

# TORRENS

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Signed: 

DEPUTY

JEAN M DANKERS, REGISTRAR OF TITLES

GOODHUE COUNTY, MINNESOTA

Fee Amount: \$19.50



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## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

### CANNON BLUFFS II

This Declaration of Covenants, Conditions and Restrictions (the "Declaration") is made in the county of Goodhue, state of Minnesota, as of the 22nd day of October, 2004, by Cannon Bluffs, L.L.C., a Minnesota limited liability company (the "Developer").

**WHEREAS**, Developer is the owner of all that real property located in Goodhue County, Minnesota, legally described in Exhibit A attached hereto, and Developer desires to submit said real property and all improvements thereon (collectively the "Property") to this Declaration, and

**WHEREAS**, the Declaration establishes on the Property a plan for a permanent single family 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 structural quality, and the architectural character of the Property, and

**WHEREAS**, the Property is not subject to Minnesota Statutes Chapter 515B by reason of the exemption contained in Section 515B.1-102(e)(2) of that statute.

**WHEREAS**, Developer desires to provide for the administration of certain services for the Property; the enforcement of the covenants, conditions and restrictions contained in this Declaration; and the preservation of the value, amenities and architectural character of the Property; and to this end wishes to subject the Property to this Declaration.

**THEREFORE**, Developer subjects the Property to this Declaration, declaring (i) that this Declaration shall constitute covenants to run with the Property, (ii) that the Property shall be owned, encumbered, used, operated, occupied and conveyed subject to the covenants, conditions, restrictions, easements, charges and liens described in this Declaration, all of which shall be binding upon all Persons having or acquiring any right, title or interest therein, and their heirs, personal representatives, successors and assigns.

## SECTION 1

### DEFINITIONS

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

- 1.1 "Act" shall mean the Minnesota Nonprofit Corporation Act, Minnesota Statutes Chapter 317A, as amended.
- 1.2 "Assessments" shall mean and refer to all Assessments levied by the Association pursuant to Section 6 of this Declaration, including annual Assessments, special Assessments and limited allocation Assessments.
- 1.3 "Association" shall mean Cannon Bluffs II Homeowners Association, a Minnesota nonprofit corporation which has been created pursuant to the Act, whose members consist of all Owners.
- 1.4 "Bluff Line" shall mean a line along the top of a slope connecting points at which the slope becomes less than thirteen percent.
- 1.5 "Bluff Line Setback" shall mean an area 30 feet from the Bluff Line where development is restricted in accordance with Section 7.13 of this Agreement and applicable Department of Natural Resources regulations.
- 1.6 "Board" shall mean the Board of Directors of the Association as provided for in the Bylaws.
- 1.7 "Bylaws" shall mean the Bylaws governing the operation of the Association, as amended from time to time.
- 1.8 "Common Property" shall mean all parts of the Property except the Lots, including all improvements thereon, owned by the Association for the common benefit of the Owners and Occupants. The Common Property is legally described in Exhibit B attached hereto.
- 1.9 "Common Expenses" shall mean and include all expenditures made or liabilities incurred by or on behalf of the Association and incident to its operation, including Assessments and items otherwise identified as Common Expenses in the Declaration or Bylaws.
- 1.10 "Developer Control Period" shall mean and refer to the time period during which Developer has the exclusive right to appoint the members of the Board, as provided in Section 16 of this Declaration.

- 1.11 "Developer Rights" shall mean and refer to the exclusive rights reserved to Developer to control the Association and complete the development of the Property, as described in Section 16 of this Declaration.
- 1.12 "DNR" shall mean the Minnesota Department of Natural Resources.
- 1.13 "Dwelling" shall mean a building consisting of one or more floors, designed and intended for occupancy as a single family residence, and located within the boundaries of a Lot. Any reference to a Dwelling includes any garage attached thereto or otherwise included within the boundaries of the Lot in which the Dwelling is located.
- 1.14 "Governing Documents" shall mean this Declaration, and the Articles of Incorporation and Bylaws of the Association, the Declaration of Easement (Trail and Roadway) as amended from time to time as permitted by this Declaration, all of which shall govern the use and operation of the Property.
- 1.15 "Guidelines" means those certain Planned Cluster Development Guidelines dated April 2, 2002 approved by the DNR and the City of Cannon Falls and now or hereafter adopted or amended by Developer, its successors or assigns, with the written approval of the DNR and the City of Cannon Falls.
- 1.16. "Improvement" means a structure, building, addition, deck, patio, fence, wall, enclosure, window, exterior door, antenna or other type of sending or receiving apparatus, sign, display, decoration, color change, shrubbery, topographical or landscaping change, impervious surface or nonstructural development or other exterior improvements to or alteration of the Property.
- 1.17 "Lot" shall mean any platted lot subject to this Declaration upon which a Dwelling is located or intended to be located, as described in Section 2.1 and shown on the Plat, including all improvements thereon, but excluding the Common Property.
- 1.18 "Member" shall mean all persons who are members of the Association by virtue of being Owners as defined in this Declaration. The words "Owner" and "Member" may be used interchangeably in the Governing Documents.
- 1.19 "Occupant" shall mean any person or persons, other than an Owner, in possession of or residing on a Lot.
- 1.20 "Owner" shall mean a Person who owns a Lot, but excluding contract for deed vendors, mortgagees and other secured parties, and grantors of life estates. The term "Owner" includes, without limitation, contract for deed vendees and holders of a life estate.
- 1.21 "Permanently Preserved Open Space" or "PPOS" shall be defined as Outlot E and Outlot F of the Common Property as legally described in Exhibit B attached hereto.

- 1.22 "Person" shall mean a natural individual, corporation, limited liability company, partnership, limited liability partnership, trustee, or other legal entity capable of holding title to real property.
- 1.23 "Plat" shall mean the recorded plat of Cannon Bluffs Second Addition depicting the Property pursuant to the requirements of Minnesota Statutes Chapter 505, 508 or 508A, as applicable, including any amended Plat or replat recorded from time to time.
- 1.24 "Property" shall mean all of the real property submitted to this Declaration, including the Dwellings and all other structures and improvements located thereon now or in the future. The Property is legally described in Exhibit A attached hereto.
- 1.25 "Rules and Regulations" shall mean the Rules and Regulations of the Association as approved from time to time pursuant to Section 5.6.

## SECTION 2

### DESCRIPTION OF LOTS AND RELATED EASEMENTS

2.1 Lots. There are twenty-six Lots, all of which are restricted exclusively to single-family residential use. No additional Lots may be created except as permitted by the applicable governmental authorities. The Lots are identified by lot and block numbers and subdivision name, as shown on the Plat, which is incorporated herein by reference. A schedule of Lots is set forth on Exhibit A attached hereto.

2.2 Access Easements. Each Lot shall be the beneficiary of an easement for access to a public street or highway on or across those portions of the Common Property designated and constructed for use as streets or walkways on the Plat, in the Declaration of Easement (Trail and Roadway) or by the Association, subject to any restrictions imposed by or pursuant to the Governing Documents or the Rules and Regulations.

2.3 Use and Enjoyment Easements. Each Lot shall be the beneficiary of easements for use and enjoyment on and across the Common Property, subject to any restrictions imposed by or pursuant to governmental approvals, laws, ordinances, regulations, easements and the Governing Documents. The Permanently Preserved Open Space as defined in this Declaration is also subject to the restrictions on use contained in Section 8.1 of this Declaration.

2.4 Utility and Maintenance Easements. Each Lot shall be subject to and shall be the beneficiary of easements for all services, communications and utilities servicing the other Lots and the Common Property, as described in Section 13.

2.5 Public Service Personnel. The Common Property shall be subject to an easement in favor of local and state police, medical and fire safety personnel, for the exercise of their proper duties.

2.6 Drainage Easements. All Lots and Common Property on which part or all of an area approved for drainage is located, shall be subject to an easement for such drainage. Outlot D, which

is part of the Common Property, is designated as a storm water drainage and retention pond area in accordance with the Guidelines and applicable governmental approvals.

2.7 Trail and Roadway Easements. Outlots A and B, which are part of the Common Property, are subject to roadway, trail and parking easements, as described in that certain Declaration of Easement (Trail and Roadway) recorded against the Property.

