

HILLARY FARM

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration is made in the County of Ramsey, State of Minnesota, on this ____th day of _____ 2004, by Hillary Farm LLC, a Minnesota limited liability company (the “Declarant”), for the purpose of creating Hillary Farm as a planned community under this Declaration.

WHEREAS, Declarant is the owner of certain real property located in Ramsey County, Minnesota, legally described in Exhibit A hereto and Declarant desires to submit said real property and all improvements thereon (collectively the “Property”) to this Declaration as a planned community; and

WHEREAS, Declarant desires to establish on the Property a plan for a 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 structural quality, and the original architectural character of the Property; and

WHEREAS, Hillary Farm is exempt from the provisions of the Minnesota Common Interest Community Act (the “Act”) pursuant to Minnesota Statutes Section 515B.1-102(e)(2); and

WHEREAS, the Property is not subject to an ordinance referred to in Section 515B.1-106 of the Act, governing conversions to a common interest ownership, but it is subject to an association known as the Hillary Farm Homeowners Association.

THEREFORE, Declarant makes this Declaration and submits the Property to this Declaration as a planned community under the name “Hillary Farm” consisting of the Lots referred to in Section 2, declaring that this Declaration shall constitute covenants to run with the Property, and that the Property shall be owned, used, occupied and conveyed subject to the covenants, restrictions, easements, charges and liens set forth herein, all of which shall be binding upon all Persons owning 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 “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.

1.2 “Association” shall mean the Hillary Farm Homeowners Association, a nonprofit corporation which has been created pursuant to Chapter 317A of the laws of the state of Minnesota whose members consist of all Owners.

1.3 “Board” shall mean the Board of Directors of the Association as provided for in the By-Laws.

1.4 “By-Laws” shall mean the By-Laws governing the operation of the Association, as amended from time to time.

1.5 Committee shall mean the Design Review Committee referred to in Section 8.1 a. hereof.

1.6 “Common Elements” shall mean the Project Sign Easement Area, the Road Access Easement Area legally described on Exhibit B attached hereto, the Trail Easement legally described on Exhibit B attached hereto, the Drainage and Utility Easements identified on the plat of Hillary Farm Addition and the Road Island Easement Areas affecting Lots 9, 11, 12, 18, 19 and 20 identified on the Exhibit D attached hereto.

1.7 “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 By-Laws.

1.8 “Dwelling” shall mean a part of 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. The Dwelling includes any garage attached thereto or otherwise included within the boundaries of the Lot on which the Dwelling is located.

1.9 “Eligible Mortgagee” shall mean any Person owning a mortgage on any Lot, which mortgage is first in priority upon foreclosure to all other mortgages that encumber such Lot, and which has requested the Association, in writing, to notify it regarding any proposed action which requires approval by a specified percentage of Eligible Mortgagees.

1.10 “Governing Documents” shall mean this Declaration, the Articles of Incorporation and By-Laws of the Association, as amended from time to time, all of which shall govern the use and operation of the Property.

1.11 “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.

1.12 “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.

1.13 “Occupant” shall mean any person or persons, other than an Owner, in possession of or residing in a Lot.

1.14 “Owner” shall mean a Person who owns a Lot, but excluding contract for deed vendors, mortgagees and other Secured Party as defined herein. The term “Owner” includes, without limitation, contract for deed vendees and holders of a life estate.

1.15 “Person” shall mean a natural individual, corporation, limited liability company, partnership, trustee, or other legal entity capable of holding title to real property.

1.16 “Plat” shall mean the recorded plat depicting the Property and satisfying the requirements of Minnesota Statutes Chapter 505, 508 or 508A, as applicable, including any amended or supplemental Plat recorded from time to time.

1.17 “Planned Community” shall mean the community known as Hillary Farm, situated on the Property and subject to this Declaration.

1.18 “Property” shall mean all of the real property submitted to this Declaration including the Dwellings and all other structures and improvements located thereon.

1.19 “Rules and Regulations” shall mean the Rules and Regulations of the Association as approved from time to time pursuant to Section 5.6.

1.20 “Security Interest” shall mean a perfected interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a mortgagee’s interest in a mortgage, a vendor’s interest in a contract for deed, a lessor’s interest in a lease intended as security, a holder’s interest in a sheriff’s certificate of sale during the period of redemption, an assignee’s interest in an assignment of leases or rents intended as security, a lender’s interest in a cooperative share loan, a pledgee’s interest in the pledge of an ownership interest, or any other interest intended as security for an obligation under a written agreement.

1.21 “Secured Party” shall mean the person owning a Security Interest as defined herein.

SECTION 2

DESCRIPTION OF LOTS, BOUNDARIES AND RELATED EASEMENTS

2.1 Lots. There are twenty-eight (28) Lots. All Lots are restricted exclusively to residential use. Each Lot constitutes a separate parcel of real estate. No additional Lots may be created by the subdivision or conversion of Lots. The Lot identifiers and locations of the Lots are as shown on the Plat, which is incorporated herein by reference, and a schedule of Lots is set forth on Exhibit A attached hereto. The Lot identifier for a Lot shall be its lot and block numbers and the subdivision name.

2.2 Lot Boundaries. The front, rear and side boundaries of each Lot shall be the boundary lines of the platted lot upon which the Dwelling is located or intended to be located as shown on the Plat. The Lots shall have no upper or lower boundaries. Subject to this Section 2 all spaces, walls, and other improvements within the boundaries of a Lot are a part of the Lot.

2.3 Use and Enjoyment Easements. Each Lot shall be the beneficiary of perpetual appurtenant easements for use and enjoyment on, over and across the Road Access Easement and Trail Easement. Each Lot shall be subject to the Road Access Easement as the same is set forth in Section 13.3 and described on Exhibit B hereto. Lots 3 through 15, 18, 20, 21, and 26 through 28 shall be subject to the Trail Easement as the same is set forth in Section 13.4 and described on Exhibit B hereto. The use and enjoyment of the Road Access Easement and the Trail Easement shall be subject to any restrictions authorized by the Governing Documents.

2.4 Utility, Drainage and Maintenance Easements. Each Lot shall be subject to and shall be the beneficiary of perpetual appurtenant easements for all services and utilities, including drainage utilities, servicing the Lots and for maintenance, repair and replacement as described in Section 13 and the location of improvements on each lot shall not interfere with said easements.

2.5 Road Island Easements. Lots 9, 11,12,18,19, 20, 21, 27 and 28 shall be subject to a perpetual easement in gross in favor of the Association for the construction, maintenance and repair of the Road Island Easement Areas described in Section 13.5 and depicted on Exhibit D. Within the Road Island Easement Areas the Association may maintain fences, benches and landscaping. Owners are hereby granted the right to use the benches located in the Road Island Easement Areas but are granted no other rights of use to the Road Island Easement Area.

2.6 Driveway Easement. Lot 26, Lot 1 and Lot 3 (hereinafter referred to as "Encumbered Property") shall be subject to a non-exclusive perpetual appurtenant easement (hereinafter referred to as the "Driveway Easement(s)") in favor of the Benefited Property hereinafter specified for the purpose of providing the Benefited Property from time to time and its owners and their respective invitees with vehicular and pedestrian ingress and egress to and from and between the Road Access Easement and the Benefited Property and the right to construct, maintain and repair the driveway located on the Driveway Easement. For purposes of this Section 2.6, Lots 1 and 25 are the Benefited Property of the Driveway Easement established hereby on Lot 26; Lot 1 is the Benefited Property of the Driveway Easement established hereby on Lot 25; and Lot 2 is the Benefited Property of the Driveway Easement established hereby on Lot 3. The Driveway Easements established hereby shall be non-exclusive; provided, however, the Driveway Easements shall be prior to and superior to any other easement. Any other easement shall be subject and subordinate to, and shall not interfere with, the Driveway Easement without the consent, in writing, of the Owner(s) of the Benefited Property. The Owner(s) of the Benefited Property shall keep the Driveway Easement established herein for the benefit of their Lot neat, orderly in condition and appearance, and in good repair and shall be responsible for snow removal. The cost of maintenance and repair shall be allocated as follows: The Owner of Lot 2 shall be entirely responsible for the cost of maintenance and repair of the

Driveway Easement across Lot 3. If Lot 26 uses the same Driveway Easement established over Lot 26 for access from the Road Easement, the cost of maintenance and repair shall be equally split between the Owners of Lots 1, 25 and 26. If Lot 26 does not use the Driveway Easement for access from the Road Easement, the cost of maintenance and repair shall be equally split between the Owners of Lots 1 and 25. The Driveway Easement shall not be obstructed in any manner but shall be kept open at all times for the free use thereof. Owners of both Encumbered Property and Benefited Property shall comply with all laws, rules, regulations and requirements of public authorities relating in any manner whatsoever to the driveway located on the Encumbered Property.

2.7 Declarant's Easements. Declarant shall have and be the beneficiary of easements for construction and sales activities as described in Section 17.

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

2.9 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. 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.

2.10 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.

2.11 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 ELEMENTS AND OTHER PROPERTY

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

- a. Except as otherwise expressly provided in the Governing Documents, all maintenance, repair, replacement, management and operation of the Common Elements shall be the responsibility of the Association.

- b. Common Expenses for the maintenance, repair, replacement, management and operation of the Common Elements shall be assessed and collected from the Owners in accordance with Section 6.

