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**COMMON INTEREST COMMUNITY NO. 6**

**VALHALLA FIVE ASSOCIATION**

**A Condominium**

**AMENDED AND RESTATED DECLARATION**

THIS AMENDED AND RESTATED DECLARATION is executed as of this 28th day of February, 2022, by Valhalla Five Association, a Minnesota non-profit corporation ("Association"), 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**, there is filed of record in the office of the Olmsted County Recorder a certain Condominium Declaration for Valhalla Five, dated December 22, 1970, and recorded as Document Number 326779, on December 23, 1970 (hereinafter the "Original Declaration"), and

**WHEREAS**, the Original Declaration established a plan for the use, operation, maintenance, and preservation of the real estate described in Exhibit A attached hereto (the "Property"), and

**WHEREAS**, there is filed in the office of the Olmsted County Recorder, an Amendment Number 1 To Condominium Declaration For Valhalla Five, dated April 20, 1973, and filed as Document Number 347055, on May 15, 1973 (the "First Amendment"), and

**WHEREAS**, the Association and the Owners desire to provide for the preservation of the residential character, value, architectural character, architectural uniformity, and amenities which are a part of the Property, and for the maintenance of open spaces and other common facilities, and

**WHEREAS**, the Association and the Owners desire to amend and restate the Original Declaration, including all Amendments, in accordance herewith, and to subject the Property to the Act in its entirety, and to the covenants, restrictions, easements, charges, and liens set forth herein, pursuant to the requirements and procedures prescribed by Section 515B.1-102(d) of the Act, and

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

**NOW THEREFORE**, as required by Section 20 of the Original Declaration, the Association, with the consent of eighty percent (80%) of the votes in the Association and one hundred percent (100%) of the first mortgagees of the condominium units, whose signatures are on file with the Association or its attorney, hereby declares that the Property and any additions thereto shall be subject to the Act as a condominium, and shall be held, transferred, sold, conveyed, used, and occupied subject to the covenants, restrictions, easements, charges, and liens set forth herein; that all persons or entities having or acquiring any interest in the Property shall be bound hereby; and that the Original Declaration shall be revoked and superseded in its entirety by this Declaration upon its recording.

## **SECTION 1 DEFINITIONS**

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

- 1.1 "Association" shall mean Valhalla Five 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.
- 1.2 "Board" shall mean the Board of Directors of the Association as provided for in the Bylaws.
- 1.3 "Bylaws" shall mean the Bylaws governing the operation of the Association, as amended from time to time.
- 1.4 "Common Elements" shall mean all parts of the Property except the Units, including all improvements thereon.
- 1.5 "Common Expenses" shall mean and include all expenditures made or liabilities incurred by or on behalf of the Association and incident to its operation, including without limitation allocations to reserves and those items specifically identified as Common Expenses in the Declaration or Bylaws.

- 1.6 "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.
- 1.7 "Governing Documents" shall mean this Declaration, the Articles of Incorporation, and Bylaws of the Association, and the Rules and Regulations adopted by the Board of Directors, as amended from time to time, all of which shall govern the use and operation of the Property.
- 1.8 "Limited Common Elements" shall mean that portion of the Common Elements defined in Section 3.2 of this Declaration.
- 1.9 "Member" shall mean all Persons who are members of the Association by being Owners as defined in this Declaration. The words "Owner" and "Member" may be used interchangeably in the Governing Documents.
- 1.10 "Occupant" shall mean any Person or Persons, other than an Owner, in possession of or residing in a Unit.
- 1.11 "Owner" shall mean a Person who owns a Unit, but excluding vendees of unrecorded contract for deeds, mortgagees, and other secured parties within the meaning of Section 515B.1-103(31) of the Act. The term "Owner" includes, without limitation, contract for deed vendees and holders of a life estate.
- 1.12 "Person" shall mean a natural individual or trust capable of holding title to real property.
- 1.13 "Plat" shall mean the CIC plat depicting the Property pursuant to the requirements of Section 515B.2-110(c) of the Act, including any amended or supplemental CIC Plat recorded from time to time in accordance with the Act. The recorded plat for the Property existing as of the date of this Declaration, as amended, shall constitute the Plat.
- 1.14 "Property" shall mean all 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.
- 1.15 "Rules and Regulations" shall mean the Rules and Regulations of the Association as approved from time to time pursuant to Section 5.6.
- 1.16 "Unit" shall mean the area or space contained within the perimeter walls of such Unit in said multi-family structure constructed on the Property as more

particularly depicted in the CIC Plat. Units shall be identified by number as set forth in Exhibit B attached hereto. All Units are restricted to residential use.

