
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

AFTON CREEK PRESERVE HOMEOWNERS ASSOCIATION

This Declaration of Covenants, Conditions and Restrictions (the “Declaration”) is made as of the 15th day of April, 2019, by Albert W. Carlson, Trustee of the Trust Agreement of Albert W. Carlson, dated February 17, 2010, as amended (the “Declarant”), for the purpose of establishing the Afton Creek Preserve as a single-family residential housing community.

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

WHEREAS, Declarant desires to establish on the Property a plan for a permanent, single-family residential community to be owned, occupied and operated for the use, health, safety and welfare of its resident owners and occupants, and for the purpose of preserving the open space, the value, the quality and character of the Property, and

WHEREAS, the Property is not subject to the Minnesota Common Interest Ownership Act, Minnesota Statutes, Chapter 515B (“MCIOA”), by reason of the exemption contained in Section 515B.1-102(e)(2) of MCIOA, and

THEREFORE, Declarant makes this Declaration and submits the Property to this Declaration as a residential community under the name “Afton Creek Preserve” consisting of the Units referred to in Section 2, declaring that this Declaration shall constitute covenants to run with the Property, and that the Property, and all real estate added thereto, shall be owned, used, occupied and conveyed subject to the covenants, restrictions, easements, charges and liens set forth herein and in the Association all of which shall run with the land and 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 “Act” means the Minnesota Nonprofit Corporation Act, Minnesota Statutes, Chapter 317A, as amended.

1.2 “Assessment” means all assessments levied by the Association pursuant to Section 6 of this Declaration, including annual assessments, and special assessments.

1.3 “Association” means Afton Creek Preserve Homeowners Association, a Minnesota nonprofit corporation created pursuant to Minnesota Statutes, Chapter 317A, whose members consist of all Owners.

1.4 “Board” means the Board of Directors of the Association as provided for in the Bylaws.

1.5 “Bylaws” mean the Bylaws governing the operation of the Association, as amended from time to time.

1.6 “City” means the City of Afton, Minnesota.

1.7 “Common Elements” means any part of the Property except the Units, including all Improvements thereon, owned by the Association for the common benefit of the Owners and Occupants. The Common Elements are legally described in Exhibit C attached hereto.

1.8 “Common Expenses” means all expenditures made or liabilities incurred by or on behalf of the Association and incident to its operation, including Assessments, the Association’s share of certain maintenance, repair, replacement and operational costs incurred by the Association as determined and allocated in accordance with the Conservation Easement with Minnesota Land and Trust, and items otherwise identified as Common Expenses in this Declaration or the Bylaws.

1.9 “Conservation Easement” means that Conservation Easement dated _____, in favor of the Minnesota Land Trust and the City of Afton, as Co-Holders, recorded as Document No. _____, which governs the Protected Property. The Conservation Easement is perpetual in duration and may be amended in rare circumstance, and only as provided therein. The Conservation Easement imposes certain restrictions and other covenants that run with the land and which support and govern the natural ecological system located within the Protected Property.

1.10 “Declarant Control Period” means the time period during which Declarant has the exclusive right to appoint the members of the Board, as provided in Section 16.5.

1.11 “Developer” means Afton Creek Preserve Development, LLC, a limited liability company created pursuant to Minnesota Statutes, Chapter 322C.

1.12 “Development Area” means all real estate subject to development by the Declarant and Developer as part of Afton Creek Preserve, as described in the Declaration.

1.13 “Dwelling” means a building consisting of one or more floors, designed and intended for occupancy as a detached, single family residence, and located within the boundaries of a Unit. The Dwelling includes any garage attached thereto or otherwise included within the boundaries of the Unit in which the Dwelling is located.

1.14 “Governing Documents” means this Declaration, and the Articles of Incorporation and Bylaws of the Association, as amended from time to time, all of which shall govern the use and operation of the Property.

1.15 “Improvement” means any physical improvement of any kind, or any design or color change to any part of the Property, including without limitation any building, wall, fence, sign, enclosure, screening, utilities system, communications system, irrigation or drainage system, pond, roadway, trail, planting, landscaping, or any other type of structure, physical improvement or change.

1.16 “MCIOA” means the Minnesota Common Interest Ownership Act, Minnesota Statutes, Chapter 515B, as amended.

1.17 “Member” means all persons who are members of the Association by virtue of being Owners. The words “Owner” and “Member” may be used interchangeably in the Governing Documents.

1.18 “Occupant” means any person or persons, other than an Owner, in possession of or residing in a Unit.

1.19 “Owner” means a Person who owns a Unit, but excluding contract for deed vendors, mortgagees and other parties holding a security interest in a Unit, and Persons holding a remainder or reversionary interest in a Unit. The term “Owners” includes, without limitation, a contract for deed vendee and a holder of a life estate.

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

1.21 “Plan” means the habitat management plan and detailed action plan required under the terms of the Conservation Easement for the restoration and maintenance of the Protected Property for wildlife habitat and ecological communities approved by the Co-Holders of the Conservation Easement.

1.22 “Plat” means the recorded plat or part thereof depicting the Property pursuant to the requirements of Minnesota Statutes, Chapter 505, 508 or 508A, as applicable, including any amended Plat or replat recorded from time to time.

1.23 “Private Improvement Developer’s Agreement” means the Private Improvement Developer’s Agreement by and between the Developer and the City of Afton recorded or to be recorded against the Property and portions of the Property identified therein as further described in Section 7.17.

1.24 “Property” means all of the real property now or hereafter subjected to this Declaration, including the Dwellings and all other structures and Improvements located thereon now or in the future. The Property is legally described in Exhibit A attached hereto.

1.25 “Protected Property” means the part of the Property identified on the plat as Outlot A and Outlot B, which are subject to the Conservation Easement.

1.26 “Rules” means the Rules of the Association as approved from time to time pursuant to Section 5.6.

1.27 “Unit” means any platted lot subject to this Declaration upon which a Dwelling is located or intended to be located, as described in Section 2.1 and shown on the Plat, including all Improvements thereon, but excluding Common Elements.

Any terms used in the Governing Documents, and defined in the Act and not in this Section, shall have the meaning set forth in the Act. References to the singular may refer to the plural, and conversely, depending on context.

SECTION 2 DESCRIPTION OF UNITS

2.1 Units. There are eighteen (18) Units. All Units are restricted to residential use. Each Unit constitutes a separate parcel of real estate. The locations of the Units are as shown on the Plat, which is incorporated herein by reference, and a schedule of Units is set forth on Exhibit B attached hereto. The Unit identifier for a Unit shall be its lot and block number and the subdivision name.

2.2 Unit Boundaries. The front, rear and side boundaries of each Unit are the boundary lines of the platted lot upon which the Dwelling is located or intended to be located as shown on the Plat. The Units have no upper or lower boundaries. All spaces, walls, and other Improvements within the boundaries of a Unit are a part of the Unit.

