

2008

OFFICE OF COUNTY RECORDER
STEARNS COUNTY, MINNESOTA

Document # 1220813

Certified, Filed, and/or Recorded on
02-28-2007 at 03:16 PM

DIANE GRUNDHOEFER
STEARNS COUNTY RECORDER



**DECLARATION
OF
COVENANTS, CONDITIONS AND
RESTRICTIONS**

STIRLING WATERS

DATED: FEBRUARY 7, 2007

✓ Schroeder law office

TABLE OF CONTENTS

	<u>Page</u>
Section 1, Definitions.....	3
Section 2, Description of Units, Boundaries, and Related Easements.....	5
Section 3, Association Membership: Rights and Obligations	6
Section 4, Administration	7
Section 5, Assessments	8
Section 6, Restrictions on Use and Alterations of Property.....	10
Section 7, Architectural Standards.....	15
Section 8, Maintenance.....	18
Section 9, Insurance.....	19
Section 10, Reconstruction, Condemnation and Eminent Domain.....	19
Section 11, Easements	20
Section 12, Compliance and Remedies.....	22
Section 13, Special Declarant Rights.....	24
Section 14, Amendments	25
Section 15, Rights of Eligible Mortgagees	26
Section 16, Rights to Add Additional Real Estate.....	28
Section 17, Miscellaneous	29
Exhibit A, Legal Description	31
Exhibit B, Legal Description – Additional Real Estate	32
Exhibit C, Natural Resources Management Plan.....	33

**Stirling Waters
DECLARATION**

This Declaration is made in the County of Stearns, State of Minnesota, on this 7th day of February, 2007, by **Lumber One Development Company, LLC.**, a Minnesota limited liability company, for the purpose of creating **Stirling Waters** as a planned patio home community.

WHEREAS, Declarant is the owner of certain real property located in Stearns County, Minnesota, legally described in EXHIBIT A attached hereto and Declarant desires to submit said 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 residential community to be owned, occupied and operated for the use, health, safety and welfare of its resident Owners and Occupants, and for the purpose of preserving the value, the structural quality, and the original architectural character of the Property; and

WHEREAS, Declarant desires to subject the Property to this Declaration to assist in assuring the architectural and aesthetic character of the Property and to ensure the health, safety and welfare of its resident Owners and Occupants, as well as providing limited services to the Owners and Occupants; and

WHEREAS, Declarant has incorporated, under the laws of the State of Minnesota, as a non-profit corporation, **Stirling Waters Homeowners Association**, for the purpose of exercising the functions aforesaid; and

WHEREAS, this community is exempt, pursuant to MN Statute 515B.1-102(e)(2), from the Minnesota Common Interest Ownership Act (Chapter 515B as amended) because the dwellings are detached single family and the Association maintains no buildings.

THEREFORE, Declarant makes this Declaration declaring that this Declaration shall constitute covenants to run with the Property, and that the Property shall be owned, used, occupied and conveyed subject to the covenants, restrictions, easements, charges and liens set forth herein, all of which shall be binding upon all Persons owning or acquiring any right, title or interest therein, and their heirs, personal representatives, successors and assigns.

**SECTION 1
DEFINITIONS**

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

1.1 "Assessments" means and refers to all assessments levied by the Association pursuant to Section 6 of this Declaration, including annual assessments and special assessments.

1.2 "Association" means **Stirling Waters Homeowners Association**, a non-profit corporation which has been created pursuant to Chapter 317A of the laws of the State of Minnesota and Minnesota Statutes Section 515 B.3-101 of the Act, whose members consist of all Owners as defined herein.

1.3 "Board" means the Board of Directors of the Association as provided for in the Bylaws.

1.4 "Bylaws" means the Bylaws governing the operation of the Association, as amended from time to time.

1.5 "Common Expenses" shall mean and include all expenditures made or liabilities incurred by or on behalf of the Association and incident to its operation, including without limitation allocations to reserves and those items specifically identified as Common Expenses in the Declaration, Bylaws, or Rules and Regulations.

1.6 "Declarant" means and refers to Lumber One Development Company, LLC, a Minnesota limited liability company, its successors and assigns.