2.8 Developer's Easements. Developer shall have and be the beneficiary of exclusive easements for construction, sales activities and related purposes as described in Section 16.

2.9 Playground Easement. Outlot C, which is part of the Common Property, shall be designated for use as a playground area upon which Developer will construct certain playground equipment to be used by the Owners and Occupants of the Lots, and shall be maintained by the Association.

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

2.11 Easements are Appurtenant. All easements and similar rights burdening or benefiting a Lot or any other part of the Property shall run with the land, and shall be permanent, subject only to termination in accordance with the terms of the easement, the agreement of the benefited parties or a court order. Any recorded easement benefiting or burdening the Property shall be construed in a manner consistent with, and not in conflict with, the easements created by this Declaration.

2.12 Impairment Prohibited. No person shall materially restrict or impair any easement benefiting 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.

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

### SECTION 3

#### COMMON PROPERTY AND OTHER PROPERTY

3.1 Common Property. The Common Property and its characteristics are as follows:

- a. All of the Property not included within the Lots constitutes Common Property. The Common Property includes those parts of the Property described in Exhibit B attached hereto. The Common Property is owned by the Association for the common benefit of the Owners and Occupants.

- b. The Common Property shall be subject to (i) easements as described in this Declaration; (ii) the right of the Association to establish reasonable Rules and Regulations governing the use of the Property; (iii) trail and roadway easements of record; and (iv) all laws, ordinances, regulations, easements and DNR and local approvals.
- c. Except as otherwise expressly provided in the Governing Documents, all maintenance, repair, replacement, management and operation of the Common Property shall be the responsibility of the Association.
- d. Common Expenses for the maintenance, repair, replacement, management and operation of the Common Property shall be assessed and collected from the Owners in accordance with Section 6.

3.2 Annexation of Other Property. Other real property may be annexed as Lots or Common Property, or any combination thereof, and subjected to this Declaration, with the approval of (i) Owners (other than Developer) of Lots to which are allocated at least sixty-seven percent (67%) of the votes in the Association, (ii) Developer so long as Developer owns any unsold Lot for sale and (iii) any governmental authority whose approval is required for such annexation.

## SECTION 4

### ASSOCIATION MEMBERSHIP: RIGHTS AND OBLIGATIONS

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

4.1 Membership. Each Owner shall be a member of the Association by virtue of Lot ownership, and the membership shall be transferred with the conveyance of the Owner's interest in the Lot. An Owner's membership shall terminate when the Owner's ownership terminates. When more than one Person is an Owner of a Lot, all such Persons shall be members of the Association, but multiple ownership of a Lot shall not increase the voting rights allocated to such Lot nor authorize the division of the voting rights.

4.2 Voting and Common Expenses. Voting rights and Common Expense obligations are allocated equally among the Lots, subject to limited Assessments authorized by Section 6.4.

4.3 Appurtenant Rights and Obligations. The ownership of a Lot shall include the voting rights and Common Expense obligations described in Section 4.2. Said rights, obligations and interests, and the title to the Lots, shall not be separated or conveyed separately, and any conveyance, encumbrance, judicial sale or other transfer of any allocated interest in a Lot, separate from the title to the Lot shall be void. The allocation of the rights, obligations and interests described in this Section may not be changed, except in accordance with the Governing Documents.

4.4 Authority to Vote. The Owner, or some natural person designated to act as proxy on behalf of the Owner, and who need not be an Owner, may cast the vote allocated to such Lot at meetings of the Association. However, if there are multiple Owners of a Lot, only the Owner or other Person designated pursuant to the provisions of the Bylaws may cast such vote. The voting rights of Owners are more fully described in Section 3 of the Bylaws.

## SECTION 5

### ADMINISTRATION

The administration and operation of the Association and the Property, including but not limited to the acts required of the Association, shall be governed by the following provisions:

5.1 General. The operation and administration of the Association shall be governed by the Governing Documents and the Rules and Regulations. The Association shall, subject to the rights of the Owners set forth in the Governing Documents, be responsible for the operation, management and control of the Property. The Association shall have all powers described in the Governing Documents and the Act. All power and authority of the Association shall be vested in the Board, unless action or approval by the individual Owners is specifically required by the Governing Documents or the Act. All references to the Association shall mean the Association acting through the Board unless specifically stated to the contrary.

5.2 Operational Purposes. The Association shall operate and manage the Property for the purposes of (i) administering and enforcing the covenants, restrictions, easements, charges and liens set forth in the Governing Documents and the Rules and Regulations, (ii) maintaining, repairing and replacing those portions of the Property for which it is responsible, (iii) preserving the value and architectural character of the Property; and (iv) enforcing all easements, covenants and restrictions contained in the trail and roadway easement of record.

5.3 Binding Effect of Actions. All agreements and determinations made by the Association in accordance with the powers and voting rights established by the Governing Documents or the Act shall be binding upon all Owners and Occupants, and their lessees, guests, heirs, personal representatives, successors and assigns, and all secured parties as defined in the Act.

5.4 Bylaws. The Association shall have Bylaws. The Bylaws shall govern the operation and administration of the Association, and shall be binding on all Owners and Occupants.

5.5 Management. The Board may delegate to a manager or managing agent the management duties imposed upon the Association's officers and directors by the Governing Documents and the Act. However, such delegation shall not relieve the officers and directors of the ultimate responsibility for the performance of their duties as prescribed by the Governing Documents and by law.

5.6 Rules and Regulations. The Board shall have exclusive authority to approve and implement such reasonable Rules and Regulations as it deems necessary from time to time for the purpose of operating and administering the affairs of the Association and regulating the use of the

Property; provided that the Rules and Regulations shall not be inconsistent with the Governing Documents, DNR approvals, or the Ordinances of the city of Cannon Falls. The inclusion in other parts of the Governing Documents of authority to approve Rules and Regulations shall be deemed to be in furtherance, and not in limitation, of the authority granted by this Section. New or amended Rules and Regulations shall be effective only after reasonable notice thereof has been given to the Owners.

5.7 Association Assets; Surplus Funds. All funds and real or personal property acquired by the Association shall be held and used for the benefit of the Owners for the purposes stated in the Governing Documents. Surplus funds remaining after payment of or provision for Common Expenses and reserves shall be credited against future Assessments or added to reserves, as determined by the Board.

## SECTION 6

### ASSESSMENTS

6.1 General. Assessments shall be determined and assessed against the Lots by the Board, in its discretion; subject to the requirements and procedures set forth in this Section 6, and the requirements of the Bylaws. Assessments shall include annual Assessments under Section 6.2, and may include special Assessments under Section 6.3 and limited Assessments under Section 6.4. Annual and special Assessments shall be allocated among the Lots equally, in accordance with the allocation formula set forth in Section 4.2. Limited Assessments under Section 6.4 shall be allocated to Lots as set forth in that Section.

6.2 Annual Assessments. Annual Assessments shall be established and levied by the Board, subject to the limitations set forth hereafter. Each annual Assessment shall cover all of the anticipated Common Expenses of the Association for that year which are to be shared equally by all Lots in accordance with the allocation set forth in Section 4.2. Annual Assessments shall be payable in equal monthly or quarterly installments, as determined by the Board. Annual Assessments shall provide, among other things, for an adequate reserve fund for the maintenance, repair and replacement of the Common Property and those parts of the Lots (if any) for which the Association is responsible.

6.3 Special Assessments. In addition to annual Assessments, and subject to the limitations set forth hereafter, the Board may levy in any Assessment year a special Assessment against all Lots equally in accordance with the allocation formula set forth in Section 4.2. Special Assessments shall be used for the purpose of defraying in whole or in part the cost of any unforeseen and unbudgeted Common Expense.

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

- a. Any Assessment or portion thereof benefiting fewer than all of the Lots, whether for maintenance or otherwise, may be assessed exclusively against the Lot or Lots benefited.