2.3 Appurtenant Easements. The Units shall be subject to and benefited by the easements described in Section 13.

SECTION 3 COMMON ELEMENTS AND OTHER PROPERTY

3.1 Common Elements. The Common Elements and their characteristics shall be as follows:

3.1.1 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.

3.1.2 Except as otherwise expressly provided in the Governing Documents, or as agreed in writing with the Association, all maintenance, repair, replacement, management and operation of the Common Elements shall be the responsibility of the Association.

3.1.2 The Common Elements are owned by the Association for the benefit of the Owners and Occupants.

3.1.4 The Common Elements are subject to (i) easements as described in this Declaration, Conservation Easement and reflected on the Plat, and (ii) the right of the Association to establish reasonable Rules governing the use thereof.

3.1.5 Common Elements include the additional obligations of the Association set forth in Paragraph 3.4 below.

3.2 Annexation of Real Property. Other real property may also be annexed to the Property as Units or Common Elements, or any combination thereof, and subjected to this Declaration, with the approval of (i) Owners (other than Declarant) of Units to which are allocated at least sixty-seven percent (67%) of the votes in the Association, and (ii) Declarant so long as Declarant owns any unsold Unit for sale. Following the required approvals, the Association shall be authorized to take all actions necessary to complete the annexation, including without limitation the execution and recording of an amendment to this Declaration reflecting the annexation.

3.3 Dedication and Deannexation of Property. The Association has the power to dedicate or convey reasonable portions of the Property owned by it to any governmental or private Person for private or public purposes, subject to the terms of the Conservation Easement and subject to the written consent of (i) the City, and (ii) Declarant so long as Declarant owns any unsold Unit for sale. Declarant shall have similar authority over portions of the Property owned by it, subject to the written consent of (i) the City, and (ii) the Association. The portion of the Property which is deannexed shall be automatically released from this Declaration, effective upon the recording of an instrument evidencing such dedication or conveyance; provided that such instrument shall reference this Declaration and the authority contained in this Section.

3.4 Additional Obligations.

3.4.1 The Association shall be responsible for the restoration and maintenance of the Protected Property, Outlot A and Outlot B, as set forth in the Plat, and as required by that certain Conservation Easement co-held by the Minnesota Land Trust and the City of Afton (the "Co-Holders") in accordance with the Plan as approved by the Co-Holders

under the terms of the Conservation Easement. Copies of the approved Plan shall be made available by the Declarant or the Developer upon request of an Owner.

3.4.2 The trail system within Outlot B and identified on the Final Development Plan will be available for public access and will be maintained by the Association.

3.4.3 Other than road and street maintenance or snowplowing performed by or on behalf of the City of Afton, the initiation of which is set out in the Development Agreement with the City of Afton, the Association shall maintain the real property legally described as Lot 1, Block 2, St. Croix Valley Estates, Washington County, Minnesota, otherwise known as 5500 Odell Avenue South, Afton, Minnesota.

3.4.4 The Association shall maintain the Property, including the outlots not included in the Protected Property, with natural prairie grasses, forbs, shrubs and trees as provided in that certain Private Improvement Developer's Agreement with the City of Afton, using Washington Conservation District's Prairie Projects Operations and Maintenance Guide. No less than sixty percent (60%) of each unit shall be planted in natural prairie grasses, and other forbs, shrubs and trees, including existing trees.

3.4.5 Other obligations as set forth in the Private Improvement Developer's Agreement with the City of Afton.

3.4.6 The Association shall maintain the stormwater basins identified on the Plat, pursuant to a maintenance plan developed with a licensed civil engineer and subject to review and approval by the City Engineer.

3.4.7 The Association shall maintain the ingress and egress easement lying between and over Lot 5 and Lot 6, Block 2, Afton Creek Preserve, Washington County, Minnesota.

SECTION 4 ASSOCIATION MEMBERSHIP: RIGHTS AND OBLIGATIONS

Membership in the Association, and the allocation to each Unit 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 solely by reason of Unit Ownership, and the membership shall be automatically transferred with the conveyance of the Owner's title to the Unit. An Owner's membership terminates when the Owner's Unit ownership terminates. When more than one Person is an Owner of a Unit, all such Persons shall be Members, but multiple ownership of a Unit shall not increase the voting rights allocated to the Unit nor authorize the division of the voting rights.

4.2 Voting and Common Expenses. Each Unit is assigned one vote. Common Expense obligations are allocated equally among the Units, subject to the qualifications set forth in Section 6.

4.3 Appurtenant Rights and Obligations. The ownership of a Unit shall include the voting rights and Common Expense obligations describe in Section 4.2. The rights and obligations, and the title to the Units, shall not be separated or conveyed separately, and any conveyance, encumbrance, judicial sale or other transfer of any allocated interest in a Unit shall be void. The allocation of the rights and obligations 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 Unit at meetings of the Association. However, if there are multiple Owners of a Unit, only the Owner or other Person designated pursuant to the provisions of the Bylaws may cast such vote. The voting rights of Owners are more fully described in Section 3 of the Bylaws.

SECTION 5 ADMINISTRATION

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

5.1 General. The operation and administration of the Association and the Property are governed by the Governing Documents and the Rules. The Association is responsible for the operation, management and control of the Property. The Association has all powers described in the Governing Documents and the Act. All powers exercisable by the Association are vested in the Board, unless action or approval by the Owners is specifically required by the Governing Documents. All references to the Association 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 Governing Documents, (ii) maintaining, repairing and replacing those parts of the Property and other Improvements (if any) for which the Association is responsible pursuant to Section 9, and (iii) preserving the value and architectural character of the Property.

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

5.4 Bylaws. The Association shall have Bylaws. The Bylaws govern the operation and administration of the Association, and are binding on all Owners, Occupants and other Persons owning or acquiring any interest in the Property.

5.5 Management. The Board has authority to select a manager or managing agent and to delegate the management duties imposed upon the Association's officers and directors by the Governing Documents and the Act. However, such delegation does not relieve the officers and

directors of the ultimate responsibility for the performance of their duties as prescribed by the Governing Documents and the Act.

5.6 Rules. The Board has authority to approve and implement such reasonable Rules as deemed necessary from time to time for the purpose of operating and administering the affairs of the Association and regulating the use of the Property. The Rules shall be consistent with the Governing Documents, the Rules, and the Conservation Easement. The inclusion in other parts of the Governing Documents of authority to approve Rules is in furtherance, and not in limitation, of the authority granted by this Section. New or amended Rules are effective only after reasonable notice thereof has been given to the Owners.

