

**COMMON INTEREST COMMUNITY NO. 1134**  
**CONDOMINIUM**  
**3625 BRYANT CONDOMINIUM**  
**DECLARATION**

**THIS DECLARATION** is made as of this \_\_\_\_\_ day of April, 2006, by Richard M. Schmitz and Lisa Dubois-Schmitz, husband and wife, herein collectively called "Declarants", pursuant to the provisions of the Minnesota Common Interest Ownership Act, Minnesota Statutes Sections 515B.1-101 through 515B.4-118 ("MCIOA"), as amended.

**RECITALS**

Declarant is the owner of that certain real estate situated in Hennepin County, Minnesota, described in **Exhibit A** attached hereto, all of which real estate constitutes and is referred to herein as the "Real Estate".

Declarant has caused 3625 Bryant Condominium Association (the "Association") to be formed as a Minnesota nonprofit corporation to serve as the statutory association of unit owners for 3625 Bryant Condominium.

Declarant wishes to establish the Real Estate as a condominium under MCIOA.

**NOW THEREFORE**, Declarant declares that the Real Estate is and shall be divided, held, transferred, conveyed, sold, leased, occupied and developed subject to MCIOA and to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, all of which shall run with the Real Estate and be binding upon all parties having any right, title or interest in the Real

Estate, their heirs, successors and assigns, and which shall inure to the benefit of each unit owner, and the heirs, successors and assigns of each unit owner.

### **Note to Readers**

Many provisions of MCIOA (Chapter 515B) which govern this common interest community ("CIC"), and of the Minnesota Nonprofit Corporation Act, Minnesota Statutes, Chapter 317A under which the Association is formed, are not repeated in this Declaration. This Declaration should be read in conjunction with both statutes.

### **1.00 DEFINITIONS**

1.01 Words defined in MCIOA shall have the meaning ascribed to them in that Act. The following are supplemental definitions.

- A. "Association" shall mean 3625 Bryant Condominium Association, a Minnesota nonprofit corporation.
- B. "Board of Directors" or "Board" shall mean the board of directors of the Association.
- C. "City" shall mean the City of Minneapolis.
- D. "Common Elements" shall mean the common elements of this condominium, as defined in MCIOA.
- E. "Eligible Mortgage Holders" shall mean those holders of a first mortgage on a unit that have submitted a written request for the Association to notify them on any proposed action requiring the consent of a specified percentage of eligible mortgage holders.
- F. "Member" shall mean any person or entity holding membership in the Association.
- G. "Occupant" shall mean the lawful occupant of a Unit.
- H. "Owner" shall mean the record owner of a Unit.
- I. "Parking Space" shall mean one of the parking stalls contained in a garage building that are part of the Common Elements but may be assigned by the Board to a particular Unit under the authority of Section 8.02 below.

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Parking Sp.

### **2.00 IDENTITY OF REAL ESTATE AND CIC**

2.01 This Declaration establishes Common Interest Community No. 1134, Hennepin County, Minnesota, under the name 3625 Bryant Condominium. It is a condominium (and not a

planned community or cooperative). It is not subject to a master association within the meaning of MCIOA. The real estate included within this CIC is legally described in Exhibit A attached hereto.

### **3.00 CIC PLAT**

3.01 The CIC Plat for this CIC is being recorded simultaneously with, and as a part of, this Declaration.

### **4.00 OWNERS ASSOCIATION**

4.01 3625 Bryant Condominium Association has been incorporated as a Minnesota nonprofit corporation under Minnesota Statutes, Chapter 317A to act as the association of unit owners required by section 515B.3-101 of MCIOA.

### **5.00 UNITS AND UNIT IDENTIFIERS**

5.01 This CIC consists of five (5) Units. The unit identifier of each Unit is shown on the CIC Plat.

### **6.00 BOUNDARIES**

6.01 The unit boundaries of each Unit shall be the walls, floors and ceilings thereof, as described in further detail in Section 515B.2-102(b) of MCIOA, all as shown on the CIC Plat.