- b. Reasonable attorneys' fees and other costs incurred by the Association in connection with (i) the collection of Assessments and (ii) the enforcement of the Governing Documents, the Act, or the Rules and Regulations, against an Owner or Occupant or their guests, may be assessed against the Owner's Lot.
- c. Late charges, fines and interest may be assessed as provided in Section 14.
- d. Assessments levied to pay a judgment against the Association may be levied only against the Lots existing at the time the judgment was entered, in proportion to their Common Expense liabilities.
- e. If any damage to the Common Property or another Lot is caused by the act or omission of any Owner or Occupant, or their guests, the Association may assess the costs of repairing the damage exclusively against the Owner's Lot to the extent not covered by insurance.
- f. If any Assessment or installment of an Assessment becomes more than thirty (30) days past due, then the Association may, upon ten (10) days written notice to the Owner, declare the entire amount of the Assessment immediately due and payable in full.

Assessments levied under Sections 6.4 a. through f. may, at the Board's discretion, be assessed as a part of, or in addition to, other Assessments levied under Section 6.

6.5 Liability of Owners for Assessments; Developer's Exemption. The obligation of an Owner to pay Assessments shall commence at the later of (i) the time at which the Owner acquires title to the Lot, or (ii) the due date of the first Assessment levied by the Board against the Lot, subject to the following qualifications:

- a. Neither Developer, nor any unsold Lot owned by Developer, shall be subject to or liable for any Assessment or Assessment lien until a certificate of occupancy has been issued with respect to the Dwelling on such Lot by the municipality in which the Property is located.
- b. The Owner at the time an Assessment is payable with respect to the Lot shall be personally liable for the share of the Common Expenses assessed against such Lot. Such liability shall be joint and several where there are multiple Owners of the Lot. The liability is absolute and unconditional.
- c. No Owner is exempt from liability for payment of Assessments by right of set-off, by waiver of use or enjoyment of any part of the Property, by absence from or abandonment of the Lot, by the waiver of any other rights, or by reason of any claim against the Association or its officers, directors or agents, or for their failure to fulfill any duties under the Governing Documents or the Act.

6.6 Assessment Lien. The Association has a lien on a Lot for any Assessment levied against that Lot from the time the Assessment becomes due. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment thereof becomes due. Fees, charges, late charges, fines and interest charges imposed by the Association pursuant to the Governing Documents are liens, and are enforceable as Assessments, under this Section 6. Recording of the Declaration constitutes record notice and perfection of any lien under this Section 6, and no further recording of any notice of or claim for the lien is required. The release of the lien shall not release the Owner from personal liability unless agreed to in writing by the Association.

6.7 Foreclosure of Lien; Remedies. A lien for Assessments may be foreclosed against a Lot under the laws of the state of Minnesota (i) by action, or (ii) by advertisement in a like manner as a mortgage containing a power of sale. The Association, or its authorized representative, shall have the power to bid in at the foreclosure sale and to acquire, hold, lease, mortgage and convey any Lot so acquired. The Owner and any other Person claiming an interest in the Lot, by the acceptance or assertion of any interest in the Lot, grants to the Association a power of sale and full authority to accomplish the foreclosure. The Association shall, in addition to its other remedies, have the right to pursue any other remedy at law or in equity against the Owner who fails to pay any Assessment or charge against the Lot.

6.8 Lien Priority; Foreclosure. A lien for Assessments is prior to all other liens and encumbrances on a Lot except (i) liens and encumbrances recorded before the Declaration, (ii) any first mortgage on the Lot, and (iii) liens for real estate taxes and other governmental Assessments or charges against the Lot.

6.9 Voluntary Conveyances; Statement of Assessments. In a voluntary conveyance of a Lot 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 Lot 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 Lot until released. 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 Lot, including all Assessments payable in the Association's current fiscal year, which statement shall be binding on the Association, seller and buyer.

## SECTION 7

### RESTRICTIONS ON USE OF PROPERTY

All Owners and Occupants, and all secured parties, by their acceptance or assertion of an interest in the Property, or by their occupancy of a Lot, covenant and agree that, in addition to any other restrictions which may be imposed by the Governing Documents, governmental approvals, laws, ordinances, regulations, and easements, the occupancy, use, operation, alienation and conveyance of the Property shall be subject to the following restrictions:

7.1 General. The Property shall be owned, conveyed, encumbered, leased, used and occupied subject to the Governing Documents, as amended from time to time. All covenants, restrictions and obligations set forth in the Governing Documents are in furtherance of a plan for the

Property, and shall run with the Property and be a burden and benefit to all Owners and Occupants and to any other Person acquiring or owning an interest in the Property, their heirs, personal representatives, successors and assigns.

7.2 Subdivision Prohibited. Except as permitted by the Governing Documents, no Lot nor any part of the Common Property may be subdivided, partitioned or converted to other use without prior approval by the Owners at an Association meeting, any governmental authorities having jurisdiction over the Property and any secured parties holding first mortgages on any Lots affected.

7.3 Residential Use. The Lots shall be used by Owners and Occupants and their guests exclusively as private, single family residential Lots. No Dwelling shall be used for hotel, commercial, business or other non-residential purposes, except as provided in Section 7.4. Any lease of a Lot (except for occupancy by guests with the consent of the Owner) which includes services customarily furnished to hotel or motel guests, shall be presumed to be for transient purposes.

7.4 Business and Agricultural Use Restricted. No business, trade, occupation or profession of any kind, whether carried on for profit or otherwise, shall be conducted, maintained or permitted in any Lot or the Common Property, including any agricultural use thereof, except:

- a. An Owner or Occupant permanently residing in a Dwelling may maintain a home occupation in the Dwelling and handle matters relating to such home occupation by telephone or correspondence therefrom; provided, that such uses (i) are incidental to the residential use; (ii) do not involve physical alteration of the Dwelling visible from the exterior; (iii) are in compliance with all governmental laws, ordinances and regulations; and (iv) do not involve any observable business activity such as signs, advertising displays, or regular deliveries, pedestrian traffic or vehicular traffic to and from the Lot by customers or employees.
- b. The Association may maintain offices on the Lots for management and related purposes within one model single family residential Dwelling on a Lot for no more than two years after the date of completion of construction prior to conversion to single-family residential use.
- c. Developer may maintain sales offices and related facilities on the Lots in connection with the exercise of its Developer Rights in compliance with the DNR approval and all governmental laws, ordinances and regulations.

7.5 Leasing. Leasing of Dwellings shall be allowed, subject to reasonable regulation by the Association, and subject to the following conditions: (i) that no Dwelling shall be leased for hotel or other transient dwelling purposes, (ii) that no Dwelling may provide that the lease is subleased, and (iii) that all leases shall be subject to the Governing Documents, and the Rules and Regulations, and that any failure of the 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 reasonable procedures for the leasing of Dwellings, consistent with this Section.

7.6 Parking. Garages and parking areas on the Property shall be used only for parking of vehicles owned or leased by Owners and Occupants and their guests, and such other incidental uses as may be authorized in writing by the Association. Garages shall not be converted to other uses or used for storage or other purposes which would prevent the parking of a full-sized motor vehicle in each garage stall. The use of roads and parking areas on the Property, and the types of vehicles and personal property permitted thereon, shall be subject to regulation by the Association. No parking shall be allowed in areas that are not designated for parking by the Association and in accordance with the plans for the Property.

7.7 Traffic Regulations. The roads located on the Property are not required to be patrolled by state or local authorities; however, vehicular traffic on the Property shall be subject to all local, county and state traffic and regulations. The Association has authority to promulgate, administer, and enforce reasonable Rules and Regulations governing vehicular and pedestrian traffic on the Property; provided that such Rules and Regulations (i) shall not violate any governmental laws, ordinances or regulations, and (ii) shall not conflict with the Declaration of Easements described in Section 2.7. The Association shall be entitled to enforce the Rules and Regulations by such procedures as it deems appropriate, including levying fines and towing. Only persons properly licensed by a local, state or federal government may operate any type of motor vehicle, including without limitation automobiles, trucks, snowmobiles, all-terrain vehicles and watercraft. All vehicles operated on the Property shall be operated in a careful, prudent, and safe manner and with due consideration for the rights of all Owners and Occupants.

7.8 Animals. No animals may be bred, or kept or maintained for business or commercial purposes, anywhere on the Property. Animals may be kept only as pets, shall be kept within the Owner's Dwelling and shall be limited to common domestic house pets such as dogs, cats, fish, birds and the like. Subject to the previous qualifications, the Board shall have the exclusive authority to prohibit, or to allow and regulate, by Rules and Regulations, the keeping of animals on the Property.