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 Sections 6.4 and 6.7.

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 By-Laws may cast such vote. The voting rights of Owners are more fully described in Section 3 of the By-Laws.

4.5 Assumption of Risk. Each Owner, by accepting a deed for any Lot, whether or not so expressed in such deed, for such Owner and the heirs, personal representatives, successors and assigns of such Owner shall be and is deemed to assume all risk associated with the proximity of the Lot to the lake and to the golf course adjoining the Property, and by accepting such deed releases, waives and holds harmless the Declarant, the Association, the Board and the Committee, their governors, managers, officers, agents, employees and independent contractors, of and from any and all loss, damage or injury, including death, that may now or hereafter result from the use of the lake or from any activity of golf and any accompanying incidental activity on

the lake or golf course, and from and against any and all claims, actions, demands, liabilities, losses, damages and expenses of any kind, including without limitation, attorney's fees, arising therefrom.

4.6 Liability. Neither the Declarant, the Board, the Committee, nor any Board or Committee member thereof shall be liable to any Owner or to any third party for any damages, loss, or prejudice suffered or claimed on account of (a) the approval or disapproval of plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development of any property within the Project, (d) if the Declarant, the Committee or such Committee member has acted in good faith on the basis of such information as may be possessed by them. Specifically, but not by way of limitation, it is understood that plans and specifications are not approved for engineering design, and by approving such plans and specifications neither Declarant, the Committee, nor any Committee member thereof, assumes liability or responsibility therefore, or for any defect in any structure constructed from such plans and specifications.

SECTION 5

ADMINISTRATION

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

5.1 General. The operation and administration of the Association and the Property shall be governed by the 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 statute under which the Association is incorporated. 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. 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 and (iii) preserving the value, and the architectural uniformity and character, of the Property.

5.3 Binding Effect of Actions. All agreements and determinations made by the Association in accordance with the powers and voting rights established by the Governing Documents shall be binding upon all Owners and Occupants, and their lessees, guests, heirs, personal representatives, successors and assigns, and all persons owning a Security Interest.

5.4 By-Laws. The Association shall have By-Laws. The By-Laws 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. 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. The inclusion in other parts of the Governing Documents of authority to approve Rules and Regulations shall be deemed to be in furtherance, and not in limitation, of the authority granted by this Section. New or amended Rules and Regulations shall be effective only after reasonable notice thereof has been given to the Owners.

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

5.8 Notice to City. Following each election of Board Members, the Association shall give notice to the City of Gem Lake of the names, addresses and telephone numbers of the current Board Members and the name, address and telephone number of any manager or managing agent selected by the Board as allowed under Section 5.5 hereof.

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 By-Laws. Assessments shall include annual Assessments under Section 6.2, and may include special Assessments under Section 6.3 and limited allocation 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 allocation 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 semi annual installments. Annual Assessments shall provide, among other things, for an adequate reserve fund for the maintenance, repair and replacement of the Common Elements and those parts of the Lots 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 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 Allocation Assessments. In addition to annual Assessments and Special Assessments, the Board may, at its discretion, levy and allocate Limited Allocation Assessments among only certain Lots in accordance with the following requirements and procedures:

- a. Any Assessment or portion thereof benefiting fewer than all of the Lots 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, 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 Elements or a 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.
- g. If Common Expense liabilities are reallocated for any purpose, assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense liabilities.

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

6.5 Working Capital Fund. There shall be established a working capital fund to meet unforeseen expenditures or to purchase additional equipment or services during the Association's beginning years of operation. The Board shall include in each subsequent annual budget a reasonable amount of working capital, based upon the anticipated needs of the Association for the year in question. There shall be contributed on a one-time basis for each Lot sold an amount equal to two (2) months installments of the estimated Common Expense Assessment for the Lot. The contribution shall be paid at the earlier of the time of closing of sale of the Lot or the time of termination of the period of Declarant control under Section 17.5. The contributions to this fund are in addition to the regular monthly installments of Assessments. The funds shall be deposited into a segregated Association account no later than the termination of the period of Declarant control. Declarant may not use the funds to defray any of its expenses, reserve contributions or construction costs, or to make up any budget deficit while Declarant is in control of the Association. However, upon the closing of the sale of an unsold Lot, Declarant may reimburse itself from funds collected from the purchaser at the closing for any contributions made by Declarant to the working capital fund with respect to that Lot.

6.6 Liability of Owners for Assessments. The obligation of an Owner to pay Assessments shall commence at the later of (i) the time at which the Owner acquires title to the Lot, or (ii) the due date of the first Assessment levied by the Board, subject to the alternative Assessment program described in Section 6.7. 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. 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. The Association may invoke the charges, sanctions and remedies set forth in Section 14, in addition to any remedies provided elsewhere in the Governing Documents, the Rules and Regulations, or by law, for the purpose of enforcing its rights hereunder.

6.7 Declarant's Alternative Assessment Program. The following alternative Assessment program is established. Notwithstanding anything to the contrary in this Section 6, if a Common Expense Assessment has been levied, any unsold Lot owned by Declarant shall be assessed at the rate of twenty-five percent (25%) of the Assessments levied on other Lots of the same type until a certificate of occupancy has been issued with respect to such Lot by the municipality in which the Lot is located. This reduced Assessment shall apply to each Lot owned by Declarant at the time that the Lot is created, and shall terminate with respect to each such Lot upon the issuance of the certificate of occupancy for the Lot. Although this alternative Assessment program will not affect the allocated share of replacement reserves attributable to

Lots owned by Declarant, there are no assurances that there will be no effect on the level of services for items set forth in the Association's budget.

6.8 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 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 recordation 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.

6.9 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. In any action whether at law or in equity the Association shall be entitled to recover its costs and expenses in bringing such action including its reasonable attorney's fees and costs.

6.10 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. Notwithstanding the foregoing, if (1) a first mortgage on a Lot is foreclosed, (2) the first mortgage was recorded on or after the date of recording of this Declaration, and (3) no Owner redeems during the Owner's period of redemption provided by Minnesota Statutes Chapters 580, 581, or 582, then the holder of the sheriff's certificate of sale from the foreclosure of the first mortgage shall take title to the Lot subject to unpaid Assessments levied for Common Expenses which became due, without acceleration, during the six (6) months immediately preceding the first day following the end of the Owner's period of redemption.

6.11 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, 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 and 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. No Lot shall be re-subdivided by an Owner to form a lot smaller than a platted Lot; provided, however, that two or more entire Lots may be combined to form a larger Lot or Lots with the prior written approval of the Board and the Owner of the combined larger Lot or Lots shall record the combination with Ramsey County so that each resulting combined Lot is a single tax parcel. Such combined Lot shall thereafter be defined as the "Lot" for purposes of this Declaration.

7.3 Residential Use. Each Lot shall be used solely and exclusively for residential purposes provided that a home occupation use shall be permitted in accordance with the terms of Section 7.4. No Lot may be used for transient, hotel, commercial, business or other non-residential purposes, except as provided in Section 7.4. The number of occupants per Dwelling shall be restricted in accordance with the occupancy restrictions of the all applicable governmental laws, ordinances and regulation. Any lease of a Lot (except for occupancy by guests with the consent of the Owner) for a period of less than thirty (30) days, or any occupancy which includes services customarily furnished to hotel guests, shall be presumed to be for transient purposes. No building shall be erected altered, placed or permitted to remain on any Lot except a single Dwelling house, designed for the accommodation of one family, together with a garage designed to accommodate at least three (3) automobiles, the exterior of which shall be constructed of the same material used, or to be used, on the exterior of the Dwelling house. No above-ground swimming pool, except small, movable children's wading pools, shall be placed or constructed on any Lot.

7.4 Business Use Restricted. No business, trade, occupation or profession of any kind, whether carried on for profit or otherwise, shall be conducted, maintained or permitted in any Lot except:

a. An Owner or Occupant residing in a Lot may maintain a home occupation/office with no on-site client or customer meetings and no on-site employees, consultants or independent contractors on such Lot and handle matters relating to such home occupation/office by electronic communications, telecommunications or correspondence therefrom, provided that (i) such use is otherwise in compliance with all applicable ordinances, codes, statutes, other laws, rules and regulations, (ii) such use is incidental and secondary to the principal use of the Lot and Improvements thereon for residential purposes and does not change the character thereof, (iii) such use has no adverse effect on the use or enjoyment of any other part of the Property, (iv) such uses do not involve physical alteration of the Lot and or Dwelling visible from the exterior; and (v) such uses do not involve any observable business activity such as signs, advertising displays, regular deliveries, or pedestrian or vehicular traffic to and from the Lot by customers or employees.

b. Declarant may maintain offices, sales facilities and other business facilities on the Property in connection with the exercise of its special declarant rights.

7.5 Leasing. Leasing of Lots and Dwellings shall be allowed, subject to reasonable regulation by the Association, and subject to the following conditions: (i) that no Lot shall be leased for transient or hotel purposes, (ii) that no Lot may be subleased, (iii) that all leases shall be in writing, (iv) no lease shall be shorter than thirty (30) days; and (v) that all leases shall provide that they are subject to the Governing Documents, 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 procedures for the leasing of Lots, consistent with this Section.