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

SECTION 6 ASSESSMENTS

6.1 General. Assessments shall be assessed and levied against the Units subject to the requirements and procedures set forth in this Section 6, the Governing Documents and the Bylaws. Assessments shall include annual Assessments under Section 6.2, and may include special Assessments under Section 6.3 and limited Assessments under Section 6.4. Annual and special Assessments shall be allocated among the Units equally, in accordance with the allocation formula set forth in Section 4.2; except that the costs allocated with respect to prairie grasses, flowers, and plants as provided in the Private Improvement Developer's Agreement, located on the Units shall be allocated solely to such respective Unit. Limited Assessments under Section 6.4 are allocated to Units 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 Units in accordance with the allocation formula set forth in Section 4.2. Annual Assessments shall be payable in equal monthly, quarterly or annual installments, as directed by the Board.

Each annual Assessment shall cover all of the anticipated Common Expenses of the Association for that year which are to be shared by all Units in accordance with the allocation formula set forth in Section 4.2. Except to the extent that the replacement is funded by Special Assessments pursuant to Section 6.3 or Limited Assessments pursuant to Section 6.4, annual Assessments shall provide for, among other things, an adequate reserve fund for the maintenance, repair and replacement of those components of the Property for which the Association is responsible, including but not limited to required restoration and maintenance of the Protected Property under the terms of the Conservation Easement and in accordance with the Plan approved by the Co-Holders of the Conservation Easement. The amount annually budgeted for replacement reserves shall be adequate, together with past and future contributions to replacement

reserves, to replace the components as determined based upon the estimated remaining useful life of each component, provided that portions of replacement reserves need not be segregated for the replacement of specific components and provide that the amount annually budgeted need not include reserves for the replacement of components that have a remaining useful life of more than 30 years.

Additionally, to support the administration of the Conservation Easement by the holders of the Conservation Easement the Annual Assessments against each Unit shall include a fee of forty and 00/100th dollars (\$40.00) to be aggregated and paid annually by the Association to the Minnesota Land Trust or other subsequent conservation easement holder. The Association shall include with the delivery of the annual payment, a current list of Owners and their mailing addresses.

The Annual Assessment allocated to the Minnesota Land Trust and levied against each unit may increase every five (5) years from the date of the last Certificate of Occupancy issued for a dwelling, by the lesser of (i) ten percent (10%); or (ii) a percentage amount equal to the percentage increase, if any, in the U.S. Department of Labor, Bureau of Labor Statistics CPI (all items, all consumers 1982-84 equals 100) which occurred during the previous five (5) year period for the Midwest Urban Region Consolidated Metropolitan Statistical Area.

The Association will collect, aggregate and pay the annual payments required hereunder to the Minnesota Land Trust or subsequent holder, on or before January 31 of each year. The first assessed payment will be paid on or before January 31, 2020.

The Association is responsible for collecting the annual payments and remitting payment to the Minnesota Land Trust. In the event that Owner of a Unit fails to make the annual payment, the Association shall have all rights and remedies available under the Governing Documents. Each Owner of a Unit within Afton Creek Preserve agrees that by acceptance of an interest in a Unit the Owner waives all rights to contest the validity of any such assessment.

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 Units equally in accordance with the allocation formula set forth in Section 4.2, and for the purposes described in this Declaration. Among other things, special Assessments shall be used for the purpose of defraying in whole or in part the cost of any unforeseen and unbudgeted Common Expense.

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

6.4.1 Any Common Expense or portion thereof benefiting fewer than all of the Units may, at the Board's discretion, be assessed exclusively against the Unit or Units benefited.

6.4.2 The initial cost to procure and install a mailbox on the Units, along with the costs to maintain, repair and replace the mailboxes located on the Units.

6.4.3 The costs of insurance may be assessed equally or by actual cost per Unit; the costs of utilities may be assessed in proportion to usage.

6.4.4 Reasonable attorney's fees and other professional fees and costs incurred by the Association in connection with (i) the collection of Assessments, and (ii) the enforcement of the Governing Documents, the Act and the Rules, against an Owner or Occupant or their guests, may be assessed against the Owner's Unit.

6.4.5 Late charges, fines and interest may be assessed as provided in Section 14.

6.4.6 Assessments levied to pay a judgment against the Association may be levied only against the Units existing at the time the judgment was entered, in proportion to those Units' Common Expense liabilities.

6.4.7 If any damage to the Common Elements or another Unit 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 Unit to the extent not covered by insurance.

6.4.8 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.

6.4.9 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 6.4.1 through 6.4.7 may, at the Board's discretion, be assessed as a part of, or in addition to, other Assessments levied under this Section 6.

6.5 Liability of Owners for Assessments. Subject to Section 6.5.2, the obligation of an Owner to pay Assessments is as follows:

6.5.1 The Owner at the time an Assessment is payable with respect to that Owner's Unit is personally liable for the share of the Common Expenses assessed against such Unit. Such liability shall be joint and severable where there are multiple Owners of the Unit.

6.5.2 Except as provided in this Section 6.5.2, the Owner's liability is absolute and unconditional, unless otherwise modified by law or this Declaration, and 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 Unit, by the waiver of any other rights, or by reason of any claim against the Association or their officers, directors or agents, or for their failure to fulfill any duties under the Governing Documents or the Act.

6.6 Assessment Lien. The Association has a lien on a Unit for any Assessment levied against that Unit 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 this 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. The attorney's fees and costs incurred by the Association to prepare and record a satisfaction or release of the lien shall be the personal obligation of the Owner of the Unit that is subject to the lien and shall be part of the amount of the lien.

6.7 Foreclosure of Lien: Remedies. A lien for Assessments may be foreclosed against a Unit under the laws of the State of Minnesota (i) by action, or (ii) by advertisement in substantially the same 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 Unit so acquired. The Owner and any other Person claiming an interest in the Unit, by the acceptance or assertion of any interest in the Unit, grants to the Association a power of sale and full authority to accomplish the foreclosure by advertisement. 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 Unit.

6.8 Lien Priority: Foreclosure. A lien under this Section 6 is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances recorded before this Declaration, (ii) any first mortgage on the Unit, and (iii) liens for real estate taxes and other governmental assessments or charges against the Unit. The holder of a first mortgage on a Unit which acquires title to the Unit by foreclosure or a deed in lieu of foreclosure shall take title to the Unit free and clear of all Assessments liens encumbering the Unit and Assessments payable in the period prior to the acquisition of title to the Unit by the mortgage holder. At such times as the first mortgage holder takes title to the Unit, it shall be obligated to pay Assessments levied against the Unit and payable during the period when it holds title to the Unit.

