

No delinquent taxes and transfer entered;  
Certificate of Real Estate Value  
( ) filed (  ) not required  
Certificate of Real Estate Value No. \_\_\_\_\_  
December 27, 2006  
**KAY L MACK AUDITOR-TREASURER**  
OP 03.00081.00, County Auditor  
87,884  
by EW  
80.05200.00 Deputy

OFFICE OF COUNTY RECORDER  
COUNTY OF BELTRAMI, MINNESOTA

THIS IS TO CERTIFY  
THAT THIS INSTRUMENT  
WAS FILED IN THIS  
OFFICE ON 12/28/2006 AT  
11:40:15AM BY DOCUMENT NUMBER

96012470449

Ann F. Allen

ANN F. ALLEN  
COUNTY RECORDER

PAGES: 48

**COMMON INTEREST COMMUNITY NO. 38**  
**TYLER HILLS**  
**A PLANNED COMMUNITY**

**TABLE OF CONTENTS**

**TYLER HILLS**

**DECLARATION**

DECLARATION ..... 1

Article I      Definitions ..... 1

    1.1      Additional Property ..... 1

    1.2      Allocated Interests ..... 1

    1.3      Area of Common Responsibility ..... 1

    1.4      Articles of Incorporation or Articles ..... 2

    1.5      Association ..... 2

    1.6      Board of Directors or Board ..... 2

    1.7      Base Assessment ..... 2

    1.8      By-Laws ..... 2

    1.9      Common Elements ..... 2

    1.10     Common Expenses ..... 2

    1.11     Common Expense Assessments ..... 3

    1.12     Common Interest Community ..... 3

    1.13     Community-Wide Standard ..... 3

    1.14     Declaration ..... 3

    1.15     Development Rights ..... 3

    1.16     Director ..... 3

    1.17     Disclosure Statement ..... 3

    1.18     Documents ..... 3

    1.19     Dwelling ..... 3

    1.20     Eligible Insurer ..... 3

    1.21     Improvements ..... 3

    1.22     Majority or Majority of Unit Owners ..... 4

    1.23     Manager ..... 4

    1.24     Member ..... 4

    1.25     Mortgage ..... 4

    1.26     Mortgagee ..... 4

    1.27     Mortgagor ..... 4

    1.28     Notice and Hearing ..... 4

    1.29     Occupant ..... 4

    1.30     Owner ..... 4

    1.31     Plat ..... 4

    1.32     Properties ..... 4

    1.33     Rules ..... 4

    1.34     Security Interest ..... 4

    1.35     Special Assessment ..... 5

    1.36     Trustee ..... 5

Article II	Identity of Real Estate and Common Interest Community .....	5
Article III	Common Interest Community Plat .....	5
Article IV	Owners Association .....	5
Article V	Units and Unit Identifiers .....	5
5.1	Units .....	5
Article VI	Development Rights and Other Special Declarant Rights .....	6
6.1	Reservation of Development Rights .....	6
6.2	Limitations on Development Rights .....	6
6.3	Phasing of Development Rights .....	6
6.4	Special Declarant Rights .....	7
6.5	Models, Sales Offices and Management Offices .....	7
6.6	Construction; Declarant's Easement .....	7
6.7	Signs and Marking .....	7
6.8	Declarant's Personal Property .....	7
6.9	Declarant Control of the Association .....	8
6.10	Limitations on Special Declarant Rights .....	9
6.11	Interference with Special Declarant Rights .....	9
Article VII	Use of Units .....	9
Article VIII	Common Elements .....	9
8.1	.....	9
8.2	.....	9
8.3	.....	9
8.4	.....	9
8.5	.....	10
8.6	Allocation of Common Elements .....	10
Article IX	Allocated Interests .....	10
9.1	Allocation .....	10
9.2	Formula .....	10
9.3	Allocation of Limited Common Element Expenses .....	10
Article X	Property Rights .....	10
10.1	Owners' Easements of Enjoyment .....	10
10.2	Delegation of Use .....	10
10.3	Access Easement .....	11

10.4	Utility and Maintenance Easements .....	11
10.5	Recorded Easements .....	11
10.6	Easements are Appurtenant .....	11
10.7	Impairment Prohibited .....	11
Article XI	Easements .....	11
11.1	General .....	11
11.2	Easement for Maintenance, Repair, Replacement and Reconstruction .....	11
11.3	Utility Easements .....	11
11.4	Trail Easement .....	12
11.5	Continuation and Scope of Easements .....	12
Article XII	Common Expenses .....	12
12.1	Apportionment .....	12
12.2	Limited Common Expenses .....	12
12.3	Common Expense Assessment Lien .....	12
12.4	Budget Adoption and Ratification .....	15
12.5	Ratification of Non-Budgeted Common Expense Assessments .....	15
12.6	Certificate of Payment of Common Expense Assessments .....	15
12.7	Monthly Payment of Common Expenses .....	15
12.8	Acceleration of Common Expense Assessments .....	15
12.9	Commencement of Common Expense Assessments .....	15
12.10	No Waiver of Liability for Common Expenses .....	16
12.11	Personal Liability of Owners .....	16
Article XIII	Membership and Voting Rights .....	16
13.1	Membership .....	16
13.2	Classes .....	16
13.3	Appurtenant Rights and Obligations .....	17
Article XIV	Board .....	17
14.1	Association Records and Minutes of Board Meetings .....	17
14.2	Powers and Duties .....	17
14.3	Board Limitations .....	19
Article XV	Persons and Units Subject to Documents .....	19
15.1	Compliance with Documents .....	19
15.2	Adoption of Rules .....	19
Article XVI	Covenant for Maintenance and Maintenance Assessments .....	19

16.1	Creation of the Lien and Personal Obligation of Assessments	19
16.2	Purpose of Assessments	19
16.3	Special Assessments for Capital Improvements	20
16.4	Notice and Quorum for Any Action Authorized under Section 16.3	20
16.5	Uniform Rate of Assessment	20
16.6	Date of Commencement of Annual Assessments: Due Dates	20
16.7	Effect of Nonpayment of Assessments: Remedies of the Association	20
16.8	Subordination of the Lien to Mortgages	21
16.9	Assessment of Costs Due to Willful or Negligent Acts	21
16.10	Exempt Property	21
Article XVII	Alternative Assessment Program	21
Article XVIII	Association Maintenance Responsibility	22
18.1	Common Elements	22
18.2	Services	22
18.3	Personal Property and Real Estate for Common Use	22
Article XIX	Owner's Maintenance	22
19.1	Upkeep and Maintenance	22
Article XX	Insurance	23
20.1	Required Coverage	23
20.2	Association Coverage of Units	24
20.3	Replacement or Repair of Property	24
20.4	Cancellation; Notice of Loss	25
20.5	Review of Policies	25
20.6	Blanket Casualty Insurance by Owner	25
Article XXI	Rental Restrictions	25
Article XXII	General Restrictions	26
22.1	Prohibition of Damage and Certain Activities	26
22.2	Landscaping	26
22.3	Non-Interference	26
22.4	Rules and Regulations	26
22.5	No Additional Units	26
22.6	No Time Shares	27
22.7	Prohibited Structures, Window Treatments, and Lawn Ornaments	27
Article XXIII	First Mortgages	27

23.1	Precedence .....	27
23.2	Notice of Action .....	27
23.3	Examination of Books and Records .....	27
23.4	Designation of Representative .....	27
Article XIV	Amendments .....	28
24.1	Declarant's Joinder .....	28
24.2	Mortgagee Approval .....	28
Article XXV	Working Capital Fund .....	29
25.1	Establishment .....	29
25.2	Declarant's Accounting .....	29
Article XXVI	Miscellaneous .....	29
26.1	Right to Cure .....	29
26.2	Association Acts through Board .....	30
26.3	Notices .....	30
26.4	Captions .....	30
26.5	Construction .....	30
26.6	Ordinance Compliance .....	30
26.7	Rights of Action .....	30
26.8	Declarant's Rights and Obligations .....	30
Article XXVII	Architectural Control .....	30
27.1	Architectural Control .....	30
27.2	Homes, Structures, and Repairs .....	30
27.2.1	Original Construction/Landscaping .....	31
27.2.2	Setbacks .....	31
27.2.3	Review of Modifications .....	31
27.2.4	Standard of Review .....	31
27.2.5	Removal and Abatement; Lien .....	32
27.2.6	Variances .....	32
27.3	Restrictions on Alterations .....	32
27.4	Review Procedures .....	33
27.5	Remedies for Violations .....	33
27.6	Fences .....	33
27.7	Accessory Structures .....	34
27.8	Nuisances .....	34
27.9	Storage .....	34
27.10	Temporary Structures .....	34
27.11	Auxiliary Structures .....	34
27.12	Maintenance and Repair .....	34

27.13	Completion of Construction of Improvements .....	35
27.14	Notice of Violation .....	35
Article XXVIII General Provisions .....		35
28.1	Enforcement .....	35
28.2	Severability .....	35
28.3	Amendment .....	35
28.4	FHA Approval .....	36
Article XXIX Additional Property .....		36

**COMMON INTEREST COMMUNITY NUMBER 38  
TYLER HILLS  
DECLARATION**

THIS DECLARATION made on the date hereinafter set forth by Steven W. Hill, a/k/a Steve Hill, and Jill Hill, husband and wife (herein "Declarant"), pursuant to the provisions of the Minnesota Common Interest Ownership Act, Minnesota Statutes §§515B.1-101 through 515B.4-118 (the "Act") as it may be amended from time to time.

**RECITALS**

WHEREAS, Declarant is the owner of certain property in Beltrami County, State of Minnesota, which is more particularly described in Exhibit A attached hereto and incorporated by reference herein, all of which real estate constitutes and is referenced to herein as the "Real Estate" and "Additional Property."