- 1.17 Master Association shall mean the nonprofit corporation created pursuant to Chapter 317A of the laws of the State of Minnesota, whose members consist of the Member Associations as that term is defined in the Master Declaration and whose purpose is to enforce and implement the terms of the Master Declaration.
- 1.18 Master Declaration shall mean the instrument entitled Declaration of Easements and Covenants of Valhalla Master Association, as amended from time to time, which shall be filed with the Olmsted County recorder and to which the Association is a signatory.
- 1.19 Master Governing Documents shall mean the Master Declaration, the Master Bylaws, and the Master Rules and Regulations.

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 thirty (30) Units, all of which are restricted exclusively to residential use. Each Unit constitutes a separate parcel of real estate. No additional Units may be created by the subdivision or conversion of Units pursuant to Section 515B.2-112 of the Act. The Unit identifiers and locations of the Units are as shown on the recorded Plat, and a schedule of Units is set forth on Exhibit B.

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 the Governing Documents.

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

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

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

2.8 Easements are Appurtenant. All easements and similar rights burdening or benefiting a Unit or any other part of the Property shall be appurtenant thereto, and shall be permanent, subject only to termination in accordance with the Act or the terms of the easement. Any recorded easement benefiting or burdening the Property shall be construed in a manner consistent with, and not in conflict with, the easements created by this Declaration.

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

2.10 Benefit of Easements. All easements benefiting a Unit shall benefit the Owners and Occupants of the Unit, and their families and guests. However, an Owner who has delegated the right to occupy the Unit to an Occupant or Occupants, whether by lease or otherwise, does not have the right to use and other easement rights in the Property during such delegated occupancy, except as a guest of an Owner or Occupant or in connection with the inspection of the Unit or recovery of possession of the Unit from the Occupant pursuant to law.

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

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

- a. All the Property not included within the Units constitutes Common Elements, and the undivided interests therein are allocated among the Units based upon the formula set forth in Section 4.2, and as depicted on Exhibit B. 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 in favor of each Unit and its Owners and Occupants; 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. 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, and serving only that Unit, are allocated to the Unit they serve. Any portion of such installations serving or affecting the function of more than one Unit or 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, balconies, shutters, awnings, window boxes, doorsteps, stoops, perimeter doors, storage lockers, and windows, 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 boundaries of the Unit or Units, 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 and an interest in the Common Elements of the Association shall be governed by the following provisions:

4.1 Membership. Each Owner shall be a member of the Association by 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 Voting. Each Unit shall be allocated a portion of the votes in the Association as set forth in Exhibit B.

4.3 Undivided Interest in Common Elements and Common Expenses. Common expense allocations shall be allocated on a percentage basis, as set forth on Exhibit B, except that limited allocations of Common Expenses shall be permitted as provided in Section 6. Undivided interests shall be allocated among the Units based upon the fractional interests in Exhibit B.

4.4 Appurtenant Rights and Obligations. The ownership of a Unit shall include the voting rights, undivided interest in the Common Elements, and Common Expense obligations described in Sections 4.2 and 4.3. Said rights, obligations, and interests, and the title to the Units, shall not be separated or conveyed separately. 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.

4.5 Authority to Vote. The Owner, or some 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; 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.

## **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 Master Governing Documents, the Governing Documents, and the Act. The Association shall, subject to the rights of the Owners set forth in the Governing Documents and the Act and the rights of the Master Association as set forth in the Master Governing Documents, 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 either (1) action or approval by the individual Owners is specifically required by the Governing Documents or the Act or (2) the Master Association has the authority or power as outlined in the Master Governing Documents. All references to the Association 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, (ii) maintaining, repairing, and replacing those portions of the Property for which it 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 the Act.

5.6 Rules and Regulations. The Board shall have exclusive authority to approve and implement such reasonable Rules and Regulations as it deems necessary from time to time for the purpose of operating and administering the affairs of the Association and regulating the use of the Property; provided that the Rules and Regulations shall not be



inconsistent with the Governing 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 credited against future assessments or added to reserves, as determined by the Board.

