

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS AFFECTING LOTS
WITHIN HAWK RIDGE ESTATES**

DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS

HAWK RIDGE ESTATES

This Declaration of Covenants, Conditions, Restrictions and Easements (the "Declaration") is made this ____ day of June, 2005, by The Housing and Redevelopment Authority of Duluth, Minnesota, a public body corporate and politic (the "Declarant").

R E C I T A L S

A. Declarant is the owner of certain real property located in St. Louis County, Minnesota, legally described in Exhibit A attached hereto (the "Real Estate").

B. Declarant has platted the Real Estate as Hawk Ridge Estates. The Declarant desires to submit the Real Estate and all improvements thereon (collectively, the "Property") to the covenants, conditions, restrictions and easements of this Declaration.

C. 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 amenities, the structural quality, and the original architectural and aesthetic character of the Property.

D. Declarant has incorporated Hawk Ridge Estates Association, Inc. ("Association"), under the laws of State of Minnesota as a non-profit corporation for the purpose of acting as a homeowner association, with the duty and power of maintaining, administering and enforcing the covenants and restrictions, and collecting and enforcing the assessments and charges hereinafter created and imposed.

E. Declarant is developing the property in phases and reserves the right, unilaterally, and without the need to obtain the consent of any Person, to expand the Property to include any other portion of the Real Estate.

F. The Property is not subject to Minn. Stat. § 515B.

D E C L A R A T I O N

THEREFORE, Declarant makes this Declaration and submits the Property, and any Additional Real Estate added thereto, to this Declaration and declares 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, conditions, 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):

"ARC" means the Architectural Review Committee established by the Board as provided in Section 7.

"Additional Real Estate" means the real property described on **Exhibit B**, including all improvements located thereon now or in the future, and all easements and rights appurtenant thereto, which Declarant has the right to add to the Property subject to and benefitted by this Declaration.

"Alterations" has the meaning provided in Section 7.

"Architectural Guidelines" means the Architectural Guidelines adopted by the ARC as provided in Section 7.

"Associated Apartment" means a portion of a Dwelling designed and intended for occupancy by a family member, care giver or helper of the Owner or Occupant of the Dwelling.

"Association" means Hawk Ridge Estates Association, Inc., 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 as defined herein.

"Board" means the Board of Directors of the Association as provided for in the By-Laws.

"Building Envelope" means that portion of each Lot designated on the Plat and in which buildings and driveways are permitted.

"By-Laws" means the By-Laws governing the operation of the Association, as amended from time to time.

"Common Areas" means and includes Outlots A, B, C, and D.

"Common Expenses" means and includes all expenditures made or liabilities incurred by or on behalf of the Association, including without limitation, allocations to reserves, maintenance of the Common Areas, and those items specifically identified as Common Expenses in this Declaration or By-Laws.

"Declarant" means The Housing and Redevelopment Authority of Duluth, Minnesota.

"Declaration" means this Declaration of Covenants, Conditions, Restrictions and Easements for Hawk Ridge Estates.

"Duplex" means a building designed and intended for occupancy as two single family residences and located within the boundaries of a Lot. The Duplex includes any garage attached thereto or otherwise included within the boundaries of the Lot in which the Duplex is located.

"Dwelling" means a part of a building 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 in which the Dwelling is located.

"Eligible Mortgagee" means any Person owning a recorded 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 a writing which includes such Person's address and an identification of the mortgage owned, to notify it regarding any proposed action which requires approval by a specified percentage of Eligible Mortgagees. As used herein, the term "mortgage" includes contracts for deed, and the term "Eligible Mortgagee" includes a Person owning the record title to a Lot as a vendor under a contract for deed.

"Governing Documents" means this Declaration, the Articles of Incorporation and By-Laws of the Association and any Rules and Regulations or Architectural Guidelines, as each may be amended from time to time, all of which shall govern the use and operation of the Property.

"Lot" means any lot depicted on the Plat and included in the Property upon which a Dwelling or Duplex is located or intended to be located, including all improvements thereon, but excluding all out-lots.

"Majority" means (for voting purposes) the holders of more than fifty percent (50%) of the votes present and entitled to vote in accordance with the provisions of this Declaration and the By-Laws.

"Member" means 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.

"Occupant" means any Person or Persons, other than an Owner, in possession of or residing in a Lot.

"Owner" means a Person who owns a Lot, but excludes contract for deed vendors, mortgagees and other secured parties. The term "Owner" includes, without limitation, contract for deed vendees and holders of a life estate.

"Person" means a natural individual, corporation, limited liability company, partnership, trustee, or other legal entity capable of holding title to real property.

"Plat" means the recorded plat of Hawk Ridge Estates.

"Property" means all of the Real Estate submitted to this Declaration.

"Real Estate" means the real property described in Exhibit A.

"Rules and Regulations" means the Rules and Regulations of the Association as approved from time to time pursuant to Section 4.6.

SECTION 2
DESCRIPTION OF LOTS

2.1. Lots. Initially, there will be 61 Lots. All Lots are restricted to residential use, as provided and qualified in Section 7. Each Lot constitutes a separate parcel of real estate. Each Lot will be separately taxed and assessed.

2.2. Easements Burdening the Lots. Each Lot shall be subject to easements in favor of the Association for maintenance, repair, replacements and enforcement.

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

2.4. Easements are Appurtenant. All easements and similar rights burdening or benefitting a Lot or any other part of the Property shall be appurtenant thereto, and shall be perpetual, subject only to termination in accordance with the terms of the easement. Any recorded easement benefitting or burdening the Property shall be construed in a manner consistent with, and not in conflict with, the easements created by this Declaration.

2.5. Impairment Prohibited. No person shall materially restrict or impair any easement benefitting or burdening the Property.

SECTION 3
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:

3.1. Membership. Each Owner shall be a member of the Association by virtue of Lot ownership. 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 Lot's voting rights.

3.2. Voting and Common Expenses. Voting rights and Common Expense obligations are allocated equally among the Lots; except that special allocations of Common Expenses shall be permitted as provided in Section 5.