### **7.00 USE OF UNITS**

7.01 Units. The Units are restricted to residential use. However, the Owner or Occupant of a Unit may use the Unit 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 visits by clients, customers, employees, coworkers or the public.

### **8.00 LIMITED COMMON ELEMENTS; PARKING SPACES (NOT LIMITED COMMON ELEMENTS)**

8.01 Allocation of Limited Common Elements. Certain portions of the common elements are allocated for the exclusive use of one or more but fewer than all of the Units. Portions of the common elements so allocated are referred to as "limited common elements". In other words, all limited common elements are also common elements, but not all of the common elements are limited common elements. Fixtures, improvements and other components specified in Section 515B.2-102(d) and (f) of the Act are limited common elements. These include the doors and windows that

are part of the perimeter boundary of a Unit. In addition, certain other limited common elements, and the Units to which each is allocated, are depicted in the CIC Plat.

8.02 Parking Spaces (Not Limited Common Elements). There is a common element garage building on the Real Estate which has space for several enclosed parking spaces. The Board (initially controlled by the Declarant) may delineate the bounds of parking spaces ("Parking Spaces") in the garage building and record a sketch thereof in the corporate records of the Association. These Parking Spaces are not limited common elements but are simply part of the Common Elements. All of the Parking Spaces shall be deemed assigned to the Declarant upon the recording of this Declaration. Declarant may then reassign a Parking Space for the exclusive use of a particular Unit. Declarant shall be entitled to charge for the initial reassignment of a Parking Space and to retain all such consideration received for such reassignment. The Declarant shall continue to have the right to make such initial reassignments of Parking Spaces not previously assigned by it for twelve months after the recording of a conveyance of the last Unit to an owner other than Declarant. Thereafter, any Parking Spaces that were not previously reassigned by the Declarant will be deemed reassigned without consideration to the Association, and the Board may then make initial reassignments of Parking Spaces not previously assigned in accordance with the rules and regulations adopted from time to time by the Board. The Board is not required to assign all such Parking Spaces, but may designate some for guest parking or other shared use. Every assignment and reassignment shall be recorded in the corporate records of the Association, and once an assignment is made, the Parking Space may not be reconfigured or reassigned without the written consent of the then Owners of the Unit to which it is assigned. The then-current assignment of a Parking Space will run with the conveyance of the Unit to which it is assigned. The Board will reassign a Parking Space to another Unit upon the written request of the Owners of the Unit to which it is then assigned and of the Owners of the Unit to which it will be reassigned. The Board may allocate some or all of the common expenses associated with a Parking Space to the Unit to which it is assigned. The Board may adopt reasonable regulations regarding the type, size and condition of vehicles and materials that may be stored on Parking Spaces, and prohibiting long-term storage of inoperable or seasonal vehicles.

## 9.00 ALLOCATED INTERESTS

9.01 Expenses and Ownership. Each of the Units is hereby allocated the percentage of the undivided interest in the common elements and the percentage of the common expenses of the Association set out in **Exhibit B** hereto attached; provided, however, that certain expenses may be assessed on a different basis, or against one or fewer than all Units, under the following circumstances:

- A. Any common expense associated with the maintenance, repair, or replacement of a limited common element undertaken by the Association may be assessed exclusively against the Unit or Units to which that limited common element is assigned, on the basis of (i) equality, (ii) square footage of the area being maintained, repaired or replaced, or (iii) the actual cost incurred with respect to each Unit.