7.6 Delegation of Use. An Owner may delegate, in accordance with the Governing Documents, the Owner's right of use and enjoyment of the Lot to persons living in the Lot pursuant to a legal right of possession; provided that such persons shall be subject to the Governing Documents and the Rules and Regulations. If lessees, or other persons other than the Owner or the Owner's family, have been given the legal right to possess the Owner's Lot, then those persons shall have the right to use any common recreational facilities, parking, storage and other amenities on the Property in lieu of the Owner and the Owner's family.

7.7 Parking and Garages. All garages shall contain stalls for at least three cars and except for Lot 1 shall be attached to the Dwelling it serves and constructed such that the vehicle garage door faces the side yard, unless the Owner obtains approval for a variance from the Committee. 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. No motor vehicle shall be constructed, reconstructed or repaired within the Property, except for purposes of loading or unloading and then for periods not in excess of four hours. This restriction shall not apply to commercial vehicles involved in construction activities on a Lot or vehicles owned and operated by persons

providing services to a Lot or Dwelling (during the time when the services are being rendered). Vehicles not regularly used by Owners, Occupants or their guests shall not be allowed to remain parked on the Lots or other parking areas of the Property. Garages shall not be converted to other uses or used for storage or other purposes which would prevent the parking of three automobiles in a garage. The use of garages, driveways and other parking areas on the Property, and the types of vehicles and personal property permitted thereon, shall be subject to regulation by the Association, including without limitation the right of the Association to tow illegally parked vehicles or to remove unauthorized personal property. No vehicles shall be parked on any unpaved area on any Lot.

7.8 Animals. Except for horses, and except for common domestic house pets such as dogs, cats, fish, birds and the like which shall not exceed on any Lot the number proscribed by City ordinance and if no number is so proscribed then four (4), no animal may be bred, or kept or maintained for any purposes, anywhere on the Property. Horses may be bred, kept or maintained subject to applicable state and local laws, ordinances and regulations. However, subject to the previous restriction, 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. This authority may be exercised so as to permit or prohibit different types of animals. The word “animal” shall be construed in its broadest sense and shall include all living creatures except humans. No pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement or any pet shall be construed or maintained on any part of the Common Elements. Pets shall at all times when walked or exercised on any portion of the Common Elements be: (i) on leash or (ii) within eight (8) feet and under the control of a person. Owners are responsible to pick up and dispose of animal droppings anywhere on the Property. The Board can prohibit the keeping of any animal that, in the sole and exclusive opinion of the Board, constitutes a nuisance to any other Owner. Upon the written request of any Owner, the Board may conclusively determine, in its sole and absolute discretion whether for purposes of this Section 7.8, a particular pet is a generally recognized house pet or such pet is a nuisance, and the Board shall have the further right to fine any Owner (in the amount not to exceed \$50.00 for each violation) for the violation of these pet restrictions by such Owner or of an Occupant of such Owner’s Lot or Dwelling, and the Owner shall be liable to the Association for the cost of repair of any damage to the Common Elements caused by the pet of such Owner or of an Occupant of such Owner’s Lot or Dwelling. Any such fines or cost to repair shall be added to and become a part of that portion of any assessment next coming due to which such Lot or Dwelling and Owner are subject.

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. No use shall be made of the Property which would violate any then existing municipal codes or ordinances, or state or federal laws, nor shall any act or use

be permitted which could cause waste to the Property, cause a material increase in insurance rates on the Property, or otherwise cause any unusual liability, health or safety risk, or expense, for the Association or any Owner or Occupant.

7.11 Subsequent Improvements. After initial occupancy of the Dwelling constructed on a Lot, no exterior improvement or construction which has not previously been approved pursuant to Section 8 shall be commenced, and no building, other structure or improvement to a Lot shall be altered on the exterior (excluding normal staining or repainting of a similar color), nor any substantial landscape work done on any Lot, unless the approvals required by Section 8 shall have been obtained. Notwithstanding the foregoing, in the event of a casualty to any improvements on a Lot, which improvements were approved pursuant to Section 8, the Owner of the Lot shall be entitled to rebuild those improvements, without change from the original approved plans, without again obtaining approval from the Committee.

7.12 Ponds, Wetlands and Trees. Ponds, lakes, marshes, wetland areas, vegetation and trees located on the Lots whether natural or otherwise, shall be maintained in substantially the same condition as originally established, subject only to (i) changes authorized by the Association consistent with all statutes, requirements, rules and regulations imposed on such areas and items by governmental authorities having jurisdiction and (ii) the prior approval of any such governmental authorities, if required. No cutting, mowing, trimming, draining, dredging or other alteration of ponds, lakes, marshes and wetland areas as well as the designated buffer areas and cutting and trimming of vegetation and trees shall be permitted, except as authorized by this Section 7.12, it being the intention that such areas and items remain and be maintained in substantially their condition as of the date of recording of this Declaration, and subject to natural changes. Buffer signs required by the local watershed district shall be maintained in place by the Lot Owner and not removed from any part of the Property. The Association shall replace such signs as necessary.

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

7.14 Signs. Except as may be required by legal proceedings, no signs or advertising posters of any kind shall be obtained or permitted within any windows, on the exterior of any Dwellings or improvements located within the Property without the express written permission of the Committee. Notwithstanding the foregoing, restrictions of this Section 7.14 shall not apply to Declarant. In addition, the Board shall have the right to erect reasonable and appropriate signs on any portion of the Common Elements. Further, no sign of any kind shall be displayed to the public view on any Lot except as set forth below and

- a. Designations, in such style and material as the Board shall by regulation approve, of street addresses and names of occupants;
- b. No "For Sale" signs are permitted without approval of the Board except permission is not necessary for one 32 square inch "For Sale" sign with colors to

be only black letters on white background located on the Lot to which it pertains stating only "For Sale," the name of a contact person and or company and one telephone number; and

c. Until the last lot is sold Declarant shall be permitted to erect and maintain upon the Property such signs as it deems necessary to advertise the Property during the construction and sale periods subject to the provisions of the zoning ordinance of the City of Gem Lake.

7.15 Mailboxes and Newspaper Boxes. A standard design and placement of mailbox shall be used on all lots. The Committee shall determine the standard design which shall be used on all Lots.

7.16 Building Exterior and Roofing Materials. The exterior walls of any Dwelling located on any Lot (exclusive of millwork) shall consist of brick, stone, stucco, natural wood material, hardi-plank or equal product, or wood shake siding. No variance from this subsection may be granted to allow vinyl or aluminum siding. Stone or brick veneers should return around to the rear of the Dwelling. Prefinished aluminum soffits and fascia are permitted. Other siding treatments, comparable in appearance and durability to concrete lap board siding products, may be acceptable if the use thereof is appropriate to the architectural style of the proposed Dwelling and does not otherwise detract from the standards and aesthetics of the Property. Consistent application, on all elevations of the Proposed Dwelling, of corner boards, window and door trim, shutters, frieze boards and moldings are encouraged, and may be required. Except for the Dwelling existing on Lot 1 at the time this Declaration is executed, roofing material shall be limited to asphalt shingles of at least 250 pound grade, wood shakes, Timberline 30 or more grade shingles, slate or synthetic slate or similar shingles, copper, or standing seam metal. All roof vents, plumbing stacks and flashing should closely match the color of surrounding materials. Deck posts shall be a minimum of eight inches by eight inches, with exterior wood trim or brick, stucco, natural stone or cultured stone veneer.

7.17 Dwelling Size Requirements. No Dwelling shall be permitted on any Lot unless it meets the following requirements as to interior area size:

a. A one story Dwelling must have an above grade finished area within the main structure of not less than 2,000 square feet, exclusive of garage, basement, porch (whether open, screened or three season) or accessory structures.

b. A Dwelling of more than one story must have an above grade finished area within the main structure of not less than 1,500 square feet for the finished ground floor and not less than 2,900 square feet in the entire Dwelling, exclusive of garage, basement, porch (whether open, screened or three season) or accessory structures.

7.18 Rubbish, Trash and Garbage. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, rubbish, brush, cuttings and other waste shall be kept only in covered sanitary containers shielded from view from roads, easements, other Lots and any other portions of the Property. The manner of shielding is subject to the written approval of the Committee. All garbage and trash shall be regularly removed from the Property and shall not be allowed to accumulate thereon. All woodpiles or storage piles shall be kept screened and concealed from view of other Lots, streets and Common Areas. Garbage and trash shall be placed for pick up as required by the disposal service designated from time to time by the Association to serve all of the Lots and Dwellings. Every Owner is required to contract with waste disposal hauler designated by the Association.

7.19 Outdoor Storage. With exception of operational automobiles (e.g. passenger cars, pick-up trucks, mini-vans and sport utility vehicles), no motor vehicle, watercraft, trailer or piece of recreational equipment, including but not limited to camping trailers, other trailers, motor homes, snowmobiles, all-terrain vehicles, golf cars, lawn mowers, motorcycles, motorbikes, boats and canoes, shall be permanently or temporarily stored on a Lot outside of a garage, Dwelling, or area shielded from view from roads, easements, other Lots and any other portion of the Property. The manner of shielding is subject to the written approval of the Board. No commercial vehicle, equipment, parts or machinery shall be permanently or temporarily stored on a Lot outside of the Dwelling or garage on the Lot. Notwithstanding the foregoing prohibition, guests of an Owner visiting for less than fifteen (15) days in any thirty (30) day period may park other vehicles on unenclosed paved areas of the Lot during that period. Notwithstanding the foregoing, outdoor cooking equipment, patio furniture and children's recreational facilities which are well maintained and attractive (as determined by the Committee) may be kept upon a Lot. The storage or collection of rubbish of any character whatsoever, any material that emits foul or obnoxious odors, the growing of any noxious weed or other noxious natural substance, and the harboring of any source of unreasonable noise or activity which disturbs the peace, comfort or serenity of Lot Owners, is prohibited. Usual trash and garbage shall be kept in sanitary containers in a neat and clean condition and shall be regularly collected in accordance with City Code. No long term outside storage of said containers shall be allowed.