7.9 Quiet Enjoyment; Interference Prohibited. All Owners and Occupants and their guests shall have a right of quiet enjoyment in their respective Lots. The Property shall be occupied and used in such a manner as will not cause a nuisance, nor unduly restrict, interfere with or impede the use and quiet enjoyment of the Property by other Owners and Occupants and their guests

7.10 Compliance with Law; Liability. No use shall be made of the Property which would violate any then existing municipal codes or ordinances, DNR approvals, or state or federal laws, nor shall any act or use be permitted which could cause waste to the Property, cause a material increase in insurance rates on the Property, or otherwise cause any unusual liability, health or safety risk, or expense, for the Association or any Owner or Occupant. Accordingly, the Association shall have the exclusive right and authority to manage and control all activities which present such risks and liabilities, and all Owners, Occupants and other users of the Property shall be required to adhere to the Rules and Regulations promulgated by the Association with respect thereto.

7.11 Alterations. Except for those made by Developer in consideration of its initial sale of a Lot and except for restrictions on use and procedures relating to the PPOS contained in Section 8 of this Declaration, no Improvements shall be made, or caused or allowed to be made, in any part of the Common Property, or on any part of the Lot which affects the Common Property or another Lot or

which is visible from outside the Lot, without the prior written authorization of the Board, or a committee appointed by it, as provided in Sections 7.12, 7.13, 8 and 9.

7.12 Storm Water Management, Trees and Vegetation. Except as provided in this Section, storm water management, vegetation and trees as described herein, shown on the governmentally approved plans for the Property or existing as of the date of governmental approvals shall be maintained (i) in compliance with all statutes, requirements, rules and regulations and approvals imposed on such areas by the DNR and any governmental authorities having jurisdiction thereover, (ii) subject to the prior approval of any such governmental authorities, if required, with respect to any changes regulated by such authorities, and (iii) subject to the applicable restrictions, if any, on use of the PPOS contained in Section 8 of this Declaration. It is the intention that such areas remain and be maintained in substantially their condition as of the date of completion of construction of the Dwellings in accordance with governmental approvals, and subject to natural changes.

There shall be no removal, cutting or topping of trees or shrubs permitted outside of the areas designated for removal on governmentally approved plans for the Property or on slopes 13 percent or greater or within the Bluff Line Setback area, unless such action is needed to cure or prevent a vegetative disease. Within one year, each tree removed shall be replanted with a native tree or shrub of similar size (at maturity) and species as the removed tree or with other native trees appropriate for the setting and site. Removal of invasive, exotic vegetative species in coordination with erosion control is also allowed. Construction fences shall be installed and maintained until after final grading at least 5 feet beyond the crown or drip line of all trees not shown in areas designated for removal on governmentally approved plans for the Property.

Except for governmentally approved grading, storm water management, and initial construction of the Dwellings, any portion of the natural path of storm water runoff that will cross the Lots must be maintained and not restricted in accordance with best management practices for runoff, erosion, and sedimentation.

7.13 Bluff Line Setback. No structure of any type shall be placed, erected or maintained in the Bluff Line Setback area or on slopes of 13 percent or greater. Grading, disturbances and storage of equipment, materials and earth shall be the minimal amount needed for construction and compliant with the conditions of DNR and local approvals, and shall not encroach into the Bluff Line Setback area or on slopes of 13 percent or greater. No utilities involving land alterations shall be placed on the Bluff Line Setback area or on slopes of 13 percent or greater. Construction and silt fences shall be placed no closer than 20 feet from the Bluff Line in accordance with DNR and local approvals and shall be placed prior to any grading, alteration, construction or disturbance. Seeding shall use best management practices in accordance with approvals and native species in accordance with appropriate types listed in MN/DOT Seeding Manual dated 2000 as amended. No sod is permitted within 20 feet of the Bluff Line.

7.14 Restrictions on Buildings and Improvements. The following restrictions shall apply to all construction methods and means relating to any homes, buildings, utilities and other improvements now or hereafter located on the Lots:

- a. All buildings, building envelopes, and other structures shall be staked prior to commencement of construction.

- b. The maximum total height of all structures shall be 35 feet.
- c. The maximum surface area of each Lot that is impervious to water penetration shall be 30 percent of the total area of the Lot.
- d. Storage of equipment, materials and earth during construction of new houses shall be in accordance with best management practices for erosion and sedimentation control; shall be the minimal amount needed for construction and compliant with all conditions of DNR and local approvals; and shall not encroach on slopes of 13% or greater or into the 30 foot Bluff Line Setback.
- e. Electrical, telephone and other utilities must be buried if feasible. Whether buried or overhead, easements and the siting of utilities should follow open corridors and areas so that no new corridors are cut or trenched over areas of existing trees or shrubs.
- f. Buildings shall only be constructed within building envelope areas designated by the Association and as depicted on the plans for the Property and in accordance with DNR and local approvals and the Guidelines.

7.15 Time Shares Prohibited. The time share form of ownership, or any comparable form of ownership interest, occupancy rights or ownership which has the effect of dividing the ownership or occupancy of a Lot or Dwelling into separate time periods, is prohibited.

7.16 Access to Lots. In case of emergency, the Common Property and all Lots are subject to entry, without notice and at any time, by an officer or member of the Board, by the Association's management agents or by any police and other public safety personnel. Entry is also authorized for maintenance purposes and for enforcement purposes, as provided elsewhere in this Declaration.

## SECTION 8

### PERMANENTLY PRESERVED OPEN SPACE

8.1 Use of PPOS. The PPOS as defined in this Declaration shall be preserved predominately in its natural condition as natural open space and for the permanent protection of existing natural resources. It is the intention to maintain the PPOS in substantially the condition it is in as of the date of governmental approvals, subject only to natural changes and the provisions of the approvals and this Declaration. No alterations, improvements or uses of the PPOS shall be allowed except in accordance with the terms of this Declaration. The following uses and procedures are for the conservation and preservation of the terrain and to protect the PPOS from certain destructive uses thereon. Therefore, for the purposes stated above the PPOS shall be subject to the following provisions:

- a. Permitted Uses. The following uses shall be allowed without prior approval of the DNR: passive recreational uses, including use of designated trails, if any, hiking, picnicking, bird and wildlife watching.

- b. Pre-approved Uses. The Association is allowed certain uses of the PPOS by prior approval of the DNR and the City of Cannon Falls subject to the terms and conditions of such approvals, including maintenance obligations, as follows:
- i. Storm water management, including maintenance and repair of storm water management features.
  - ii. Erosion control.
  - iii. Pre-approved grading.
  - iv. Pre-approved water and sewer facilities.
  - v. Removal, cutting or topping of trees or shrubs in accordance with the provisions of Section 7.12 of this Declaration.
  - vi. Removal of invasive, exotic vegetative species on lists approved by the DNR in coordination with erosion control in accordance with the provisions of Section 7.12 of this Declaration.
  - vii. Pre-approved utilities.
  - viii. Construction and maintenance of future trails in accordance with DNR approvals.
  - ix. Storage of equipment, materials and earth for initial construction as approved by the DNR.
- c. Uses permitted with DNR approval. The Association may be allowed certain uses of the PPOS after first obtaining the approval of the DNR. The Board of Directors of the Association shall, in its sole discretion, decide whether or not to seek such approval. In the event that the Board of Directors decides to seek such approval, the Board, by resolution, shall authorize the officers of the Association to take such action as may be necessary in order to obtain approval from the DNR, including providing the DNR with such plans and specifications as the DNR may deem necessary to review and approve or disapprove such usage. No alterations, improvements or uses shall be allowed or shall be commenced prior to obtaining such approval from the DNR. Such alterations, improvements or uses shall include the following:
- i. Vegetative destruction, removal, cutting, trimming, topping, alterations, planting, landscaping, seeding except as allowed under Section 8.1(b).
  - ii. Topographic alterations, including grading, filling, excavating, dredging, draining, movement or removal of soil or other topographic features, except as allowed in Section 8.1(b).