6.9 Voluntary Conveyances: Statement of Assessments. In a voluntary conveyance of a Unit, the buyer shall not be personally liable for any unpaid Assessments or other charges made by the Association against the seller or the seller's Unit prior to the time of conveyance to the buyer, unless expressly assumed by the buyer. However, the lien of such Assessments shall remain against the Unit until released or satisfied. Any seller or buyer shall be entitled to a statement, in recordable form, from the Association setting forth the amount of the unpaid Assessments against the Unit, including all Assessments payable in the Association's current fiscal year, which statement shall be binding on the Association, the seller and the 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 Unit, 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, 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 Protected Property. The Protected Property is subject to the Conservation Easement held by the Minnesota Land Trust and the City of Afton. The purpose of the Conservation Easement is to protect and preserve the conservation value of the Protected Property by prohibiting activities that significantly interfere with the natural habitat and open space of the Protected Property and by requiring the restoration and maintenance of the Protected Property as natural habitat for wildlife and native biological communities.

It is the intent of the Declarant, the Co-Holders of the Conservation Easement and the Association that, in the event of a conflict between the Declaration, Bylaws, any Rules and Regulations, and the Conservation Easement, the Conservation Easement shall control as to all matters relating to the Protected Property.

The Declarant, or the Association, or other fee owner of the Protected Property, is responsible for the restoration of the Protected Property and the cost of restoration and maintenance. Use of the Protected Property is limited in the terms and restrictions of the Conservation Easement.

7.3 Subdivision Prohibited. No Unit nor any part of the Common Elements may be subdivided or partitioned or otherwise changed without the prior written approval of the Board, the Owners at an Association meeting, any governmental authorities having jurisdiction over the Property, and any secured parties holding first mortgages on any Units affected. In addition, the Protected Property may not be subdivided, except as specifically provided in the Conservation Easement.

7.4 Residential Use. Except as provided in Section 7.4, the Units shall be used by Owners and Occupants and their guests exclusively as private, single family residential Dwellings. An Owner may delegate, in accordance with the Governing Documents, the Owner's right of use and enjoyment of the Unit to persons living in the Unit pursuant to a legal right of possession; provided, that such persons shall be subject to the Governing Documents and the Rules.

7.5 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 Dwelling, Unit or the Common Elements except:

7.5.1 An Owner or Occupant may maintain a home occupation in such Owner or Occupant's Dwelling; provided, that such use (i) is incidental to the residential use of the Dwelling, (ii) does not involve physical alteration of the Dwelling or Unit visible from the exterior of the Dwelling, (iii) does not involve any observable business activity such as signs, advertising displays, frequent deliveries, or use of the Unit by customers or employees, and (iv) complies with any additional requirements contained in the Rules and the Governing Documents, or in any governmental laws, codes, rules, statutes or ordinances.

7.5.2 The Association may maintain offices on the Property for management and related purposes.

7.5.3 Declarant, Developer, or a builder authorized by one of them, may maintain offices, sales facilities, model homes and other business facilities on the Property in connection with the exercise of the rights reserved under this Declaration, as the case may be.

7.6 Leasing. Leasing of Units shall be allowed, subject to reasonable regulation by the Association, and subject to the following conditions: (i) no Unit shall be leased for transient or hotel purposes; (ii) no Unit may be subleased; (iii) a Dwelling must be leased in its entirety (not by room) unless simultaneously occupied by the Owner; (iv) the lease shall be in writing; and (v) the lease shall provide that it is subject to the Governing Documents and the Rules, 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 as may be necessary to implement non-discriminatory procedures for the leasing of Units, consistent with this Section and applicable law.

7.7 Parking/Vehicles/Personal Property. Vehicles of any type owned or used by Owners or Occupants shall only be parked or kept within the Owner's garage or driveway, subject to the provisions of this Section. All campers, trailers, boats, ATVs and recreational vehicles and all non-working vehicles must be stored within the garages. Driveways should be used for parking purposes only, not for vehicle storage. No Person shall perform maintenance, repair or restoration work on any vehicle on the Property except for their own vehicles, and then only (i) within the Owner's garage, or (ii) for emergency repairs. Notwithstanding anything to the contrary in this Section, commercial vehicles shall not be parked or stored on the Property, except within a garage or on a temporary basis in connection with construction work on a Unit or deliveries. The Association shall have the authority to establish Rules to further regulate and restrict outside storage and parking of passenger vehicles, trucks, trailers, watercraft, recreational vehicles and all other kinds of personal property.

7.8 Traffic Regulations. All vehicular traffic on the Property is subject to federal, state and local laws and regulations. All vehicles operated on the Property shall be operated in a careful, prudent, and safe manner; and with due consideration for the rights of all Owners and Occupants.

7.9 Pets. Only domestic pets as defined by the City of Afton ordinances and not other animals shall be permitted on the Property and such ordinances shall control the keeping of such pets.

7.10 Use of Temporary Structures. No structure of a temporary character, mobile home, manufactured home, trailer, camper or tenet shall be used or occupied on any Unit at any time as a residence, living abode or living quarters, either temporarily or permanently.

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

7.12 Compliance with Law. The Property shall be used in compliance with municipal codes or ordinances, and state and federal laws. No Person shall 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.

7.13 Improvements. Except for those made by Declarant, Developer or authorized builders in connection with the sale of a Unit or construction of the first Dwelling thereon, no Improvement may be made, or caused or allowed to be made, in any part of the Common Elements, or in any part of Unit or Dwelling which is visible from the exterior of the Dwelling, without approval pursuant to Section 8.

7.14 Ponds, Wetlands, Prairie Grasses, Forbs, Shrubs and Trees. Ponds, marshes, wetland areas, vegetation and trees, whether located on a Unit or on Common Elements, and whether natural or otherwise, shall be maintained in substantially the same condition as originally established, subject only to (i) the terms and conditions of the Conservation Easement, or (ii) changes authorized by the Association consistent with all statutes, requirements, rules and regulations imposed on such areas and items by governmental authorities having jurisdiction over the Property, and (iii) the prior approval of any governmental authorities, if required. No cutting, moving, trimming, draining, dredging or other alteration of such areas and items shall be permitted, except as authorized by this Section 7.14, it being the intention that such areas and items remain and be maintained in a substantially natural condition, and subject to natural changes.

7.15 Time Share Ownership. No Unit may be sold under or subjected to any time-sharing, time-interval or similar right-to-use programs, unless approved in writing by the Board.

7.16 Access to Units. In case of emergency, the yard areas of the Units are subject to entry, without notice and at any time, by an officer or member of the Board, by the management agent of the Association, or by any public safety personnel. Reasonable access is also authorized for maintenance purposes under Sections 9 and 13 and for enforcement purposes under Section 14.

7.17 Compliance with Private Improvement Developer's Agreement. There is a certain Private Improvement Developer's Agreement, dated April 15, 2019, as amended whether before or after the date of this Declaration, entered into between the Developer and the City (the "Development Agreement"). The Development Agreement contains various restrictions and requirements with respect to the development of Afton Creek Preserve, as defined in the Declaration, the construction of homes and other Improvements, and the use and maintenance of various spaces owned or to be owned by the Association, or the City. The Declarant, Developer and the Association shall comply in all respects with the Development Agreement.