3.3. Appurtenant Rights and Obligations. The ownership of a Lot shall include the voting rights and Common Expense obligations described in Section 3.2. These rights, obligations and interests, and the title to the Lots, may not be separated or conveyed separately. The allocation of the rights, obligations and interests described in this Section may not be changed, except in accordance with the Governing Documents.

3.4. 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 the Owner's Lot at meetings of the Association; provided, that if there are multiple Owners of a Lot, only the Owner or other Person designated pursuant to the provisions of the By-Laws or such Owner or other person's proxy may cast such vote. The voting rights of Owners are more fully described in the By-Laws.

3.5. Use of the Common Areas. The Common Areas may be used by the Owners and Occupants and their guests for recreational purposes, subject to the Governing Documents. No Owner or Occupant will have or may assert any exclusive or special rights in any portion of the Common Areas against any other Owner or Occupant or their guests. The Declarant, pursuant to Section 11, or the Board may grant such easements burdening the Common Areas or make such public dedications of the Common Areas as the Declarant or the Board deems to be in the interest of the Association.

3.6. Development of the Common Areas. Development of the Common Areas is restricted except that Outlots A and D, or any portion thereof may, at Declarant's sole election, be dedicated for streets, utilities or other public purposes. The construction of additional buildings, the clearing of vegetation and the storage of vehicles and other materials within the Common Areas is prohibited, except as specifically approved by the Board and may also require permission from the City of Duluth. Notwithstanding the foregoing, Declarant or the Association may cause or permit the construction of storm water retention ponds and sewer retention facilities and related access roads in the Common Areas.

SECTION 4 ADMINISTRATION

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

4.1. General. The operation and administration of the Association and the Property shall be governed by the Governing Documents. The Association shall have all powers described in the Governing Documents and Minn. Stat. § 317A. 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.

4.2. Operational Purposes. The Association shall operate for the purposes of (i) administering and enforcing the covenants, restrictions, easements, charges and liens set forth in the Governing Documents and (ii) preserving the value and architectural uniformity and character of the Property.

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

4.4. By-Laws. The Association shall have By-Laws. The By-Laws and any amendments thereto shall govern the operation and administration of the Association.

4.5. 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; provided, however, that 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.

4.6. 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 Declaration. The inclusion in other parts of the

Declaration 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 will be effective only after twenty-one (21) days' written notice thereof has been given to the Owners.

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

SECTION 5 ASSESSMENTS FOR COMMON EXPENSES

5.1. General. Assessments for Common Expenses shall be determined and assessed against the Lots by the Board, in its discretion; subject to the limitations set forth in Sections 5.2 and 5.3, and the requirements of the By-Laws. Assessments for Common Expenses shall include annual assessments and may include special assessments. Assessments shall be allocated evenly among the Lots, subject to the following qualifications.

- a. Any Common Expense associated with the maintenance, repair, or replacement undertaken by the Association as permitted in Section 8 may be assessed exclusively against the Lot or Lots for which the maintenance, repair or replacement is provided.
- b. Any Common Expense or portion thereof benefitting fewer than all of the Lots may be assessed exclusively against the Lots benefitting on the basis of the actual cost incurred with respect to each Lot.
- c. 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, against an Owner or Occupant or their guests, may be assessed against the Owner's Lot.
- d. Fees, charges, late charges, fines and interest may be assessed as provided in Sections 7 and 10.
- e. Assessments levied to pay a judgment against the Association may be levied only against the Lots included in the Property at the time the judgment was entered, in proportion to their Common Expense liabilities.
- f. If any installment of an assessment becomes more than 30 days past due, then the Association may, upon 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, Common Expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense liabilities.
- h. Assessments under Subsections 5.1. a-g shall not be considered special assessments as described in Section 5.3.

5.2. Annual Assessments. Annual assessments shall be established and levied by the Board, subject only to the limitations set forth in Section 5.2 and 5.3. Each annual assessment shall cover all of the anticipated Common Expenses of the Association for that year.

- a. Until a Common Expense assessment is levied, Declarant shall pay all accrued expenses of the community.
- b. After a Common Expense assessment is levied, the annual assessment may be subsequently increased by the Board, subject to Section 5.2.c.
- c. Until the termination of the period of Declarant control described in Section 11.3, the increase in the annual assessment per Lot for any year shall not exceed the greater of (i) the increase from the preceding year in the Revised Consumer Price Index for Urban Wage Earners and Clerical Workers U.S. City Average, All Items Series A (1982-1984=100) issued by the Bureau of Labor Statistics of the United States Department of Labor; or (ii) 5% of the total annual assessment for the Association's previous fiscal year, unless such increase is approved by the vote of a majority of those Owners voting, in person or by proxy, at a meeting called for that purpose. Written notice of the meeting shall be sent to all Owners not less than 21 days nor more than 30 days in advance of the meeting.

5.3. 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 Units for the purpose of defraying in whole or in part (i) the cost of any unforeseen or unbudgeted Common Expense, (ii) general or specific reserves for maintenance, repair or replacement, and (iii) the maintenance, repair or replacement of any part of the Property, and any fixtures or other property related thereto. Notwithstanding the foregoing, any special assessment shall be subject to approval by the vote of a majority of those Owners voting, in person or by proxy, at a meeting called for that purpose. Written notice of the meeting shall be sent to all Owners not less than 21 days nor more than 30 days in advance of the meeting.

5.4. Working Capital Fund. Declarant shall establish a working capital fund to meet unforeseen expenditures or to purchase additional equipment or services during the period when Declarant is conducting its sales activities. There shall be contributed on a one-time basis for each Lot sold by Declarant an amount equal to two (2) months installments of the estimated Common Expense assessment for the Lot being conveyed. The contribution to the working capital fund may be paid either at the time of closing of sale of the Lot or when control of the Association is transferred to the Owners upon termination of the period of Declarant control. The amounts paid into this fund are in addition to the regular monthly installments of assessments. The funds shall be deposited into the Association's account, and 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 closing the closing of the sale of a Lot, Declarant may reimburse itself from funds collected at the closing for funds which it contributed to the working capital fund with respect to that Lot.

5.5. 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 5.6. The Owner at the time an assessment is payable with respect to the Lot shall be personally liable for the Common Expenses assessed against the 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 his or her share of Common Expenses 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 Sections 5.7, 5.8, 5.9, and in Section 10, in addition to any remedies provided elsewhere in the Governing Documents, or by law, for the purpose of enforcing its rights hereunder.