5.8 Services. The Association may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Property, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Property or the enforcement of the Governing Documents. The Association may arrange with others to furnish water, trash collection, sewer service, and other common services to each Unit.

5.9 Master Association. The Association is a Member Association, as that term is defined in the Master Declaration. The Association hereby authorizes the Master Association to enforce any of the provisions of the Association Governing Documents pursuant to the terms of the Master Governing Documents.

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

6.1 General. Assessments for Common Expenses shall be determined and assessed against the Units by the Board, in its discretion; subject to the limitations set forth in this Section 6 and the requirements of the Bylaws. Assessments for Common Expenses shall include annual assessments under Section 6.2 and insurance assessments under Section 6.5 and may include special assessments under Section 6.3 and limited allocation assessments under Section 6.4. Annual assessments shall be allocated among the Units in accordance with the allocation formula set forth in Section 4.2. Special assessments under Section 6.3 shall be allocated to Units as set forth in that section. Limited allocation 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, subject only to the limitations set forth hereafter. Each annual assessment shall cover the anticipated Common Expenses of the Association for the year. Annual assessments shall be payable in equal monthly installments. Annual assessments shall provide, among

other things, for an adequate reserve fund for the replacement of the Common Elements and those parts of the Units for which the Association is responsible to replace.

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. Subject to the discretion of the Board of Directors, special assessments may be assessed against the Units per the allocation formula set forth in Section 4.2 or may be assessed against the Units based on actual cost incurred with respect to each Unit. Special assessments may be used only to defray, in whole or in part, the cost of any unforeseen or unbudgeted Common Expense; or the cost of any capital improvement to the Units or Common Elements. Special assessments do not include limited allocation assessments under Section 6.4, paragraphs (a) through (h), or insurance assessments under Section 6.5.

6.4 Limited Allocation Assessments. In addition to annual assessments and special assessments, the Board may, at its discretion, levy and allocate limited allocation assessments among only certain Units in accordance with the following requirements and procedures:

a. Any Common Expenses associated with the maintenance, repair, or replacement of a Limited Common Element undertaken by the Association shall 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 shall 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 utilities may be assessed in proportion to usage.

d. Reasonable attorneys' fees and other costs if incurred by the Association in connection with: (i) the collection of assessments; or (ii) the enforcement of the Governing Documents or the Act 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 515B.3-116(a) of the Act, and the same shall be treated in the same manner as assessments under Section 6.2, above.

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 the act or omission of any Owner or Occupant or their guests damages the Common Elements or another Unit, 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 to 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.

6.5 Insurance Assessments. Insurance assessments shall be established and levied by the Board of Directors. Each insurance assessment shall cover all anticipated insurance premiums and costs incurred by the Association for that year. Insurance assessments may be payable in equal monthly installments or in any other manner directed by the Board of Directors. The cost of insurance may be assessed against each of the Units in proportion to value, risk, and coverage.

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. No Owner is exempt from liability for payment of his or her share of Common Expenses by right of set-off, by waiver of use or enjoyment of any part of the Property, by absence from or abandonment of the Unit, by the waiver of any other rights, or by reason of any claim against the Association or its officers, directors or agents, or for their failure to fulfill any duties under the Governing Documents or the Act. The Association may invoke the charges, sanctions, and remedies set forth in Section 13, in addition to any remedies provided elsewhere in the Governing Documents or by law, for the purpose of enforcing its rights hereunder.

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 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.

6.8 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. The Association, or its authorized representative, shall have the power to bid 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. The commencement of an action to recover the sums is not an election of remedies if it is dismissed before commencement of foreclosure of the lien provided for by Section 515B.3-116 of the Act.

6.9 Lien Priority; Foreclosure; A lien under this Section is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances recorded before the Original 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 June 1, 1994, 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 (3), (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.

6.10 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.

6.11 Annual Assessment Due Dates. 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.

## **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, the Act, and the Master Governing Documents, as amended from time to time. All covenants, restrictions, and obligations set forth in the Governing Documents and the Master 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 Declaration, Bylaws, and Rules and Regulations. Each Unit Owner or occupant of a Unit shall comply with the provisions of this Declaration, the Bylaws, and any Rules and Regulations of the Association or its representative, as lawfully amended from time to time, as well as the provisions of the Master Governing Documents 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 of Directors of the Association.