7.17.1 In the event of a failure to comply, the City may (i) enter the Property and cure the non-compliance, or (ii) compel compliance by any legal or administrative means available to it under existing laws, ordinances, codes or regulations.

7.17.2 Prior to undertaking any action to cure the noncompliance, the City shall give written notice to the Association, and to the Developer, responsible for the noncompliance, and the responsible party shall have fifteen (15) days thereafter to cure the noncompliance; except, that in the event of an emergency, the City may act immediately provided that it makes a reasonable effort to give the previously described notice. Except in an emergency, notice shall be mailed, or hand delivered during business hours, to the party in question at its last known business address on the City's records. In addition, if the cure of a default requires more than fifteen (15) days after the mailed notice; provided, however, that for the cure of a default that requires more than fifteen (15) days to complete, Developer will commence the performance to cure the default within fifteen (15) days of the date of the notice and make good faith efforts to complete the performance as soon thereafter as possible. In addition to actually performing under this Section, the process of soliciting a contractor bid for any performance shall be considered commencing the performance hereunder.

7.17.3 The City shall be entitled to recover against the Association the City's costs and expenses, including reasonable administrative costs and attorneys' fees, incurred in undertaking or enforcing compliance with the Development Agreement.

7.17.4 The City shall have easements over the Property for reasonable access in the event that it is required to enforce its rights under this Section.

SECTION 8 BUILDING STANDARDS

8.1 Approved Builders. The Association shall maintain at its sole discretion a list of Approved Builders. Only builders on the approved list will be allowed to construct new houses in Afton Creek Preserve.

8.2 Application for House Construction. Each lot owner desiring to build a house on a lot within Afton Creek Preserve must submit to the Association, through one of the Approved Builders, a fully completed Application for House Construction. The primary goal of the

application process is to determine that the proposed house conforms to the building standards and lot requirements as set forth in this Declaration and of the City of Afton.

8.3 Commencement of Construction. An Approved Builder must begin construction within one (1) year from the date of the closing of the purchase of a lot from the owner of the lot as of the date of this Declaration. A subsequent resale of the lot shall not enlarge or modify the requirements of this provision.

8.4 No building, fence, wall, or other structure shall be erected or maintained upon the Properties, nor shall any exterior additions, change or alteration be made to any such building, fence, wall, or any other structure until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Board as to harmony of external design and location in relation to surrounding structures and topography. Boundary markers required by the Co-Holders of the Conservation Easement to clearly mark boundaries between the Units and the Protected Property shall be maintained and enforced by the Association.

8.5 Accessory buildings shall be constructed of the same exterior materials and style of the main structure.

8.6 All driveways must be surfaced with concrete, asphalt, brick, or other materials except raw exposed gravel.

8.7 No structure of a temporary nature, including trailers, basements, garages, barns or other buildings shall be used on any lot at any time as a residence, either temporarily or permanently. All construction of the house and all related construction, including driveways and landscaping, must be completed within one (1) year from the date the construction begins or the date on which a building permit is issued, whichever date is first, except where such completion is made impossible or would result in great hardship to the owner or builder because of strikes, fires, national emergency or other disaster.

8.8 The minimum floor area of any dwelling, exclusive of garage, basement and porches, shall be as follows:

8.8.1 A one-story dwelling with basement shall have a minimum floor area of 1950 square feet.

8.8.2 A one-story dwelling without a basement shall have a minimum floor area of 2000 square feet of which no more than 200 square feet of the floor area may be utility room.

8.8.3 A two-story or two and one-half story dwelling shall have a minimum first floor area of 1650 square feet.

8.9 The exterior of any dwelling shall be muted earth tone or natural color and the texture and surface of the materials used to finish the exterior of any dwelling shall be consistent

with this color requirement in that the texture and surface of the exterior finish shall be maintained so as to enhance and preserve the natural or earth tone color and appearance of the dwelling. No aluminum, vinyl, or steel siding, soffit, or major portions of exterior may be used without specific cause for design elements.

8.10 All mailboxes will be uniform in design and color, and will comply with plans and specifications approved by the Association.

SECTION 9 MAINTENANCE

9.1 Maintenance by Association. The maintenance obligations of the Association are as follows:

9.1.1 The Association shall maintain the Common Elements.

9.1.2 The Association shall install, maintain, repair and replace the mailboxes located on the Units at the Owner's expense, assessed pursuant to Section 6.4.

9.2 Maintenance by Owner. Subject to Section 9.1, all maintenance of the Dwelling, Unit and all Improvements located within the Unit shall be the sole obligation and expense of the Owner of the Unit. Maintenance for which the Owner is obligated shall be performed in a good and workmanlike manner and in accordance with all applicable codes, ordinances, regulations, laws and reasonable standards (if any) established by the Association. If an Owner fails to perform any maintenance, repair or replacement activity for which the Owner is responsible hereunder (except for the exterior or interior of the Dwelling located within the Unit), or renders any maintenance, repair or replacement necessary by such Owner's acts or omissions, or by that of Occupants or guests, the Association may undertake such maintenance, repair or replacement activity and assess the Owner's Unit for the cost thereof pursuant to Section 6.4. However, prior to undertaking such maintenance, repair or replacement, the Association shall provide notice to the Owner, specifying the deficiencies at issue. If the deficiencies are not promptly corrected, then the Association may proceed with the maintenance, repair or replacement work.

9.3 Damage Caused by Owner. Notwithstanding any provision to the contrary in this Declaration, if, in the judgment of the Association, the need for maintenance of any part of the Property is caused by the act or omission of an Owner or Occupant, or his or her guests, or by a condition in a Unit which the Owner or Occupant has caused or allowed to exist after notice from the Association, the Association may cause such damage or condition to be repaired or corrected (and enter the yard area of upon any Unit to do so), and the cost thereof may be charged and assess against the Unit of the Owner responsible for the damage. Such cost shall be a personal obligation of the Owner and a lien against the Owner's Unit.

SECTION 10 INSURANCE

10.1 Required Coverage. The Association shall obtain and maintain, at a minimum, 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, as follows:

10.1.1 Property insurance in broad form covering all risks of physical loss in an amount equal to one hundred percent of the insurable “replacement costs” of Improvements located on the Common Elements or on other portions of the Property which the Association is obligated to maintain, less deductibles, exclusive of land and other items normally excluded from coverage. The policy or policies shall also cover personal property owned by the Association.

10.1.2 Comprehensive public liability insurance covering the Common Elements, and the use, operation and maintenance of lands or Improvements which the Association is obligated to maintain against claims for death, bodily injury and property damage, and such other risks as are customarily covered by such policies for projects similar in type, location and use to the Property. The policy shall have minimum limits of One Million Dollars per occurrence. The policy shall, if reasonably available, 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 City of Afton and the Minnesota Land Trust shall be named as additional insureds on the Association’s insurance policy.

