: 

John H. Schwieters

Its: Member

STATE OF MINNESOTA            )  
  ) ss.  
COUNTY OF WASHINGTON        )

April The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of April, 2022, by John H. Schwieters, the Member of Victor Land Holdings, LLC, a Minnesota limited liability company, on behalf of said entity.

  
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:  
Taft Stettinius & Hollister LLP (BHM)  
2200 IDS Center  
80 South 8<sup>th</sup> Street  
Minneapolis, Minnesota 55402  
(612) 977-8884



**EXHIBIT A TO DECLARATION**  
**COMMON INTEREST COMMUNITY NO. \_\_\_\_\_**  
a Condominium

**EAGLES LANDING**  
**SCHEDULE OF UNITS**

**Unit Number**

100

110

120

130

140

200

210

220

230

240

300

310

320

330

**EXHIBIT B TO DECLARATION**

**COMMON INTEREST COMMUNITY NO. \_\_\_\_\_**  
a Condominium

**EAGLES LANDING**

**UNDERLYING LEGAL DESCRIPTION OF PROPERTY**

That part of Lot 3, Block 2, Bald Eagle Industrial Park, Washington County, Minnesota, described as follows:

Commencing at the Northeast corner of said Lot 3; thence North 78 degrees 08 minutes 43 seconds West, assumed bearing, along the North line of said Lot 3 a distance of 127.00 feet to the West line of the East 127.00 feet of said Lot 3 to the point of beginning, thence South 11 degrees 51 minutes 17 seconds West along said West line of the East 127.00 feet a distance of 280.74 feet; thence North 78 degrees 08 minutes 53 seconds West 248.00 feet to the West line of said Lot 3; thence North 11 degrees 51 minutes 17 seconds East along said West line of Lot 3 a distance of 280.76 feet to the Northwest corner of said Lot 3; thence South 78 degrees 08 minutes 43 seconds East along said North line of Lot 3 a distance of 248.00 feet to the point of beginning.

and

That part of Lot 3, Block 2, Bald Eagle Industrial Park, Washington County, Minnesota, described as follows:

Commencing at the Northeast corner of said Lot 3; thence North 78 degrees 08 minutes 43 seconds West, assumed bearing, along the North line of said Lot 3 a distance of 127.00 feet to the West line of the East 127.00 feet of said Lot 3; thence South 11 degrees 51 minutes 17 seconds West along said West line of the East 127.00 feet a distance of 280.74 feet to the point of beginning; thence North 78 degrees 08 minutes 53 seconds West 248.00 feet to the West line of said Lot 3; thence South 11 degrees 08 minutes 53 seconds West along said West line of Lot 3 a distance of 232.14 feet to the South line of the Southeast Quarter of Section 30, Township 31, Range 21, Washington County, Minnesota; thence South 89 degrees 00 minutes 18 seconds East along said South line of Section 30 a distance of 252.52 feet to said West line of the East 127 feet of Lot 3; thence North 11 degrees 51 minutes 17 seconds East along said West line of the East 127.00 feet a distance of 184.58 feet to the point of beginning.