5.6. Alternative Assessment Program. The following alternative assessment program is established. Notwithstanding anything to the contrary in this Section 5, if a Common Expense assessment has been levied, any Lot for which no certificate of occupancy has been issued, shall be assessed at the rate of 25% of the assessment levied on other Lots until a certificate of occupancy has been issued with respect to the Lot by the City of Duluth. There are no assurances that this alternative assessment program will have no effect on the level of services for items set forth in the Association's budget.

5.7. Assessment Lien. The Association has a lien on a Lot for any assessment levied against that Lot from the time the assessment becomes due. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due. Fees, charges, late charges, fines and interest charges imposed by the Association pursuant to the Governing Documents are liens, and are enforceable as assessments, under this Section. Recording of the Declaration constitutes record notice and perfection of any lien under this Section, and no further recordation of any notice of or claim for the lien is required.

5.8. Foreclosure of Lien: Remedies. A lien for Common Expenses may be foreclosed against a Lot under the laws of the State of Minnesota (i) by action, or (ii) by advertisement as a lien under a mortgage containing a power of sale. The Association, or its authorized representative, shall have the power to bid in at the foreclosure sale and to acquire, hold, lease, mortgage and convey any 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, 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.

5.9. Lien Priority: Foreclosure. A lien under this Section is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances recorded before the Declaration, (ii) any first mortgage on the Unit, except for a contract for deed and (iii) liens for real estate taxes and other governmental assessments or charges against the Unit. Notwithstanding the foregoing, if (i) a first mortgage on a Unit is foreclosed, (ii) the first mortgage was recorded and (iii) no Owner redeems during the Owner's period of redemption provided by 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 Unit subject to unpaid assessments for Common Expenses levied which became due, without acceleration, during the Owner's period of redemption. This provision shall not prevent the Association from redeeming as a creditor.

5.10. 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 satisfied, and may be foreclosed or otherwise enforced. 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 6
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.

6.1. General. The Property shall be owned, conveyed, encumbered, leased, used and occupied subject to the Governing Documents, as amended from time to time. All covenants, restrictions and obligations set forth in the Governing Documents are in furtherance of a plan for the Property, and shall run with the Property and be a burden and benefit to all Owners and Occupants and to any other Person acquiring or owing an interest in the Property, their heirs, personal representatives, successors and assigns.

6.2. Subdivision Prohibited. No Lot may be subdivided or partitioned without the prior written approval of the Board. (See, however, Section 7.1f regarding Duplexes.)

6.3. Residential Use. The Lots shall be used by Owners and Occupants and their guests exclusively as Dwellings or Duplexes, and not for transient, hotel, commercial, business or other non-related purposes, except as provided in Section 6.4. The garages are restricted to use as garages for vehicles and storage associated with residential use of the Dwellings and Duplexes. Any lease of a Lot or any portion of a Dwelling or Duplex (except for occupancy by guests with the consent of the Owner) for a period of less than 30 days, or any occupancy which includes any services customarily furnished to hotel guests, shall be presumed to be for transient purposes.

6.4. 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 (i) an Owner or Occupant residing in a Lot may keep and maintain his or her business or professional records in such Lot and handle matters relating to such business by telephone or correspondence therefrom, provided that such uses are incidental to the residential use, do not involve physical Alterations and do not involve any observable business activity such as signs, advertising displays, bulk mailings, deliveries, or visitation or use of the Lot by customers or employees, (ii) the Association and Declarant may maintain offices on the Property for management, marketing and development, and related purposes, (iii) a home builder may maintain and show a model Dwelling with the Declarant's permission, and (iv) an Owner or Occupant residing in a Dwelling may operate a home day care as permitted by law.

6.5. Leasing. Leasing of Duplexes and Dwellings for residential purposes will be allowed. Notwithstanding anything in this Declaration to the contrary, this provision may not be amended and no restriction not set forth in this Section 6 shall be placed on leasing Lots without the consent of the Declarant while Declarant owns any Lot.

6.6. Parking. Garages and parking areas on the Property shall be used only for parking of vehicles owned or leased by Owners and Occupants and their guests, and such other incidental uses as may be authorized in writing by the Association. 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.

6.7. Animals. No animal may be bred, or kept or maintained for business or commercial purposes, anywhere on the Property. 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. The word "animal" shall be construed in its broadest sense and shall include all living creatures except humans.

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

6.9. 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.

6.10. 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.

6.11. Access to Lots. In case of emergency, all Lots, Duplexes and Dwellings are subject to entry, without notice and at any time, by any officer or member of the Board of the Association, by the Association's management agents or by any public safety personnel. Entry is also authorized for maintenance purposes under Section 8 and for enforcement purposes under Sections 5, 7 and 10.

6.12. Associated Apartments. Notwithstanding anything in the Governing Document to the contrary, one Associated Apartment is permitted per Dwelling. Alterations for any Associated Apartment are subject to approval pursuant to Section 7. The Board may adopt reasonable rules and regulations governing Associated Apartments.

6.13. Duplexes. Notwithstanding anything in the Governing Documents to the contrary, up to eight Lots may contain Duplexes. If Declarant adds Additional Real Estate to the Property, up to 3 additional Lots may contain Duplexes. Duplexes are subject to special regulation pursuant to Section 7.

SECTION 7 ARCHITECTURAL CONTROL

7.1. Restriction on Alterations. The following restrictions and requirements shall apply to Alterations on the Property:

- a. Except as expressly provided in this Section 7, no structure, building, addition, deck, patio, fence, wall, enclosure, window, exterior door, sign, display, decoration, color change, shrubbery, material topographical or landscaping change, or other exterior improvements to or alteration of any Lot (collectively referred to as "Alterations"), shall be commenced, erected or maintained, unless and until the plans and specifications showing the nature, kind, shape, height, color, materials and locations of the Alterations shall have been approved in writing by an architectural review committee ("ARC") appointed by the Board of Directors. The ARC shall be made up of an odd number of natural individuals and shall have at least three (3) members. The Declarant will have the right to appoint a majority of the members of the ARC while the Declarant owns any unimproved Lot.