NOW, THEREFORE, Declarant hereby declares that all of the Properties described above shall be held, transferred, sold, conveyed, occupied, and developed subject to the Act and subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described Properties or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof.

**ARTICLE I  
DEFINITIONS**

**Section 1.1** "Additional Property" shall mean that certain real property situated in the County of Beltrami, State of Minnesota, legally described on Exhibit A of this Declaration.

**Section 1.2** "Allocated Interests" are the common expense liability and votes in the Association.

**Section 1.3** "Area of Common Responsibility" shall mean and refer to the common area, together with those areas, if any, which by the terms of this Declaration or by contract or agreement become the responsibility of the Association. The office of any property Manager employed by or contracting with the Association, if located on the Properties, or any public rights of way within or adjacent to the Properties, may be part of the Area of Common Responsibility. The Area of



Common Responsibility shall include such emergency access easement areas dedicated for use of public agencies.

**Section 1.4 “Articles of Incorporation” or “Articles”** shall mean and refer to the Articles of Incorporation of Tyler Hills Homeowners' Association, as filed with the Secretary of State of the State of Minnesota.

**Section 1.5 “Association”** shall mean and refer to Tyler Hills Homeowners' Association, a Minnesota non-profit corporation, its successors and assigns. It is the Association of Unit Owners pursuant to the Act.

**Section 1.6 “Board of Directors” or “Board”** shall mean the Board of Directors of the Association.

**Section 1.7 “Base Assessment”** shall mean and refer to assessments levied against all units in the Properties to fund the Common Expenses.

**Section 1.8 “By-Laws”** shall mean and refer to the By-Laws of the Association, as adopted by the Directors of the Association and as they may be amended from time to time.

**Section 1.9 “Common Elements”** shall mean each portion of the Common Interest Community, other than a unit or Limited Common Element, owned by the Association for the common benefit of the Owners. The Common Elements are shown on the attached Exhibit B.

**Section 1.10 “Common Expenses”** shall mean and include the actual and estimated expenses incurred by the Association for the general benefit of all Unit Owners, including:

**Section 1.10.1** Any reasonable reserve as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Elements or any other real or personal property acquired or held by the Association;

**Section 1.10.2** Expenses of administration, maintenance, repair or replacement of the Common Elements;

**Section 1.10.3** Expenses declared to be Common Expenses by the Documents or by the Act; and

**Section 1.10.4** Expenses agreed upon as Common Expenses by the Association.

In addition, the costs and expenses imposed on the Association, benefitting fewer than all of the units, shall be a Common Expense but assessed exclusively against those units benefitted.

**Section 1.11 "Common Expense Assessments"** are the funds required to be paid by each Unit Owner in payment of the Owner's Common Expense liability.

**Section 1.12 "Common Interest Community"** is the real property described on the attached Exhibit A, subject to the Declaration of Tyler Hills.

**Section 1.13 "Community-Wide Standard"** shall mean a standard of conduct, maintenance or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors.

**Section 1.14 "Declaration"** is this document, including any amendments.

**Section 1.15 "Development Rights"** are the rights reserved by the Declarant under Article VI of this Declaration to create units, Common Elements, and Limited Common Elements within the Common Interest Community.

**Section 1.16 "Director"** is a member of the Board.

**Section 1.17 "Disclosure Statement"** is the most current document prepared pursuant to Section 4-101 and 4-102 of the Act as it may be amended from time to time and provided to purchasers prior to the time of execution of a binding purchase agreement.

**Section 1.18 "Documents"** are the Declaration, Plat and Plans recorded pursuant to the provisions of the Act, the By-Laws and the Rules as they may be amended from time to time. Any exhibit, schedule or certification accompanying a document is part of that document.

**Section 1.19 "Dwelling"** is a part of a building consisting of one or more floors, designed or intended for occupancy as a single-family residence, and located within the boundaries of a unit. Dwelling includes any garage attached thereto or otherwise included within the boundaries of the unit in which the Dwelling is located.

**Section 1.20 "Eligible Insurer"** is an insurer or guarantor of a first Security Interest in a unit. An Eligible Insurer must notify the Association in writing of its name and address and inform the Association that it has insured or guaranteed a first Security Interest in a unit. The Eligible Insurer must provide the Association with the unit number and address of the unit on which it is the insurer or guarantor of a Security Interest. Such notice shall be deemed to include a request that the Eligible Insurer be given the notices and other rights described in Article XX (Insurance).

**Section 1.21 "Improvements"** are any construction, structure, fixture or facilities existing or to be constructed on the land which is included in the Common Interest Community including, but not limited to, buildings, trees and shrubbery planted by the Declarant or the Association, paving, utility wires, pipes, and light poles.

**Section 1.22 “Majority” or “Majority of Unit Owners”** means the Owners of more than fifty percent (50%) of the votes in the Association.

**Section 1.23 “Manager”** is a person, firm or corporation employed or engaged to perform management services for the Common Interest Community and the Association.

**Section 1.24 “Member”** shall mean and refer to a person entitled to membership in the Association, as provided herein.

**Section 1.25 “Mortgage”** shall mean and refer to a Mortgage or any other form of security deed.

**Section 1.26 “Mortgagee”** shall mean and refer to a beneficiary or holder of a Mortgage.

**Section 1.27 “Mortgagor”** shall mean and refer to any person who gives a Mortgage.

**Section 1.28 “Notice and Hearing”** is a right of a Unit Owner to receive notice of an action proposed to be taken by or on behalf of the Association and the right to be heard thereon.

**Section 1.29 “Occupant”** is any person or persons, other than an Owner, in possession of or residing in a unit.

**Section 1.30 “Owner”** shall mean and refer to one or more persons who hold the record title to any unit which is part of the Common Interest Community, including parcel developers, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a unit is sold under a recorded contract of sale or memorandum thereof, and the contract specifically so provides, then the purchaser (rather than the fee owner) will be considered the Owner.

**Section 1.31 “Plat”** means the Plat filed with this Declaration, a copy of which is Exhibit B, as it may be amended from time to time.

**Section 1.32 “Properties”** shall mean and refer to the real property described in Exhibit A attached hereto.

**Section 1.33 “Rules”** means regulations for the use of Common Elements and for the conduct of Persons in connection therewith within the Common Interest Community, adopted by the Board pursuant to this Declaration.

**Section 1.34 “Security Interest”** is an interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a mortgagee’s interest in a mortgage, a vendor’s interest in a contract for deed, a land sales contract, a lessor’s interest in a lease intended as security, a holder’s interest in a sheriff’s certificate of sale during the period of redemption, an assignee’s interest in an assignment of the leases or rents

intended as security, a pledgee's interest in the pledge of an ownership interest, and any other interest intended as security for an obligation under a written agreement.

**Section 1.35 "Special Assessment"** shall mean and refer to assessments levied in accordance with Article XII (Common Expenses) of this Declaration.

**Section 1.36 "Trustee"** is the entity which may be designated by the Board as the Trustee for the receipt, administration and disbursement of funds derived from insured losses, condemnation awards, Special Assessments for uninsured losses and other sources as defined in the By-Laws. If no Trustee has been designated, the Trustee will be the Board acting by Majority vote, as executed by the President and attested by the Secretary.

## **ARTICLE II IDENTITY OF REAL ESTATE AND COMMON INTEREST COMMUNITY**

This Declaration establishes Common Interest Community Number 38, Beltrami County, Minnesota, under the name Tyler Hills, a Common Interest Community (the "CIC"). It is a planned community and is not subject to a master association.

The entire CIC is situated on land described in Exhibit A.

## **ARTICLE III COMMON INTEREST COMMUNITY PLAT**

The CIC Plat for this Common Interest Community is being recorded simultaneously with and as a part of the this Declaration. A copy of the plat is attached hereto as Exhibit B.

## **ARTICLE IV OWNERS ASSOCIATION**

Tyler Hills Homeowners' Association, a Minnesota non-profit corporation, has been incorporated under Minnesota Statutes, Chapter 317A to act as the Association of Unit Owners required by Section 515B.3-101 of the Act.

## **ARTICLE V UNITS AND UNIT IDENTIFIERS**

**Section 5.1 Units.** There are sixty-two (62) Units. Except for any rights to the Declarant under this Declaration, no person may create additional Units by the subdivision or conversion of Units pursuant to Section 515B.2-112 of the Act.

Each Unit constitutes a separate parcel of real estate. Units shall be improved with one (1) dwelling, and all Units and dwellings will be restricted to residential use. Unless stated otherwise in this Declaration, and Owner shall be responsible for maintenance of the Unit and the dwelling thereon.

The identifiers and location of the Units are shown on the plat, which is incorporated herein by reference. Each Unit is identified by its unit number and the subdivision name. The Unit boundaries shall be the lot lines designated on a Plat recorded pursuant to §505.

**ARTICLE VI**  
**DEVELOPMENT RIGHTS AND OTHER SPECIAL DECLARANT RIGHTS**

**Section 6.1 Reservation of Development Rights.** The Declarant reserves the following Development Rights:

(a) The right to construct underground utility lines, pipes, wires, ducts, conduits and other facilities across the Plat for the purpose of furnishing utility and other services to buildings and Improvements to be constructed on the Property. The Declarant also reserves the right to withdraw and grant easements to public utility companies and to convey Improvements within those easements anywhere in the Common Interest Community not occupied by buildings, for the purposes mentioned above.

(b) The right to take the trees Declarant has planted on the Common Elements and transplant them on certain Units as Declarant sees fit.

(c) To add the Additional Property to the planned community.

**Section 6.2 Limitations on Development Rights.** The Development Rights reserved in Section 6.1 are limited as follows:

(a) The Development Rights may be exercised at any time, but not more than ten (10) years after the recording of the initial Declaration;

(b) The quality of construction, architectural style, principal materials employed in construction and size of any buildings and Improvements to be created on the Property shall be consistent with those constructed pursuant to this Declaration as initially recorded;

(c) All Units, Common Elements and Limited Common Elements (if any) created pursuant to the Development Rights will be restricted to residential use in the same manner and to the same extent as the Units created under this Declaration as initially recorded;

(d) No Development Rights may be exercised unless approved pursuant to Section 6.9 of this Declaration.