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 as permitted under Section 7.12 hereof.

7.5 Subdivision Prohibited. Except as permitted by the Act, 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 Residential Use. The Units shall be used by Owners and Occupants and their guests exclusively as private, single family residential dwellings, and not for rental, transient, hotel, commercial, business, or other non-residential purposes, except as provided in Sections 7.7 and 7.17. Any lease of a Unit (except for occupancy by guests with the consent of the Owner) for a period of less than seven (7) days, any occupancy which includes services customarily furnished to hotel guests, or any occupancy pursuant to any service that enables people to list, find, and rent properties shall be presumed to be for rental, transient, hotel, commercial, business, or other non-residential purposes.

7.7 Business Use Restricted. No business, trade, occupation, or profession of any kind, whether carried on for profit or otherwise, shall be conducted, maintained, or

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

7.8 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.

7.9 Parking. All parking areas on the Property, including any underground parking garages, surface street parking, and detached garage parking stalls 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 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.

7.10 Animals. No animal may be bred, kept, or maintained for business or commercial purposes anywhere on the Property. Notwithstanding the foregoing the Board has the right to reasonably regulate animals, including prohibiting them entirely, through Rules and Regulations.

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, (defined as a situation in which the Association needs access for the purposes of abating or correcting any condition in the Unit which violates any governmental law, ordinance, or regulation, which may cause material damage to or jeopardize the safety of the common interest community, or which may constitute a health or safety hazard for occupants of Units) all Units and Limited Common Elements are subject to an easement for access, without notice and at any time, by an officer or member of the Board, by the Association's agents or by any public safety personnel. Even in the event of an emergency, if possible, the Association will attempt to notify the Owner and/or Occupant of the need for emergency access to the Unit and/or Limited Common Element. Entry is also authorized for maintenance purposes under Section 9 and for enforcement purposes under Section 13.

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 of Directors of the Association. No Unit Owner or occupant of a Unit shall permit anything to be done or kept in any Unit or in the Common Elements which will result in the cancellation of insurance on the CIC, or contents thereof, or which will be in violation of applicable law or ordinance. No waste shall be committed in the Common Elements. No Unit Owner shall make any improvement or alterations to his or her Unit that impair that structural integrity or mechanical systems or lessen the support of any portion of the CIC without the prior written approval of the Board of Directors of the Association, which written approval may be conditioned upon (i) the furnishing to the Association of complete plans and specifications for such alteration or improvement prepared by a licensed architect or engineer, and (ii) the furnishing to the Association of financial guarantees or assurances satisfactory to the Association that all claims for labor or material furnished in connection with such alteration or improvement will be fully paid and that no claims or liens will arise therefrom.

7.16 Satellite Dishes. No satellite dishes greater than eighteen inches (18") in diameter or any other antenna shall be affixed to any portion of the Property, nor shall any C-band antennae be erected on or affixed to any portion of the Property, without prior written consent of the Board. The Board of Directors of the Association may provide guidelines regarding the use, installation, and location of satellite dishes or other types of antennae.

7.17 Leasing. Leasing of Units shall be allowed, subject to reasonable regulation by the Association, and subject to the following restrictions and conditions:

- a. "Leasing" shall refer to the occupancy of a Unit by anyone other than the Owner(s) for any duration, in exchange for compensation of any kind whatsoever. "Leasing" shall specifically include conventional leases negotiated by the Owner and a third party and leases pursuant to any service that enables people to list, find, and rent properties (*e.g.*, airbnb.com, vrbo.com, and craigslist.com). "Leasing" shall not

include situations in which the Owner continues to live in the residence with a roommate, regardless of that person's relationship to the Owner.