10.1.3 Insurance coverage against dishonest acts on the part of directors, officers, managers, trustees, employees or other persons responsible for handling funds belonging to or administered by the Association, if deemed to be advisable by the Board or required as a precondition to the purchase, insuring or financing of a mortgage on a Unit. The insurance shall name the Association as insured, as its interests may appear.

10.1.4 Workers’ Compensation insurance as required by law.

10.1.5 Such other insurance as the Board may determine from time to time to be in the best interests of the Association and the Owners.

10.2 Premiums, Improvements, Deductibles. All insurance premiums shall be assessed and paid as annual Assessments, and allocated among the Units as determined by the Board consistent with the Governing Documents. The Association may, in the case of a claim for damage or personal injury with respect to Improvements (if any) which the Association maintains (i) pay the deductible amount as a Common Expense, (ii) assess the deductible amount against the Units affected in any reasonable manner, or (iii) require the Owners of the Units affected to pay the deductible amount directly.

10.3 Loss Payee; Insurance Trustee. All insurance coverage maintained by the Association shall be written in the name of, and the proceeds thereof shall be payable to, the Association (or a qualified insurance trustee selected by it) as trustee for the benefit of the Owners and mortgagees which suffer loss. The Association, or any insurance trustee selected by it, shall

have exclusive authority to negotiate, settle and collect upon any claims or losses under any insurance policy maintained by the Association. Subject to Section 11.1.4, the Association, or any insurance trustee selected by it, shall use the proceeds from property insurance on a damaged Improvement solely to repair and reconstruct the damaged Improvement, and not for any other purpose.

10.4 Required Policy Provisions. All policies of property insurance carried by the Association shall, if such provisions are reasonably available, provide that:

10.4.1 Each Owner and Unit Mortgagee is an insured Person under the policy with respect to liability arising out of the Owner's membership in the Association.

10.4.2 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.

10.4.3 No act or omission by any Owner or mortgagee of a Unit, 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.

10.4.4 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 (subject to Section 10.2).

10.5 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 days' prior written notice to the Association, and all of the insured.

10.6 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.

10.7 Owner's Personal Insurance. It is the obligation of each Owner to obtain personal insurance coverage at his or her own expense covering fire and other casualty to the Owner's Dwelling and other insurable Improvements located within the Owner's Unit, and public liability insurance covering the Owner's Unit. All insurance policies maintained by Owners shall, if possible, provide that they are without contribution as against any insurance purchased by the Association, except as to deductibles under Section 10.2 or other items not covered by the Association's insurance.

SECTION 11 RECONSTRUCTION, CONDEMNATION AND EMINENT DOMAIN

11.1 Reconstruction. In the event of a casualty on or to any portion of the Property, the obligations and procedures for the repair, reconstruction or disposition of the damaged Improvements shall be governed by the following provisions.

11.1.1 All repairs and reconstruction of the damaged Improvements shall be commenced promptly following the casualty and shall be carried through diligently to conclusion. The Association shall be responsible for the repair and reconstruction of Common element Improvements and the Owners shall be responsible for the repair and reconstruction of Improvements to their respective Units.

11.1.2 All repair and reconstruction shall be approved pursuant to Section 8. The repair and reconstruction shall be in accordance with the requirements of all applicable zoning, subdivision, building, and other governmental regulations.

11.1.3 Notice of substantial damage or destruction to any portion of the Property shall be promptly given to the Association by the Owner of the damaged Improvements.

11.1.4 Notwithstanding the foregoing, repair and reconstruction of a Dwelling need not be undertaken if the Association, the Owner and the Owner's mortgagee agree in writing that the damaged Improvements need not be repaired and reconstructed. If such an agreement is made, the ruins and debris of any damaged Improvements shall promptly be cleared away and the damaged portion of the Property shall be left in an orderly, safe and sightly condition.

11.2 Condemnation and Eminent Domain. In the event of a taking of any part of the Common Elements by condemnation or eminent domain, the Association shall have authority to act on behalf of the Owners in all proceedings, negotiations and settlement of claims. Except for proceeds payable to the holder of the Conservation Easement as provided under the terms of the Conservation Easement, all other proceeds shall be payable to the Association to hold and distribute for the benefit of the Owners and their mortgagees, as their interests may appear. With respect to the taking of all or part of a Unit, the Owner of the Unit shall negotiate and settle all claims, subject to the rights of any mortgagee of the Unit.

SECTION 12 SPECIAL PROVISIONS WITH THE CITY OF AFTON

12.1 The City of Afton and the Minnesota Land Trust shall be named as an additional insured on the pertinent Association insurance policies and the policies shall cover those risks identified by the City, including but not limited to coverage for personal injuries and any other losses occurring as a result of the public use of the walking trails on Outlot B and otherwise on the Property. The Association shall hold harmless and indemnify the City of Afton and the Minnesota Land Trust from all losses incurred as a result of the public's use of the walking trails located on Outlot B and otherwise on the Property.

12.2 The Association waives its right to appeal any assessment of the City of Afton.

12.3 In the event the Association becomes insolvent or ceases to operate, the City of Afton shall have the first right to exercise control of the Association itself or to designate such control to another.

12.4 The Developer shall provide a maintenance agreement requiring that the permanent stormwater basins will be inspected and maintained long term by the Developer or the HOA. The maintenance agreement shall be subject to review and approval by the City Engineer. The agreement at a minimum shall include the following:

- i. Who will conduct maintenance
- ii. Inspection frequency
- iii. Maintenance necessary to ensure effective performance
- iv. Maintenance intervals
- v. Removal of settled materials
- vi. Maintenance of vegetation

12.5 A minimum of a 48 hour notice shall be provided to the Turner Rhode Horse Farm in advance of controlled burns for the maintenance of the prairie grass, and the burning shall be done only when the prevailing winds will carry all or most of the smoke away from the Horse Farm.

12.6 The Association's restrictive covenants shall not include Architectural controls, but may contain Building Standards as provided in Section 8.

12.7 The City's restrictions regarding setbacks shall control.

SECTION 13 EASEMENTS

Each Unit and the Common Elements, and the rights of the Owners and Occupants therein, shall be subject to (i) the appurtenant easements and rights granted and reserved in the Declaration, (ii) the appurtenant easements and rights granted and reserved in this Section 13, and (iii) the other appurtenant easements and rights of record as referenced herein.

13.1 Access. Each Unit is the beneficiary of a nonexclusive easement for access to a public street or highway on or across those portions of the Common Elements designated for use as streets or sidewalks, as show on the Plat or otherwise designated by the Association, subject to any restrictions imposed pursuant to the Governing Documents.