**Section 6.3 Phasing of Development Rights.** No assurances are made by the Declarant as to whether the Declarant will exercise its Development Rights or the order in which such portions,

or all of the areas, will be developed. The exercise of Development Rights as to some portions will not obligate the Declarant to exercise them as to other portions.

**Section 6.4 Special Declarant Rights.** The Declarant reserves the following Special Declarant Rights, to the maximum extent permitted by law, which may be exercised, where applicable, anywhere within the Common Interest Community:

- (a) To complete Improvements indicated on the Plat and Plans filed with the Declaration;
- (b) To exercise a Development Right reserved in the Declaration;
- (c) To maintain sales offices, management offices, signs advertising the Common Interest Community and models;
- (d) To use easements through the Common Elements for the purpose of making Improvements within the Common Interest Community; and
- (e) To appoint or remove an officer of the Association or a Board member during a period of Declarant control subject to the provisions of Section 6.2 of this Declaration.

**Section 6.5 Models, Sales Offices and Management Offices.** As long as the Declarant is an Owner, the Declarant, its duly authorized agents, representatives and employees may maintain any Unit owned by the Declarant or any portion of the Common Elements as a model Unit, sales office or management office.

**Section 6.6 Construction; Declarant's Easement.** The Declarant reserves the right to perform warranty work, repairs and construction work in Units and Common Elements, to store materials in secure areas, and to control and have the right of access to work and repair until completion. All work may be performed by the Declarant without the consent or approval of the Board. The Declarant has an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Special Declarant Rights, whether arising under the Uniform Act or reserved in this Declaration. This easement includes the right to convey utility and drainage easements to public utilities, municipalities, or the State to fulfill the plan of development.

**Section 6.7 Signs and Marketing.** The Declarant reserves the right to post signs and displays in the Common Elements in order to promote sales of Units. Declarant also reserves the right to conduct general sales activities in a manner which will not unreasonably disturb the rights of Unit Owners.

**Section 6.8 Declarant's Personal Property.** The Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the premises that has not been represented as property of the Association. The Declarant reserves

the right to remove from the property promptly after the sale of the last Unit any and all goods and Improvements used in development, marketing and construction, whether or not they have become fixtures.

Specifically, certain trees have been planted by Declarant and shall remain the property of Declarant until all of the Units are sold.

**Section 6.9 Declarant Control of the Association.**

(a) Subject to Subsection 6.9(b): There shall be a period of Declarant control of the Association, during which the Declarant, or Persons designated by the Declarant, may appoint and remove the officers and members of the Board. The period of Declarant control terminates no later than the earlier of:

- (i) Voluntary surrender of the right of control by Declarant;
- (ii) Sixty (60) days after conveyance of seventy-five percent (75%) of the Units that may be created to Owners other than Declarant; or
- (iii) Five (5) years after the first Unit is conveyed to an Owner other than Declarant.

The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board before termination of that period. In that event, the Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association or Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

(b) Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created to Unit Owners other than Declarant, not less than thirty-three and one-third percent (33 $\frac{1}{3}$ %) of the members of the Board must be elected by Owners other than the Declarant.

(c) Not later than the termination of any period of Declarant control, the Owners shall elect a Board of at least three (3) members, at least a Majority of whom shall be Owners. The Board shall elect the officers. The Board members and officers shall take office upon election.

(d) Notwithstanding any provision of this Declaration or the By-laws to the contrary, and following notice, the Owners, by a two-thirds vote of all Persons present and entitled to vote at a meeting of the Owners at which a quorum is present, may remove a member of the Board with or without cause, other than a member appointed by the Declarant.

**Section 6.10 Limitations on Special Declarant Rights.** Unless terminated earlier by an amendment to this Declaration executed by the Declarant, any Special Declarant Right may be exercised by the Declarant until the earlier of the following: as long as the Declarant (a) is obligated under any warranty or obligation, (b) owns any Unit, (c) owns any Security Interest in any Units, or (d) ten (10) years have elapsed after recording of this Declaration. Earlier termination of certain rights may occur by statute.

**Section 6.11 Interference with Special Declarant Rights.** Neither the Association nor any Unit Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right without the prior written consent of the Declarant.

## **ARTICLE VII USE OF UNITS**

All units are restricted to single-family, residential use. The following activities in a residential unit shall not be considered a violation of this restriction:

- A. The maintenance by the Association or its Manager of an office for purposes of management of this common interest community.
- B. The use of a unit by an Owner for home office or studio uses which are incidental to the principal residential use of the unit, which comply with applicable zoning, and which do not invite or generate regular or frequent visit by clients, customers, employees, coworkers or the public.

## **ARTICLE VIII COMMON ELEMENTS**

The Common Elements and their characteristics are as follows:

**Section 8.1** All of the property not included within the units constitutes Common Elements. The Common Elements include those parts of the property described on the CIC Plat. The Association owns the Common Elements for the benefit of the Owners and Occupants.

**Section 8.2** The Common Elements shall be subject to certain easements as described in Articles X (Property Rights) and XI (Easements).

**Section 8.3** All maintenance, repairs, replacements, management and operation of the Common Elements shall be the responsibility of the Association, except as otherwise stated in this Declaration.

**Section 8.4** The retention ponds shown on the Plat are part of the Common Elements to be maintained by the Association. At no time may the retention ponds be eliminated or modified to reduce their capacity to retain storm water.



**Section 8.5** Common Expenses for the maintenance, repair, replacement, management and operation of the Common Elements shall be assessed and collected from the Owner in accordance with Article XII (Common Expenses).

**Section 8.6 Allocation of Common Elements.** Common Elements shall be as identified and allocated on the CIC Plat (Exhibit B).

## **ARTICLE IX ALLOCATED INTERESTS**

**Section 9.1 Allocation.** Each of the Units is hereby allocated an equal percentage of undivided interest in the Common Elements and in the Common Expenses of the Association, and an equal portion of the votes in the Association as specified in Exhibit C attached to this Declaration. However, certain expenses may be assessed on a different basis, or against one or fewer than all of the Units, under Section 515B.3-115(h) of the Act.

**Section 9.2 Formula.** The percentage of allocation of interests specified in Exhibit C is calculated for each Unit by dividing the Unit into the total number of all Units.

**Section 9.3 Allocation of Limited Common Element Expenses.** Common Expenses associated with a limited common element assigned to only one Unit shall be assessed against that Unit.

## **ARTICLE X PROPERTY RIGHTS**

**Section 10.1 Owners' Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Area described herein which shall be appurtenant to and shall pass with title to every Unit; subject to the following provisions:

**Section 10.1.1** The right of the Association to adopt reasonable rules and regulations regarding the conduct and usage of any facility by any Member or guest of a Member;

**Section 10.1.2** The right of the Association to suspend the voting rights and the right to use of any facilities by an Owner for any period during which any Assessment against their Unit remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

**Section 10.1.3** Each Unit shall be subject to, and shall be the beneficiary of the appurtenant easements for encroachments as described in this Declaration.

**Section 10.2 Delegation of Use.** Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family or the contract purchasers who reside on the Properties.

**Section 10.3 Access Easement.** Each unit shall be the beneficiary of an appurtenant easement for access to a public street or highway on or across the Common Elements as shown on the Plat, subject to any restrictions set forth in the Declaration.

**Section 10.4 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 this Declaration.

**Section 10.5 Recorded Easements.** The property shall be subject to such other easements as may be recorded against it or otherwise shown on the Plat.

**Section 10.6 Easements are Appurtenant.** All easements and similar rights burdening or benefitting 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 benefitting or burdening the property shall be construed in a manner consistent with, not in conflict with, the easements created by this Declaration.

**Section 10.7 Impairment Prohibited.** No Person shall materially restrict or impair any easement benefitting or burdening the property; subject to the Declaration and the right of the Association to establish and enforce reasonable rules and regulations governing the use of the property.

## **ARTICLE XI EASEMENTS**

**Section 11.1 General.** In addition to the specific easements referenced in this Article (see Exhibit C), the Common Interest Community may be subject to other easements or licenses granted by the Declarant pursuant to his powers under Article VI (Development Rights and Other Special Declarant Rights) of this Declaration.

**Section 11.2 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.

**Section 11.3 Utility Easements.** The property shall be subject to non-exclusive appurtenant easements for all utilities, water and sewer, drainage easements, 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 septic 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 utilities and metering devices.

**Section 11.4 Trail Easement.** The property shall be subject to a non-exclusive trail easement in width and distances referred to in the Plat. Said trails are Common Elements as described in Article VIII, even though some portions of the trail easements may cross Units within the CIC.

**Section 11.5 Continuation and Scope of Easements.** Notwithstanding anything in this Declaration to the contrary, in no event shall a Unit Owner or an Occupant be denied reasonable access to his/her unit or the right to utility services thereto. The easements set forth in this Article shall supplement and not limit any easements described elsewhere in this Declaration or recorded, and shall include reasonable access to the easement area through the units and the Common Elements for purposes of maintenance, repair, replacement and reconstruction.

## **ARTICLE XII COMMON EXPENSES**

**Section 12.1 Apportionment.** Except as provided in Section 12.2 and Article XVI (Covenant for Maintenance and Maintenance Assessments), all Common Expenses shall be assessed against all Units in accordance with their percentage interest in the Common Expenses as shown on Exhibit C of this Declaration.

### **Section 12.2 Limited Common Expenses:**

**Section 12.2.1** Any common expense for services provided by the Association to an individual Unit at the request of the Owner shall be assessed against that Unit.

**Section 12.2.2** Any insurance premium increase attributable to a particular Unit by virtue of activities in or construction on the Unit shall be assessed against that Unit.