- B. Any common expense or portion thereof benefiting fewer than all of the Units may be assessed exclusively against the Units benefited, on the basis of (i) equality, (ii) square footage of the area being maintained, repaired or replaced, or (iii) the actual cost incurred with respect to each Unit. For example, an expense that benefits solely the Parking Spaces may allocated to the Units to which the Parking Spaces are assigned.
  - C. The costs of insurance may be assessed in proportion to value, risk or coverage, and the costs of utilities may be assessed in proportion to usage.
  - D. Reasonable attorneys fees and other costs incurred by the Association in connection with (i) the collection of assessments and (ii) the enforcement of the Declaration, bylaws, MCIOA, or the Rules and Regulations, against an Owner or occupant or their guests, may be assessed against the Owner's Unit.
  - E. Fees, charges, late charges, fines and interest may be assessed as provided in Section 515B.3-116(a) of MCIOA.
  - F. Assessments levied under Section 515B.3-116 of MCIOA to pay a judgment against the Association may be levied only against the Units existing at the time the judgment was entered, in proportion to their common expense liabilities.
  - G. If any damage to the common elements or another Unit is caused by the act or omission of any Owner or Occupant, or their invitees, the Association may assess the costs of repairing the damage exclusively against the Owner's Unit to the extent not covered by insurance.
  - H. If any installment of an assessment becomes more than 30 days past due, then the Association may, upon 10 days written notice of the Owner, declare the entire amount of the assessment immediately due and payable in full.
  - I. Expenses relating to the maintenance, repair, replacement or operation of all or any part or component of a common element or limited common element may be assessed against Units on the basis of use, which may either be measured or reasonably estimated.
  - J. If common expense liabilities are reallocated for any purpose authorized by MCIOA, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.
  - K. Assessments described in Subsections 9.01.A-J shall not be considered special assessments as described in Section 10.03.
- 9.02 Voting. Each Unit is hereby allocated one vote in the Association.

9.03 Formula. The fractional allocation of interests specified in Section 9.01 above is based on relative floor areas.

9.04 Reasonable Estimates. Whenever an expense that is allocable to a Unit or to a limited common element is assigned under Section 9.01.A, or to certain benefited Units under Section 9.01.B is not separately metered or cannot otherwise be precisely measured, the Association may make a reasonable estimate thereof, and based on such estimate, may adopt for convenience a simple flat fee per each such Unit.

## 10.00 ASSESSMENTS

10.01 General Provisions. Section 515B.3-115 of MCIOA specifies how assessments are assessed and collected. Section 515B.3-116 specifies how the lien for assessments is created and enforced, and to which interests it is either superior or subordinate. The following subsections 10.02 through 10.07 supplement those provisions.

10.02 Annual Assessments. Annual Assessments shall be established and levied by the Board. Each annual assessment shall cover all of the anticipated Common Expenses of the Association for that year. Annual assessments shall provide, among other things, for contributions to a separate reserve fund sufficient to cover the periodic cost of maintenance, repair and replacement of the common elements and those parts of the Units for which the Association is responsible, in accordance with the Association's reserve plan. The plan may assume that a portion of the future costs will be funded by future special assessments.

10.03 Special Assessments. In addition to the annual assessments authorized above, the Board may, by a majority vote of all Directors, levy a special assessment payable over one or several assessment years for the purpose of defraying, in whole or in part, the cost of any unforeseen or unbudgeted common expense, including without limitation the construction, reconstruction, repair or replacement of a capital improvement and including fixtures and personal property related thereto.

10.04 Commencement of Initial Annual Assessments. The annual assessments provided for herein shall commence as to all units not later than 60 days after the conveyance of the first Unit to an Owner other than Declarant or a successor declarant. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year.

10.05 Commencement of Annual Assessments. By November 30 of each year the Board shall fix the amount of annual assessments against each Unit for the following fiscal year and shall send written notice thereof to each Owner. The due date for payment of annual assessments shall be as set by the Board. At the time the Board fixes the amount of annual assessments it shall adopt a budget for the following fiscal year and cause a copy of such budget in reasonable detail to be furnished to each Owner.