1. Mandatory Requirements for Leases. Any Owner who leases his or her Unit as of the date of the recording of this Declaration or anytime thereafter decides to lease his or her unit must satisfy the following conditions:

- i. Any Owner leasing a Unit as permitted by this Section shall, within thirty (30) days of this Declaration being recorded, if not already on file, deliver a copy of the written lease to the Association's management company or Secretary of the Association. The written lease, or any renewals thereof, shall conform to the requirements of this subsection.
- ii. Any Owner leasing a Unit shall always keep the Association advised in writing of the address of the Owner's current residence or principal address in the case of a business and any changes thereto, and of the name(s) of his, her, or its tenant(s), their contact information and any other information reasonably required by the Association as set forth in the Rules and Regulations of the Association.
- iii. All leases shall be for the entire Unit.
- iv. Any lease relationship permitted by this Section shall be in writing and shall require that the terms of the lease shall be subject in all respects to the provisions of the Governing Documents and the Master Governing Documents, and that any failure by the tenant to comply with the terms thereof shall be a default under the lease or rental agreement, giving rise to the Association's ability to evict the tenant.
- v. All leases shall be for a period of at least thirty (30) days.
- vi. All leases permitted by this section shall contain any Lease Addendum(s) made part of the Rules and Regulations, as modified.
- vii. The Association may require an Owner and his or her tenants to sign an Assignment of Rents, which the Association will enforce if the Owner fails to timely pay assessments levied against the Unit by the Association. A copy of the Assignment of Rents may be made a part of the Rules and Regulations as modified.



- viii. Any sale by an unrecorded contract for deed will be a lease and subject to the provisions of this Section until and unless the Contract for Deed is recorded, in which event the Vendee will be considered as the Owner of the Unit in accordance with this Declaration and the Act.
- ix. Other than situations in which the Owner continues to reside in the Unit, any third party occupying a Unit as his/her principal or primary residence shall be considered a leasehold, regardless of whether any rent is paid by the party to the Owner.
- x. No subleasing of any Unit is permitted.

2. Enforcement Powers. In the event an Owner leases his or her Unit, the Owner of said Unit hereby delegates and assigns to the Association the power and authority to enforce against the tenant of such Unit all breaches resulting from the violation of the Governing Documents, including the power and authority to enforce the terms of any Assignment of Rents, and to evict the tenant on behalf of and for the benefit of the Owner, in accordance with the terms hereof, for violation of the Governing Documents. In the event the Association incurs any attorneys' fees or costs to enforce the terms of the Governing Documents, including but not limited to evicting any tenant, all such costs shall constitute a lien against such Owner's Unit, enforceable in the same manner as liens for unpaid Common Expense assessments.

3. Rules and Regulations. 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.

7.18 Smoking Restrictions. Except for certain designated outdoor smoking areas that the Board may in its sole discretion designate from time to time, and except as otherwise set forth herein, smoking shall be prohibited throughout the Property, including the Units, Common Elements, and Limited Common Elements. As used herein, "smoking" shall include, but is not limited to, the use of cigarettes, cigars, pipes, electronic cigarettes, marijuana, other smokable substances, and vaping devices.

## **SECTION 8 ARCHITECTURAL CONTROL**

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

8.1.1 Except for maintenance work performed pursuant to Section 9.3 of this Declaration and as otherwise provided in this Section 8, no alterations affecting the Property's structural components, electrical systems, and/or mechanical systems

shall be commenced, erected, or maintained anywhere on the Property, 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 of Directors or a committee appointed by it.

The criteria for approval shall include and require, at a minimum, (i) comparable or better quality of materials as used in existing improvements, (ii) adequate protection of the Property, the Association, Owners, and Occupants from liability and liens arising out of the proposed alterations, and (iii) compliance with governmental laws, codes, and regulations.

8.2 Review Procedures. The following procedures shall govern requests for alterations under Section 8.1:

8.2.1 Detailed plans, specifications, and related information regarding any proposed alteration, in form and content acceptable to the Board of Directors, shall be submitted to the Board of Directors at least sixty (60) days prior to the projected commencement of construction. No alterations shall be commenced prior to approval.

8.2.2 The Board of Directors shall give the Owner written notice of approval or disapproval. If the Board of Directors fails to approve or disapprove within sixty (60) days after receipt of said plans and specifications and all other information requested by the Board of Directors, the approval will not be required, and this Section shall be deemed to have been fully complied with so long as the alterations are done in accordance with the plans, specifications, and related information which were submitted.