**Section 12.2.3** An assessment to pay a judgment against the Association may be made only against the Units in the Common Interest Community at the time the judgment was entered, in proportion to the common expense liabilities.

**Section 12.2.4** If a common expense is caused by the misconduct of an Owner, the Association may assess that expense exclusively against that Owner's Unit.

**Section 12.2.5** Fees, charges, taxes, impositions, late charges, fines, collection costs and interest charged against an Owner pursuant to the Declaration documents and the Act are enforceable as Common Expense Assessments.

### **Section 12.3 Common Expense Assessment Lien:**

**Section 12.3.1** When the Association has a lien on a Unit for a Common Expense Assessment levied against the Unit or fines imposed against its Owner from the time the Common Expense Assessment or fine becomes due, fees, charges, late charges, fines and interest charged pursuant to the Act and the Documents are enforceable as assessments under this Section. If a Common Expense Assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due.

**Section 12.3.2** A lien under this Section is prior to all other liens and encumbrances on a Unit except:

- (1) liens and encumbrances recorded before the recordation of the Declaration;
- (2) a first Security Interest on the Unit recorded before the date on which the Common Expense Assessment sought to be enforced became delinquent; and
- (3) liens for real estate taxes and governmental assessments or charges against the unit.

A lien under this Section is also prior to all Security Interests described in subdivision 2 of this subsection, to the extent that the Common Expense Assessments are based on the periodic budget adopted by the Association pursuant to Section 12.3.1 of this Article that would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce either the Association's lien or a Security Interest described in subdivision (2) of this subsection. This subsection does not affect the priority of mechanic's or materialmen's liens or the priority of a lien for other assessments made by the Association. A lien under this Section is not subject to any exemptions referenced at Section 3-116(b) of the Act.

**Section 12.3.3** Recording of the Declaration constitutes record notice and perfection of the lien. Further recording of a claim of lien for a Common Expense Assessment under this Section is not required.

**Section 12.3.4** A lien for an unpaid Common Expense Assessment is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the full amount of the Common Expense Assessment becomes due, except that if an order of a unit subject to a lien under this Section files a petition for relief under the United States Bankruptcy Code, the time period for instituting proceedings to enforce the Association's lien shall be tolled until thirty (30) days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.

**Section 12.3.5** This Section does not prohibit an action to recover sums for which a lien is created or prohibits the Association from taking a deed in lieu of foreclosure.

**Section 12.3.6** A judgment or decree in any action brought under this Section shall include costs and reasonable attorney's fees for the prevailing party, which shall be additional Common Expense Assessments.

**Section 12.3.7** A judgment or decree in an action brought under this Section is enforceable by execution under the laws of the State of Minnesota.

**Section 12.3.8** A lien for Common Expenses may be foreclosed against a unit under 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 in at the foreclosure sale and to acquire, hold, lease, mortgage and convey any Units 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 full authority to accomplish the foreclosure. The Association shall, in addition, have the right to pursue any remedy at law or an equity against the Owner who fails to pay any assessment or charge against the Unit.

**Section 12.3.9** The Association's lien may be foreclosed in a like manner as a mortgage containing a power of sale pursuant to the Minnesota Statute §580, or by action pursuant to §581. The Association shall have the power of sale to foreclose the lien pursuant to Minnesota Statute §580.

**Section 12.3.10** In any action by the Association to collect Common Expense Assessments or to foreclose a lien for unpaid Common Expense Assessments, the Court may appoint a receiver for the Owner to collect all sums alleged to be due from that Owner or a tenant of the Owner prior to or during the pendency of the action. The Court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Common Expense Assessments, based on a periodic budget adopted by the Association pursuant to this Declaration.

**Section 12.3.11** If a holder of a first or second Security Interest in a Unit forecloses that Security Interest, the purchaser at the foreclosure sale is not liable for any unpaid Common Expense Assessments against that Unit which became due before the sale, other than the assessments which are prior to that Security

Interest under sub-Section 12.3.2 of this Section of the Declaration. Any unpaid Common Expense Assessments not satisfied from the proceeds of sale become Common Expenses collectible from all the Owners, including the purchaser.

**Section 12.3.12** In the case of foreclosure by action under applicable Minnesota law, the Association shall give reasonable notice of its action to each lien holder of a Unit whose interest would be affected.

**Section 12.3.13** Any payments received by the Association in discharge of an Owner's obligation may be applied to the oldest balance due.

**Section 12.4 Budget Adoption and Ratification.** Within thirty (30) days after adoption of a proposed budget from the Common Interest Community, the Board shall provide a summary of the budget to each Owner and shall set a date for a meeting of the Owners to consider ratification of the budget. The meeting shall not be less than fourteen (14) or more than thirty (30) days after mailing of the summary. If a Majority of all Unit Owners do not reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Unit Owners continues until the Unit Owners ratify a new budget.

**Section 12.5 Ratification of Non-Budgeted Common Expense Assessments.** If the Board votes to levy Common Expense Assessments not included in the current budget, other than one enumerated in Section 12.2 of this Declaration, in an amount greater than fifteen percent (15%) of the current annual operating budget, the Board shall submit this Common Expense to the Owners for ratification in the same manner as a budget under Section 12.4.

**Section 12.6 Certificate of Payment of Common Expense Assessments.** Upon written request, the Association shall furnish an Owner a copy of the statement, setting out the amount of unpaid Common Expense Assessments against the Unit. The statement must be furnished within ten (10) days after receipt of the request and must be in recordable form. The statement is binding on the Association, the Board and each Owner.

**Section 12.7 Monthly Payment of Common Expenses.** All Common Expenses assessed under Sections 12.1 and 12.2 of this Declaration shall be due and payable monthly.

**Section 12.8 Acceleration of Common Expense Assessments.** In the event of default in which any Owner does not make the payment of Common Expense Assessments levied against their Unit within ten (10) days of the date due, the Board shall have the right, at the notice and hearing, to declare all unpaid Common Expense Assessments for the appurtenant fiscal year immediately due and payable.

**Section 12.9 Commencement of Common Expense Assessments.** Common Expense Assessments shall begin on the first day of the month after the conveyance of the first Unit to an Owner other than the declarant.

**Section 12.10 No Waiver of Liability for Common Expenses.** No Unit may become exempt from liability for a payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of a Unit against which the Common Expense Assessments are made.

**Section 12.11 Personal Liability of Owners.** The Owner of a Unit, at the time a Common Expense Assessment or portion of the assessment is due and payable, is personally liable for the Common Expense Assessment. Personal liability for the Common Expense Assessment shall not pass to a successor in title to the Unit unless the successor agrees to assume the obligation. Multiple Owners of a Unit shall be liable, jointly and severally, for a Common Expense Assessment and any other charge otherwise imposed upon an Owner.

### **ARTICLE XIII MEMBERSHIP AND VOTING RIGHTS**

**Section 13.1 Membership.** Every Owner, as defined in Article I (Definitions), shall be deemed to have a membership in the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit which is subject to any assessment.

**Section 13.2 Classes.** The Association shall have two classes of voting membership.

**Class A.** Class A Members shall be all Owners, with the exception of the Declarant, and said Owners shall be entitled to one (1) vote for each Unit owned. When more than one Person holds an interest in any Unit, all such Persons shall be Members. The vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Unit.

**Class B.**

(a) The Class B Member shall be the Declarant, their successors and assigns, who shall be entitled to three (3) votes for each Unit owned. The voting power to which a Declarant is entitled shall at all times be calculated to include all Units owned by Declarant and all Units that Declarant has reserved the right to build. If the Declarant is more than one Person, each Person shall be a Member but they may not cast more than three (3) votes for each Unit jointly owned.

(b) Upon the end of the Declarant control period, a Class B Member shall be deemed to be a Class A Member, and if then an Owner, shall be entitled to one (1) vote for each Unit which Declarant holds the interest required for Class A Membership.

**Section 13.3 Appurtenant Rights and Obligations.** The ownership of a Unit shall include the voting rights and Common Expense obligations described in Section 12. 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 Documents and the Act.

## **ARTICLE XIV BOARD**

**Section 14.1 Association Records and Minutes of Board Meetings.** The Board shall permit any Owner, holder of a first mortgage, guarantor of a first mortgage secured by Unit(s), or the insurer of a Unit, to inspect the records of the Association and the Minutes of Board and committee meetings during normal business hours. The minutes shall be available for inspection within fifteen (15) days after any such meeting.

**Section 14.2 Powers and Duties.** All power and authority of the Association shall be vested in the Board except as provided in this Declaration, the By-Laws or the Act. The Board shall have, subject to the limitations contained in this Declaration and the Act, the powers and duties necessary for the administration of the affairs of the Association and Common Interest Community, which shall include, but not be limited to, the following:

- (a) Adopt and amend By-Laws and Rules;
- (b) Adopt and amend budgets for revenues, expenditures and reserves;
- (c) Collect Common Expense Assessments from Owners;
- (d) Hire and discharge managing agents;
- (e) Hire and discharge independent contractors, employees and agents, other than managing agents;
- (f) Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violation of the Association's Declaration, By-Laws or Rules in the Association's name on behalf of the Association or two or more Owners for matters affecting the Common Interest Community;
- (g) Make contracts and incur liabilities;
- (h) Regulate the use, maintenance, repair, replacement and modification of the Common Elements;



(i) Cause additional Improvements to be made as part of the Common Elements;

(j) Acquire, hold, encumber and convey, in the Association's name, any right, title or interest to real or personal property, where Common Elements may be conveyed subject to a Security Interest or pursuant to Section 3-112 of the Act;

(k) Grant temporary or permanent easements, leases, licenses and concessions through or over the Common Elements;

(l) Impose and receive a payment, fee or charge for the use, rental or operation of the Common Elements, other than Limited Common Elements described in the Act and for services provided to Owners;

(m) Impose a reasonable charge for late payment of assessments and after notice and hearing, levy reasonable fines for violations of this Declaration, the By-Laws, Rules and Regulations of the Association;

(n) Impose a reasonable charge for the preparation and recordation of amendments to this Declaration and for resale certificates required by the Act for a statement of unpaid assessments;

(o) Provide for the indemnification of the Association's officer and Board and maintain Directors and officer's liability insurance;

(p) Assign the Association's right to future income, including the right to receive Common Expense Assessments;

(q) Exercise any other powers conferred by this Declaration or the By-Laws;

(r) Exercise any other power allowed in this State by legal entities of the same type as the Association;

(s) Exercise any other power necessary and proper for the government and operation of the Association; and

(t) By resolution, establish permanent extended committees of directors to perform any of the above functions under specifically delegated administrative standards, as designated in the Resolution establishing a committee. All committees must maintain

and publish notice of their actions to Owners and the Board. However, actions taken by a committee may be appealed to the Board by any Owner within forty-five (45) days of publication of the notice. If an appeal is made, the committee action must be ratified, modified or rejected by the Board at its next regular meeting.