13.2 Use and Enjoyment. Each Unit is the beneficiary of a nonexclusive easement for use and enjoyment on and across the Common Elements, subject to any restrictions authorized or imposed pursuant to the Governing Documents and the Conservation Easement.

13.3 Maintenance, Repair, Replacement and Reconstruction. Each Unit, and the rights of the Owners and Occupants thereof, and the Common Elements shall be subject to and benefited by nonexclusive easements in favor of the Association for the maintenance, repair, replacement and reconstruction of the Common Elements, other Improvements located within the Units, and utilities serving the Units, to the extent necessary to fulfill the Association's obligations under the Governing Documents. Each Owner shall afford to the Association and its management agents and employees, access at reasonable times and upon reasonable notice, to and through the yard area of the Unit for such maintenance, repair and replacement; provided that access may be had without notice and at any time in case of emergency.

13.4 Utilities, Services. Subject to the terms and restrictions of the Conservation Easement, the Common Elements and the Units shall be subject to and benefited by nonexclusive easements in favor of the City, the Association and all utility companies and other service providers for the installation, use, maintenance, repair and replacement of all utilities, services and common operating systems, such as natural gas, electricity, telephone, cable TV, internet and other electronic communications, water, sewer, septic systems, wells, and similar services, irrigation systems, and metering and control devices, which exist, which are constructed as part of the development of the Property, which are approved by the City, which are approved by the Association under authority contained in the Governing Documents, or which are described or referred to in the Plat, this Declaration or other recorded instruments. Each Unit, and the rights of the Owners and Occupants thereof, shall also be subject to and benefited by a non-exclusive easement in favor of the other Units, the Common Elements, and the Association for all such utilities, services and systems installed in accordance with the foregoing provision of this Section. Utilities and related services or systems shall be installed, used, maintained and repaired so as not to interfere with the use and quiet enjoyment of the Units by the Owners and Occupants, nor affect the structural or architectural integrity of the Dwellings or Improvements to the Common Elements.

13.5 Drainage. The Common Elements and the yard areas of the Units shall be subject to and benefited by nonexclusive easements for storm water drainage over those parts of the Property which are designated, improved or graded for such purposes as part of the development of the Property.

13.6 Emergency Access to Units. In case of emergency, all Units are subject to an easement for access, without notice and at any time, by officers of the Board, by the Association's management agents, or by any public safety personnel.

13.7 Conservation Easements. No placement or construction of manmade structures (except stormwater drainage equipment, and two (2) scenic overlook benches/structures shown on the plat), cutting or removing trees or other vegetation, excavating or filling, applying chemicals, herbicides, pesticides, insecticides or fertilizers, depositing of waste or debris, or other

alteration of the area subject to the Conservation Easement is permitted, except as provided therein.

13.8 Declarant and Developer's Easements. The Units and Common Elements are subject to nonexclusive easements in favor of the Declarant and Developer for the exercise of the rights reserved in the Governing Documents, as applicable.

13.9 Project Sign Easements. Declarant and Developer, as applicable, shall have the right to erect and maintain monument signs and related Improvements identifying the neighborhood and the Development Area, on Units subject to sign easements, on the Common Elements, and on adjoining City-owned land if permitted by the City. Signs or monuments on the Protected Property are permitted only as allowed under the terms of the Conservation Easement.

13.10 Other Easements. The Property shall be subject to such other easements as may be authorized by the Association under authority contained in the Governing Documents or recorded against the Property by reason of the City's requirements in connection with the development of the Property.

13.11 Continuation, Scope and Conflict of Easements. The easements set forth in this Section (i) shall run with the land and shall be appurtenant to the benefited Property; (ii) shall supplement and not limit any easements described elsewhere in this Declaration or otherwise recorded; (iii) shall be permanent, subject only to termination in accordance with the terms of the easement; and (iv) shall include reasonable access to the easement areas over and through the Property for purposes of construction, maintenance, repair, replacement and reconstruction. Notwithstanding anything in this Declaration to the contrary, no Owner or Occupant shall be denied reasonable access to his or her Unit or the right to utility services thereto.

13.12 Non Interference; Impairment Prohibited. All Persons exercising easement rights shall do so in a reasonable manner so as not to materially interfere with the operation of the Property or damage to the Property, and shall be financially liable for all costs of repair of any part of the Property which is damaged by the person's exercise of the easement area, or related Improvements or equipment installed therein.

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 and the Rules, and such amendments thereto as may be made from time to time, and the decisions of the Association with respect to matter over which it has authority. A failure to comply shall entitle Association to the relief set forth in this Section, in addition to the rights and remedies authorized elsewhere by the Governing Documents or the Rules.

14.1 Entitlement to Relief. Legal relief may be sought by the Association against any Owner, or by an Owner against the Association or another Owner, to enforce compliance with the Governing Documents, the Rules, the Act or the decisions of the Association. However, no Owner may withhold any Assessments payable to the Association, nor take or omit other action in violation of the Governing Documents, the Rules, or the Act, as a measure to enforce such Owner's position, or for any other reason.

14.2 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:

14.2.1 Commence legal action for damages or equitable relief in any court of competent jurisdiction.

14.2.2 Impose late charges 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 first month after the Assessment or installment was due.

14.2.3 In the event of default of more than thirty days in the payment of any Assessment or installment thereof all remaining installments of Assessments assessed against the Unit 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 attorney's fees and other professional fees, costs and late charges, are not paid in full prior to the effective date of the acceleration. Not less than ten days advance written notice of the effective date of the acceleration shall be given to the defaulting Owner.

14.2.4 Impose reasonable fines, penalties or charges for each violation of the Governing Documents or the Rules.

14.2.5 Suspend the rights of any Owner to vote when the Assessments due with respect to the Owner's Unit are past due, and suspend the rights of any Owner or Occupant and their guests to use any Common Element amenities; provided, that the suspension of use rights shall not apply to deck, balcony, porch patio or easements appurtenant to the Unit, and those portions of the Common Elements providing utilities service and access to the Unit. 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 days thereafter, for each violation.

14.2.6 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 Units.

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

14.3 Rights to Hearing. Before the imposition of any of the remedies authorized by Sections 14.2.4 through 14.2.5, the Board shall, upon written request of the offender, grant to the offender an opportunity for a fair and equitable hearing. The Association shall give to the offender written notice of the nature of the violation and the right to a hearing, and the offender shall be given at least ten 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 ten 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 then days following the hearing, if not delivered to the offender at the hearing.

14.4 Lien for Charges, Penalties, Etc. All charges, fines, expenses, 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 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 and Fees. With respect to any collection measures, or any other measure or action, legal, administrative, or otherwise, which the Association take pursuant to the provisions of the Governing Documents or Rules, whether or not finally determined by a court or arbitrator, the Association may assess the Unit owned by the violator with any expenses incurred in connection with such enforcement, including without limitation fines or charges previously imposed by the Association, reasonable attorneys' fees and other professional fees, and interest (at the highest rate allowed by law) on the delinquent amounts owed to the Association. Such fees and 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 alien against such Owner's Unit.

