

Filed February 17, 2003

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**Common Interest Community Number 391**

**A Condominium**

**LIBERTY PARK CONDOMINIUM**

**DECLARATION**

THIS DECLARATION is made as of this 19<sup>th</sup> day of February, 2003, by College City Homes, Inc., a Minnesota corporation, herein called "Declarant", pursuant to the provisions of the Minnesota Common Interest Ownership Act, Minnesota Statutes Sections 515B.1-101 through 515B.4-118 (the "Act"), as amended.

**RECITALS**

WHEREAS, Declarant is the purchaser of certain real estate located in Dakota County, Minnesota, legally described in Exhibit A attached hereto (the "Real Estate"), and Declarant is the purchaser of the additional land described in Exhibit B attached hereto (the "Additional Real Estate"), and

WHEREAS, Declarant desires to establish on the Real Estate a plan for the permanent residential community to be owned, occupied and operated for the use, health, safety, and welfare of its resident owners and occupants, and for the purpose of preserving the value, the structured quality, and the original architectural and aesthetic character of the Real Estate, and

WHEREAS, the Real Estate and the Association are not subject to the jurisdiction of a Master Association, and

WHEREAS, the Real Estate is not subject to an ordinance referred to in Section 515B.1-106 of the Act, governing conversions to common interest community, and

WHEREAS, Declarant wishes to establish the Real Estate as a condominium under the Act.

NOW THEREFORE, Declarant declares that the Real Estate is and shall be divided, held, transferred, conveyed, sold, leased, occupied and developed subject to the Act and to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, 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.

## **PRELIMINARY MATTERS**

### **Note to Readers**

Many provisions of the Act (Chapter 515B) which governs 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.

### **SECTION 1.00 DEFINITIONS**

- 1.01 Words defined in the Act shall have the meaning ascribed to them in the Act. The following are supplemental definitions.
- a. "Association" shall mean Liberty Park Condominium Association, a Minnesota nonprofit corporation.
  - b. "Board of Directors" or "Board" shall mean the Board of Directors of the Association.
  - c. "Member" shall mean any person or entity holding membership in the Association.

### **SECTION 2.00 IDENTITY OF REAL ESTATE AND CIC RESERVATION OF RIGHT TO EXPAND CIC BY ADDING ADDITIONAL REAL ESTATE**

- 2.01 This Declaration establishes Common Interest Community No. 391, Dakota County, Minnesota, under the name Liberty Park Condominium, as a Flexible Common Interest Community. It is a condominium (and not a planned community or cooperative), and is not subject to a master association. The real estate initially included within this CIC is legally described as follows:

See Exhibit A and Exhibit C attached hereto.

- 2.02 Additional real estate which may be added to the CIC, pursuant to Section 515B.2-106 is legally described as follows:

See Exhibit B attached hereto.

- 2.03 Portions of the additional real estate may be added to the CIC at different times, but all such additional real estate shall be brought into the CIC within ten years from the date of recording the Declaration. The maximum number of units that may be created within the additional real estate is 52 units, all of which units shall be restricted to residential use. All buildings and units erected upon additional real estate will be compatible with the other buildings and units in the CIC in terms of architectural appearance, quality of construction and principal materials employed in construction. The size of the buildings and number of units in additional buildings will vary as described in Section 5.01 below. All restrictions in this Declaration affecting use, occupancy, and alienation of units will apply to units created in the additional real estate upon addition to the CIC. Any of the foregoing assurances related to additional real estate will lapse and be of no effect relative to any portion of the additional real estate not added to the CIC within the ten year period set forth above.
- 2.04 Additional real estate shall be added to the CIC by the procedures set forth in Section 515B.2-111.

### **SECTION 3.00 CIC PLAT**

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

### **SECTION 4.00 OWNERS ASSOCIATION**

- 4.01 Liberty Park 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 the Act.

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

- 5.01 This CIC shall initially consist of 10 units, all of which are restricted to residential use. This CIC also includes a common element lot (Lot 7, Block 4, LIBERTY PARK, Dakota County, Minnesota) The first phase of construction will be a two-story wood frame building with 10 condominium units located in the building. The unit identifier of each unit is shown on the CIC plat. Additional buildings may be brought into the development as additional real estate until the full complement of 62 units is constructed. The condominium buildings will be constructed to be compatible with one another, but not identical. Two building designs will be used. The buildings proposed for the portion of the development legally described as Lots 2 and 6, Block 4, LIBERTY PARK, will be two ten-unit buildings, with five units on each side, back to back. The buildings designed for the portion of the development legally described as Lots 3, 4, and 5, Block 4, LIBERTY PARK, will be four-unit buildings, with the units side by side in a row-style. The buildings intended to be built on a future replat of Outlot B, LIBERTY PARK, are preliminarily designed as ten-unit buildings very similar to the first condominium building constructed on

Lot 6, Block 4, LIBERTY PARK. All buildings will be two stories in height, using wood as the primary construction material with vinyl and brick exterior finishes.