8.2.3 If no request for approval is submitted, approval is denied unless (i) the alterations are reasonably visible, and (ii) no written notice of the violation has been given to the Owner in whose Unit the alterations are made by the Association or another Owner within six (6) months following the date of completion of the alterations. Notice may be direct written notice or the commencement of legal action by the Association or an Owner. The Owner of the Unit in which the alterations are made shall have the burden of proof, by clear and convincing evidence, that the alterations were completed and reasonably visible for at least six (6) months following completion and that the notice was not given.

8.3 Remedies for Violations. The Association may undertake any measures, legal or administrative, to enforce compliance with this Section and shall be entitled to recover from the Owners causing or permitting the violation all attorneys' fees and costs of enforcement, regardless of whether a legal action is started. Such attorneys' fees and costs shall be a lien against the Owner's Unit and a personal obligation of the Owner. In addition, the Association shall have the right to enter the Owner's Unit and to restore any part of the Unit to its prior condition if any alterations were made in violation of this Section, and the

cost of such restoration shall be a personal obligation of the Owners and a lien against the Owner's Unit.

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

8.5 Hold Harmless. Regardless of whether the Board approves the alteration, the Owner who causes an alteration to be made 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 violates any restrictions imposed by any governmental authority having jurisdiction over the Property. 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. 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 of Directors, to make such rules and regulations as it deems appropriate for the maintenance provided in this section.

9.2 Optional Maintenance by Association. In addition to the maintenance described in this Section the Association may, with the approval of Owners entitled to cast in excess of fifty percent (50%) of all the votes in the Association, undertake to provide additional maintenance to the Units.

9.3 Maintenance by Owner. Except for the maintenance required to be provided by the Association under Section 9.1 or 9.2, all maintenance, repair, or replacement of the Units shall be the sole responsibility and expense of the Owners thereof. 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 maintenance to be performed by the Owner be accomplished pursuant to specific uniform criteria established by the Association. The Association may also undertake any 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, 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 general liability insurance covering the use, operation, and maintenance of the Common Elements, with minimum limits of \$1,000,000 per occurrence and \$5,000,000.00 per annum, 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 or insurance coverage against dishonest acts on the part of directors, officers, property managers, trustees, employees, or persons responsible for handling funds belonging to or administered by the Association if deemed to be advisable by the Board or required by the regulations of the FHA or FNMA as a precondition to the purchase or financing of a mortgage on a 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.

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.

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.

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 must obtain additional personal insurance coverage at his or her own expense covering fire and other casualty to the Unit, personal property or personal liability and provide the Association with proof of such insurance as may be requested from time to time by the Board. Each Owner shall be responsible for any deductible or related expenses to said personal property or personal

liability insurance coverage. All insurance policies maintained by Owners shall provide that they are without contribution as against the insurance purchased by the Association.

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

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

11.2 Condemnation and Eminent Domain. In the event of a taking of any part of the Property by condemnation or eminent domain, the provisions of the Act shall govern provided that: (i) the Association shall be the attorney-in-fact to represent the Owners in any related proceedings, negotiations, settlements, or agreements; and (ii) any awards or proceeds shall be payable to the Association for the benefit of the Owners and the mortgagees of the affected Units. 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 interests may appear.

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

## **SECTION 12 EASEMENTS**

12.1 Easement for Encroachments. Each Unit and the Common Elements, and the rights of the Owners and Occupants therein, shall be subject to an exclusive easement for encroachments in favor of the adjoining Units for fireplaces, walls, roof overhangs, air conditioning systems, 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 a building or 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 building or 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.

12.3 Utilities Easements. The Property shall be subject to non-exclusive, appurtenant easements for all utilities, water and sewer, and similar services, which exist from time to time, as constructed or referred to in the Plat, or as otherwise described in this Declaration or any other duly recorded instrument. Each 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 services, including without limitation any sewer or water lines servicing other Units. Each Unit shall also be subject to an exclusive easement in favor of the Association and all utility companies providing service to the Units for the installation and maintenance of utility metering devices.

12.4 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.

12.5 Master Association Easement. There is an easement in favor of the Master Association, including, without limitation, any management agent or service vendor retained by the Master Association, for access on and across the Property and any Unit, for the purpose of performing the Master Association's obligations under the Master Governing Documents or for the purposes of performing any obligation the Master Association has determined, in its discretion, to exercise on behalf of the Association as allowed by the Master Declaration. Except in the event of emergencies, this easement shall be exercised only during normal business hours and then, whenever practical, only upon advance notice to the Owner or Occupant directly affected.