10.06 Lien Priority; Foreclosure. A lien under this Section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances recorded before the Declaration, (ii) any first mortgage on the unit, and (iii) liens for real estate taxes and other governmental assessments or

charges against the unit. Notwithstanding the foregoing, if a first mortgage on a unit is foreclosed, and no Owner redeems during the Owner's period of redemption provided by Chapters 580, 581, and 582, then the holder of the sheriff's certificate of sale from the foreclosure of the first mortgage shall take title to the Unit subject to unpaid assessments for common expenses levied pursuant to Section 515B.3-115(a), (e)(1) to (3), (f), and (i) of the Act which became due, without acceleration, during the six months immediately preceding the first day following the end of the Owner's period of redemption.

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

#### **11.00 ENCROACHMENTS**

11.01 Physical Boundaries. The existing physical boundaries of a Unit, or of a Unit reconstructed in substantial accordance with the description contained in the original Declaration, are its legal boundaries, regardless of vertical or lateral movement of the building or minor variances due to shifting or settling.

#### **12.00 ASSOCIATION MAINTENANCE RESPONSIBILITY**

12.01 Common Elements. The Association shall be responsible for the maintenance and repair of the common elements, including limited common elements, and common easement rights, the expense of which shall be allocated as described in MCIOA and this Declaration, except that each Owner shall be responsible for replacement of broken glass in windows and doors of such Owner's Unit, and except that the Board may permit Owners to undertake directly certain specific maintenance and repair of limited common elements, subject to the oversight of the Association. The Association shall have the exclusive right to manage, maintain and alter the common elements.

12.02 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.

12.03 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 the right of enjoyment of such property to Occupants of the 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 other 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.

### 13.00 OWNERS' MAINTENANCE

13.01 Upkeep and Maintenance. Each owner shall be responsible for the upkeep and maintenance of the owner's Unit and (with the permission of the Board) assigned limited common elements. The Board may amend any part of the Rules and Regulations from time-to-time, including this allocation of maintenance responsibility.

13.02 Negligence and Misuse. If maintenance, repairs or replacement to the common elements or to the Unit of another owner are necessitated by the negligence, misuse or neglect of a Unit Owner, the expense thereof, including reasonable legal fees incurred in enforcing the provision, shall be charged to such offending Unit Owner.

13.03 Internal Installations. All maintenance and repair of internal installations of the Unit, which are not Common Elements, shall be at the Unit Owner's expense.

### 14.00 INSURANCE, CASUALTY AND EMINENT DOMAIN

14.01 Association's Policies. Section 515B.3-113 of MCIOA requires the Association to maintain casualty insurance coverage on the Common Elements and Units. The same section also requires general liability coverage, authorizes the Association to carry any other insurance it considers appropriate, specifies minimum notice from an insurer prior to cancellation, specifies other provisions for such insurance, requires the Association or an insurance trustee to adjust all losses, and describes the Association's duty with respect to repair or rebuilding after casualty to Common Elements or Units. The provisions of MCIOA described in this paragraph may not be varied or waived, but are hereby supplemented, as follows:

- A. The Association shall carry workers compensation insurance whenever it has eligible employees.
- B. The Association may carry fidelity insurance and shall do so whenever required by a holder, insurer or guarantor of a mortgage.
- C. The Association may enter into binding agreements with one or more holders, insurers or guarantors of mortgages obligating the Association to keep specified



coverages in effect for specified periods and to notify a holder, insurer or guarantor of any changes to coverage.

- D. The Association shall maintain policy limits which are consistent with those maintained by similar properties within the Minneapolis-St. Paul metropolitan area.

14.02 Owners' Individual Policies. Each Unit Owner must carry an individual Condominium Unit All Risk Homeowners Policy (currently designated as an HO-6 policy in the case of residential properties) covering liability for accidents occurring within the Unit, and insuring the value of personal property and real property within the Unit which is not covered by the Association's comprehensive blanket policy. Personal property and attached items in a Unit, such as carpeting and other types of floor covering (such as stone, ceramic tile or hardwood flooring), wallcoverings, light fixtures, plumbing fixtures, window treatments, and all types of built-in appliances, cabinets and millwork are not covered by the Association's blanket policy. The extent of the property included or excluded from the Association's blanket policy may be clarified by the Board from time-to-time by amendments to the Rules and Regulations, and each Unit Owner is responsible for conforming his/her individual coverage to such changes. All such policies shall contain waivers of subrogation and provide that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such individual insurance carried by any Owner.