- iii. Recreational structures on slopes less than 13%, such as benches, picnic table, and canoe docking, launching and storage.
  - iv. Structures for access.
  - v. Utilities, except as allowed under Section 8.1(b).
  - vi. Impervious surfaces such as asphalt, concrete and pavers.
  - vii. Fences.
  - viii. No trespassing or interpretive signs.
  - ix. Any other uses, alterations or improvements.
- d. Prohibited uses. The following uses of the PPOS are prohibited:
- i. Structures of any type, temporary or permanent, on slopes of 13% or greater except structures for access approved under Section 8.1(c).
  - ii. Non-recreational structures, temporary or permanent.
  - iii. Buildings, permanent or mobile, within the Scenic Easement Area described in Section 8.2.
  - iv. Motorized and powered vehicles, includes autos, trucks, snowmobiles and all terrain vehicles, or mountain bikes except for maintenance equipment and motorized wheelchairs or other devices of a similar type for the purpose of transporting handicapped persons.
  - v. Parking.
  - vi. Signs, sale displays, decorations, sales offices and facilities, management offices, rental facilities and agricultural uses, except as allowed under Section 8.1(c).
  - vii. Storage of equipment, supplies or material, except as allowed under Section 8.1(b).
  - viii. Removal, alteration or damage to threatened or endangered species as defined by statute or regulation.
  - ix. Trash, rubbish, waste, pollutants, hazardous materials, or sanitary landfills.
  - x. Hunting, discharge or carrying of firearms, air guns and other devices designed to fire a potentially lethal projectile.



8.2 Easement. A portion of Outlot F is subject to a Scenic Easement in favor of the DNR dated December 17, 1987 and filed December 24, 1987 as Document No. 317687 in the office of the Goodhue County Registrar of Titles (the "Scenic Easement Area"). In addition to those restrictions on the use of the PPOS contained in Section 8.1, the conveyance of any other easement within the Scenic Easement Area for any purpose, including, but not limited to road or utility easements, is prohibited without the written authorization of the DNR.

8.3 Maintenance. The Association shall maintain the PPOS at its expense as provided in the Governing Documents. The Association shall have a right of access to perform such duties. The Association shall be entitled to enforce all restrictions on use of the PPOS area in accordance with Section 14 of the Declaration. Any costs and expenses of such enforcement, including attorneys' fees and costs, shall be assessed against the responsible Owner in accordance with Section 6 of this Declaration.

8.4 Ownership of Improvements. All Improvements approved by the DNR shall become the property of the Association upon installation, and the responsibility of the Association for maintenance, repair and replacement. The Association may, at its discretion, choose to remove and not replace any Improvement in the Common Property, subject to the approval of the DNR.

8.5 DNR Inspection. The DNR shall have the right to enter upon the PPOS for the purpose of inspection and enforcement of the terms of the covenants contained herein.

## SECTION 9

### ARCHITECTURAL STANDARDS

9.1 Restrictions on Improvements. One of the purposes of this Declaration is to ensure that those parts of the Lots and Dwellings which are visible from outside the Lot be kept architecturally attractive in appearance. Therefore, except as set forth in Section 9.5, the following restrictions and requirements shall apply to all Improvements to the Lots:

- a. Except as expressly provided in this Section 9, no Improvements shall be commenced, erected or maintained on the Lots, unless and until the plans and specifications showing the nature, kind, shape, height, color, materials and locations of the Improvements shall have been approved in writing by an architectural committee appointed by the Board.
- b. The Board shall appoint and supervise the architectural committee, and specifically delegate to it the functions exercised under this Section 9; provided, that Developer shall be entitled to appoint the members of the architectural committee until Developer no longer owns an unsold Lot for sale to the public. Thereafter, the entire architectural committee shall be appointed by the Board, and a majority of its members shall be Owners. The architectural committee shall have three or five members. The architectural committee's decisions pursuant to this Section 9 shall be subject to Developer's written approval until such time as Developer no longer owns an unsold Lot for sale to the public. Notwithstanding the foregoing, the Board may elect to act as

the architectural committee, and in such case all references in this Section to the architectural committee shall refer to the Board.

- c. The architectural committee may establish criteria for approval of Improvements under its jurisdiction; provided that the following minimum criteria shall apply:
- (1) The exterior design criteria for Dwellings initially constructed on the Lots shall be determined by Developer.
  - (2) All approved additions to Dwellings shall substantially maintain the same original style and design characteristics of the Dwelling. Comparable or better quality materials shall be used in additions to Dwellings.
  - (3) No temporary structures nor any "manufactured home" as defined in Minnesota Statutes Section 327B.01, Subd. 13 shall be permitted.
  - (4) All Dwellings shall be constructed on industry standard concrete foundations, with foundation walls of concrete block or poured concrete.
  - (5) At a minimum, a double attached or detached garage shall be included with each Dwelling.
  - (6) There shall be adequate protection of the Property, the Association, Owners and Occupants from liability and liens arising out of the construction of the Improvements.
  - (7) There shall be substantial preservation of other Owners' sight lines, if material.
  - (8) There shall be compliance with governmental laws, codes, approvals and regulations.
  - (9) Only one Dwelling (including the attached or detached garage) shall be constructed on each Lot.
  - (10) There shall be compliance with the Guidelines now or hereafter established or amended by Declarant, its successors or assigns, with the approval of the City of Cannon Falls.

Except as otherwise provided in this Section 9, the architectural committee shall be the sole judge of whether the criteria are satisfied; provided, that the Board may reverse or modify any decision of the architectural committee which the Board determines to be in violation of the Governing Documents or any law, or which it determines to be unreasonable or unfair based upon neutral principles uniformly applied. In case the terms of this Declaration regarding minimum criteria conflict with any applicable governmental approval, law or regulation, then, to the extent inconsistent, the governmental approval, law or regulation shall supersede the terms of this Declaration.

- d. Approval of Improvements which encroach upon another Lot shall create an appurtenant easement for such encroachment in favor of the Lot with respect to which the Improvements are approved, notwithstanding any contrary requirement in the Governing Documents. A file of the resolutions approving all Improvements shall be maintained permanently as a part of the Association's records.

9.2 Review Procedures. The following procedures shall govern requests for Improvements under this Section:

- a. Detailed plans, specifications and related information regarding any proposed Improvements, in form and content acceptable to the architectural committee, shall be submitted to the architectural committee at least sixty (60) days prior to the projected commencement of construction. No Improvements shall be commenced prior to approval.
- b. The architectural committee shall give the Owner written notice of approval. If the architectural committee fails to approve or disapprove within sixty (60) days after receipt of said plans and specifications and all other information requested by the architectural committee, then approval shall be deemed to be granted; provided that the Improvements are done in accordance with the plans, specifications and related information which were submitted.
- c. If no request for approval is submitted, approval shall be deemed to be denied.

9.3 Remedies for Violations. The Association, or Developer so long as it owns an unsold Lot for sale, 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 all attorneys' fees and costs of enforcement incurred by it, whether or not a legal action is started. Such attorneys' fees and costs shall be a lien against the Owner's Lot and a personal obligation of the Owner. In addition, the Association shall have the right to enter the Owner's Lot and to restore any part of the Dwelling or Lot to its prior condition if any Improvements were made in violation of this Section, and the cost of such restoration shall be a personal obligation of the Owner and a lien against the Owner's Lot.

9.4 Hold Harmless. Any Person who makes application for or causes Improvements to be made, regardless of whether the Improvements are approved by the architectural committee, shall be solely responsible for the construction standards and specifications relating to the Improvements, and the construction work. That Person shall be solely responsible for determining whether the Improvements are in violation of any restrictions imposed by any governmental authority having jurisdiction over the Property. That Person shall hold the Association and Developer harmless and indemnify them, and their officers and directors, from and against any expenses, claims, damages, losses or other liabilities, including without limitation attorneys' fees and costs of litigation, arising out of (i) any Improvements which violate any governmental approvals, laws, codes, ordinances or regulations, (ii) the adequacy of the specifications for construction of the Improvements, and (iii) the construction of the Improvements.

9.5 Exemptions. The requirements set forth in this Section 9 (except Subsection 9.4) shall not apply to the following antenna installed on a Lot, as permitted by applicable federal law: (i) one antenna one meter or less in diameter for the purpose of receiving direct broadcast/satellite service or video programming services, or (ii) any antenna for receiving television broadcast signals. The architectural committee may require that the antenna be installed so as to minimize its visibility, unless such requirements would (i) unreasonably delay installation, (ii) unreasonably increase the cost of installation, maintenance or use of the antenna, or (iii) preclude reception of an acceptable quality signal. The architectural committee shall have authority to impose further, reasonable requirements consistent with law, including without limitation the right to limit the height of antenna masts.