- b. The criteria for approval shall include and require, at a minimum, (i) substantial uniformity of color, size, location, type and design in relation to existing improvements and topography, (ii) comparable or better quality of materials as used in existing improvements, (iii) ease of maintenance and repair, (iv) adequate protection of the Property, the Association, Owners and Occupants from liability and liens arising out of the proposed Alterations, and (v) compliance with governmental laws, codes and regulations.
- c. Declarant may prepare initial Architectural Guidelines, which may contain general provisions applicable to all of the Property, as well as specific provisions which vary from phase to phase. The Architectural Guidelines are intended to provide guidance to owners and builders regarding matters of particular concern. The Architectural Guidelines are not the exclusive basis for decisions. Compliance with the Architectural Guidelines does not guarantee approval of any application. The Association, by and through the ARC, shall have sole and full authority to amend the Architectural Guidelines; provided, however, that as long as Declarant owns any unimproved Lot, Declarant's written consent shall be required for any such amendment. Any amendments to the Architectural Guidelines shall be prospective only and shall not apply to require modifications or the removal of structures previously approved once the approved construction or modification has been commenced. There shall be no limitation on the scope of the amendments to the Architectural Guidelines, and amendments may remove requirements previously imposed or otherwise make the Architectural Guidelines less restrictive.
- d. Notwithstanding the foregoing statements regarding the amendment of the Architectural Guidelines, the following will be included in the Architectural Guidelines unless this Declaration is amended to provide otherwise:
- (i) Trailer homes, mobile homes, motor homes, campers, or recreational vehicles may not be used for a temporary shelter or for permanent residence upon any Lot.
 - (ii) Buildings shall conform with the City of Duluth Zoning Code. In addition, any requests for variances from the Zoning Code for any alteration, must be approved by the ARC before a variance request is made to the City of Duluth.
 - (iii) Each of the Lots will have its own Building Envelope as set forth in **Exhibit C** attached hereto, which depicts that portion of the Lot which may be improved (subject to approval as provided herein) by buildings and impervious surfaces. The boundaries of the Building Envelope must be staked or otherwise fenced or marked as required by the ARC to preserve the Lot's natural environment. A maximum of two buildings may be located on each Lot. One of the buildings must be a Dwelling or Duplex. The other building may be a detached garage or a storage shed. A Dwelling or Duplex with an attached garage will be considered one building. If two Lots will be combined by an owner and developed as one, then the Building Envelope may be re-established for the Lots. Once combined, the Lots will be treated as one Lot for all purposes under this Section 7. Re-establishing the Building Envelope for this purpose will be deemed an alteration. Notwithstanding anything in this Declaration to the contrary, the ARC may grant a variance relating to construction outside of a Lot's Building Envelope pursuant to Section 7.5.
 - (iv) Trees over six inches in diameter outside of a Lot's Building Envelope may not be cut or removed except (a) a dead or diseased tree may be removed, (b) a tree may be

cut or removed to allow for the installation of approved landscaping and plantings and (c) pursuant to a variance granted by the ARC.

- e. The Architectural Guidelines may be based on purely aesthetic considerations and the ARC may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Each owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. The ARC shall have the sole discretion to make final, conclusive and binding determinations on matters of aesthetic judgment and such determinations are not be subject to review so long as they are made in good faith and in accordance with the procedures set forth herein.
- f. The ARC will determine which Lots may include Duplexes. The criteria to be applied by the ARC may include lot size and dispersion. No Duplex will be permitted within 300 feet from any other Duplex. The ARC may designate Lots it believes are appropriate for Duplexes and/or it may approve Lots for Duplexes on a first come first served basis as applications are received. Any application for approval for construction of a Duplex must state whether the two single family residences will remain in one ownership, or whether they will be legally divided into two separate ownerships. If the application states that the Duplex will be divided into two separate ownerships, then (i) approval by the ARC will be deemed approval of the subdivision of the Lot by the Board pursuant to Section 6.2 and (ii) upon such subdivision, each of the two single family residences and its allocated interest in the Lot will constitute a separate Lot but the resulting Lots will have a combined Building Envelope.

The restrictions and requirements set forth in this Section 7.1 are minimum requirements and may be extended or supplemented in the Architectural Guidelines.

7.2. Review Procedures. The following procedures shall govern requests for Alterations under this Section:

- a. Detailed plans, specifications and related information regarding any proposed alteration, in form and content acceptable to the ARC, shall be submitted to the ARC at least forty-five (45) days prior to the projected commencement of construction. No Alterations shall be commenced prior to approval. The 45-day time period may be waived or reduced by the ARC in its sole discretion and on a case-by-case basis. A waiver or reduction in any one instance shall not entitle the Owner or any other Owner to a waiver or reduction in any other instance even on the same project.
- b. The ARC shall make a determination on each application within forty-five (45) days after receipt of a completed application and all required information. The ARC may (i) approve the application, with or without conditions; (ii) approve a portion of the application, with or without conditions, and disapprove other portions; or (iii) disapprove the application. The ARC shall notify the applicant in writing of the ARC's determination. In the case of disapproval, the ARC may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections. If the ARC fails to respond in a timely matter, approval shall be deemed to have been given. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with Architectural Guidelines unless a written variance has been granted pursuant to Section 7.5. Notice shall

be deemed to have been given at the time the envelope containing the response is deposited in the U.S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

- c. If no request for approval is submitted, approval is denied, unless (i) the completed Alterations are reasonably visible and (ii) no written notice of violation has been given to the Owner on whose Lot the Alterations are made, by the Association or another Owner, for six months after completion. Notice may be direct written notice or the commencement of legal action by the Association or an Owner. The Owner of the Lot in which the Alterations are made shall have the burden of proof, by clear and convincing evidence, that no notice was given for at least six months following the date on which the Alterations were completed and reasonably visible.

7.3 Commencement and Completion of Work. If construction does not commence on an alteration for which plans have been approved within one year after the date of approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work, including all work set forth in approved landscaping plans, shall be completed within one year of commencement unless otherwise specified in the ARC's notice of approval or unless the ARC grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, it shall be considered nonconforming and it shall be subject to enforcement action by the Association.