14.03 Rebuilding after Casualty. If the Trustee or a mortgagee undertakes the reconstruction or remodeling of a Unit after casualty, the same need be restored only to substantially the same condition as the Unit was as of the recording of this Declaration.

14.04 Eminent Domain. As in the case of physical damage or destruction, the Association shall represent all Unit Owners with respect to any condemnation involving all or any part of the CIC, including the condemnation proceedings, and any negotiations, settlements, or agreements as part of the condemnation or in lieu of the condemnation, and all proceeds shall be payable in the first instance to the Association or an insurance trustee, for the benefit of Owners and mortgage holders.

14.05 Deductibles. The Association may, in the case of a claim under the Association's blanket policy for damage to a Unit, pay the deductible amount as a common expense.

## **15.00 ARCHITECTURAL RESTRICTIONS**

15.01 Association Control. The Association shall have the exclusive control of the Common Elements (including limited common elements) and no change shall be made to the Common Elements or to the exterior of any Unit, including changes in appearance or color, except by the written authorization of the Association.

15.02 Safety, Noise and Vibrations. The Association shall have the right to regulate or prohibit appliances and installations within a Unit that may have an effect on safety, which may affect the functioning of common mechanical or electrical components, or which may cause noise or vibration detectable from outside the Unit.

15.03 Awnings. No awnings or shades shall be erected over and outside of the windows, nor shall any articles or structures be hung or placed on any outside window sills, without the prior written consent of the Association.

15.04 Wiring or Penetrations. No exterior wiring shall be installed nor shall there be penetrations of the walls, window frames or roofs of the exterior of the building except as authorized in writing by the Board.

15.05 Mechanical and Electrical Equipment. No additional air conditioning or air cooling unit shall be installed or placed in any part of a unit other than that which was originally installed, without the prior written consent of the Association. All ceiling fans and all other electrical fixtures installed in a unit must comply with all applicable building codes and underwriting standards and other reasonable standards adopted by the Association. No oil-fired or other combustion type heaters shall be allowed in units.

15.06 Antennae. No exterior television, radio, satellite, or microwave antenna of any sort shall be erected or maintained upon the common elements or the exterior of a Unit without the prior written approval of the Board. The Board will permit antennae to be erected on the roof of the building if the installation meets the Association's design and appearance specifications, or in the absence of such specifications, good practice for a safe and weatherproof installation. Each Unit shall have an easement for electric cable connecting its rooftop antenna with the Unit by a reasonable route, through common elements. However, any requirements with respect to satellite receiving antennas one meter or less in diameter shall be reasonable, shall not impair or degrade reception and shall conform to the Federal Telecommunications Act of 1996. The City may also have requirements.

## 16.00 RENTALS

16.01 Units. Any lease of a Unit must be approved by the Board prior to occupancy by the tenant. The approval may include a background check on the proposed occupants. The approval process shall be conducted in a commercially reasonable and prompt manner, and shall not be used to inhibit or discourage ownership of Units by non-resident investors. All leases shall be in writing, and shall provide that they are subordinate and subject to the provisions of this Declaration and the Rules, and that a failure of the tenant to comply with the terms of such documents shall be a default under the lease enforceable by the Association as well as by the landlord. No Unit shall be leased for transient or hotel purposes. The Board may adopt such reasonable Rules as may be necessary to implement procedures, consistent with this Section.