## SECTION 10

### MAINTENANCE

10.1 Maintenance by Association. The Association shall provide for all maintenance, repair or replacement (collectively referred to as "maintenance") of the Common Property, including all roads, trails, playgrounds, storm water management features and other improvements thereon, and snow removal services on all roads located on the Common Property. The Association agrees that its obligation for perpetual maintenance of Outlot D exists notwithstanding that drainage and utility easements over said Outlot and the storm water pipes, conduits, culverts, ditches and appurtenances thereto may be dedicated to the City of Cannon Falls on the Plat or in a Development Contract between the City and the Developer. The Association shall have easements as described in Section 13 to perform its obligations under this Section. The Association shall not, and has no obligation to, maintain any Building containing a Dwelling located on the Property. Outlot D shall be perpetually maintained as designed by and at the expense of the Association, in accordance with the standards of the City's ordinances or the approvals of the DNR, whichever is most restrictive.

10.2 Optional Maintenance by Association. The Association may, with the approval of the Board and a majority of votes cast by the Owners in person or by proxy at a meeting called for such purposes, provide lawn maintenance on the Lots, snow removal from driveways located on the Lots or maintenance of water and sewer systems on the Lots (but not exterior maintenance to the Dwellings).

10.3 Maintenance by Owner. Except for the maintenance required to be provided by the Association under Section 10.1 or 10.2, all maintenance of the Dwellings and Lots shall be the sole responsibility and expense of the Owners thereof. However, the Owners and Occupants shall have a duty to promptly notify the Association of defects in or damage to those parts of the Property which the Association is obligated to maintain. The Association may require that any exterior maintenance on a Lot to be performed by the Owner be accomplished pursuant to uniform criteria established by the Association. The Association may also undertake any exterior maintenance which the responsible Owner fails to or improperly performs, and charge the Owner and assess the Lot for the cost thereof. Such cost shall be a personal obligation of the Owner and a lien against the Owner's Lot.

10.4 Damage Caused by Owner. Notwithstanding any provision to the contrary in this Section, if, in the judgment of the Association, the need for maintenance of any part of the Property is caused by the willful or negligent act or omission of an Owner or Occupant, or their guests, or by a

condition in a Lot which the Owner or Occupant has willfully or negligently allowed to exist, the Association may cause such damage or condition to be repaired or corrected (and enter the yard area of any Lot to do so); provided, that the Association may do so only after the expiration of 30 days following written notice to the Owner or Occupant of the Lot. The costs of such work by the Association may be charged and assessed against the Lot of the Owner responsible for the damage. Such costs shall be a personal obligation of the Owner and a lien against the Owner's Lot.

## SECTION 11

### INSURANCE

11.1 Required Coverage. The Association shall obtain and maintain, at a minimum, a policy or policies of insurance in accordance with the insurance requirements set forth herein, issued by a reputable insurance company or companies authorized to do business in the state of Minnesota, as follows:

- a. Property insurance in broad form covering all risks of physical loss in an amount equal to one hundred percent (100%) of the insurable "replacement cost" of the Improvements to the Common Property, less deductibles, exclusive of land and other items normally excluded from coverage. The policy or policies shall also cover personal property owned by the Association. The policy or policies shall include such endorsements, coverages and limits as may be necessary to cover those unique risks and liabilities generated by the residential or recreational related activities on the Common Property. The policy or policies shall also contain "Inflation Guard" and "Agreed Amount" endorsements, if reasonably available. The Association may also enter into binding written agreements with a mortgagee, insurer or loan servicer obligating the Association to keep certain specified coverages or endorsements in effect.
- b. Comprehensive public liability insurance covering the use, operation and maintenance of the Common Property, with minimum limits of one million dollars (\$1,000,000) per occurrence, against claims for death, bodily injury and property damage, and such other risks as are customarily covered by such policies for projects similar in construction, location and use to the Property. The policy or policies shall include such endorsements, coverages and limits as may be necessary to cover those unique risks and liabilities generated by the residential and recreational related activities on the Common Property. The policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner or Occupant because of negligent acts of the Association or other Owners or Occupants.
- c. Insurance coverage against dishonest acts on the part of directors, officers, managers, trustees, employees or other persons responsible for handling funds belonging to or administered by the Association, if deemed to be advisable by the Board or required as a precondition to the purchase or financing of a mortgage on a Lot. The fidelity bond or insurance shall name the Association as the named insured.
- d. Workers' Compensation insurance as required by law.

- e. Directors and officers liability insurance with such reasonable limits and coverages as the Board shall determine from time to time.
- f. Such other insurance as the Board may determine from time to time to be in the best interests of the Association and the Owners.

11.2 Premiums; Improvements Deductibles. All insurance premiums shall be assessed and paid as annual Assessments, and allocated among the Lots as determined by the Board consistent with the Governing Documents. The insurance need not cover the Dwellings, but if the Dwellings are covered, any cost may be assessed against the Lots affected. The Association may, in the case of a claim for damage to insured Improvements on a Lot, (i) pay the deductible amount as a Common Expense, (ii) assess the deductible amount against the Lots affected in any reasonable manner, or (iii) require the Owners of the Lots affected to pay the deductible amount directly.

11.3 Loss Payee; Insurance Trustee. All insurance coverage maintained by the Association shall be written in the name of, and the proceeds thereof shall be payable to, the Association (or a qualified insurance trustee selected by it) as trustee for the benefit of the Owners and secured parties which suffer loss. The Association, or any insurance trustee selected by it, shall have exclusive authority to negotiate, settle and collect upon any claims or losses under any insurance policy maintained by the Association.

11.4 Required Policy Provisions. All policies of property insurance carried by the Association shall contain the following provisions or endorsements, if reasonably available:

- a. Each Owner and secured party is an insured Person under the policy with respect to liability arising out of the Owner's interest in the Common Property or membership in the Association.
- b. The insurer waives its right to subrogation under the policy against any Owner or member of the Owner's household and against the Association and members of the Board.
- c. The coverage shall not be voided by or conditioned upon (i) any act or omission of an Owner, unless acting within the scope of authority on behalf of the Association, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.
- d. If at the time of a loss under the policy there is other insurance in the name of an Owner covering the same property covered by the policy, the Owner's policy is the primary insurance.

11.5 Cancellation; Notice of Loss. All policies of property insurance and comprehensive liability insurance maintained by the Association shall provide that the policies shall not be canceled or substantially modified, for any reason, without at least thirty (30) days prior written notice to the Association, and all insureds.

11.6 Restoration in Lieu of Cash Settlement. All policies of property insurance maintained by the Association shall provide that, despite any provisions giving the insurer the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable (i) without the prior written approval of the Association (or any Insurance Trustee) or (ii) when in conflict with provisions of any insurance trust agreement to which the Association may be a party, or any requirement of law.

11.7 No Contribution. All policies of insurance maintained by the Association shall be the primary insurance where there is other insurance in the name of the Owner covering the same property, and may not be brought into contribution with any insurance purchased by Owners.

11.8 Owner's Personal Insurance. Unless such insurance is approved and carried by the Association, each Owner shall obtain personal insurance coverage at his or her own expense covering fire and other casualty to the Owner's Dwelling, personal property insurance and public liability insurance covering the Owner's Lot.

## SECTION 12

### RECONSTRUCTION, CONDEMNATION AND EMINENT DOMAIN

12.1 Reconstruction. In the event of a casualty the damaged Improvements shall be promptly rebuilt and restored. All repair and reconstruction shall be substantially in accordance with the plans and specifications of the Improvements as initially constructed and subsequently improved.

12.2 Condemnation and Eminent Domain. In the event of a taking of any part of the Common Property by condemnation or eminent domain, (i) notice shall be given by the Association to all Owners and the DNR, (ii) the Association shall be the attorney-in-fact to represent the Owners in any related proceedings, negotiations, settlements or agreements and (iii) any awards or proceeds shall be payable to the Association to hold and distribute for the benefit of the Owners.