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

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

1.9 "Governing Documents" means this Declaration, the Articles of Incorporation, the Bylaws and Rules and Regulations of the Association, as amended from time to time, all of which shall govern the use and operation of the Property.

1.10 "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.

1.11 "Occupant" means any person or persons, other than an Owner, in possession of or residing in a Unit.

1.12 "Owner" means a Person who owns a Unit, but excluding contract for deed vendors, mortgagees and other secured parties within the meaning of Section 515B.1-103(29) of the Act. The term "Owner" includes, without limitation, contract for deed vendees and holders of a life estate.

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

1.14 "Plat" means the recorded plat depicting the Property satisfying the requirements of Minnesota Statutes Chapter 505, 508, or 508A, as applicable, including any amended or supplemental plat recorded from time to time in accordance with the act.

1.15 "Property" means all of the real property submitted to this Declaration, including the Dwellings and all other structures and improvements located thereon now or in the future. The Property as of the date of this Declaration is legally described in Exhibit A attached hereto.

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

1.17 "Unit" means any platted lot subject to this Declaration upon which a Dwelling is located or intended to be located, as shown on the Plat, including all improvements thereon, currently 17 units, specifically Lots 1 through 8, Block 1 and Lots 1 through 9, Block 2, **STONE GATE**. Each unit constitutes a separate parcel of real estate.

SECTION 2
DESCRIPTION OF UNITS, BOUNDARIES AND RELATED EASEMENTS

2.1 Units. There are seventeen (17) Units, subject to the right of the Declarant to add additional units in accordance with Section 16. All Units are restricted exclusively to residential use. Each Unit constitutes a separate parcel of real estate. The Unit identifiers and locations of the Units are shown on the Plat, which is incorporated herein by reference, and a schedule of Units set forth on Exhibits A. The Unit identifier for a Unit shall be a lot and block number and the subdivision name.

2.2 Unit Boundaries. The front, rear and side boundaries of each Unit shall be the boundary lines of the platted lot upon which the Dwelling is located or intended to be located as shown on the Plat. The Units shall have no upper or lower boundaries.

2.3 Utility and Maintenance Easements. Each Unit shall be subject to and shall be the beneficiary of perpetual appurtenant easements for all services and utilities servicing the Units, and for maintenance, repair and replacement as described in Section 11. The sprinkler system located within each lot is owned by the Owner but the Association shall be responsible for the maintenance and repair of the individual sprinkler system as a Common Expense, and shall have an easement for access over and across all Lots and Properties for all things reasonably necessary to properly maintain, repair and care for the individual irrigation systems. Each Owner shall be responsible for the cost of water used by the Owner's sprinkler system.

2.4 Encroachment Easements. Each Unit shall be subject to and shall be the beneficiary of perpetual appurtenant easements for encroachments as described in Section 11.

2.5 Declarant's Easements. Declarant shall have and be the beneficiary of easements for construction and sales activities as described in Section 13.

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

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

2.8 Impairment Prohibited. No person shall materially restrict or impair any easement benefiting or burdening the Property, subject to the Declaration and the right of the Association to establish and enforce reasonable Rules and Regulations governing the use of the Property.

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

SECTION 3 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:

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

3.2 Voting and Common Expenses. Voting rights and Common Expense obligations are allocated equally among the Units (each Unit shall have one vote); 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 Unit shall include the voting rights and Common Expense obligations described in Section 3.2. Said rights, obligations and interests, 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, separate from the title to the Unit, shall be void. The allocation of the rights, obligations and interests described in this Section may not be changed, except in accordance with the Governing Documents.

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 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 4 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:

4.1 General. The operation and administration of the Association and the Property shall be governed by the Governing Documents, the Rules and Regulations, and the Act. The Association shall, subject to the rights of the Owners set forth in the Governing Documents, be responsible for the operation, management and control of the Property. The Association shall have all powers described in the Governing Documents and the statute under which the Association is incorporated. All power and authority of the Association shall be vested in the Board, unless action or approval by the individual Owners is specifically required by the Governing Documents or the Act. 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 and manage the Property for the purposes of:

- (a) Administering and enforcing the covenants, restrictions, easements, charges and liens set forth in the Governing Documents and the Rules and Regulations;
- (b) Maintaining, repairing and replacing those portions of the Property for which it is responsible; and
- (c) 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 shall be binding upon all Owners and Occupants, and their lessees, guests, heirs, personal representatives, successors and assigns, and all secured parties.