**Section 14.3 Board Limitations.** The Board may not act on behalf of the Association to amend this Declaration, to terminate the Common Interest Community or to elect members of the Board or determine qualifications, powers and duties or terms of office or Board members, but the Board may fill vacancies in its membership for the unexpired portion of any term.

## **ARTICLE XV PERSONS AND UNITS SUBJECT TO DOCUMENTS**

**Section 15.1 Compliance with Documents.** All Owners, tenants, Managers, and Occupants of the units shall comply with the Documents. The acceptance of a deed or the exercise of any incident of ownership or the entering into of a lease or the occupancy of a unit constitutes agreement with the provisions of the Documents (as accepted and ratified by that Owner, tenant, Manager, or Occupant). All provisions recorded in the office of the Beltrami County Recorder are covenants running with the land and shall bind any Persons having any time, any interest or any estate in any unit.

**Section 15.2 Adoption of Rules.** The Board may adopt Rules regarding the use and occupancy of units as it affects the Common Elements, the Limited Common Elements, and the activities of Occupants subject to notice and comment.

## **ARTICLE XVI COVENANT FOR MAINTENANCE AND MAINTENANCE ASSESSMENTS**

**Section 16.1 Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Unit owned within the Properties, hereby covenants, and each Owner of any Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: (1) annual assessments or charges, and (2) Special Assessments for capital Improvements, such assessments to be established and collected as hereinafter provided. The annual and Special Assessments, together with interest, costs, and reasonable attorney's fees, shall be charged on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

**Section 16.2 Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties for the improvement and maintenance of the Common Area.

**Section 16.3 Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, repair, or replacement of the capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the votes of each class of Members who are voting in Person or by proxy at a meeting duly called for this purpose.

**Section 16.4 Notice and Quorum for Any Action Authorized under Section 16.3.** Written notice of any meeting called for the purpose of taking any action authorized under Section 16.3 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all of the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 16.5 Uniform Rate of Assessment.** Both annual and Special Assessments must be fixed at a uniform rate for all Units and may be collected on a monthly basis.

**Section 16.6 Date of Commencement of Annual Assessments: Due Dates.** The annual assessments provided for herein shall commence, as to all Units, on the day that the first Unit is sold to an Owner other than Declarant (or his affiliates).

The first annual assessment shall be made for the balance of the calendar year and shall become due and payable in equal installment on payment dates to be established by the Board of Directors.

The amount of the annual assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment provided for as the remaining number of months in the year bear to twelve. The same reduction in the amount of the assessment shall apply for the first assessment levied against any property which is hereafter added to the properties now subject to assessment at a time other than the beginning of any assessment.

The due date of any special assessment shall be fixed by the resolution authorizing such assessment.

**Section 16.7 Effect of Nonpayment of Assessments: Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six percent (6%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property. No Owner

may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Unit.

**Section 16.8 Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof.

**Section 16.9 Assessment of Costs Due to Willful or Negligent Acts.** If the need for maintenance or repair is due to the willful or negligent acts of an Owner or the Owner's family, guests, tenants, or invitees, the costs of such maintenance, less the net insurance proceeds received by the Association due to such act or neglect, if any, shall be assessed against such Owner's Unit and shall be added to and become a part of the current annual assessment against that Unit and, at the option of the Board, shall be payable in full with the next monthly installment of the then current annual assessment, or divided equally over the remaining months for the then current annual assessment and payable with and in addition to the monthly installments, other than current annual assessment.

**Section 16.10 Exempt Property.** The following property subject to this Declaration shall be exempt from the assessments, charges, and liens created herein:

- (a) All properties dedicated and accepted by the local public authority and devoted to public use;
- (b) All properties exempted from taxation by the laws of the State of Minnesota upon the terms and to the extent of such legal exemption;
- (c) All Common Areas defined in Article I hereof; and
- (d) Notwithstanding any provision herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges, or liens.

## **ARTICLE XVII ALTERNATIVE ASSESSMENT PROGRAM**

Declarant hereby establishes an alternative assessment program as provided by Minnesota Statutes Section 515B.3-115(b). Specifically, if a Common Expense assessment has been levied, any Unit owned by Declarant shall be assessed at the rate of twenty-five percent (25%) of the assessment that would otherwise be levied on such Unit until such Unit is substantially completed as evidenced by a Certificate of Occupancy issued with respect to such Unit; provided, however, that part of any assessment allocated to a replacement reserve shall be fully levied against each Unit, including Units owned by Declarant, upon substantial completion of the exterior of the building contained in the Unit. Following the issuance of a Certificate of Occupancy, each Unit owned by

Declarant shall be assessed at the full rate. This reduced assessment shall apply to each Unit owned by Declarant and shall continue as to each such Unit until such Unit is substantially completed as evidenced by the issuance of the Certificate of Occupancy as previously described. There are no assurances that this alternative assessment program will have no effect on the level of services for items set forth in the Association's budget.

## **ARTICLE XVIII ASSOCIATION MAINTENANCE RESPONSIBILITY**

**Section 18.1 Common Elements.** The Association shall be responsible for the maintenance and repair of the Common Elements, the expense of which shall be allocated as described in the Act and this Declaration. The Association shall have the exclusive right to manage, maintain and alter the Common Elements.

**Section 18.2 Services.** The Association may obtain and pay for the services of any Persons or entities, 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 Real Estate, whether such personnel are furnished or employed directly by the Association or by any Person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Real Estate or the enforcement of this Declaration. The Association may arrange with others to furnish trash collection and other common services to each unit.

**Section 18.3 Personal Property and Real Estate for Common Use.** The Association may acquire and hold for the use and benefit of all of the Owners tangible and intangible personal property and real estate and may dispose of the same by sale or otherwise. Such beneficial interest shall not be transferable except with the transfer of title to a unit, provided that an Owner may delegate his right of enjoyment of such property to residents of his unit. A transfer of title to a unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of the Owners. The transfer of title to a unit under foreclosure shall entitle the purchaser to the beneficial interest in such property associated with the foreclosed unit.

## **ARTICLE XIX OWNER'S MAINTENANCE**

**Section 19.1 Upkeep and Maintenance.** Each Owner shall be responsible for the upkeep and maintenance of his unit, and to the extent not otherwise maintained by the Association and each Owner shall maintain the same free to hazardous substances, vermin, cockroaches, pests and debris which may pose a threat to the health or safety of Occupants of other units. Every Owner must perform promptly all cleaning, maintenance and repair work within his unit, which, if omitted, would affect another unit or units, being expressly responsible for the damages and liabilities that his failure to do so may engender. Without limiting the generality of the foregoing, the Association may require an Owner to remove offending items, or to use a professional exterminator, and upon failure of the Owner so to do, Association after reasonable notice may enter the unit with a professional

exterminator or other appropriate contractor and take corrective action, charging the Owner of such unit for the reasonable cost thereof. An Owner shall do no act nor any work that will impair the structural soundness or integrity of the building, or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the Common Elements, the other units, or their Owners.

## **ARTICLE XX INSURANCE**

**Section 20.1 Required Coverage.** The Association shall obtain and maintain, at a minimum, a master policy of 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 for the full insurable replacement costs of the improvements on the Common Area, 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 shall cover personal property owned by the Association and shall name the Association as the named insured. 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, deductibles and limits with respect to the foregoing and other hazards as may be required from time to time by the regulations of the FHA of Federal National Mortgage Association ("FNMA") as a precondition to their insuring, purchasing or financing a mortgage on a Unit. The Board may also, on behalf of the Association, enter into binding written agreements with a mortgagee, insurer or servicer, including without limitation the FHA or FNMA, obligating the Association to keep certain specified coverages or endorsements in effect.

(b) Comprehensive public liability insurance covering the ownership, existence, use, operation or management of the property subject to Association control, with minimum limits of \$1,000,000.00 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 CIC. Unit Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, operation or management of the Common Area. The policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner or occupant of a Unit because of the negligent acts of the Association or other Owners or occupants and shall cover claims of one or more insured parties against other insured parties. 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, 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 their insuring, purchasing or financing 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 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 (3) 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) Worker's compensation insurance, as required by law.

(e) Policies carried pursuant to subsection (a) and (b) shall provide that:

(i) Each Member and any secured party of the Member's Unit is an insured person under the policy with respect to liability arising out of the Member's interest in the Common Area or the Member's membership in the Association;

(ii) The insurer waives its rights to subrogation under the policy against any Member (or members of Member's household) and against the Association and Directors;

(iii) No act or omission by any Member or secured party, unless acting within the scope of authority on behalf of the Association, shall void the policy or be a condition to recovery under the policy; and

(iv) The Association's policy shall be the primary insurance if, at the time of a loss under the policy, there is other insurance in the name of a Member covering the same property covered by the Association's policy.