12.3 Notice. The Association shall promptly give written notice of any condemnation proceedings or substantial destruction of the Property to all Owners and the DNR.

## SECTION 13

### EASEMENTS

13.1 Easement for Maintenance, Repair, Replacement and Reconstruction. Each Lot, 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 Lots for the purposes of maintenance, repair, replacement and reconstruction of utilities and other common infrastructure Improvements serving more than one Lot, to the extent necessary to fulfill the Association's obligations under the Governing Documents.

13.2 Utility Easements. The Property shall be subject to reasonable non-exclusive, appurtenant easements in favor of all public utility companies and other utility providers for the

installation, use, maintenance, repair and replacement of all utilities, such as natural gas, electricity, cable TV and other electronic communications, water, sewer, irrigation systems, and similar services, and metering and control devices, which exist or are constructed as part of the development of the Property, or which are referred to in the Plat or otherwise described in this Declaration or any other duly recorded instrument. Each Lot, and the rights of the Owners and Occupants thereof, shall also be subject to a non-exclusive, appurtenant easement in favor of the other Lots for all such utilities and services; provided, that the utilities and services shall be installed, used, maintained and repaired so as not to interfere with the use and quiet enjoyment of the Lots by the Owners and Occupants, nor affect any Improvements located on the Lots.

13.3 Emergency Access to Lots. In case of emergency, all Lots and Common Property are subject to a reasonable easement for access, without notice and at any time, by an officer or member of the Board, by the Association's management agents, or by any police, fire or other public safety personnel. The Association and any Owner whose Lot is involved in the emergency access event shall hold the city of Cannon Falls, and the public safety personnel, managers or Board members who enter the Property harmless from any claims arising out of such entry.

13.4 Project Sign Easements. Developer shall have the right to erect monument signs identifying the project and related decorative improvements on Outlot A and Outlot B of the Common Property. Those parts of the Property on which monument signs or related decorative improvements are located shall be subject to appurtenant, exclusive easements in favor of the Association, and Developer while it owns any unsold Lot, for the continuing use, maintenance, repair and replacement of said signs and Improvements. In exercising their rights under said easements, the Association and Developer shall take reasonable care to avoid damaging the Property.

13.5 Trail Easement. Outlot A and Outlot B of the Common Property shall be subject to a certain roadway and trail easements as more fully described in a separate, recorded Declaration of Easement (Trail and Roadway) describing said easement.

## SECTION 14

### COMPLIANCE AND REMEDIES

Each Owner and Occupant, and any other Person owning or acquiring any interest in the Property, shall be governed by and comply with the provisions of the Act, governmental approvals, laws, codes, ordinances, regulations, the Governing Documents, the Rules and Regulations, and such amendments thereto as may be made from time to time, and the decisions of the Association. A failure to comply shall entitle the Association to the relief set forth in this Section, in addition to the rights and remedies authorized elsewhere by the Governing Documents or by law.

14.1 Entitlement to Relief. Legal relief may be sought by the Association against any Owner, or by an Owner against the Association or another Owner, to enforce compliance with the Governing Documents, the Rules and Regulations, the Act or the decisions of the Association, including violation of any restrictions contained in this Declaration and the Declaration of Easement (Trail and Roadway). However, no Owner may withhold any Assessments payable to the Association,



or take or omit other action in violation of the Governing Documents or the Rules and Regulations, as a measure to enforce such Owner's position, or for any other reason.

14.2 Remedies. In the event of a violation of this Declaration or the Declaration of Easement (Trail and Roadway) or any of the Governing Documents, in addition to any other remedies, expressed or implied, administrative or legal, the Association shall have the right, but not the obligation, to implement any one or more of the following actions against Owners and Occupants and/or their guests, who violate the provisions of the Governing Documents or the Rules and Regulations:

- a. Commence legal action for damages or equitable relief in any court of competent jurisdiction.
- b. Impose late charges of up to the greater of twenty dollars (\$20), or fifteen percent (15%) of the amount past due, for each past due Assessment or installment thereof, and impose interest at the highest rate permitted by law accruing beginning on the first day of the month after the Assessment or installment was due.
- c. In the event of default of more than thirty (30) days in the payment of any Assessment or installment thereof, all remaining installments of Assessments assessed against the Lot owned by the defaulting Owner may be accelerated and shall then be payable in full if all delinquent Assessments or installments thereof, together with all attorneys' fees, costs of collection and late charges, are not paid in full prior to the effective date of the acceleration. Not less than ten (10) days advance written notice of the effective date of the acceleration shall be given to the defaulting Owner.
- d. Impose reasonable fines, penalties or charges for each violation of the Act, the Governing Documents or the Rules and Regulations of the Association.
- e. Suspend the rights of any Owner to vote when the Assessments due with respect to the Owner's Lot are past due, and suspend the rights of any Owner or Occupant and their guests to use any Common Property recreational amenities; provided, that the suspension of use rights shall not apply to those portions of the Common Property providing utilities service and access to the Lot. Such suspensions shall be limited to periods of default by such Owners and Occupants in their obligations under the Governing Documents, and for up to thirty (30) days thereafter, for each violation.
- f. Restore any portions of the Common Property damaged or altered, or allowed to be damaged or altered, by any Owner or Occupant or their guests in violation of the Governing Documents, and to assess the cost of such restoration against the responsible Owners and their Lots.
- g. Enter any Lot in which, or as to which, a violation or breach of the Governing Documents exists which materially affects, or is likely to materially affect in the near future, the health or safety of the other Owners or Occupants, or their guests, or the safety or soundness of any Dwelling or other part of the Property or the property of the

Owners or Occupants, and to summarily abate and remove, at the expense of the offending Owner or Occupant, any structure, thing or condition on the Lot which is causing the violation; provided, that any Improvements which are a part of a Dwelling may be altered or demolished only pursuant to a court order or with the agreement of the Owner.

- h. Foreclose any lien arising under the provisions of the Governing Documents or under law, in the manner provided by the Governing Documents.

14.3 Rights to Hearing. Before the imposition of any of the remedies authorized by Section 14.2 d., e., f. or g., the Board shall, upon written request of the offender, grant to the offender an opportunity for a fair and equitable hearing. The offender shall be given notice of the nature of the violation and the right to a hearing, and at least ten (10) days within which to request a hearing. The hearing shall be scheduled by the Board and held within thirty (30) days of receipt of the hearing request by the Board, and with at least ten (10) days prior written notice to the offender. If the offender fails to timely request a hearing or to appear at the hearing, then the right to a hearing shall be deemed waived and the Board may take such action as it deems appropriate. The decision of the Board and the rules for the conduct of hearings established by the Board shall be final and binding on all parties. The Board's decision shall be delivered in writing to the offender within ten (10) days following the hearing, if not delivered to the offender at the hearing.

14.4 Lien for Charges, Penalties, Etc. Any Assessments, charges, fines, expenses, penalties or interest imposed under this Section shall be a lien against the Lot of the Owner or Occupant against whom the same are imposed and the personal obligation of such Owner in the same manner and with the same priority and effect as Assessments under Section 6. The lien shall attach as of the date of imposition of the remedy, but shall not be final as to violations for which a hearing is held until the Board makes a written decision at or following the hearing. All remedies shall be cumulative, and the exercise of, or failure to exercise, any remedy shall not be deemed a waiver of the Association's right to pursue any others.

14.5 Costs of Proceeding and Attorneys' Fees. With respect to any collection measures, or any measures or action, legal, administrative, or otherwise, which the Association takes to enforce the provisions of the Act, Governing Documents or Rules and Regulations, whether or not finally determined by a court or arbitrator, the Association may assess the violator and his or her Lot with any expenses incurred in connection with such enforcement, including without limitation fines or charges previously imposed by the Association, reasonable attorneys' fees, and interest (at the highest rate allowed by law) on the delinquent amounts owed to the Association. Such expenses shall also include any collection or contingency fees or costs charged to the Association by a collection agency or other Person acting on behalf of the Association in collecting any delinquent amounts owed to the Association by an Owner or Occupant. Such collection or contingency fees or costs shall be the personal obligation of such Owner and shall be a lien against such Owner's Lot.