### **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 and the Governing Documents, 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 as follows:

13.1 Entitlement to Relief. The Association may commence legal action to recover sums due, for damages, for injunctive relief, 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 or the Act:

- a. Commence legal action for damages or equitable relief in any court of competent jurisdiction.
- b. Impose late charges 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. Reasonable advance written notice of the effective date of the acceleration shall be given to the defaulting Owner.
- d. Impose reasonable fines, penalties, or charges for each violation of the Act or the Governing Documents.
- e. 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.
- f. 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.

- g. 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, by advertisement, 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 13.2 d., 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 ten (10) days prior written notice to the offender. If the offending Owner fails to appear at the hearing then the right to a hearing shall be waived and the Board may take such action as it deems appropriate. The decision of the Board and the rules for the conduct of 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.

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 or the Governing Documents, 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 and the Act as provided therein.

## **SECTION 14 AMENDMENTS**

This Declaration may be amended by the consent of (i) Owners of Units to which are allocated at least sixty-seven percent (67%) of the votes in the Association, and (ii) the percentage of Eligible Mortgagees (based upon one vote per first mortgage owned) required by Section 15 as to matters prescribed by said Section. Consent of the Owners may be obtained in writing or at a meeting of the Association duly held in accordance with the Bylaws. Consents of Eligible Mortgagees shall be in writing. Any amendment shall be subject to any greater requirements imposed by the Act. The Amendment shall be effective when recorded as provided in the Act. An affidavit by the Secretary of the Association as to the outcome of the vote, or the execution of the foregoing agreements or consents, shall be adequate evidence thereof for all purposes, including without limitation, the recording of the amendment.

## **SECTION 15 RIGHTS OF ELIGIBLE MORTGAGEES**

Notwithstanding anything to the contrary in the Governing Documents, and subject to any greater requirements of the Act or other laws, Eligible Mortgagees shall have the following rights and protections:

15.1 Consent to Certain Amendments. The written consent of fifty-one percent (51%) of all Eligible Mortgagees of the Units that are subject to first mortgages held by Eligible Mortgagees (based upon one vote per first mortgage owned) shall be required for any amendment to the Governing Documents which causes any change in the following: (i) voting rights; (ii) assessment liens, or priority of assessment liens; (iii) contributions to reserves for maintenance, repair, and replacement of Common Elements; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in the Common Elements or Limited Common Elements, or rights to their use; (vi) redefinition of any Unit boundaries; (vii) convertibility of Units into Common Elements or vice versa; (viii) expansion or contraction of the Property or the addition, annexation, or withdrawal of property to or from the Property; (ix) hazard or fidelity insurance requirements; (x) leasing of Units; (xi) imposition of any restrictions on the leasing of Units; (xii) a decision by the Association to establish self-management when professional management is in effect as required previously by the Governing Documents or any Eligible Mortgagee; (xiii) restoration or

repair of the Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents; (xiv) any action to terminate the legal status of the condominium after substantial destruction or condemnation occurs; or (xv) any provisions that expressly benefit mortgage holders or insurers or guarantors of mortgages. Notwithstanding the foregoing, implied approval of a proposed amendment shall be assumed when an Eligible Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided that the notice was delivered by certified mail with a return receipt requested.

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

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

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

15.5 Priority of Lien. Any holder of a first mortgage on a Unit or any purchaser of a first mortgage at a foreclosure sale, that comes into possession of a Unit by foreclosure of the first mortgage or by deed or assignment in lieu of foreclosure, takes the Unit free of any claims for unpaid assessments or any other charges or liens imposed against the Unit by the Association which have accrued against such Unit prior to the acquisition of possession of the Unit by said first mortgage holder or purchaser (i) except as provided in Section 6.9 and the Act, and (ii) except that any unpaid assessments or charges with respect to the Unit may be reallocated among all Units in accordance with their interest in the Common Elements.

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

15.7 Priority for Condemnation Awards. No provision of the Governing Documents shall give an Owner, or any other party, priority over any rights of the Eligible Mortgagees of the Unit pursuant to its mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Unit and/or the Common Elements. The Association shall give written notice to all Eligible Mortgagees of any condemnation or eminent domain proceeding affecting the Property promptly upon receipt of notice from the condemning authority.