4.4 Bylaws. The Association shall have Bylaws. The Bylaws and any amendments

thereto shall govern the operation and administration of the Association, and shall be binding on all Owners and Occupants.

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

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

5.1 General. Assessments for Common Expenses shall be determined and assessed against the Units by the Board, in its discretion, subject to the requirements and procedures set forth in Section 5, and the requirements of the Bylaws. Assessments shall include annual assessments and may include special assessments under Section 5.3. Annual and special assessments shall be allocated among the Units equally according to the allocation formula set forth in Section 3.2.

5.2 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 the Units in accordance with the allocations set forth in Section 3.2. Annual assessments under Section 5.2 shall be payable in equal monthly installments. Annual assessments shall provide, among other things, for an adequate reserve fund for the maintenance, repair and replacement of those parts of the Units for which the Association is responsible.

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 equally in accordance with allocation formula set forth in Section 3.2. Special

assessments shall be used for the purpose of defraying in whole or in part the cost of any unforeseen and unbudgeted Common Expense.

5.4 Liability of Owners for Assessments. The Declarant or contractor owning a Unit shall be responsible for 1/2 of the monthly assessment when the dwelling is completed and a Certificate of Occupancy is issued. Neither the Declarant nor the contractor shall be responsible for the assessment on said Unit prior to that event. The Owner shall be responsible for the entire monthly assessment upon the sale of said Unit to the Owner. The Owner at the time an assessment is payable with respect to the Unit shall be personally liable for the share of the Common Expenses assessed against such Unit. Such liability shall be joint and several where there are multiple Owners of the Unit. The liability is absolute and unconditional. No Owner is exempt from liability for payment of assessments by right of set-off, by waiver of use or enjoyment of any part of the Property, by absence from or abandonment of the Unit, by the waiver of any other rights, or by reason of any claim against the Association or its officers, directors or agents, or for their failure to fulfill any duties under the Governing Documents or the Act. The Association may invoke the charges, sanctions and remedies set forth in Section 12, in addition to any remedies provided elsewhere in the Governing Documents, the Rules and Regulations, or by law, for the purpose of enforcing its rights hereunder.

The Declarant shall contribute to the Association's operating account on an annual basis an amount equal to the deficit between the amounts of the annual assessments collected and the Common Expenses incurred until such time as 10 Units have been sold .

5.5 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 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 5 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.

5.6 Foreclosure of Lien; Remedies. A lien for assessments may be foreclosed against a Unit under the laws of the State of Minnesota (1) by action, or (ii) by advertisement in a like manner as a mortgage containing a power of sale. The Association, or its authorized representative, shall have the power to bid in at the foreclosure sale and to acquire, hold, lease, mortgage and convey any 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. 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.

5.7 Lien Priority; Foreclosure. A lien for assessments 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; and (iii) liens for real estate taxes and other governmental assessments or charges against the Unit. Notwithstanding the foregoing, if (1) a first mortgage on a Unit is foreclosed, (2) the first mortgage was recorded on or after the date of recording of this Declaration, and (3) no Owner redeems during the Owner's period of redemption provided by Minnesota Statutes Chapters 580, 581, or 582, then the holder of the sheriff's certificate of sale from the foreclosure of the first mortgage shall take title to the Unit subject to unpaid assessments for Common Expenses levied which became due, without acceleration, during the six (6) months immediately preceding the first day following the end of the Owner's period of redemption.

5.8 Voluntary Conveyances; Statement of Assessments. In a voluntary conveyance of a Unit, 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 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. 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, seller and buyer.

SECTION 6

RESTRICTIONS ON USE AND ALTERATIONS 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:

6.1 General. The Property shall be owned, conveyed, encumbered, leased, used and occupied subject to the Governing Documents. 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.

6.2 Subdivision Prohibited. Except as permitted by the Act, no Unit may be subdivided or partitioned without the prior written approval of all Owners and all secured parties holding first mortgages on the Units.