14.6 Liability for Owners' and Occupants' Acts. An Owner shall be liable for the expense of any maintenance, repair or replacement of the Property rendered necessary by such Owner's acts or omissions, or by that of Occupants or guests in the Owner's Lot, to the extent that such expense is not covered by the proceeds of insurance carried by the Association or such Owner or Occupant.

However, any insurance deductible amount and/or increase in insurance rates, resulting from the Owner's acts or omissions may be assessed against the Owner responsible for the condition and against his or her Lot.

14.7 Enforcement by Owners. The provisions of this Section shall not limit or impair the independent rights of other Owners to enforce the provisions of the Governing Documents, the Rules and Regulations, and the Act as provided therein.

## SECTION 15

### AMENDMENTS

15.1 Approval Requirements. Except for amendments by Developer to add real estate to the Property, this Declaration may be amended only by the approval of:

- a. Owners of Lots to which are allocated at least sixty-seven percent (67%) of the total votes in the Association.
- b. Developer as to certain amendments as provided in Section 15.6.
- c. The Department of Natural Resources, Division of Waters, following the approvals of items a. and b. above.
- d. The City of Cannon Falls, when applicable.

15.2 Procedures. Approval of the Owners may be obtained in writing or at a meeting of the Association duly held in accordance with the Bylaws. Approvals of Developer and DNR shall be in writing. The amendment shall be effective when executed by the necessary parties, including the DNR and recorded. An affidavit by the President or Secretary of the Association as to the outcome of the vote, or the execution of the foregoing agreements or consents, shall be adequate evidence thereof for all purposes, including without limitation, the recording of the amendment.

## SECTION 16

### DEVELOPER RIGHTS

Developer hereby reserves exclusive and unconditional authority to exercise the following rights for as long as it owns a Lot, or for such shorter period as may be specifically indicated:

16.1 Complete Improvements. To complete all the Dwellings and other Improvements included in Developer's development plans or allowed by the Declaration, and to make improvements in the Lots and Common Property to accommodate the exercise of any Developer rights.

16.2 Sales Facilities. To construct, operate and maintain a sales office and management office within one model single family residential Dwelling on a Lot for no more than 2 years prior to

conversion to single-family residential use, and construct, operate and maintain model Lots within any Lots owned by Developer from time to time.

16.3 Signs. To erect and maintain signs and other sales displays offering the Lots for sale or lease, in or on any Lot owned by Developer and on Outlot A and Outlot B of the Common Property.

16.4 Easements. To have and use easements, for itself, its employees, contractors, representatives, agents and prospective purchasers through and over the Common Property and the yard areas of the Lots for the purpose of exercising its rights under this Section.

16.5 Control of Association. To control the operation and administration of the Association, including without limitation the power to appoint and remove the members of the Board, until the earliest of: (i) voluntary surrender of control by Developer, (ii) an Association meeting which shall be held within sixty (60) days after conveyance to Owners other than a Developer of seventy-five percent (75%) of the total number of Lots authorized to be included in the Property or (iii) the date five (5) years following the date of the first conveyance of a Lot to an Owner other than Developer.

16.6 Consent to Certain Amendments. Until such time as Developer no longer owns any unsold Lot for initial sale, Developer's written consent shall be required for any amendment to the Governing Documents or Rules and Regulations which directly or indirectly affects Developer's rights under the Governing Documents.

## SECTION 17

### MISCELLANEOUS

17.1 Severability. If any term, covenant, or provision of this instrument or any exhibit attached hereto is held to be invalid or unenforceable for any reason whatsoever, such determination shall not be deemed to alter, affect or impair in any manner whatsoever any other portion of this Declaration or exhibits attached hereto.

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

17.3 Notices. Unless specifically provided otherwise in the Governing Documents or the Act, all notices required to be given by or to the Association, the Board, the Association officers or the Owners or Occupants shall be in writing and shall be effective upon hand delivery, or mailing if properly addressed with postage prepaid and deposited in the United States mail; except that registrations pursuant to Section 2.2 of the Bylaws shall be effective upon receipt by the Association.

17.4 Conflicts Among Documents. In the event of any conflict among the provisions, the Declaration, the Bylaws or any Rules or Regulations approved by the Association, the Declaration shall control unless it permits the documents to control. As between the Bylaws and Rules and Regulations, the Bylaws shall control. In the event of a conflict between this Declaration and the

Guidelines, this Declaration shall control. In the event of any conflicts between the Governing Documents and applicable laws, ordinances, approvals, and easements, the most restrictive shall control.

17.5 Duration of Covenants. The covenants, conditions, restrictions, easements, liens and charges contained in this Declaration shall be valid for a period of thirty years, and shall automatically renew thereafter for successive renewal periods of ten years each, subject only to termination by court order, or by written agreement of (i) the Owners of eighty percent (80%) of the Lots, (ii) eighty percent (80%) of the holders of first mortgages on the Lots, (iii) Developer so long as Developer owns a Lot; (iv) the DNR; and (v) the City of Cannon Falls, when applicable.

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

**CANNON BLUFFS, L.L.C.**

By: *Linda L. Ingle*  
Title: *President*

STATE OF MINNESOTA )  
                                  ) ss.  
COUNTY OF *HENNEPIN*

*4* The foregoing instrument was acknowledged before me this *22<sup>nd</sup>* day of *October*, 200*7*, by Linda L. Ingle, the President of Cannon Bluffs, L.L.C., a Minnesota limited liability company, on behalf of said entity.



*Julie K Olson*  
Notary Public

This instrument was drafted by:  
Kent W. Speight  
WATSON & SPEIGHT, P.A.  
411 West Third Street  
Red Wing, MN 55066  
(651) 388-8805

Townhouse\Cannon Bluffs I\Declaration

**CANNON BLUFFS II**  
**EXHIBIT A TO**  
**DECLARATION OF**  
**COVENANTS, CONDITIONS AND RESTRICTIONS**

**DESCRIPTION OF PROPERTY**

Lots 1 through 6, Block 1; Lots 1 through 6, Block 2; Lots 1 through 14, Block 3; and Outlots A, B, C, D, E and F, Cannon Bluffs Second Addition, Goodhue County, Minnesota.

**DESCRIPTION OF LOTS**

Lots 1 through 6, Block 1; Lots 1 through 6, Block 2; Lots 1 through 14, Block 3; Cannon Bluffs Second Addition, Goodhue County, Minnesota.

**CANNON BLUFFS II**  
**EXHIBIT B TO**  
**DECLARATION OF**  
**COVENANTS, CONDITIONS AND RESTRICTIONS**

**DESCRIPTION OF COMMON PROPERTY**

Outlots A, B, C, D, E, and F, Cannon Bluffs Second Addition, Goodhue County, Minnesota.

Townhouse\Cannon Bluffs II\Declaration Exhibit B

**CANNON BLUFFS II**

**CONSENT BY MORTGAGEE**

The undersigned (the "Mortgagee"), is the mortgagee of portions of real property described on Exhibit A to the Declaration of Covenants, Conditions and Restrictions of Cannon Bluffs II (the "Declaration") by a Mortgage filed on the 4<sup>th</sup> day of September, 2002, in the office of the Goodhue County Registrar of Titles as Document No. 16549 (the "Mortgage"). Mortgagee hereby consents to this Declaration; provided, that by consenting thereto the Mortgagee does not in any manner constitute itself or obligate itself as the Developer as defined in the Declaration nor does such consent modify or amend the terms and conditions of the Mortgage and other loan documents executed in connection therewith; and provided further that the Mortgage shall be and remain a lien on the property described therein, until released or satisfied.

8<sup>th</sup> IN WITNESS WHEREOF, the Mortgagee has caused this Consent to be executed on the day of December 2004.

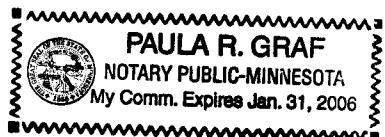
BNC National Bank

By: Nancy G. Madsen  
Its: Vice President

STATE OF MINNESOTA )  
) ss.  
COUNTY OF Hennepin

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of DEC 2004, by Nancy G. Madsen the VP of BNC National Bank, a national bank corporation, on behalf of the corporation.

Paula R. Graf  
Notary Public



This instrument was drafted by:  
**WATSON & SPEIGHT, P.A.**  
411 West Third Street  
Red Wing, MN 55066  
(651) 388-8805