14.6 Liability for Owners' and Occupants' Acts. An Owner shall be liable for the expense of any maintenance, repair or replacement of any part of the Property rendered necessary by such Owner's acts or omissions, or by that of Occupants or guests in the Owner's Unit, 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 maybe assessed against the Owner responsible for the condition and against his or her Unit.

14.7. Enforcement by Other 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 or the Rules, as provided therein.

SECTION 15 AMENDMENTS

15.1 Approval Requirements. Except for amendments by Declarant pursuant to Section 16, this Declaration may be amended only by the approval of:

15.1.1 Owners who have the authority to cast at least sixty-seven percent of the total votes in the Association, except that any amendment which changes the basic allocation of voting rights and Common Expense obligations described in Section 4.2 of this Declaration shall require unanimous approval. Additionally, any amendment that changes any provisions that affect the Protected Property or its restoration or maintenance or the Conservation Easement shall require the written approval of the holders of the Conservation Easement.

15.1.2 Declarant as to certain amendments as provided in Section 16.6.

15.1.3 The City, with written approval, as to any amendment which adversely affects its rights or obligations under this Declaration or the Development Agreement, which includes but is not limited to Sections 3.1.2, 3.1.4, 3.1.5, 3.4, 7.1, 7.2, 7.3, 7.4, 7.5, 7.5.1, 7.14-all, 7.17-all, 12-all, 13.7, and 13.10.

15.2 Procedures. Approval of the Owners may be obtained in writing or at a meeting of the Association duly held in accordance with the Bylaws. Other required approvals shall be in writing. The amendment shall be effective when recorded in the office of the appropriate recording office in the county in which the Property is located. An affidavit by the President or Secretary of the Association as to the outcome of the vote, or the execution of the foregoing agreements or consents, shall be adequate evidence thereof for all purposes, including without limitation, the recording of the amendment. Owners shall cooperate to make available their owners duplicate certificates of title in connection with the recording of the amendment, if necessary.

SECTION 16 DECLARANT RIGHTS

Declarant hereby reserves exclusive and unconditional authority to exercise the following development and other rights specified herein, for as long as it owns a Unit, or for such shorter period as may be specifically indicated:

16.1 Complete Improvements. To complete all the Dwellings and other Improvements included in Declarant's development plans or allowed by the City, this Declaration, and to make Improvements in the Units owned by Declarant and the Common Elements to accommodate the exercise of any rights reserved herein.

16.2 Sales Facilities. To construct, operate and maintain a sales office, management office, model Dwellings and other development and sale facilities within the Common elements, and within any Units owned by Declarant or authorized builders from time to time.

16.3 Signs. To erect and maintain signs and other sale displays offering the Units for sale or lease, in or on any Unit owned by Declarant or authorized builders, and on the Common Elements, subject to the terms and restrictions of the Conservation Easement.

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

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

16.6 Consent to Certain Amendments. Declarant's written consent shall be required for any amendment to the Governing Documents or Rules which affect Declarant's rights or the rights of authorized builders under the Governing Documents.

Declarant may assign or license, in whole or in part, the rights described in Section 16.1 through 16.5 to other developers or to builders by an agreement signed by Declarant and the other party.

SECTION 17 MISCELLANEOUS

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

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

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

17.4 Conflicts Among Documents. In the event of any conflict among the provisions of this Declaration, the Bylaws or the Rules, this Declaration shall control. As between the Bylaws and the Rules, the Bylaws shall control. As between the Conservation Easement and any of the Governing Documents or the Rules, the Conservation Easement shall control.

17.5 Duration of Covenants. The covenants, conditions, restrictions, easements, liens and charges contained in this Declaration shall be perpetual, subject only to termination (i) by the affirmative vote of eighty percent of the votes in the Association, eighty percent of the holders of first mortgages on Units (one vote per mortgage held), and the written approval of Declarant (as applicable) for so long as the applicable party owns a Unit for sale, or (ii) by court order.

IN WITNESS WHEREOF, the undersigned has executed this instrument the date and year set forth herein.

DECLARANT

Albert W. Carlson, as Trustee of the Trust Agreement of Albert W. Carlson dated February 17, 2010, as amended

STATE OF MINNESOTA

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Albert W. Carlson, as Trustee of the Trust Agreement of Albert W. Carlson dated February 17, 2010, as amended.

Notary Public

This instrument was drafted by:
Dudley and Smith, P.A.
101 East Fifth Street, Suite 2602
St. Paul, MN 55101
651-291-1717

AFTON CREEK PRESERVE HOMEOWNERS ASSOCIATION

EXHIBIT A TO DECLARATION

LEGAL DESCRIPTION OF PROPERTY

AFTON CREEK PRESERVE HOMEOWNERS ASSOCIATION

EXHIBIT B TO DECLARATION

DESCRIPTION OF UNITS

Lot 1, Block 1, Afton Creek Preserve, Washington County, Minnesota

Lot 1, Block 2, Afton Creek Preserve, Washington County, Minnesota

Lot 2, Block 2, Afton Creek Preserve, Washington County, Minnesota

Lot 3, Block 2, Afton Creek Preserve, Washington County, Minnesota

Lot 4, Block 2, Afton Creek Preserve, Washington County, Minnesota

Lot 5, Block 2, Afton Creek Preserve, Washington County, Minnesota

Lot 6, Block 2, Afton Creek Preserve, Washington County, Minnesota

Lot 7, Block 2, Afton Creek Preserve, Washington County, Minnesota

Lot 8, Block 2, Afton Creek Preserve, Washington County, Minnesota

Lot 9, Block 2, Afton Creek Preserve, Washington County, Minnesota

Lot 10, Block 2, Afton Creek Preserve, Washington County, Minnesota

Lot 11, Block 2, Afton Creek Preserve, Washington County, Minnesota

Lot 12, Block 2, Afton Creek Preserve, Washington County, Minnesota

Lot 13, Block 2, Afton Creek Preserve, Washington County, Minnesota

Lot 1, Block 3, Afton Creek Preserve, Washington County, Minnesota

Lot 2, Block 3, Afton Creek Preserve, Washington County, Minnesota

Lot 3, Block 3, Afton Creek Preserve, Washington County, Minnesota

Lot 4, Block 3, Afton Creek Preserve, Washington County, Minnesota

AFTON CREEK PRESERVE HOMEOWNERS ASSOCIATION

EXHIBIT C TO DECLARATION

DESCRIPTION OF COMMON ELEMENTS

Outlots A and B, Afton Creek Preserve, Washington County, Minnesota

Lot 1, Block 2, St. Croix Valley Estates, Washington County, Minnesota