7.20 Easements Reserved at Platting. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat unless vacated by action of the municipal authority. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the flow of drainage channels in the easement, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot shall be maintained continuously by the Owner of the Lot except for improvements owned by a public authority or a utility company.

7.21 Soil and Gravel Sale. Except as approved by the Committee, no sod, soil, or gravel shall be sold or removed from the Property and all soil or gravel available from any excavation for the construction or alteration of a Dwelling or any appurtenance of any Lot and by whomsoever owned shall be hauled and disposed of at other points within the boundaries of the Property at the discretion of the Committee. If the Committee declines to use the soil or gravel or

fails to respond within five (5) days to a request by an Owner for direction as to where to place soil or gravel from an excavation, then in such case the Owner shall remove the soil and or gravel from the Property at the Owner's expense.

7.22 Tower Structure, Antenna, Dish and Windmill. No exterior antenna, aerial, tower, wire, line, pole, post, cable, dish or other device for transmitting or receiving radio, television, microwave, laser, electromagnetic or other telecommunications signals (collectively, "Antenna") may be installed that exceed 10 feet in height except that an outside radio or television antenna may be placed upon the roof of a residence, providing such antenna does not extend more than 10 feet above the roof where it is located and provided further that a dish not greater than thirty-six (36) inches in diameter and of a kind approved by the Committee may be maintained if located other than upon a roof and if appropriately screened. No exterior windmill of any kind shall be constructed, maintained or permitted to remain on any Lot or any structure on any Lot.

7.23 Underground Utilities. Utilities serving Lots existing from time to time within the Property shall employ underground utility distribution facilities. Poles, wires or the above-ground utility service distributions facilities shall be permitted to exist on a temporary basis during the initial construction of Dwellings on Lots within the Property or during any repair or replacement of the underground utility conduits, cables and facilities.

7.24 Grading. No change in the grading of any Lot shall be undertaken except in conformance with Section 8.1 hereof.

7.25 Trees. No mature trees, (i.e. trees with trunks, measured at three (3) foot elevation, greater than four (4) inches in diameter) shall be cut on any Lot, except dead or diseased trees or trees reasonably necessary to facilitate construction of a Dwelling or other permitted improvement, except in accordance with (1) the City of Gem Lake ordinances, and (2) with such standards as may be reasonably be adopted by the Committee in accordance with Section 8.1 of this Declaration. No diseased or dead trees shall be allowed to remain on any Lot following the closing of a sale thereof by Declarant or any successor. All such trees shall be promptly removed and hauled away. No elm wood shall be allowed to be kept for firewood purposes with total removal and disposal of bark.

7.26 Driveways. Except for Lot 1 all driveways shall be paved, with asphalt, concrete or pavers within six months of occupancy. The Developer is granted the right to require that all driveways abut the road with 20 feet of pavers to be installed by the Developer. The color and type of paver may be selected by the Lot Owner from a sample group determined by the Board. No gravel driveways shall be allowed. All driveways and garages shall be maintained in a neat and orderly condition. Garages are to be used for the parking of standard passenger vehicles and trucks not to exceed three-quarter tons in load capacity, boats or the storage of similar items of personal property so long as such storage of personal property will not necessitate or result in the parking of any vehicle on streets or regularly on driveways within the Properties. Furthermore, garages shall not be converted to living quarters or workshops which will preclude the parking of vehicles.

7.27 Lawns. Weather permitting, all lawns on Lots with a completed Dwelling must be sodded or seeded within six months of the date the City issues a Certificate of Occupancy in accordance with a landscape plan approved by the Committee.

7.28 Temporary Structures. No structure or object of a temporary character such as, but not limited to, house trailers, vans, tents, shacks, sheds, or temporary or accessory buildings or structures, shall be erected, kept or maintained on the Property, or any part thereof. This restriction shall not apply to tents and play structures intended for use by children or to temporary structures used by Declarant for Property, construction or sale of property throughout the Property or to Owners, their contractors and employees, during construction of a Dwelling on the Owner's Lot.

7.29 Nuisances. No rubbish or debris of any kind shall be dumped, placed, or permitted to accumulate upon any portion of the Property, nor shall any nuisance or odors be permitted to render any portion thereof unsanitary, unsightly, offensive, or detrimental to persons using or occupying any other portions of the Property. Noxious or offensive activity shall not be carried on in any Lot, Dwelling, or in any parts of the Common Elements, and each Owner, his family, tenants, guests, invitees, servants, and agents shall refrain from any act or use of a Lot, Dwelling, or of the Common Elements which could cause disorderly, unsightly, or unkempt conditions, or which could cause embarrassment, discomfort, annoyance, or nuisance to the Occupants of other portions of the Property. Any Owner, or his family, tenant, guests, invitees, servants, or agents, who dumps or places any trash or debris upon any portion of the Property shall be liable to the Association for actual costs of removal thereof or in the amount of one hundred fifty dollars (\$150.00), whichever is greater, and such sum shall be added to and become a part of that portion of any assessment next becoming due to which such Owner and his or her Lot or Dwelling are subject.

7.30 Fences. No chain link fences shall be permitted within the Property, except with regard to maintenance areas within the Common Elements and approved by the Committee, those fences erected by Declarant and dog runs, approved by the Committee, which are screened from the view of adjacent Lots. Any chain link fence must be vinyl covered or coated. The Committee generally shall discourage the construction of fences on any of the Lots, except fences enclosing swimming pools as required by applicable law, and fences enclosing small patios adjacent to the primary Dwelling on a Lot. In no event shall opaque fences be permitted to serve as a boundary between Lots or between a Lot and any other portion of the Property.

7.31 Additions, Improvements, and Painting. No Owner shall have the right to construct any Improvements of any type or nature whatsoever on his or her Lot, including without limitation, any fences, hedges, pools, patios, spas, Jacuzzis or landscaping, without the prior written consent of the Committee.

7.32 Outside Lighting. The location, size, color and design of all lighting fixtures or similar equipment used outside of a Dwelling must be approved by the Committee. All outside lighting shall be designed so that the fixture does not direct light outside of the Lot.

7.33 Swimming Pools. Unless installed by the Declarant, the location, size and design of all swimming pools, including without limitation, plunge pools, must be approved, in advance, by the Committee. Any lighting of a pool shall be designed so as to buffer the surrounding Lots and Common Elements from such lighting.

7.34 Traffic Regulations. All vehicular traffic on the roads and or streets shall be subject to the provisions of the laws of the State of Minnesota, the County, and the City concerning operation of motor vehicles on public streets. No four wheelers, mini-bikes, go-karts, motorized skate boards, whether gas or battery powered, shall be allowed on the roads and or streets. The Board is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including reasonable safety measures and speed limits and including modifications of those in force on public streets within the Property. The Board shall be entitled to enforce same by establishing such enforcement procedures as it deems appropriate, including levying fines for the violation thereof. Only drivers licensed to operate motor vehicles by the State of Minnesota or by any other state in the United States may operate any type of motor vehicle, including golf carts, within the Property. All vehicles of any kind and nature which are operated on the Streets in the Property shall be operated in a careful, prudent, safe, and quiet manner and with due consideration for the rights of all residents of the Property.

7.35 Pesticides. No Owner or Occupant shall use or apply any phosphorus fertilizer.

SECTION 8

ARCHITECTURAL STANDARDS

8.1 Restrictions on Alterations. One of the purposes of this Declaration is to ensure that those parts of the Lots which are visible from the exterior be kept architecturally attractive in appearance. Therefore, the following restrictions and requirements shall apply to alterations on the Property.

a. Design Review Committee. No Improvements to a Lot shall be erected, placed, altered, expanded or occupied on any Lot, nor shall site grading, landscaping or preparation of a Lot occur, until the building plans and specifications and site plan showing the location of such Improvements, or alteration or expansion thereof, and/or the landscaping plan, have been approved by the design review committee (the "Committee"). The Committee shall be composed of three (3) members, all of whom initially shall be appointed by Declarant. The members of the Committee may be changed at any time and from time to time by Declarant, who shall notify the Association in writing of each such change. In the event of the death or resignation of any member of the Committee, the remaining member or members shall have full authority to act as the Committee, unless and until Declarant appoints an individual to replace the deceased or resigning member of the Committee. Notwithstanding the foregoing,

at such time as Dwellings and landscaping have been completed on each of the Lots, the members of the Committee shall be appointed and may be changed from time to time by the Board.

b. Objectives. The objectives of the Committee shall include, among others, the following:

- (1) To promote long-term community quality by encouraging construction on the Lots of only single-family homes of appropriate architectural style and exterior design;
- (2) To protect and preserve the character and nature of the Property, including its landscape, pleasing views and natural characteristics;
- (3) To prevent any commercial, business or industrial use of the Lots (except as permitted under Section 7.3);
- (4) To promote the use of only quality exterior materials and finishes, of a color and applied in a manner that enhance the appeal and compatibility of the residential community within the Property;
- (5) To promote adequate and reasonable Property of the Property, appropriate to the type of homes to be constructed thereon;
- (6) To promote the erection of houses and garages appropriately located on the Lots, to foster and preserve a harmonious appearance and function, to avoid a monotonous appearance, and to preserve the quality of views from other Lots;
- (7) To enforce compliance with all terms, general and specific standards, and other use restrictions contained herein, on the Plat, or pursuant to any other document duly recorded which affects title to any part of the Property;
- (8) To promote compatibility of alterations made to any Dwelling or other improvements on a Lot with the existing Dwellings and other improvements on the other Lots; and
- (9) To promote compatibility of landscaping on Lots in order to achieve a harmonious viewscape Lots and to preserve and enhance the aesthetic quality of the Property.

c. Review Process. Design review by the Committee shall include but not be limited to (a) site grading and landscaping plans; (b) location of all buildings; (c) height and mass of buildings in relation to other houses on Lots and the general

topography of the Property; (d) driveway access; and (e) exterior finish materials. Prior to commencement of construction or site grading on any Lot, the Owner of the Lot shall submit to the Committee: a site plan of the Lot, showing existing grades, Lot lines, setback lines; proposed location of each building, and the location, length and width of all driveways, sidewalks and patios; a site grading and tree clearing plan, which shall identify all tree protection measures and all installations of silt fences; two (2) sets of construction plans for the building(s), including interior floor plans, renderings of all exterior elevations, and an identification of the character, quality and color and, if available, the manufacturer, of all exterior materials and furnishings; and renderings of any proposed fences and/or retaining wall improvements. If, within twenty (20) days after said plans and specifications have been submitted to it, the Committee or its designated representative neither disapproves such design and location nor approves the same subject to one or more conditions), and in any event if no suit to enjoin the erection of such building or the making of such alterations has been commenced prior to the completion thereof, such approval(s) will be deemed granted, further evidence thereof will not be required, and this covenant shall be deemed to have been fully performed.

d. Landscaping. No tree may be removed except in compliance with the ordinances and regulations, if any, of the City of Gem Lake. Generally, landscape plans shall contemplate turf, shrubs, trees and flower gardens, to be maintained by the Owner of the Lot. Landscape plans providing for non-maintained areas may be permitted only in areas of heavy tree cover. Landscape plans which include plantings of native grasses, wildflowers and/or other plantings intended to create a low-maintenance landscape of natural appearance, may be permitted only when the same will be professionally designed, installed and maintained to maturity and where the same are appropriate to neighboring landscape. Prior to commencement of any grading, tree removal or other landscape alteration beyond any such activity within the approved building area for a Dwelling, and in any event not later than the earlier to occur of the date of first occupancy, or ninety (90) days after completion of construction of the Dwelling on a Lot, the Owner of the Lot shall submit for review by the Committee two sets of a proposed landscape plan for the Lot, identifying all plantings, maintained yard areas, gardens, areas of proposed non-maintained natural ground cover, and proposed tree clearing for landscape or view purposes. If, within twenty (20) days after its receipt of the proposed landscape plan, the Committee or its designated representative neither disapproves such landscape plan nor approves the same subject to one or more conditions, approval of the landscape plan will be deemed granted, further evidence thereof will not be required, and this covenant shall be deemed to have been fully performed. The Committee, in reviewing and approving landscape plans for Lots, shall have as one of its objectives to ensure that the landscaping on all of the Lots is harmonious with the landscaping on the other Lots.

8.2 Variance. The Committee may, in its sole discretion, grant to an Owner a variance from certain requirements of Section 7 and Section 8.1 of this Declaration (a “Variance”), subject and pursuant to the terms and conditions of this Section 8. No variance granted by the Committee relieves the Owner from compliance with any ordinance or regulation of the City. No warranty or representation is made that a variance granted by the Committee will comply with City ordinances. Each Owner is required to obtain all necessary City approvals prior to proceeding with the work associated with any variance granted by the Committee. Variances are intended to provide a means of departure from the literal provisions of this Declaration where strict adherence would cause undue hardship to an Owner because of conditions or circumstances unique to an individual Lot. The Committee shall not have the right to grant a Variance if it is reasonably foreseeable that the use or enjoyment of any other Lot would be materially adversely affected as a result of such Variance. The lack of any such material adverse effect shall be considered by the Committee in its decision, but shall not obligate the Committee to grant the Variance. The grant of any Variance by the Committee shall have no precedential effect. The Committee need not grant any Variance that would have a similar effect or result with respect to any Variance previously granted by the Committee. Furthermore, any Owner who has received a Variance with respect to any particular requirement under this Declaration may not rely upon such Variance for any other requirement, nor shall such Owner be automatically entitled to any further Variance from the same requirement. The power vested in the Committee by this Section 8 is purely discretionary. The Committee’s determination concerning the grant of a Variance shall be conclusive and, if the Committee disapproves a Variance, it need not state a reason for such disapproval. No Owner shall have any recourse against the Committee for any disapproval of a Variance or for any approval of a Variance in accordance with Section 8.

8.3 Architectural Liability. The Committee shall be concerned about aesthetic characteristics only and does not assert architectural expertise. In the course of its duties, the Committee may request certain design modifications in the interest of producing overall Lot improvements more complementary to or compatible with the Property. It is the sole duty and responsibility of the Owner to employ an architect or other person to design the requested modifications in a safe and architecturally sound manner. Each Owner of any interest in the Property, his/her heirs, successors and assigns, as a condition of his ownership, waives any right to damages which result from architectural designs requested by the Committee. The Committee shall not be responsible in any manner whatsoever for any defect in any plans or specifications submitted, nor as revised by the Committee or for any work done pursuant to the requested changes of said plans and specifications. The Committee shall exercise its best judgment as to aesthetic characteristics of architectural design and its judgment shall be final.

8.4 Building Inspectors and Standards. The Committee shall have the power and right to employ inspectors to insure that proper building standards are maintained. The inspector or inspectors as designated from time to time by the Committee shall operate pursuant to prescribed rules and Procedures approved by the Committee. The Committee shall have the power to adopt minimum construction building standards, and may amend the same from time to time, and until such standards are adopted, the building code for the City of Gem Lake shall control.

8.5 Remedies for Violations. The Board may undertake any measures, legal, equitable 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 the Association, whether or not a legal action is started. In lieu of seeking actual damages the Association may recover as liquidated damages and not as a penalty the sum of \$50.00 for every day the violation continues. By acceptance of an interest in the Property each Owner agrees with the Association that the amount so fixed herein as liquidated damages is a reasonable forecast of just compensation for the harm that will be caused to the Association by the Owner's violation. All monetary damages, including liquidated damages, and all attorneys' fees and costs of the Association shall be a lien against the Owner's Lot and a personal obligation of the Owner.

8.6 Hold Harmless. The Owner who causes an alteration to be made, regardless of whether the alteration is approved by the Board and or the Committee, shall be solely responsible for the construction standards and specifications relating to the alteration, and the construction work. The Owner, and not the Association, is responsible for determining whether any alteration is in violation of any restrictions imposed by any governmental authority having jurisdiction over the Property. The Owner shall hold harmless and indemnify the Association, and its officers, directors, and members of the Committee from and against any expenses, claims, damages, losses or other liabilities, including without limitation attorneys' fees and costs of litigation, arising out of (i) any alteration which violates any governmental laws, codes, ordinances or regulations, (ii) the adequacy of the specifications for construction of the alterations, (iii) the construction and use of the alterations and (iv) the approval, consent, permission, variance or denial of any of the foregoing.

8.7 Approval Not a Guarantee. No approval of plans and specifications and no publication of standards by the Committee shall be construed as representing or implying that such plans, specifications, or standards will, if followed, result in properly designed improvements. Such approvals and standards shall in no event be construed as representing or guaranteeing that any Dwelling or other improvement built in accordance therewith as built in a good and workmanlike manner.

8.8 Liability. Neither the Declarant, the Committee, nor any Committee member thereof shall be liable to any Owner or to any third party for any damages, loss, or prejudice suffered or claimed on account of (a) the approval or disapproval of plans, drawings and specifications, submitted, revised, or approved pursuant to the terms of this Section 8, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications including any defects in construction undertaken pursuant to such plans (c) the development of any property within the Project, (d) any loss or damages to any person arising out of the approval, or disapproval of any plans or specifications, (e) any loss or damage arising from the noncompliance of such plans and specifications with any governmental ordinances and regulations, and specifications. Specifically, but not by way of limitation, it is understood that plans and specifications are not approved for engineering design, and by approving such plans and specifications neither Declarant, the Board, the Committee, nor

any Board or Committee member thereof, assumes liability or responsibility therefore, or for any defect in any structure constructed from such plans and specifications.

SECTION 9

MAINTENANCE

9.1 Maintenance by Association. The Association shall provide for all maintenance, repair or replacement (collectively referred to as “maintenance”) of the Common Elements, including all improvements thereon. Maintenance, repair and replacement shall include but not be limited to the following:

- a. Road maintenance and snowplowing, sanding as necessary and sweeping;
- b. Road traffic directional and advisory signs as deemed necessary by the Association;
- c. Ditch maintenance and cleaning along the Road;
- d. Maintenance and cleaning of ponds, outfall structures and other facilities constructed for storm water handling inside and to the edge of the Property;
- e. Culvert and pipe cleaning of interior storm water facilities;
- f. Concrete curb repair along interior road;
- g. Brushing, clearing and sweeping of trails; and
- h. Project sign areas.