15.8 Management Agreement Requirements. The term of any agreement for professional management of the Property may not exceed two (2) years. Any such agreements must provide the Association with a right of termination, the extent of such right to be mutually agreed upon by the Association and the management company.

15.9 Access to Books and Records/Audit. Eligible Mortgagees shall have the right to examine the books and records of the Association upon reasonable notice during normal business hours, and to receive free of charge, upon written request, copies of the Association's annual reports and other financial statements. Financial statements, including those which are audited, shall be available within one hundred eighty (180) days of the end of the Association's fiscal year. If a request is made by FNMA or any institutional guarantor or insurer of a mortgage loan against a Unit, for an audit of the Association's financial statements for the preceding year, the Association shall cause an audit to be made and deliver a copy to the requesting party.

15.10 Notice Requirements. Upon written request to the Association identifying the name and address of the holder, insurer, or guarantor of a mortgage on a Unit, and the Unit number or address, the holder, insurer, or guarantor shall be entitled to timely written notice of:

- a. a condemnation loss or any casualty loss which affects a material portion of the Property or the Unit securing the mortgage;
- b. a sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of a Unit on which it holds a mortgage;
- c. a lapse, cancellation, or material modification of any insurance policy maintained by the Association; and
- d. a proposed action which requires the consent of a specified percentage of Eligible Mortgagees.

## **SECTION 16 MISCELLANEOUS**

16.1 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.

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

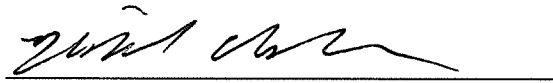
16.3 Notices. Unless specifically provided otherwise in the Governing Documents or the Act, all notices required to be given by or to the Association, the Board of Directors, the Association officers or the Owners or Occupants shall be in writing and shall be effective upon hand delivery, mailing if properly addressed with postage prepaid and deposited in the United States mail, or when sent via e-mail to an e-mail address designated pursuant to



**SECRETARY'S AFFIDAVIT**


STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF OLMSTED    )

The undersigned, Secretary of Valhalla Five Association, a Minnesota non-profit corporation, being first duly sworn on oath, hereby swears and certifies, pursuant to Minn. Stat. § 515B.1-116 and the Original Declaration, that this Amended and Restated Declaration has been duly approved by eighty percent (80%) of the votes in the Association and one hundred percent (100%) of the first mortgagees, in satisfaction of the requirements of the Original Declaration.

  
\_\_\_\_\_  
Secretary

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF OLMSTED    )

The foregoing instrument was subscribed and sworn to before me this 28<sup>th</sup> day of February, 2022, by Michael Chutkan, the Secretary of Valhalla Five Association, a Minnesota corporation, on behalf of the corporation.

  
\_\_\_\_\_  
Notary Public



THIS INSTRUMENT WAS DRAFTED BY:  
Smith Jadin Johnson, PLLC  
7900 Xerxes Avenue South, Suite 2020  
Bloomington, MN 55431  
(952) 388-0289

**COMMON INTEREST COMMUNITY NO. 6**

**VALHALLA FIVE ASSOCIATION**

**A Condominium**

**EXHIBIT A TO AMENDED AND RESTATED DECLARATION**

**LEGAL DESCRIPTION OF PROPERTY**

Lot 5, Block 4, all in Valhalla Fourth Subdivision, according to the Plat thereof, Olmsted County, Minnesota.



**COMMON INTEREST COMMUNITY NO. 6**

**VALHALLA FIVE ASSOCIATION**

**A Condominium**

**EXHIBIT B TO AMENDED AND RESTATED DECLARATION**

**SCHEDULE OF UNITS**

<b>Unit Identifier</b>	<b>Fraction of Interest in Common Elements, Common Expense Liability, and Portion of Votes in the Association</b>
10	3.6
11	3.1
12	3.6
13	3.1
14	2.5
15	3.6
16	3.6
17	3.1
18	3.1
19	3.6
20	4.2
21	3.1

22	3.6
23	3.1
24	2.5
25	3.6
26	3.6
27	3.1
28	3.1
29	3.6
30	4.2
31	3.1
32	3.6
33	3.1
34	2.5
35	3.6
36	3.7
37	3.1
38	3.1
39	3.6