**Section 20.2 Association Coverage of Units.** The Association will not provide insurance for any Units. It will be the responsibility of each Owner to provide the appropriate insurance on each Unit pursuant to Section 20.6.

**Section 20.3 Replacement or Repair of Property.** Any portion of the property subject to Association control that has been damaged or destroyed by a loss covered by the Association's

insurance shall be promptly repaired or replaced by the Association unless (i) the CIC is terminated; (ii) such repair or replacement would be illegal; or (iii) Members holding at least eighty percent (80%) of the voting power of the Association (including every Member and first mortgagee on a Unite which shall not be rebuilt) vote not to rebuild. If less than the entire property subject to Association control is repaired or replaced, the insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition compatible with the remainder of the CIC, the proceeds attributable to the Units which are not rebuilt shall be distributed to the Owners of those Units and the secured parties of those Units, as their interests may appear, and the remainder of the proceeds shall be distributed to all Unit Owners and secured parties as their interests may appear, in proportion to their Common Expense liability. The cost of repair or replacement of Common Area in excess of insurance proceeds and reserves shall be paid a Common Expense, and the cost of repair of a Unit in excess of insurance proceeds shall be paid by the respective Unit Owner.

**Section 20.4 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, all of the insureds, and all mortgagees of Units (including, if applicable, the FHA or FNMA).

**Section 20.5 Review of Policies.** All insurance policies shall be reviewed at least annually by the Board of Directors in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the property which may have been damages or destroyed.

**Section 20.6 Blanket Casualty Insurance by Owner.** Since the Association will not maintain blanket casualty and fire insurance pursuant to Section 2 of this Article, then any Owner of a Unit shall carry, maintain and timely pay the premium or premiums on a policy of fire, extended coverage, vandalism, and malicious mischief, with all risk endorsement insurance.

## ARTICLE XXI RENTAL RESTRICTIONS

Leasing of units shall be allowed, subject to reasonable regulation by the Association, and subject to the following conditions:

- (i) That no Unit shall be leased for transient or hotel purposes;
- (ii) That no Unit may be subleased;
- (iii) That all leases shall be in writing; and



(iv) That all leases shall provide that they are subordinate and subject to the provisions of the governing Documents, the Rules and Regulations and the Act; and

(v) That any failure of lessee to comply with the terms of such Documents shall be a default under the lease. 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.

## **ARTICLE XXII GENERAL RESTRICTIONS**

**Section 22.1 Prohibition of Damage and Certain Activities.** Nothing shall be done or kept on any unit or any part thereof which would increase the rate of insurance on the Real Estate or any part thereof over what the Association, but for such activity, would pay, without the prior written consent of the Association. Nothing shall be done or kept on any unit or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No noxious, destructive or offensive activity shall be allowed on any units or any part thereof, nor shall anything be done thereon which may be or may become a nuisance to any other Owner or to any other Person at any time lawfully residing on the Real Estate.

**Section 22.2 Landscaping.** No one shall harm, mutilate, destroy, alter or litter any of the landscaping work or Improvements on the Common Elements, including grass, trees and flower beds.

**Section 22.3 Non-Interference.** No part of the Common Elements shall be used by anyone in such a manner so as to interfere with the use and enjoyment of the units or the Common Elements. No part of the Common Elements shall be used by the Owners for the erection, placing or maintenance of clotheslines, incinerators, garbage disposal equipment, recreation or athletic equipment, tents, fences or other barriers or for the placing or disposal of rubbish, garbage or waste without the prior written consent of the Board of Directors.

**Section 22.4 Rules and Regulations.** The Board of Directors may from time to time adopt, promulgate and publish other Rules of conduct reasonably relating to the enjoyment of the CIC by Owners and Occupants, provided that: (a) all such Rules and Regulations may have the effect of contradicting a provision of this Declaration or the By-Laws, and (b) no rule or regulation may discriminate against the Owners, tenants, or invitees of the units.

**Section 22.5 No Additional Units.** Neither the Declarant nor any other Unit Owner is permitted to create any additional units by subdivision or conversion under Section 515B.2-112 of the Act.

**Section 22.6 No Time Shares.** Time shares, as defined in the Act, are not permitted in this CIC.

**Section 22.7 Prohibited Structures, Window Treatments, and Lawn Ornaments.** No structure of any temporary character, basketball hoop, trailer, tent, shack, boathouse, barn, or other outbuilding shall be constructed on any Unit, except as provided in Article XXVIII. Window treatments must be in harmony with the design of the dwelling and the surrounding area must be properly installed. No blankets, sheets, loose fabric, or excessively brightly colored window treatments shall be permitted. No lawn ornaments or sculptures shall be permitted on any Unit, unless inside a dwelling and not visible from the exterior of the dwelling. The architectural control committee shall be the final arbitrator of any disputes under this section.

### **ARTICLE XXIII FIRST MORTGAGEES**

**Section 23.1 Precedence.** The provisions of this Article take precedence over any other conflicting provisions of this Declaration.

**Section 23.2 Notice of Action.** Any mortgagee and any insurer or guarantor of a first mortgage on a unit who has advised the Association in writing of its name and address and the address of the unit covered by such mortgage, and in said writing as requested the Association to notify it of any of the following, will be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the project or any unit on which there is a first mortgage held, insured, or guaranteed by such mortgage holder or insurer or guarantor, as applicable;
- (b) Any delinquency in the payment of assessments or charges owed, or any other default in the performance of any obligation under the Declaration, By-Laws, or Articles of Incorporation by an Owner of a unit subject to a first mortgage held, insured, or guaranteed by such holder or insurer or guarantor, which remains uncured for a period of 60 days;
- (c) Any lapse, cancellation or material modification of any insurance policy maintained by the Association;
- (d) Any proposed action which would require the consent of a specified percentage of mortgage holders as specified in this Declaration.

**Section 23.3 Examination of Books and Records.** First mortgagees and holders, insurers and guarantors of first mortgages shall have the right to examine the books and records of the Association, as set forth more fully in the By-Laws.

**Section 23.4 Designation of Representative.** Any holder of a first mortgage on a unit may designate a representative to attend meetings of members.

## ARTICLE XXIV AMENDMENTS

The Act specifies the requirements for amending the Declaration. In addition to those requirements:

**Section 24.1 Declarant's Joinder.** In addition to the other requirements for amendment of this Declaration, the written joinder and consent of the Declarant shall be required for any amendment of either the Declaration which shall abolish, diminish or restrict Declarant's rights hereunder to complete Improvements, to maintain sales and management offices and models or to maintain signs and advertise the project, until the last conveyance of a unit to an Owner other than Declarant. This right may be waived in whole or part at any time by recording a written waiver executed and acknowledged by Declarant.

**Section 24.2 Mortgagee Approval.** In addition to all other requirements set forth herein and except when a higher percentage is required by law or this Declaration, amendments to this Declaration of a material nature must be agreed to by Unit Owners who represent at least 67% of the total allocated votes in the Association and by mortgage holders who have submitted a written request to the Association to be notified of any proposed action requiring consent of mortgage holders, who represent at least 51% of the votes ascribed to units that are subject to mortgages held by such mortgage holders. A change to any of the provisions governing the following matters would be considered material:

- (a) voting rights;
- (b) increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens;
- (c) reductions in reserves for maintenance, repair, and replacement of Common Elements;
- (d) responsibility for maintenance and repairs;
- (e) reallocation of interests in the general or Limited Common Elements, or rights to their use;
- (f) redefinition of any unit boundaries;
- (g) convertibility of units into Common Elements or vice versa;
- (h) expansion or contraction of the project, or the addition, annexation, or withdrawal or property to or from the project;
- (i) hazard or fidelity insurance requirements;

- (j) imposition of any restrictions on the leasing of units;
- (k) imposition of any restrictions on a Unit Owner's right to sell or transfer his or her unit;
- (l) a decision by the Association to establish self management if professional management had been required previously by the holder of a first mortgage on a unit;
- (m) restoration or repair of the project (after damage or partial condemnation) in a manner other than that specified in the Declaration; or
- (n) any provisions that expressly benefit mortgage holders, insurers, or guarantors.

#### **ARTICLE XXV WORKING CAPITAL FUND**

**Section 25.1 Establishment.** The Declarant shall establish a working capital fund intended to meet unforeseen expenditures or to purchase any additional equipment or services. At the time control of the Association is transferred to Owners, the working capital fund shall be transferred to the Association for deposit in a segregated fund. The fund shall be initially established at an amount equal to two months' assessments on all units. The amount attributable to a particular unit will be collected and deposited in the fund at the time of closing of Declarant's sale of the unit, provided that when control of the project is transferred to Owners, the amounts attributable to all units which have not then closed shall be collected. A contribution from each unit to the working capital fund is measured by two months' assessments, but amounts paid into the fund are not advance payments of regular assessments.

**Section 25.2 Declarant's Accounting.** The Declarant may not use working capital funds to defray any of its expenses, reserve contributions or construction costs or to make up any budget deficits while it is in control of the Association. When unsold units are sold, however, the Declarant may reimburse itself from funds collected at a unit closing for money it paid the Association for that unit's share of the working capital fund.

#### **ARTICLE XXVI MISCELLANEOUS**

**Section 26.1 Right To Cure.** In the event that any Owner violates any covenant or fails to perform any condition contained in this Declaration, the Association may perform the act, remove the defect or correct the violation upon thirty (30) days written notice to the Owner. If the Association so acts on behalf of an Owner, the Association may levy an assessment against the Owner's unit for the cost of the performance or correction.

**Section 26.2 Association Acts through Board.** The power and authority of the Association as provided in the applicable Statutes, the Declaration, By-Laws, and Rules and Regulations shall vest in a Board of Directors elected by the Owners in accordance with the By-Laws of the Association. The Association shall act through the Board of Directors and the officers elected by the Board. All references in this Declaration and the By-Laws to action by the Association shall mean the Board of Directors acting for the Association, unless action by the vote of the Owners, members or mortgagees is expressly required by the Declaration or By-Laws.