7.4 No Waiver of Future Approvals. Each Owner acknowledges that the persons reviewing applications under this Section will change from time to time and the opinions on aesthetic matters, as well as interpretations and applications through the Architectural Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the ARC may refuse to approve similar proposals in the future. Approval of application or plans, or any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, plans or other matters, subsequently or additionally submitted for approval.

7.5 Variances. The ARC may, but shall never be required to, authorize variances regarding compliance with any of the guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) preclude the ARC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting the variance.

7.6 Limitation of Liability. The standards and procedures established by this Section are intended as a mechanism for maintaining and enhancing the overall aesthetics of Hawk Ridge Estates; they do not create any duty to any Person. Review and approval of any application pursuant to this Article may be made on the basis of aesthetic considerations only, and the ARC shall not bear any responsibility for insuring the structural integrity or soundness of approved construction or modifications, nor for insuring compliance with building codes and other governmental requirements, nor for insuring that all buildings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners.

Declarant, the Association, the Board, the ARC and any committee, member, officer, agent or employee of the foregoing shall not be held liable for soil conditions, drainage or other general site work; or any defects in plans revised or approved hereunder or loss or damage arising out of the action, inaction, integrity, financial condition or quality of work of any contractor or its subcontractors, employees or agents, whether or not Declarant has approved or featured such contractor as a builder; or any injury, damages or loss arising out of the manner or quality or other circumstances of approved Alterations to any Lots. In all matters, the Board, the ARC, and the members of each shall be defended and indemnified by the Association.

7.7. Certificate of Compliance. Any Owner may request that the ARC issue a Certificate of Architectural Compliance certifying that there are no known violations of this Section or the Architectural Guidelines for the Owner's Lot. The ARC shall either grant or deny such request within thirty (30) day of receipt of a written request. Issuance of certificates shall preclude the ARC or Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate. The Association may require a reasonable fee for the issuance of any Certificate of Architectural Compliance.

7.8. Additional Procedural Requirements. In each instance where detailed plans, specifications and related information regarding any proposed alteration must be submitted, the detail plans and specifications must, at a minimum, include the following: (i) four sets of drawings showing floor plans, building elevations, and typical cross-sections, including material colors and exterior construction; (ii) four sets of the proposed site plan on the Lot showing the following: (a) the location of the Dwelling or Duplex and attached or detached garage, if any, (b) the location of any outbuildings, (c) the location of the driveway and parking and construction materials that will be used, (d) a proposed grading plan showing contours and spot elevations of Lot Alterations and accurate clearing limits (clearing limits for all construction, including utility work, must be staked by Owner on site prior to the commencement of the work and adhered to by all contractors, where over clearing occurs all trees and other vegetation or materials must be replaced with equal value trees, vegetation or other materials as determined by the ARC in its sole discretion); (iii) proposed planting plan; and (iv) extent of maintained turf area.

7.9. Fees. The ARC may establish and charge reasonable fees for review of all applications and may require such fees to be paid in full prior to reviewing any application. Such fees may include reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. Declarant and the Association may employ architects, engineers or other person as deemed necessary to perform or assist in the performance of the review. The Board may include the compensation of such persons in the Associations annual operating budget as Common Expenses.

7.10. Remedies for Violations. The Association may undertake any measures, legal or administrative, to enforce compliance with this Section and shall be entitled to recover from the Owner causing or-permitting the violation all attorneys' fees and costs of enforcement, whether or not a legal action is started. Such attorneys' fees and costs shall be a lien against the Owner's Lot and a personal obligation of the Owner. In addition, the Association shall have the right to enter the Owner's Lot and to restore any part of the Lot to its prior condition if any Alterations were made in violation of this Section, and the cost of such restoration shall be a personal obligation of the Owner and a lien against the Owner's Lot.

SECTION 8 MAINTENANCE

8.1. Maintenance by Owners. All maintenance of the Dwellings, Duplexes and Lots shall be the sole responsibility and expense of the Owners thereof. Each Owner shall maintain the Owner's Lot and all Alterations to the Lot in compliance with all applicable ordinances and directives. As used in this Section, maintenance includes, without limitation, the repair and upkeep of all Alterations visible from the outside of any building, lawn care, ice and snow removal, and waste disposal.

8.2. Optional Maintenance by the Association. The Association may, but shall not be required to, provide any maintenance an Owner is responsible for pursuant to Section 8.1 but fails to provide. In addition, the Association may, but shall not be required to, provide maintenance to Common Areas and holding, drainage or similar ponds and/or to trails and related facilities located within the Common Areas.

8.3. 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 Property is caused by the willful or negligent act or omission of an Owner or Occupant, or their guests, or by a condition in a Lot which the Owner or Occupant has willfully or negligently allowed to exist, the Association may cause such damage or condition to be repaired or corrected (and enter upon any Lot to do so), and the cost thereof may be assessed against the Lot of the Owner responsible for the damage.

SECTION 9 INSURANCE

9.1. Coverage. The Association may obtain and maintain a master policy or policies of insurance in accordance with the insurance requirements set forth herein, issued by a reputable insurance company or companies authorized to do business in the State of Minnesota, providing the following coverages:

- a. Fidelity bond or insurance coverage against dishonest acts on the part of directors, officers, trustees, employees or persons responsible for handling funds belonging to or administered by the Association if deemed to be advisable by the Board or required by the regulations of the FHA or FNMA as a precondition to 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 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 or a waiver of defense based upon the exclusion of persons serving without compensation shall be added.
- b. Workers' Compensation insurance as required by law.
- c. Directors and officers liability insurance with such reasonable limits and coverages as the Board shall determine from time to time.

- d. Insurance with reasonable limits and coverages as the Board shall determine from time to time protecting the members of the Board, the members of the ARC, and the Association against claims made regarding any decision or failure to decide regarding any alteration.
- e. Comprehensive public liability insurance covering the use, operation and maintenance of the Common Areas, with minimum limits of \$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.
- 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.

9.2. Premiums: Improvements: Deductibles. All insurance premiums will be assessed and paid as a Common Expense.

SECTION 10 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 decisions of the Association, the Board and the ARC and such amendments thereto as may be made from time to time. 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.