9.2 Maintenance by Owner. All maintenance of the Dwellings and Lots shall be the sole responsibility and expense of the Owners thereof.

9.3 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 Common Elements is caused by the willful or negligent act or omission of an Owner or Occupant, or their guests the Association may cause such Damage or condition to be repaired or corrected and the cost thereof may be charged and assessed against the Lot of the Owner responsible for the Damage. Such cost shall be a personal obligation of the Owner and a lien against the Owner’s Lot.

SECTION 10

RESOLUTION OF DISPUTES BEWTWEEN OWNERS

10.1 Dispute Notification and Resolution Procedure (Owner Disputes). Any disputes between Owners regarding their respective rights and duties under this Declaration shall be resolved in accordance with the provisions of this Section. This does not apply to: (i) disputes between the Association and any Owner or (ii) disputes between the Declarant and any Owner.

10.2 Dispute Resolution. If there is a dispute between Owners regarding their rights or duties under this Declaration, either party may submit a written request to other party to have the dispute resolved in accordance with the provisions of this Section (the "Resolution Notice"). No later than 20 business days following the receipt of the Resolution Notice by the other party, the Owners shall meet and negotiate in good faith to resolve the dispute. If a party refuses or fails to meet for any reason or if the dispute cannot be resolved as a result of the meeting, the dispute shall be resolved in accordance with the procedures described in subparagraphs a) and/or b) below in that order.

a. Mediation. If the dispute has not been resolved within 30 days of receipt of the Resolution Notice, the dispute shall be submitted to mediation pursuant to the mediation procedures adopted by the American Arbitration Association or any successor thereto or to any other entity offering mediation services that is acceptable to the parties. Either party may initiate the mediation procedures. If either party fails or refuses to participate in mediation for any reason, the other party may commence binding arbitration as described in subparagraph b). The arbitrator shall take into account a party's failure or refusal to mediate in awarding costs and attorneys' fees.

b. Binding Arbitration. If the parties do not resolve the dispute pursuant to the procedures described in subparagraph a), either party may commence binding arbitration under the American Arbitration Association (AAA) or any other arbitration provider mutually acceptable to the parties. The AAA Arbitration Rules for the Real Estate Industry shall apply in all cases unless the parties agree otherwise. The arbitrator's decision may be enforced in any court of competent jurisdiction.

SECTION 11

INSURANCE

11.1 Required Coverage. The Association shall obtain and maintain, at a minimum, a master policy or policies of insurance 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 Common Elements, less deductibles, exclusive of land, footings, excavation and other items normally excluded from coverage (but including all building service equipment and machinery). The policy or policies shall cover personal property owned by the Association. The policy or policies shall also contain “Inflation Guard” and “Agreed Amount” endorsements, if reasonably available.
- b. Comprehensive public liability insurance covering the use, operation and maintenance of the Common Elements, 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 shall contain a “severability of interest” endorsement which shall preclude the insurer from denying the claim of an Owner or Occupant because of negligent acts of the Association or other Owners or Occupants. The policy shall include such additional endorsements, coverages and limits with respect to such hazards as may be required by the regulations of the FHA, VA or FNMA as a precondition to their insuring, purchasing or financing a mortgage on a Lot.
- c. Fidelity 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 by the regulations of the FHA or FNMA 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 and shall, if required by the regulations of the FHA or FNMA as a precondition to their insuring, purchasing or financing of a mortgage on a Lot, be written in an amount equal to the greater of (i) the estimated maximum of Association funds, including reserves, in the custody of the Association or management agent at any given time while the bond is in force, or (ii) a sum equal to three (3) months aggregate Assessments on all Lots plus reserves. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.
- d. Workers’ Compensation insurance as required by law.
- e. Directors and officer’s 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.

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). 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 provide that:

- 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 Elements 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. No act or omission by any Owner or secured party, unless acting within the scope of authority on behalf of the Association, shall void the policy or be a condition to recovery under the policy.
- 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 Association's policy is 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, to the FHA, VA or FNMA (if applicable), all of the insured and all Eligible Mortgagees.

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 or their Eligible Mortgagees.

11.8 Effect of Acts Not Within Association's Control. All policies of insurance maintained by the Association shall provide that the coverage shall not be voided by or conditioned upon (i) any act or omission of an Owner or Eligible Mortgagee, unless acting within the scope of authority on behalf of the Association, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

11.9 Owner's Personal Insurance. Each Owner shall obtain property insurance in an amount no less than the taxable market value of the Lot and Dwelling and liability insurance in an amount no less than one million (\$1,000,000.00) dollars for the protection of the Owner and the Owner's Lot. All insurance policies maintained by Owners shall provide that they are without contribution as against the insurance purchased by the Association.

SECTION 12 RECONSTRUCTION, CONDEMNATION AND EMINENT DOMAIN

12.1 Reconstruction. The Association shall be responsible for the maintenance, repair and replacement of the Common Elements, and each Lot Owner shall be responsible for the maintenance, repair and replacement of the Lot Owner's Lot. Damage to the Common Elements or any Lot as a result of the acts or omissions of a Lot Owner or the association is the responsibility of the person causing the Damage, or whose agents or invitees caused the Damage.

12.2 Condemnation and Eminent Domain. In the event of a taking of any part of the Common Elements by condemnation or eminent domain, (i) notice shall be given as provided in Section 16.9, (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.

12.3 Notice. The Association shall give written notice of any condemnation proceedings or substantial destruction of the Property to the Eligible Mortgagees entitled to notice under Section 16.9.

SECTION 13

EASEMENTS

13.1 Utility Easements. The Property shall be subject to 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, sanitary sewer, storm sewer and drainage systems, septic systems, wells, and similar services, and metering and control devices, which exist or are

constructed as part of the Property 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 the structural or architectural integrity of the Lots or Dwellings.

a. Easements for the installation and maintenance of utilities and drainage facilities for the Property have been reserved as shown on the duly recorded plat of Hillary Farm. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the flow of drainage channels in the easement, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot shall be maintained continuously by the Owner of the Lot except for improvements owned by a public authority or a utility company. No improvement or planting shall be constructed or recreated which may damage or which may change the rate or direction of flow of water across the Property in any way that would have a material adverse effect upon Lots within the Property.

b. The easement area of each Lot and all improvements therein shall be maintained continuously by the Owner of the Lot except for those improvements for which a public authority or utility company may be responsible and except for those areas of the Property from time to time containing Common Elements which shall be maintained by the Association at the expense of the Association. Common Elements shall be subject to control and maintenance the Association and easements have been created for such area.

13.2 Project Sign Easements. Notwithstanding the grant of easement referred to below in this Section Declarant shall have the right to erect and maintain monument signs identifying the Planned Community and related decorative improvements on, over and across those portions of Lot 20, 24 and 28, Block 1, Hillary Farm, Ramsey County, Minnesota as are described on Exhibit B hereto. Declarant shall grant an exclusive permanent easement to the Association for the continuing use, maintenance, repair and replacement of said signs and improvements. In exercising its rights under said easements, the Association shall take reasonable care to avoid damaging the improvements to the Property.

13.3 Roadway Access Easements. All of the Lots except Lot 13 shall be subject to the Road Access Easement in favor of all the other Lots as described on Exhibit B hereto.

13.4 Trail Easements. Lots 3 through 15, 18, 20, 21, 26, 27 and 28 shall be subject to the Trail Easement in favor of all the Lots as described on Exhibit B hereto.

13.5 Road Island Easement. Lots 9, 11,12,18,19, 20 and 21 shall be subject to a Road Island Easement in gross in favor of the Association as depicted on Exhibit D hereto.

13.6 View Easement. Lot 1, Block 1, is hereby granted the full and free right to an easement for the uninterrupted enjoyment of the view of Gem Lake over and across all those parts of Lots 6 and 7 Block 1, Hillary Farm, Ramsey County, Minnesota as described below (hereinafter referred to as the “View Easement”). No permanent or temporary structure (including but not limited to a building, fence, play structure or wall), vehicle, automobile, trailer, or boat shall be placed within the View Easement. No vegetation, including but not limited to trees, shall be maintained or placed within the View Easement that obstructs the view of Gem Lake from Lot 1. Driveways on Lots 6 and 7 shall be constructed nearest to the property line which is furthest away from the View Easement. The View Easement is legally defined as follows: A strip of land 100 feet in width, the center line of which is the property line between Lots 6 and 7, Block 1, Hillary Farm, Ramsey County, Minnesota.

13.7 Drainage and Utility Easements. The Property is subject to Drainage and Utility Easements as shown on the plat of Hillary Farm Addition. No filling or excavation shall be permitted within the Drainage and Utility Easements. No permanent or temporary structure (including but not limited to a building, fence, play structure or wall), vehicle, automobile, trailer, or boat shall be placed within the Drainage and Utility Easements.

13.8 Documentation of Easements. The reserved easements may be created from time to time as required to provide the necessary access and utility services to the Property. No consent or joinder of the Association or any Owner or any mortgagee or other secured party in any Lot, nor any release therefrom, shall be required to create the easements.