**Section 26.3 Notices.** Any notice required to be sent to any member of the Association (or Owner) under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such member appearing on the records of the Association at the time of such mailing. In the case of multiple Owners of a unit, notice to any one of such Owners shall be deemed notice to all.

**Section 26.4 Captions.** The headings in this Declaration are intended for convenience only and shall not be given and a substantive effect.

**Section 26.5 Construction.** In the event of any apparent conflict between this Declaration and the By-Laws, the provisions of this Declaration shall govern. The use of pronouns such as "his," "he," and "him" are for literary purposes and mean whenever applicable the plural and female forms.

**Section 26.6 Ordinance Compliance.** This Common Interest Community has been established in compliance with all conditions required under all applicable ordinances.

**Section 26.7 Rights of Action.** In addition to all other remedies and rights set forth in the Act, the Association, and any one or more aggrieved Unit Owners, shall have the right of action against Unit Owners who fail to comply with the provisions of the Declaration and By-Laws or the decisions of the Association, and one or more Unit Owners shall also have such rights of action against the Association for any failure to comply with or enforce such provision.

**Section 26.8 Declarant's Rights and Obligations.** The Declarant shall enjoy the same rights and shall be deemed to have assumed the same duties with respect to its unsold units in the condominium as any other Owner, except as modified or extended by the alternate assessment program and the special Declarant rights described in this Declaration.

## **ARTICLE XXVII ARCHITECTURAL CONTROL**

**Section 27.1 Architectural Control.** The Association shall have the right to control certain architectural and similar aspects of the initial development of all lots.

**Section 27.2 Homes, Structures, and Repairs.** All homes shall be designed to be sensitive to and compatible with the surrounding homes with respect to architectural style, materials, colors, textures, building conditioning, utility meter and chimney locations. No informational signs are allowed without the review and approval of the Association, except that one (1) "for sale" sign

may be placed on a lot by an owner without Association approval. The following architectural standards apply to each lot and no variances shall be allowed from these architectural standards without approval of the Association.

**Section 27.2.1 Original Construction/Landscaping.** A site plan, landscaping plan, tree preservation plan, and plans and specifications for the construction of a living unit on any unit shall be submitted to the Association for its written approval before any construction activity has begun. No structure, dwelling, fence, wall, broadcasting, or receiving equipment shall be erected, placed, or altered on any unit until the plans and specifications, including landscaping plans meeting the requirements set forth herein, any plans showing the location of the structure, elevations and finish grade levels have been approved by the Association as to (i) quality and type of workmanship and materials, (ii) location with respect to topography, finish, grade, elevation, and neighboring dwellings. Accompanying such documentation shall be the name and address of the party to whom approval or disapproval is to be mailed. Approval or disapproval will be effective on the date of postmark when mailed by first class mail, postage prepaid, and addressed to the named party. Plans and specifications and site plans shall be deemed to have been received by the Association when such documents are hand delivered to the Association, two business days after the same are sent to the Association by overnight delivery service or three business days after the same are sent to the Association by first class United States mail.

**Section 27.2.2 Setbacks.** Any building located on the Unit must be at least 50 feet from Tyler Avenue, at least 30 feet from the front boundary line of the Unit, at least 50 feet from the back boundary line of the Unit, and at least 10 feet from each side boundary line of the Unit.

**Section 27.2.3 Review of Modifications.** After the completion of a Dwelling on a unit, the construction or modification of any building or structure, including, but not limited to, fences, mail boxes, retaining walls, and exterior colors, shall require prior written approval by the Association of the plans, specifications, and samples for the construction or modification, in accordance with the standards set forth herein.

**Section 27.2.4 Standard of Review.** In addition to the standards set forth herein, the Association may promulgate more detailed standards and procedures governing its areas of responsibility and practice. In addition, the following shall apply: the plans and specifications shall be reviewed as to quality of workmanship, design and harmony of external design with existing structures, topography and finish grade elevation. No permission or approval shall be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an owner to remodel the interior of that owner's residence or to paint or decorate the interior of that owner's residence any color desired.

**Section 27.2.5 Removal and Abatement; Lien.** The Association shall have the right to order an owner to remove or alter any structure on any unit erected in violation of the terms of this Declaration, and to employ appropriate judicial proceedings to compel the alteration or demolition of any non-conforming construction or other violation. Any cost incurred by the Association in enforcing this section may be levied by the Declarant as an assessment against the applicable unit or units. Any such assessment which is not paid when due shall, together with interest at a rate of eight percent (8%) per annum, any cost of collection, and any attorney's fees and costs, become a continuing lien upon such unit or units, as well as being the personal obligation of the owner of such units. The lien may be enforced as provided herein. Each owner by acceptance of a deed for any unit, shall be deemed to give full and complete power of sale to the Association and to a foreclosure of the lien by advertisement. The Association may elect to bring an action at law against the owner personally obligated to pay the assessment.

**Section 27.2.6 Variances.** Reasonable variances to the covenants, conditions, and restrictions may be granted by the Association after review, in order to overcome practical difficulties or to prevent unnecessary hardship. A variance may only be granted if it is not detrimental to other units and shall not defeat the purpose of this Declaration.

**Section 27.3 Restrictions on Alterations.** The following restrictions and requirements shall apply to alterations on the property:

Except as otherwise provided in this Article XVII and except for alterations made by Declarant in consideration of its initial sale of a Unit, no structure, building, addition, deck, patio, fence, wall, enclosure, window, exterior door, sign, display, decoration, color change, shrubbery, material, topographical, or landscaping change, nor any other exterior improvements to or alteration of any dwelling or any other part of a Unit which is visible from the exterior of the Unit shall be commenced, erected, or maintained in a Unit, unless and until the plans and specifications showing the nature, kind, shape, height, color, materials, and locations of the alternations shall have been approved in writing by the Board of Directors or a committee appointed by it. Notwithstanding the foregoing, Declarant's written consent shall also be required for alternations until Declarant no longer owns any unsold Unit.

The criteria for approval shall include and require at a minimum (i) substantial uniformity of color, size, location, type, and design in relation to existing improvements and topography, (ii) comparable or better quality of materials as used in existing improvements, (iii) ease of maintenance and repair, (iv) adequate protection of the property, the Association, owners and occupants from liability and liens arising out of the proposed alterations, and (v) compliance with governmental laws, codes, and regulations.

Each Owner may place on its unit any landscaping, consisting of trees and shrubs as it determines, subject to approval and control as regard to the type and location thereof under the rules

and regulations issued by the Board. No such landscaping may be placed, however in any of the Common Elements, except on decision of the Board. All grass and lawns located on the units and Common Elements shall be kept and maintained in the manner determined by the Board.

**Section 27.4 Review Procedures.** The following procedures shall govern requests for alterations under this section:

Detail 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 alteration shall be commenced prior to approval.

The Board of Directors shall give the Owner written notice of approval or disapproval. If the Board of Directors fails to approve or disapprove in sixty (60) days after receipt of said plans and specifications and all other information requested by the Board of Directors, then 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.

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 lot 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 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.

**Section 27.5 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 Owner causing or permitting the violation of all attorney's fees, and costs of enforcement, whether or not illegal action is started. Such attorney's 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 dwelling or Unit to its prior condition if any alterations were made in violation of this section, the cost of such restoration shall be a personal obligation of the Owner and a lien against the Owner's Unit.

**Section 27.6 Fences.** Fences may be allowed where appropriate and necessary for screening, security, containment, and aesthetic purposes subject to compliance with local ordinances and must be reviewed and approved by the Association. Fences must be of high quality construction and materials. All fences must be designed to be architecturally compatible with the homes and surroundings. Fences may not be higher than six (6) feet above grade, except that ornamental post finials may extend six (6) inches above the top of the fence. All fences must be kept in good repair. Chain-link fence, dog runs and dog houses will be discouraged in areas visible from the public street; however, they may be allowed after review by the Association, which may require screening or other mitigation.



**Section 27.7 Accessory Structures.** Storage buildings, pool mechanical enclosures, and children's club houses may be allowed in areas that are not visible from the public street and must be reviewed and approved by the Association. The design of any such structure must be highly related to the architectural style of the home and compatible with the surroundings.

**Section 27.8 Nuisances.** No clotheslines or drying yards, or pet control lines shall be permitted, unless concealed by hedges or screening acceptable to the Association. No weeds or unsightly growth shall be permitted to grow or remain upon the premises. No refuse pile or unsightly object shall be allowed to be placed or suffered to remain anywhere thereon. In the event that an Owner of any unit shall fail or refuse to keep such premises free from weeds, refuse piles, or other unsightly objects, then the Association may enter upon such lands and remove the same at the expense of the Owner and such entry shall not be deemed as trespass and in the event of such irremoval, a lien shall arise and be created in favor of the Association and against such unit for the full amount chargeable to such unit. Such amount shall be due and payable within thirty (30) days after the Owner is billed therefore. No unit shall be used, in whole or in part, for the storage of rubbish of any character whatsoever, nor for the storage of any property or thing that would cause such unit to appear in an unclean or untidy condition or that will be obnoxious to the eye, nor shall any substances, thing, or material be kept on any unit that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace, quiet, comfort, or serenity of the occupants of surrounding property. The outside storage of an unlicensed or inoperable motor vehicle upon the premises shall be prohibited.

**Section 27.9 Storage.** Overnight outside storage of any items, including, but without limiting the generality of the foregoing, sporting equipment, toys, yard and garden tools and equipment, and trash and garbage containers shall not be allowed unless effectively screened from view outside the unit. No boats, automobiles, snowmobiles, trailers, camping vehicles, tractors/trailers, or trucks in excess of 9,000 pounds gross weight shall at any time be stored or parked on any unit outside of a garage or on a public street. The provision shall not exclude the temporary storage on the driveway for a period not to exceed 72 hours.