16.02 Parking Spaces. Because the Parking Spaces are primarily intended to serve the needs of Owners and Occupants, a Parking Space may not be rented to anyone other than an Owner or Occupant of a Unit without the prior written consent of the Board. Such consent to lease to a non-Owner or non-Occupant may be conditioned on a right of any Owner or Occupant to assume the tenancy on the same terms on reasonable notice.

## **17.00 GENERAL RESTRICTIONS**

17.01 **Pets.** No pets other than (a) aquarium fish, (b) caged birds, and (c) no more than (i) two domestic dogs, (ii) two domestic cats or (iii) one dog and one cat shall be permitted in a Unit at any time, except that this restriction does not apply to a guide dog or assist dog used by a blind or deaf person. The Board may adopt reasonable regulations governing the behavior and wastes of animals and, after reasonable opportunity to cure, may order the removal of a pet that habitually disturbs the peace of the building, is threatening to others or is the source of odors in the common hallways or other units. Since the common spaces are for the enjoyment of all Owners and Occupants, the Board may prohibit or restrict the access of dogs and cats to the common lawn, and may limit the use of the common hallways and passages by dogs and cats to actual access to and from Units.

17.02 **Regulations.** The Board of Directors may from time-to-time adopt, promulgate and publish rules of conduct, regulations and operating policies reasonably relating to the enjoyment of the CIC by Unit Owners and Occupants, and not inconsistent with this Declaration.

17.03 **Additional Units.** Neither the Declarant nor any other Owner may subdivide or convert any of the Units into Units, Common Elements and limited common elements under the provisions of Section 515B.2-112 of MCIOA.

17.04 **Time Shares.** Time shares, as defined in MCIOA, are not permitted in this CIC.

17.05 **No Smoking Policy.** This is a no-smoking building. Smoking is not permitted anywhere on the Real Estate, whether indoors or outdoors, or within a unit or on the common elements. Owners of units are responsible for infractions within their unit or by their tenants, family members, guests or invitees upon the common elements.

## **18.00 FIRST MORTGAGEES**

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

18.02 **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 has 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, Bylaws, 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; and
- D. Any proposed action which would require the consent of a specified percentage of mortgage holders as specified below.

18.03 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 Bylaws.

18.04 Designation of Representative. Any holder of a first mortgage on a Unit may designate a representative to attend meetings of members.

### 19.00 SPECIAL DECLARANT RIGHTS

19.01 Special Declarant Rights. Declarant hereby reserves the following rights (referred to in MCIOA as Special Declarant Rights) for its benefit:

- A. the right to enter the common elements and complete improvements indicated on the CIC Plat, planned by the Declarant consistent with the disclosure statement or authorized by the municipality in which the CIC is located;
- B. the right to create Units by this Declaration;
- C. the right to maintain sales offices, management offices, signs advertising the CIC, and models, provided that no more than one combined sales and management office and no more than two model units will be maintained at any one time;
- D. the right to use easements through the common elements for the purpose of making improvements within the CIC; and
- E. the right to appoint or remove any officer or director of the Association during the period of declarant control, which shall expire on the earliest of the following events:
  1. Three years after the date of the first conveyance of a Unit to a Unit Owner other than a Declarant;
  2. The Declarant's voluntary surrender of control by giving written notice to the Unit Owners pursuant to Section 515B.1-115 of MCIOA; or
  3. The conveyance of 75 percent of the Units to Unit Owners other

than a Declarant.

## 20.00 AMENDMENTS

20.01 Statutory Requirements. MCIOA specifies the requirements for amending the Declaration. In addition to those requirements:

20.02 Declarant's Joinder. In addition to the other requirements for amendment of this Declaration and the Bylaws contained herein, the written joinder and consent of the Declarant shall be required for any amendment of either this Declaration or the Bylaws 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.

20.03 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 75% of the total allocated votes in the Association and by Eligible 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 of 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 its 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.