13.9 Continuation and Scope of Easements. Notwithstanding anything in this Declaration to the contrary, in no event shall an Owner or Occupant be denied reasonable access to his or her Lot or the right to utility services thereto. The easements set forth in this Section 13 shall supplement and not limit any easements described elsewhere in this Declaration or recorded, and shall include reasonable access to the easement areas through the Common Elements for purposes of maintenance, repair, replacement and reconstruction. All easement rights shall include a right of reasonable access to maintain, repair and replace the utility lines and related equipment.

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 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.

14.1 Entitlement to Relief. The Association may commence legal action to recover sums due, for Damages, for injunctive relief or to foreclose a lien owned by it, or any combination thereof, or an action for any other relief authorized by the Governing Documents or available at law or in equity. Legal relief may be sought by the Association against any Owner to enforce compliance with the Governing Documents, the Rules and Regulations, or the decisions of the Association. Owners may also enforce compliance with the Governing Documents or the Rules and Regulations, by a private legal action, independent of this Section. 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 Sanctions and Remedies. In addition to any other remedies or sanctions, expressed or implied, administrative or legal, the Association shall have the right, but not the obligation, to implement any one or more of the following actions against Owners and Occupants and/or their guests, who violate the provisions of the Governing Documents or the Rules and Regulations:

- a. Commence legal action for Damages or equitable relief in any court of competent jurisdiction. In lieu of seeking actual damages the Association may recover as liquidated damages and not as a penalty the sum of \$50.00 for every day the violation continues. By acceptance of an interest in the Property each Owner agrees with the Association that the amount so fixed herein as liquidated damages is a reasonable forecast of just compensation for the harm that will be caused to the Association by the Owner's violation.
- 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 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. 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 Elements damaged or altered, or allowed to be damaged or altered, by any Owner or Occupant or their guests in violation of the Governing Documents, and to assess the cost of such restoration against the responsible Owners and their Lots.

g. Foreclose any lien arising under the provisions of the Governing Documents or under law, in a like manner as a mortgage containing a power of sale pursuant to Chapter 580, Minnesota Statutes, as amended, or by action pursuant to Chapter 581, Minnesota Statutes, as amended. The Association shall have a power of sale to foreclose the lien pursuant to Chapter 580, Minnesota Statutes, as amended.

14.3 Rights to Hearing. Before the imposition of any of the remedies authorized by Section 14.2 d., e. or f. 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. The Board may delegate the foregoing hearing authority to a committee of three or more disinterested Owners, who shall conduct the hearing and make a recommendation to the Board regarding the disposition of the matter.

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 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 and the Rules and Regulations, as provided therein.

SECTION 15

AMENDMENTS

15.1 Approval Requirements. 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. The percentage of Eligible Mortgagees (based upon one vote per Lot financed) required by Section 16 as to matters prescribed by said Section.
- c. Declarant as to certain amendments as provided in Section 17.6.
- d. The City of Gem Lake, which approval will not be unreasonably withheld.

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 By-laws. Consents of Eligible Mortgagees, the FHA, the VA and Declarant shall be in writing. The amendment shall be effective when recorded with the County Recorder and/or Registrar of Titles as applicable. An affidavit by the

Secretary of the Association as to the outcome of the vote, or the execution of the foregoing agreements or consents, shall be adequate evidence thereof for all purposes, including without limitation, the recording of the amendment. Amendments requiring the approval of the City shall be submitted in writing to the City Clerk. The City shall be deemed to have approved the amendment if the City fails notify the Association within sixty (60) days after receipt of the proposed amendment of its disapproval.

SECTION 16 RIGHTS OF ELIGIBLE MORTGAGEES

Notwithstanding anything to the contrary in the Governing Documents, and subject to any greater requirements of any applicable law, Eligible Mortgagees shall have the following rights and protections:

16.1 Consent to Certain Amendments. The written consent of Eligible Mortgagees representing at least fifty-one percent (51 %) of the Lots that are subject to first mortgages held by Eligible Mortgagees (based upon one (1) vote per Lot financed) shall be required for any amendment to the Governing Documents which causes any change in provisions including the following: (i) voting rights; (ii) increases in Assessments over twenty-five percent (25%), Assessment liens, or priority of Assessment liens; (iii) reductions in reserves for maintenance, repair and replacement of Common Elements ; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in the Common Elements or rights to their use; (vi) redefinition of any Lot boundaries; (vii) convertibility of Lots into Common Elements or vice versa; (viii) expansion or contraction of the Property or the addition, annexation or withdrawal of property to or from the Property; (ix) hazard or fidelity insurance requirements; (x) imposition of restrictions on the leasing of Lots; (xi) imposition of any restrictions on an Owner's right to sell or transfer his or her Lot; (xii) restoration or repair of the Property (after a hazard Damage or partial condemnation) in a manner other than that specified in the Governing Documents; (xiii) any action to terminate the legal status of the Planned Community after substantial destruction or condemnation occurs; or (xiv) any provisions that expressly benefit Eligible Mortgagees, or insurers or guarantors of mortgages.

16.2 Consent to Certain Actions. The written consent of Eligible Mortgagees representing at least sixty-seven percent (67%) of the Lots that are subject to first mortgages held by Eligible Mortgagees (based upon (1) one vote per Lot financed) shall be required to (i) abandon or terminate the Planned Community; (ii) change the allocations of voting rights, Common Expense obligations or interests in the Common Elements; (iii) partition or subdivide a Lot except as permitted by statute; (iv) abandon, partition, subdivide, encumber or sell the Common Elements; or (v) use hazard insurance proceeds for other than the repair, replacement or reconstruction of the Property, except as otherwise provided by law.

16.3 No Right of First Refusal. The right of an Owner to sell transfer or otherwise convey his or her Lot shall not be subject to any right of first refusal or similar restrictions except as reserved in agreements for the sale of a Lot by the Declarant.

16.4 Priority of Lien. Any holder of a first mortgage on a Lot or any purchaser of a first mortgage at a foreclosure sale, that comes into possession of a Lot by foreclosure of the first mortgage or by deed or assignment in lieu of foreclosure, takes the Lot free of any claims for unpaid Assessments or any other charges or liens imposed against the Lot by the Association which have accrued against such Lot prior to the acquisition of possession of the Lot by said first mortgage holder or purchaser; (i) except as provided in Section 6.10; and (ii) except that any unreimbursed Assessments or charges may be reallocated among all Lots in accordance with their interests in the Common Elements.

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

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

16.7 Requirements for Management Agreements. The term of any agreement for professional management of the Property may not exceed two (2) years. Any such agreement must provide at a minimum for termination without penalty or termination fee by either party, (i) with cause upon thirty (30) days prior written notice, and (ii) without cause upon ninety (90) days prior written notice.

16.8 Access to Books and Records/Audit. Eligible Mortgagees shall have the right to examine the books and records of the Association upon reasonable notice during normal business hours, and to receive free of charge, upon written request, copies of the Association's annual reports and other financial statements. Financial statements, including those which are audited, shall be available within one hundred twenty (120) days of the end of the Association's fiscal year. If the Planned Community consists of fewer than fifty (50) Lots, FNMA, or any institutional guarantor or insurer of a mortgage loan against a Lot, may require that, at its own expense, an audit of the Association's financial statements be made for the preceding year, in which case the Association shall cooperate in having an audit made and a copy given to the requesting party.

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

- a. a condemnation loss or any casualty loss which affects a material portion

of the Property or the Lot securing the mortgage;

b. a sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of a Lot on which it holds a mortgage;

c. a lapse, cancellation or material modification of any insurance policy maintained by the Association; and

d. a proposed action which requires the consent of a specified percentage of Eligible Mortgagees.

SECTION 17

SPECIAL DECLARANT RIGHTS

Declarant hereby reserves exclusive and unconditional authority without Board or Association approval required to exercise the following special declarant rights for as long as it owns a Lot, or for such shorter period as may be specifically indicated:

17.1 Complete Improvements. To complete all the Lots and other improvements indicated on the Plat, or otherwise included in Declarant's Property plans or allowed by the Declaration; to make alterations in the Lots and Common Elements to accommodate the exercise of any special declarant rights; to maintain temporary storage piles of dirt as needed to complete Property work and or Lot improvements; and to store dirt on Lots on which there is not a completed Dwelling. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, so long as Declarant shall own any Lot in the Property, it shall be expressly permissible for Declarant and its contractors, subcontractors, agents, employees, successors, and assigns to carry on such activities as may be reasonably required, convenient, or incidental to the improvement of Lots, Dwellings and Common Elements, including, without limitation, the installation of construction trailers and storage of materials or equipment on any property owned by Declarant or the Common Elements, and the use of Common Elements for access to construction sites in the Property.

17.2 Declarant's Right to Conduct Sales and Other Activities. Notwithstanding any other provision in this Declaration to the contrary, Declarant, its agents, employee and officers, including without limitation, any management and marketing agents, are irrevocably empowered to sell Lots on any terms to any purchasers, for so long as Declarant owns any Lots in the Property. Also, for so long as Declarant owns any Property in the Property, Declarant, its agents, employees and officers, any management and marketing agents employed by Declarant, shall have the right to transact any business necessary to consummate sales of property throughout the Property, including but not limited to, the right to maintain office(s) on the Property in location(s) to be selected by Declarant; to have employees in such offices, to construct and maintain sales agency offices, and such other structures or appurtenances which are necessary or desirable for the Property and sale of property throughout the Property, including, without limitation, sales models (which may be Dwellings) and parking lots; to post and display a sign or

signs on any Lots owned by Declarant or on the Common Elements; and to use the Common Elements, and to show Lots. Sales office signs and all other structures and appurtenances pertaining to the sale or Property of property within the Property shall not be considered Common Elements and shall remain the property of the Declarant.