### **SECTION 6.00 BOUNDARIES**

- 6.01 The unit boundaries shall be the interior, unfinished surfaces of the perimeter walls, floors and ceilings of each unit, more specifically defined as follows:
- a. All lath, furring, wallboard, plasterboard, sheetrock, plaster, paneling, tiles, wallpaper, paint, finished flooring, floor covering and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors or ceilings, including perimeter doors and windows, and their frames, are part of the common elements.
  - b. If any chute, flue, duct, pipe, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside of the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.
  - c. Subject to subsection b. above, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.
  - d. All perimeter doors and windows and any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, decks, patios, and other fixtures designed to serve a single unit and constructed as part of the original construction, and any authorized replacements and modifications thereof, if located outside of the units' boundaries, are limited common elements allocated exclusively to that unit.

### **SECTION 7.00 USE OF UNITS**

- 7.01 All units are restricted to residential use. The following activities in a residential unit shall not be considered a violation of this restriction:
- a. The use of a unit by the Declarant as a sales office or model home during the initial period of construction and sales.
  - b. The maintenance by the Association or its manager of an office for purposes of management of this condominium.
  - c. 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 visits by clients, customers, employees, coworkers or the public.

## SECTION 8.00 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. In addition to the limited common elements specified in Section 515B.2-102(d) and (f) of the Act, certain limited common elements, and the units to which each is allocated, are depicted on the CIC Plat.

## SECTION 9.00 ALLOCATED INTERESTS

- 9.01 **Allocation.** Each of the units is hereby allocated an equal percentage or fraction of undivided interests in the common elements and in the common expenses of the Association, and an equal number of votes in the Association as specified in Exhibit D attached to this Declaration. However, certain expenses may be assessed on a different basis, or against one or fewer than all units, under Section 515B.3-115(h) of the Act.
- 9.02 **Formula.** The percentage or fractional allocation of interests in the common elements specified in Exhibit D is calculated for each unit by dividing the number one into the total number of all units in the CIC.

## SECTION 10.00 ASSESSMENTS

- 10.01 **General Provisions.** Section 515B.3-115 of the Act 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.
- 10.02 **Special Assessments.** 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 cost of any unforeseen or unbudgeted common expense, including without limitation the unexpected construction, reconstruction, repair or replacement of a capital improvement and including fixtures and personal property related thereto, provided that any such assessment shall have the assent of not less than two-thirds (2/3) of the voting power of members who are voting in person or by proxy at a meeting duly called for this purpose.
- 10.03 **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. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year.
- 10.04 **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.

#### **SECTION 11.00 LIMITED ASSESSMENT PROGRAM**

- 11.01 The Declarant hereby establishes a limited assessment program of the type described in Section 515B.3-115(b) of the Act. Notwithstanding anything apparently to the contrary in Section 10.00 above, if a common expense assessment has been levied, any units owned by Declarant (and which have never been conveyed to anyone else) shall be liable for all budgeted replacement reserves, but after deducting such reserves from the amount of the assessments, shall be liable only for twenty-five percent (25%) of the balance of the assessments levied on such unit, until such time as a certificate of occupancy is issued by the City of Northfield. Such unit shall be liable for full assessments upon the first day of the first month following the earlier of (i) conveyance of the unit by Declarant or (ii) the issuance of such certificate of occupancy for the unit. Although this limited assessment program will not affect the allocated share of replacement reserves attributable to units owned by Declarant, there are no assurances that there will be no effect on the level of services for items set out in the Association's budget included in the disclosure statement or otherwise approved by the Association.

#### **SECTION 12.00 ENCROACHMENT EASEMENT**

- 12.01 The existing physical boundaries of a unit, or of a unit reconstructed in substantial accordance with the description contained in this Declaration, are its legal boundaries, regardless of vertical or lateral movement of the building or minor variances due to shifting or settling.

#### **SECTION 13.00 ASSOCIATION MAINTENANCE RESPONSIBILITY**

- 13.01 **Common Elements.** The Association shall be responsible for the maintenance and repair of the common elements, including limited 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. The Association's obligations include, without limitation, maintenance and repair of subdivision identification monuments and signs, ornamental fences, landscaping, and unit or building identification signs.
- 13.02 **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