10.1. 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, or by an Owner against the Association or another Owner, to enforce compliance with the Governing Documents, and the decisions of the Association, the Board or the ARC. Notwithstanding the foregoing, if the Association has resolved a dispute with an Owner regarding compliance with the Governing Documents, the resolution is final and another Owner may not commence or continue any action against the Owner with whom the Association resolved the dispute. No Owner may withhold any assessments payable to the Association, or take (or omit) other action in violation of the Governing Documents, as a measure to enforce such Owner's position, or for any other reason.

10.2. 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.

- a. Commence legal action for damages or equitable relief in any court of competent jurisdiction.
- b. Impose late charges of up to the greater of \$20, or 15% of the amount due, for each past due assessment or installment thereof, and interest at up to the highest rate permitted by law.

- c. In the event of default of more than 30 days in the payment of any assessment or installment thereof, all remaining installments assessed against the Lot owned by the defaulting Owner may be accelerated and shall then be payable in full if all delinquent assessments, together with all costs of collection and late charges, are not paid in full prior to the effective date of the acceleration. At least fourteen (14) days' 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.
- e. Enter any Lot (including any Dwelling, Duplex or other building) in which, or as to which, a violation or breach of the Governing Documents exists which materially affects, or is likely to materially affect in the near future, the health or safety of the other Owners or Occupants, or their guests, or the safety or soundness of any Dwelling, Duplex or other building or other part of the Lot, and to summarily abate and remove, at the expense of the offending Owner or Occupant, any structure, thing or condition in the Lot (including any Dwelling, Duplex or other building) which is causing the violation; provided, that any improvements which are a part of a Lot may be altered or demolished only pursuant to a court order or with the agreement of the Owner.
- f. Foreclose any lien arising under the provisions of the Governing Documents or under law, in the manner provided for the foreclosure of mortgages by action or under a power of sale in the state of Minnesota.
- g. Enter any Lot (including any Dwelling, Duplex or other building) to perform and maintenance, replacement, restoration, rebuilding or repair that the Association is authorized to perform pursuant to the Governing Documents.
- h. Enter any Lot (including any Dwelling, Duplex or other building) for the purpose of effectuating any remedies provided in Section 7 of this Declaration.

10.3. Rights to Hearing. Except where an emergency exists, in the case of the imposition of any of the remedies authorized by Section 10.2.d., e., f., g. or h. of this Section, the Board shall, upon written request of the alleged offender, grant to the alleged offender a fair and equitable hearing. The alleged offender shall be given notice of the nature of the violation and the right to a hearing, and at least 10 days within which to request a hearing. The hearing shall be scheduled by the Board and held within thirty days of receipt of the hearing request by the Board, and with at least 10 days prior written notice to the alleged offender. If the alleged offender fails to appear at the hearing, then the right to a hearing shall be 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 alleged offender within ten days following the hearing, if not delivered to the alleged offender at the hearing. A party may be represented in any hearing by legal counsel; however, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the Board except on grounds of self-incrimination, or other grounds deemed by the Board to be appropriate. In this connection, the Board need not accept the statements of counsel as being the statements of counsel's client if the Board desires direct testimony. The parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce or confuse the members of the Board, or any party to the proceedings, or any action by counsel which is viewed by the Board as disruptive of the proceedings shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the

foregoing reasons shall be the result of a majority vote of the members of the Board and shall be nonappealable. If event counsel is excluded, the party who's counsel has been excused may request a postponement to a date not less than 5 nor more than 15 days from the date of postponement to enable the party to obtain alternative counsel; provided, however, that such postponement shall not be authorized if it appears to members of the Board that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing, and such determination shall not be appealable. Formal rules of evidence and formal court-type procedures need not be followed by the Board. The Board of Directors may consider any evidence, testimony or matter it deems to be relevant.

10.4. Lien for Charges, Penalties, Etc. Any assessments, charges, fines, penalties or interest imposed under this Section shall be a lien against the Unit 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 5. 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 gives written notice 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 right to pursue any others.

10.5. 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, 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.

10.6. 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 as provided therein.

SECTION 11 SPECIAL DECLARANT RIGHTS

Declarant hereby reserves exclusive and unconditional authority to exercise the following special declarant rights for as long as it owns an unimproved Lot:

11.1. Sales Facilities. To construct, operate and maintain a sales office, management office, model units and other development, sales and rental facilities within the Property and any Lots owned by Declarant from time to time, located anywhere on the Property. To permit the construction, operation and maintenance model units by selected contractors within the Property on Lots not owned by Declarant.

11.2. 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.

11.3. 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 60 days after conveyance to Owners other than a Declarant of 75% of the total number of Lots authorized to be included in the Property or (iii) the date ten (10) years following the date of the first conveyance of a Lot to an Owner other than Declarant. Notwithstanding the foregoing, the Owners other than the Declarant shall have the right to nominate and elect not less than 33⅓% of the directors at a meeting of the Owners

which shall be held within 60 days following the conveyance by Declarant of 50% of the total number of Lots authorized to be included in the Property.

11.4. Consent to Certain Amendments. As long as Declarant owns any Lot, Declarant's written consent shall be required for any amendment to the Governing Documents which directly or indirectly affects or may affect Declarant's rights under the Governing Documents.

11.5. Conveyance to Association. The Declarant may, from time to time, convey one or more Lots on which no Dwellings have been built to the Association. Upon any such conveyance, the obligation of the Declarant to pay any further assessments (those not then assessed against the Lot) for the Lots will end.

11.6. Add Additional Real Estate. To add Additional Real Estate to the Property as described in Section 12.

11.7. Unimproved Lot Defined. For purposes of this Declaration, a Lot will be deemed to be "unimproved" until a certificate of occupancy has been issued for a Duplex or single family Dwelling on the Lot.