**Section 27.10 Temporary Structures.** No manufactured home or structure of temporary character, trailer, basement, tent, shack, garage, barn, or other building shall be used on any unit at any time as a residence, either temporarily or permanently.

**Section 27.11 Auxiliary Structures.** Unless expressly authorized in this Declaration, no detached structure shall be permitted unless design and location of the same shall be approved by the Association.

**Section 27.12 Maintenance and Repair.** In order to preserve the uniform and high standard appearance of the property, each Owner undertakes the responsibility for maintenance and repair of the exterior of his/her living Unit, private yard area, and private driveway on the unit. Such responsibility for maintaining the unit and improvements thereon shall include, but not be limited to, the following: the maintenance and repair of exterior services of all buildings on the unit,

including, without limitation, the painting of the same as often as necessary, replacement of trim and caulking, the maintenance and repair of roofs, gutters, down spouts and overhangs, the maintenance and repair of exterior windows and doors, necessary painting, staining, and repair of patio structures and maintaining private yard barriers and private driveways, and/or shall be required to mow, trim, water, or otherwise care for grass, trees, or the plants located on the unit, and shall be required to remove snow from driveways, parking areas, and walkways to the living Unit. Maintenance, painting, and construction shall be in the original colors and materials in colors approved by the Association. All colors and materials may be approved by the Association.

**Section 27.13 Completion of Construction of Improvements.** All construction work shall, upon approval of the plans by the Association, be carried on with dispatch; all such work on each initial living Dwelling shall be completed within six (6) months after the commencement of said construction and any related landscaping shall be completed within six (6) months after the completion of the initial living Dwelling. The driveway on each Unit shall be finished with concrete or asphalt within six (6) months after completion of the initial living Dwelling.

**Section 27.14 Notice of Violation.** The Association shall give the Owner seven (7) days written notice of any violation of the provisions contained within this Declaration. The notice shall be given by certified mail, addressed to the Owner of the property of the unit in question and shall specify, in reasonable detail, the nature of the violation. In the event the violation is not corrected within this seven (7) day period, then the Association shall be entitled to utilize all remedies as provided for in this Declaration. Notwithstanding the above language, the Association shall not be required to provide notice in violation if, in the Association's reasonable judgment, the Association believes that the violation would cause immediate and irreparable harm to the Association if the remedies provided for in this Declaration are not immediately evoked.

## ARTICLE XXVIII GENERAL PROVISIONS

**Section 28.1 Enforcement.** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 28.2 Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**Section 28.3 Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall automatically extend for successive periods of ten (10) years. This Declaration may be amended during the first thirty-year period by an instrument signed by not less than eighty percent (80%) of the Unit Owners and thereafter by an instrument signed by not less than two-thirds of the Unit Owners. Any amendment must be recorded.

**Section 28.4 FHA Approval.** As long as there is a Class B Member and, if required by Federal Housing Administration rules or regulations, the following actions will require the prior approval of the Federal Housing Administration: annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

**ARTICLE XXIX  
ADDITIONAL PROPERTY**

The Declarant hereby reserves the right to add the Additional Property to the CIC. The Declarant's right to add the Additional Property to the CIC will terminate ten (10) years following the date of recording of this Declaration. No more Units may be created on the Additional Property. If it is added to the CIC, it will become a Common Element. The Declarant makes no other assurances with regard to the Additional Property pursuant to Minnesota Statutes §515B.2-106.

The Declarant may add all the Additional Property to the planned community at any time within the time limits set forth in §515B.2-106 of the Act by recording a supplemental Declaration.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, have hereunto set their hands this 26<sup>th</sup> day of December, 2006.

\_\_\_\_\_  
Steven W Hill aka Steve Hill

\_\_\_\_\_  
Jill Hill

STATE OF MINNESOTA

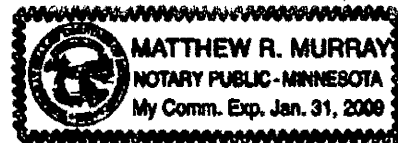
ss.

COUNTY OF BELTRAMI

The foregoing was acknowledged before me this 26<sup>th</sup> day of December, 2006 by Steven W. Hill, a/k/a Steve Hill, and Jill Hill, husband and wife.

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

THIS INSTRUMENT DRAFTED BY:  
DRAHOS YOUNG & KIESON, P.A.  
Attorneys at Law  
1005 Paul Bunyan Drive N.W.  
Bemidji, MN 56601  
(218) 444-1750



C:\Data\DY\K\SAVEDOC\S\INCT\TylerHills-DEC.wpd (vm)

**EXHIBIT A**

**DESCRIPTION OF REAL ESTATE**

The Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$  of NE $\frac{1}{4}$ ) and the East Half of the Northeast Quarter of the Southeast Quarter (E $\frac{1}{2}$  of NE $\frac{1}{4}$  of SE $\frac{1}{4}$ ), all in Section Eleven (11), Township One Hundred Forty-six (146), Range Thirty-three (33).

**ADDITIONAL PROPERTY**

Outlot B of Tyler Estates.

**EXHIBIT B**

**CIC PLAT**

**TYLER HILLS**

**EXHIBIT C  
TABLE OF INTERESTS**

<u>Unit No.</u>	<u>Percentage of Common Expenses</u>	<u>Vote in the Affairs of Association</u>
1	1.61%	1
2	1.61%	1
3	1.61%	1
4	1.61%	1
5	1.61%	1
6	1.61%	1
7	1.61%	1
8	1.61%	1
9	1.61%	1
10	1.61%	1
11	1.61%	1
12	1.61%	1
13	1.61%	1
14	1.61%	1
15	1.61%	1
16	1.61%	1
17	1.61%	1
18	1.61%	1
19	1.61%	1
20	1.61%	1

21	1.61%	1
22	1.61%	1
23	1.61%	1
24	1.61%	1
25	1.61%	1
26	1.61%	1
27	1.61%	1
28	1.61%	1
29	1.61%	1
30	1.61%	1
31	1.61%	1
32	1.61%	1
33	1.61%	1
34	1.61%	1
35	1.61%	1
36	1.61%	1
37	1.61%	1
38	1.61%	1
39	1.61%	1
40	1.61%	1
42	1.61%	1
43	1.61%	1
44	1.61%	1
45	1.61%	1

46	1.61%	1
47	1.61%	1
48	1.61%	1
49	1.61%	1
50	1.61%	1
51	1.61%	1
52	1.61%	1
53	1.61%	1
54	1.61%	1
55	1.61%	1
56	1.61%	1
57	1.61%	1
58	1.61%	1
59	1.61%	1
60	1.61%	1
61	1.61%	1
62	1.61%	1



[Print this page](#)**Envelope 1063835****Case Information**

Location	Cass County
Date Filed	06/12/2014 09:19:23 AM
Case Number	
Case Description	
Assigned to Judge	
Attorney	Jeremy Klinger
Firm Name	Drahos, Kieson and Christopher, P.A.
Filed By	Jeremy Klinger

**Fees**

Convenience Fee	\$5.00
Total Court Case Fees	\$0.00
Total Court Filing Fees	\$424.00
Total Court Service Fees	\$0.00
Total Filing & Service Fees	\$0.00
Total Service Tax Fees	\$0.00
Total Provider Service Fees	\$0.00
Total Provider Tax Fees	\$0.00
Grand Total	\$429.00

**Payment**

Account Name	Credit Card Account
Transaction Amount	\$429.00
Transaction Response	
Transaction ID	1504062
Order #	0010638350

**Summons**

Filing Type	EFile
Filing Code	Summons
Filing Description	Civil Case
Reference Number	1
Comments	
Status	Submitting

**Fees**

Court Fee	\$322.00
Service Fee	\$0.00

## Optional Services

>Civil Filing Fee \$322.00

**Documents**

*Document* summons.pdf [Original]

**Complaint-Civil**

Filing Type EFile  
 Filing Code Complaint-Civil  
 Filing Description Civil Case  
 Reference Number 2  
 Comments  
 Status Submitting

**Fees**

Court Fee \$0.00  
 Service Fee \$0.00

**Documents**

*Document* Complaint.pdf [Original]

**Affidavit of Plaintiff**

Filing Type EFile  
 Filing Code Affidavit of Plaintiff  
 Filing Description Civil Case  
 Reference Number 3  
 Comments  
 Status Submitting

**Fees**

Court Fee \$0.00  
 Service Fee \$0.00

**Documents**

*Document* AffChristineWittner.pdf [Original]

---

**Affidavit-Other**

Filing Type	EFile
Filing Code	Affidavit-Other
Filing Description	Civil Case
Reference Number	4
Comments	
Status	Submitting

**Fees**

Court Fee	\$0.00
Service Fee	\$0.00

**Documents**

<i>Document</i>	AffwayneBohn.pdf	<u>[Original]</u>
-----------------	------------------	-------------------

---

**Affidavit of Service**

Filing Type	EFile
Filing Code	Affidavit of Service
Filing Description	Civil Case
Reference Number	4
Comments	
Status	Submitting

**Fees**

Court Fee	\$0.00
Service Fee	\$0.00

**Documents**

<i>Document</i>	AffServiceFuchs.pdf	<u>[Original]</u>
-----------------	---------------------	-------------------

---

**Agreement**

Filing Type	EFile
Filing Code	Agreement
Filing Description	Civil Case
Reference Number	5

**Comments**

Status Submitting

**Fees**

Court Fee \$0.00

Service Fee \$0.00

**Documents***Document* ExhibitA (2).pdf [Original]

---

**Notice of Taking Deposition**

Filing Type EFile

Filing Code Notice of Taking Deposition

Filing Description Civil Case

Reference Number 6

**Comments**

Status Submitting

**Fees**

Court Fee \$102.00

Service Fee \$0.00

**Optional Services**

&gt;Motion/Response \$102.00

**Documents***Document* NoticeofMotion.pdf [Original]