20.04 Implied Approval. The implied approval of an Eligible Mortgage Holder may be assumed when an Eligible Mortgage Holder fails to submit a response to an written proposal for an amendment within 30 days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

20.05 Inhibition of Rentals. In addition to any other requirement of MCIOA, any amendment that prohibits or imposes further restrictions on the rental of Units shall require the affirmative vote or written agreement of Owners of Units to which at least 4/5<sup>th</sup> of the votes in the Association are allocated for adoption, and may not, in any event, apply to persons or entities who are Owners as of the date of adoption of such amendment.

## **21.00 WORKING CAPITAL FUND**

21.01 Establishment. The Declarant shall establish an Association 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.

21.02 Declarant's Accounting. This working capital fund is the property of the Association, and is not to be confused with any earnest money agreed upon between the Declarant and buyers of Units. The Declarant may not use the Association working capital fund 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.

## **22.00 SAFETY AND HEALTH**

22.01 Hazardous Substances, Devices and Pests. Owners must maintain their Units and limited common elements free of hazardous substances, faulty or dangerous devices and equipment,

vermin, cockroaches, pests and debris which may pose a threat to the health or safety of Occupants of other Units. Owners must perform promptly all cleaning, maintenance and repair work within their Unit and limited common element, which, if omitted, would affect another Unit or Units, being expressly responsible for the damages and liabilities that 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 or limited common element with a professional exterminator or other appropriate contractor and take corrective action, charging the Owner of such Unit for the reasonable cost thereof.

22.02 Impairment of Structure or Easement. 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 other property right or interest appurtenant to the Real Estate, nor do any act nor allow any condition to exist which will adversely affect the common elements, the other Units, or their Owners.

### 23.00 MISCELLANEOUS

23.01 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.

23.02 Association Acts through Board. The power and authority of the Association as provided in the applicable Statutes, the Declaration, Bylaws, and Rules and Regulations shall be vested in a Board of Directors elected by the Owners in accordance with the Bylaws of the Association. The Association shall act through the Board of Directors and the officers elected by the Board; accordingly, all references in this Declaration and the Bylaws to action or consent 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 Bylaws.

23.03 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.

23.04 Captions. The headings in this Declaration are intended for convenience only and shall not be given any substantive effect.

23.05 Construction. In the event of an apparent conflict between this Declaration and the Bylaws, 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.

23.06 Compliance with Ordinance. This CIC is a condominium conversion of an existing residential building located within the City of Minneapolis and is therefore governed by Chapter 250, Minneapolis Code of Ordinances. The Declarant hereby certifies that all conditions required under said Chapter 250 have been complied with.

23.07 No Shoreland. This CIC does not include any shoreland, as defined in Minnesota Statutes, Section 103F.205.

23.08 Rights of Action. In addition to all other remedies and rights set forth in MCIOA, 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 Bylaws 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 provisions.

23.09 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.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of the day and year recited on the first page hereof.

\_\_\_\_\_  
Richard M. Schmitz

\_\_\_\_\_  
Lisa Dubois-Schmitz

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by Richard M. Schmitz and Lisa Dubois-Schmitz, husband and wife.

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

THIS INSTRUMENT DRAFTED BY:  
N. Walter Graff, Esq.  
Best & Flanagan LLP



225 South Sixth Street, Suite 4000  
Minneapolis, Minnesota 55402  
(612) 339-7121

**EXHIBIT A**

**DESCRIPTION OF REAL ESTATE**

Lot 8, Block 80, Remingtons 2nd Addition to Minneapolis, Hennepin County, Minnesota.

Together with appurtenant easements of record.

**EXHIBIT B****ALLOCATION OF UNDIVIDED INTEREST IN THE COMMON ELEMENTS AND OF  
THE COMMON EXPENSES  
(See Section 9.01 above)**

<b>UNIT</b>	<b>PERCENTAGE</b>
001	22.44%
101	19.39%
102	19.39%
201	19.39%
202	19.39%
<b>TOTAL</b>	<b>100.00%</b>

Each unit is allocated one vote.

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