17.3 Signs. To erect and maintain signs and other sales displays offering the Lots for sale or lease, in or on any Lot owned by Declarant and on the Common Elements not designated as roadway.

17.4 Easements. To have and use easements, for itself, its employees, contractors, representatives, agents and prospective purchasers through and over the Common Elements for the purpose of exercising its special declarant rights.

17.5 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 Declarant, (ii) an Association meeting which shall be held within sixty (60) days after conveyance to Owners other than a Declarant of ninety percent (90 %) 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 a Declarant. Notwithstanding the foregoing, the Owners other than a Declarant shall have the right to nominate and elect not less than thirty-three and one-third percent (33 1/3 %) of the directors at a meeting of the Owners which shall be held within sixty (60) days following the conveyance by Declarant of fifty percent (50%) of the total number of Lots authorized to be included in the Property.

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

SECTION 18

ASSOCIATION POWERS

18.1 Association Powers. Except as provided in Subsection 18.1.b, and subject to the provisions of this Declaration or the By-Laws:

- a. The Association shall have the power to:
 - (1) Adopt, amend and revoke Rules and Regulations not inconsistent with the Articles of Incorporation, Bylaws and Declaration, as follows: (i) regulating the use of the Common Elements; (ii) regulating the use of the Lots, and conduct of Lot Occupants, which may jeopardize the health, safety or welfare of other Occupants, which involves noise or other

disturbing activity, or which may Damage the Common Elements or other Lots; (iii) regulating or prohibiting animals; (iv) regulating changes in the appearance of the Common Elements and conduct which may Damage the Planned Community; (v) regulating the exterior appearance of the Planned Community, including, for example, balconies and patios, and signs and other displays; (vi) implementing the Articles of Incorporation, Declaration and By-Laws, and exercising the powers granted by this section; and (vii) otherwise facilitating the operation of the Planned Community;

(2) Adopt and amend budgets for revenues, expenditures and reserves, and levy and collect assessments for common expenses from Lot owners;

(3) Hire and discharge managing agents and other employees, agents, and independent contractors;

(4) Institute, defend, or intervene in litigation or administrative proceedings (i) in its own name on behalf of itself or two or more unit owners on matters affecting the Common Elements or other matters affecting the Planned Community or, (ii) with the consent of the owners of the affected Lots on matters affecting only those Lots, provided however the Association may upon a vote of a majority of the Board of Directors and without a vote of the members, assign the Road Access Easement described on Exhibit B hereto to a public body for continued use as a road with;

(5) Make contracts and incur liabilities;

(6) Regulate the use, maintenance, repair, replacement and modification of the Common Elements and the Lots;

(7) Cause improvements to be made as a part of the Common Elements;

(8) Acquire, hold, encumber, and convey in its own name any right, title, or interest in real estate or personal property, but (i) Common Elements other than the Road Access Easement Area may be conveyed or subjected to a security interest only if persons entitled to cast at least 67% of the votes in the Association, including 67% of the votes allocated to Lots not owned by the Declarant, approve that action in writing or at a meeting and provided further that the Road Access Easement Area may not be conveyed or subjected to a security interest by the Association;

(9) Grant public utility easements through, over or under the Common Elements, and, subject to approval by resolution of Lot Owners other than

Declarant or its affiliates at a meeting duly called, grant other public or private easements, leases and licenses through, over or under the Common Elements;

(10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the Common Elements and for services provided to Lot Owners;

(11) Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, By-Laws, and Rules and Regulations of the Association;

(12) Impose reasonable charges for the review, preparation and recordation of amendments to the Declaration, statements of unpaid assessments, or furnishing copies of Association records;

(13) Provide for the indemnification of its officers and directors, and maintain directors' and officers' liability insurance;

(14) Whenever the Association is permitted or required by this Declaration to enter any Lot for the purpose of correction, repair, cleaning, clearing, mowing, or in the event of an emergency, or any other required or permitted activity, such entrance shall not be deemed a trespass;

(15) Provide for reasonable procedures governing the conduct of meetings and election of directors;

(16) Exercise any other powers conferred by law, or by the Declaration, Articles of Incorporation or By-Laws; and

(17) Exercise any other powers necessary and proper for the governance and operation of the Association.

b. Notwithstanding the aforesaid Section 18.1 a, this Declaration or the By-Laws or any amendment thereto may not impose limitations on the power of the Association to deal with the Declarant which are more restrictive than the limitations imposed on the power of the Association to deal with other persons.

18.2 Board of Directors and Officers. An Association shall be governed by a Board of Directors. Except as expressly prohibited by this Declaration, the Articles of Incorporation, By-Laws, Subsection 18.1 b, the Board may act in all instances on behalf of the Association. In the performance of their duties, the officers and directors are required to exercise (i) if appointed by the Declarant, the care required of fiduciaries of the Lot Owners and (ii) if elected by the Lot Owners, the care required of a director by Section 302A.251 or 317A.251, as applicable. The

Board may not act unilaterally to amend the Declaration, to terminate the Planned Community, to elect directors to the Board, or to determine the qualifications, powers and duties, or terms of office of directors, but the Board may fill vacancies in its membership created other than by removal by the vote of the Association members for the unexpired portion of any term.

18.3 “Meeting of Board of Directors”. Except as otherwise provided in this subsection, meetings of the Board of Directors must be open to the Lot Owners. To the extent practicable, the Board shall give reasonable notice to the Lot Owners of the date, time, and place of a Board meeting. If the date, time and place of meetings are provided for in By-Laws, announced at a previous meeting of the Board, posted in a location accessible to the Lot Owners and designated by the Board from time to time, or if an emergency requires immediate consideration of a matter by the Board, notice is not required. “Notice” has the meaning given in Section 317A.011, Subd. 14. Meetings may be closed to discuss the following:

- a. Personnel matters;
- b. Pending or potential litigation, arbitration or other potentially adversarial proceedings, between Lot Owners, between the Board or Association and Lot Owners, or other matters in which any Lot Owner may have an adversarial interest, if the Board determines that closing the meeting is necessary to discuss strategy or to otherwise protect the position of the Board or Association or the privacy of a Lot Owner or Occupant of a Lot; or
- c. Criminal activity arising within the Planned Community if the Board determines that closing the meeting is necessary to protect the privacy of the victim or that opening the meeting would jeopardize investigation of the activity.

Nothing in this Section 18.3 imposes a duty on the Board to provide special facilities for meetings. The failure to give notice as required by this Section 18.3 shall not invalidate the Board meeting or any action taken at the meeting.

SECTION 19

MISCELLANEOUS

19.1 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.

19.2 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.

19.3 Tender of Claims. In the event that any incident occurs which could reasonably

EXHIBIT A TO DECLARATION

LEGAL DESCRIPTION OF PROPERTY/SCHEDULE OF UNITS

LEGAL DESCRIPTION

The legal description of the Property as of the recording of this Declaration is as follows:

Lots 1 through 28, Block 1, Hillary Farm Addition, Ramsey County, Minnesota

SCHEDULE OF LOTS

The Lots consist of all platted lots on the Property on which a Dwelling is or may be located, as follows:

- Lot 1
- Lot 2
- Lot 3
- Lot 4
- Lot 5
- Lot 6
- Lot 7
- Lot 8
- Lot 9
- Lot 10
- Lot 11
- Lot 12
- Lot 13
- Lot 14
- Lot 15
- Lot 16
- Lot 17
- Lot 18
- Lot 19
- Lot 20
- Lot 21
- Lot 22
- Lot 23
- Lot 24
- Lot 25
- Lot 26
- Lot 27
- Lot 28

EXHIBIT B TO DECLARATION

LEGAL DESCRIPTION OF COMMON ELEMENTS

Section 13.2 Project Sign Easement:

A perpetual and exclusive easement to construct, maintain and repair entry monuments and landscaping on, over and across Lots 20,24 and 28, Hillary Farm Addition, Ramsey County, Minnesota, described as follows:

[INSERT LEGAL DESCRIPTION]

Section 13.3 Road Access Easement:

A perpetual and exclusive easement for ingress and egress purposes on, over and across the following described property:

[INSERT LEGAL DESCRIPTION]

Section 13.4 Trail Easement:

A perpetual and nonexclusive easement for pedestrian travel on foot, and in or on non-motorized vehicles, including but not limited to, bicycles, skis, strollers, and skates on, over and across Lots 3 through 15, 18, 20, 21, 26, 27 and 28 Hillary Farm Addition, said easement being described as follows:

[INSERT LEGAL DESCRIPTION]

EXHIBIT C TO DECLARATION
PROJECT SIGN EASEMENT PURSUANT TO SECTION 13.2

[EASEMENT DESCRIPTION TO BE PROVIDED]

EXHIBIT D TO DECLARATION

Section 13.5 Road Island Easement.

A perpetual and exclusive easement for the construction, maintenance and repair of the Road Island Easement Areas as identified below on, over and across Lots 9, 11,12,18,19, 20 and 21 Hillary Farm Addition.

[DRAWING DEPICTING ROAD ISLAND EASEMENT AREAS TO BE ATTACHED]