11.8. City Ponds, Retention Facilities and Access Roads. The Declarant and the City Engineer of the City of Duluth have entered into a Memorandum of Understanding, pursuant to which the Declarant agreed to construct a storm sewer system, including appropriate storm water retention ponds and access roads as approved by the City Engineer, to receive storm water flows from the property. The storm water retention ponds and access roads will be constructed within the Common Areas. The Authority will be responsible to operate and maintain the storm water retention ponds and to maintain the access roads for two years following acceptance of the street and utility improvements within the Property by the City of Duluth. If, at the end of such two year period, the City Engineer determines that the design and construction of the ponds and access roads is acceptable and that the ponds and access roads have been adequately maintained by the Declarant, the City Engineer will issue a written acceptance of the storm sewer system and access roads. At such time, the City will assume the ownership, operation and maintenance of the storm sewer system and access roads. The Declarant reserves an easement for the construction, reconstruction and maintenance of the storm sewer system and access roads and may freely enter the Common Areas for this purpose. Declarant also reserves the right, without any consent from the Owners or the Association, to grant or cause the Association to grant easements to the City of Duluth for the storm sewer system and access roads within the Common Areas.

SECTION 12 RIGHT TO ADD ADDITIONAL REAL ESTATE, RELOCATE UNIT BOUNDARIES AND ALTER UNITS

12.1. Declarant's Rights to Add Additional Real Estate. Declarant hereby expressly reserves the right to add the Additional Real Estate to the Property, by unilateral action subject to the following conditions:

- a. The right of Declarant to add the Additional Real Estate to the Property shall terminate ten (10) years after the date of recording of this Declaration or upon earlier express written withdrawal of such right by Declarant, unless extended by a vote of the Owners. There are no other limitations on Declarant's rights hereunder, except as may be imposed by law.

- b. The Additional Real Estate may be added to the Property in parcels consisting of one or more platted lots, or portions thereof.
- c. There are no assurances as to the times at which all or any part of the Additional Real Estate will be added to the Property, the order in which it will be added, the number of parcels per phase nor the size of the parcels. Declarant is under no obligation to add the Additional Real Estate to the Property, and the Additional Real Estate may be developed by Declarant or its successors in interest for other purposes, subject only to approval by the appropriate governmental authorities.
- d. The maximum number of Lots (not including the subdivision of Lots pursuant to Section 7.1d) that may be created within the Additional Real Estate is 64.
- e. Any Alterations created upon the Additional Real Estate, when and if added to the Property, shall be subject to Section 7.
- f. All covenants and restrictions contained in this Declaration affecting the use, occupancy and alienation of Lots shall apply to all Lots created on the Additional Real Estate, when and if added to the Property.
- g. The statements made in Subsections c through f above shall not apply to any Additional Real Estate which is not added to the Property.

12.2. Subdivision or Conversion. No additional Lots may be created by the subdivision or conversion of a Unit into two or more Lots, nor into other Lots, except as provided in Sections 6.2 and 7.1(f).

SECTION 13 AMENDMENTS

This Declaration may be amended by the consent of (i) Owners of Lots to which are allocated at least sixty-seven percent (67%) of the votes in the Association, (ii) the percentage of Eligible Mortgagees (based upon one vote per first mortgage owned) required by Section 14 as to matters described by said Section and (iii) the consent of Declarant to certain amendments as provided in Section 11. Consent 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 and the Declarant shall be in writing. The Amendment shall be effective when recorded. 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.

SECTION 14 PROVISIONS FOR ELIGIBLE MORTGAGEES

Notwithstanding anything to the contrary in the Governing Documents, and subject to any greater requirements or other laws, Eligible Mortgagees shall have the following rights and protections:

14.1. 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 vote per first mortgage owned) shall be required for any amendment to the Governing Documents which causes any change except pursuant to Section 16.7 in the following: (i) voting rights; (ii)

increases in assessments that raise the previously assessed amount by more than 25%, (iii) responsibility for maintenance and repairs; (iv) expansion or contraction of the Property or the addition, annexation or withdrawal of property to or from the Property except as provided in Section 12; (v) imposition of any restrictions on the leasing of Units; or (vi) any provisions that expressly benefit mortgage holders, or insurers or guarantors of mortgages.

14.2. Consent to Subdivision. No Lot may be partitioned or subdivided without the prior written approval of the Owner and Eligible Mortgagee thereof, and the Association.

14.3. No Right of First Refusal. The right of an Owner to sell, transfer or otherwise convey his or her Unit shall not be subject to any right of first refusal or similar restrictions.

14.4. Priority 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 acquisition of possession of the Lot by said first mortgage holder or purchaser; (i) except as provided in Section 5.9 and (ii) except that any unpaid assessments or charges with respect to the Lot may be reallocated equally among all Lots.

14.5. 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 a request is made by FNMA or any institutional guarantor or insurer of a mortgage loan against a Lot, for an audit of the Association's financial statements for the preceding year, the Association shall cause an audit to be made and deliver a copy to the requesting party.

14.6. 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 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.

14.7. Additional Provisions Regarding Consent. In determining the denominator for the calculation of the percentages of consents pursuant to Sections 13 and 14.1, only first mortgages held by Eligible Mortgagees shall be counted. Furthermore, if an Eligible Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after such Eligible Mortgagee receives proper

notice of the proposal, the Eligible Mortgagee shall be deemed to have approved of and consented to the proposed amendment. Such notice must be delivered by certified mail with return receipt requested, and is deemed given on the date that it is postmarked. If more than one Eligible Mortgagee holds the same first mortgage, the mortgage shall only be counted once for the calculation of the percentages of consents, and consent from any one such Eligible Mortgagee shall be binding as consent from all.

SECTION 15 SNOWMOBILE TRAILS

15.1. Disclosure Regarding Snowmobile Trail. A snowmobile runs through land that is now or may be included in the Property. The trail runs east and west along vacated Lester Street (sometimes known as London Street) and runs next to Lots 1 and 3, Block 1, Lots 1 and 2, Block 2, Lot 1, Block 3, Lot 7, Block 7 and Lot 16, Block 5 of the Plat. By accepting a conveyance of title to a Lot or by occupying any Lot within the Property, particularly one of the listed Lots, each Owner and Occupant for themselves, their heirs, successors, representatives, assigns and guests, hereby acknowledges that ownership of property abutting upon a snowmobile trail comes subject to a special set of circumstances. Therefore, each Owner and Occupant is deemed to acknowledge and agree to the continued existence of the snowmobile trail and to acknowledge and agree to the following regarding the use and operation of the snowmobile trail:

- i. maintenance activities on the snowmobile trail may begin early in the morning and extend late into the evening and may include the use of grooming equipment and other mechanical devices, and
- ii. portions of the Property may experience higher than normal levels of noise, lighting, visual disruption, exhaust, and snowmobile, pedestrian and other traffic (including snowmobile traffic on public streets within the Property) because of the proximity of the snowmobile trail.

SECTION 16 MISCELLANEOUS

16.1. 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 instrument or exhibits.

16.2. 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.

16.3. Tender of Claims. In the event that any incident occurs which could reasonably give rise to a demand by the Association against Declarant for indemnification, the Association shall promptly tender the defense of the action to its insurance carrier, and give Declarant written notice of such tender, the specific nature of the action and an opportunity to defend against the action.

16.4. Notices. Unless specifically provided otherwise in the Governing Documents, all notice required to be given by or to the Declarant, the Association, the Board, the ARC or their officers, agents or members, the Association or the Owners or Occupants shall be in writing and shall be effective upon hand delivery, or mailing if properly addressed with postage prepaid and deposited in the United States mail.

16.5. Conflicts Among Documents. In the event of any conflict among the provisions of the Declaration, the By-Laws or any Rules or Regulations approved by the Association. The Declaration shall control, and as between the By-Laws and the Rules and Regulations, the By-Laws shall control.

16.6 Duration of Covenants. The easements set forth in this Declaration are perpetual. The covenants, conditions, restrictions, liens and charges contained in this Declaration shall continue for thirty (30) years after the date of the first conveyance of a Lot. The covenants, easements, liens and charges contained in this Declaration shall automatically be extended for successive terms of twenty-one (21) years each unless the Owners of Lots to which are allocated at least eighty percent (80%) of the votes of the Association vote to terminate.

16.7 Special Provisions Relating to Certain Amendments. Notwithstanding any other provision in this Declaration to the contrary, if any amendment is necessary in the judgment of the Board, to cure any ambiguity or to correct or supplement any provision of this Declaration that is defective, missing or inconsistent with any other provision hereof, or if such amendment is necessary to conform to the requirements of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, then at any time and from time to time, the Board may effect an appropriate corrective amendment without the approval of the Owners or Eligible Mortgagees upon receipt by the Board of an opinion from independent legal counsel to the effect that the proposed amendment is permitted by the terms of this Section.

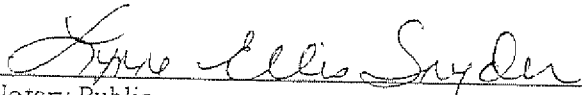
IN WITNESS WHEREOF, the undersigned has executed this instrument the day and year first set forth.

THE HOUSING AND REDEVELOPMENT AUTHORITY
OF DULUTH, MINNESOTA

By _____


STATE OF MINNESOTA)
) ss.
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this 10th day of June, 2005, by RICHARD W. BALL, the Executive Director of The Housing and Redevelopment Authority of Duluth, Minnesota, a public body corporate and politic a organized under the laws of the State of Minnesota on behalf of the authority.



Notary Public

This instrument was drafted by:
FRYBERGER, BUCHANAN, SMITH &
FREDERICK, P.A.

700 Lonsdale Building
302 West Superior Street
Duluth, MN 55802
(218) 722-0861
DDM/13848-35

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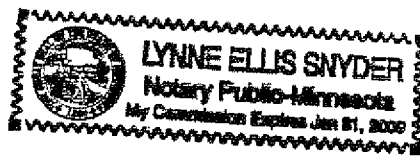


EXHIBIT A TO DECLARATION
DESCRIPTION OF THE REAL ESTATE

All of the property platted as Hawk Ridge Estates, including, without limitation:

Lots 1-8 ,Block 1,
Lots 1-7, Block 2,
Lot 1, Block 3,
Lots 1 and 2, Block 4,
Lots 1-16, Block 5,
Lots 1-17, Block 6,
Lots 1-7, Block 7,
Lots 1-3, Block 8,
Outlot A, Outlot B, Outlot C and Outlot D.

EXHIBIT B TO DECLARATION

DESCRIPTION OF THE ADDITIONAL REAL ESTATE

Lots 24, 25, 26, 38, 39, 61, 62 and 63, Auditor's Plat of LESTER PARK GARDEN TRACTS except those portions thereof platted as Hawk Ridge Estates.

Lots 19-23, Lots 40-47 and Lots 51-60, Auditor's Plat of LESTER PARK GARDEN TRACTS.

EXHIBIT C TO DECLARATION
DEPICTION OF BUILDING ENVELOPES

NOTE: ASSOCIATION WILL PROVIDE

Consent of Mortgage Holder

Western National Bank, a national banking association ("Western") is the holder of a Mortgage ("Mortgage") given by The Housing and Redevelopment Authority of Duluth, Minnesota, Douglas Berg and Crystal McLain dated November 10, 2004 and registered in the office of the St. Louis County Registrar of Titles of November 12, 2004 as Document No. 787875, in the original principal amount of \$2,000,000. Western consents to the covenants, conditions, restrictions, easements, charges and liens set forth in and created by the Declaration of Covenants, Conditions, Restrictions and Easements of Hawk Ridge Estates (the "Declaration"). Western also releases the lien of its Mortgage from Outlot A, Outlot B, Outlot C, and Outlot D of the plat of Hawk Ridge Estates. Western does not release its lien against any Lot other than the Outlots, but agrees that its interest in the Lots will be subject to the covenants, conditions, restrictions, easements, charges and liens set forth in the Declaration.

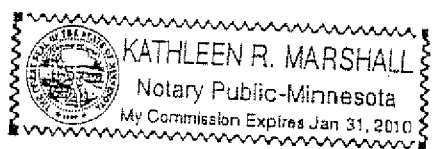
WESTERN NATIONAL BANK

By [Signature]
Its AVP

STATE OF MINNESOTA)
) ss.
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this 16th day of June, 2005, by John Conley, the Asst. Vice President of Western National Bank, a national banking association, on behalf of the association.

[Signature]
Notary Public



This instrument was drafted by:
FRYBERGER, BUCHANAN, SMITH &
FREDERICK, P.A.
700 Lonsdale Building
302 West Superior Street
Duluth, MN 55802
(218) 722-0861
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