6.3 Residential Use. The Units shall be used by Owners and Occupants and their guests exclusively as private, single family residential dwellings, and not for transient, hotel, commercial, business or other non-residential purposes, except as provided in Section 6.4. Any lease of a Unit (except for occupancy by guests with the consent of the Owner) for a period of less than 7 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 Unit or the Common Areas except:

- (a) An Owner or Occupant residing in a Unit may maintain a home occupation in such Unit and handle matters relating to such home occupation by telephone, computer or correspondence therefrom; provided that such uses are incidental to the residential use, comply with applicable zoning restrictions and other laws, ordinances and regulations, do not involve physical alteration of the Unit visible from the exterior and do not involve any observable business activity such as signs, advertising displays, regular deliveries, or pedestrian or vehicle traffic to and from the Unit by customers or employees.
- (b) The Association may maintain offices on the Property for management and related purposes.
- (c) Declarant may maintain offices, sales facilities and other business facilities on the Property in connection with the exercise of its special declarant rights.

6.5 Leasing. Leasing of Units shall be allowed, subject to reasonable regulation by the Association, and subject to the following conditions:

- (a) No Unit shall be leased for transient or hotel purposes;
- (b) No Unit may be subleased;
- (c) All leases shall be in writing and shall be for a minimum of 12 months;
- (d) All leases shall provide that they are subordinate and subject to the provisions of the Governing Documents and the Rules and Regulations; and
- (e) Any failure of the lessee to comply with the terms of such documents shall be a default under the lease.

The Association may impose such reasonable Rules and Regulations as may be necessary to implement procedures for the leasing of Units, consistent with this Section.

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. Garages shall not be converted to other uses or used for storage or other purposes which would prevent the parking of automobiles in the garage. The use of garages, driveways, and other parking areas on the

Property, and the types of vehicles and personal property permitted thereon, shall be subject to regulation by the Association, including without limitation the right of the Association to tow illegally parked vehicles or to remove unauthorized personal property.

6.7 Animals. No animal may be bred or kept or maintained for business or commercial purposes, anywhere on the Property. However, subject to the previous restriction, the Board shall have the exclusive authority to prohibit, or to allow and regulate, by Rules and Regulations, the keeping of animals on the Property. This authority may be exercised so as to permit or prohibit different types of animals, but those animals which are permitted shall be limited to common domestic house pets such as dogs, cats, fish, birds and the like. The word "animal" shall be construed in its broadest sense and shall include all living creatures except humans. No more than one (1) dog or one (1) cat shall be allowed in each unit. All animals must be confined within the dwelling in such a manner so as not to disturb the peaceful enjoyment of the other owners. Any animal causing or creating a nuisance or unreasonable disturbance, due to its noise or conduct, shall be permanently removed from the property at the expense of its owner. Dog kennels are prohibited. The owner of a pet shall be responsible for the immediate cleaning and removal of any excrement left by said pet, as well as any damage done by said pet. No dog shall be allowed outside of a dwelling unless it is on a leash.

6.8 Quiet Enjoyment; Interference Prohibited. All Owners and Occupants and their guests shall have a right of quiet enjoyment in their respective Units, 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. No substance, thing, or material may be kept on the Property if that material emits foul or obnoxious odors, or will cause any noise that will or might disturb the peace, quiet, comfort or serenity of neighbors. Unit Owners, Occupants, or guests shall not make noises, play instruments, or operate radios, televisions or amplifiers in a way that disturbs other residents of the Property.

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 Alterations. Except for those made by Declarant or its assigns in consideration of its initial sale of a Unit, no alterations, changes, improvements, repairs or replacements of any type, temporary or permanent, structural, aesthetic or otherwise (collectively referred to as "alterations") shall be made, or caused or allowed to be made, by any Owner or Occupant, or their guests in any part of the Unit which affects another Unit or which is visible from the exterior of the Unit, without the prior written authorization of the Board, or a committee appointed by it, as provided in Section 8. The Board, or the appointed committee if so authorized by the Board, shall have authority to establish reasonable criteria and requirements for alterations, and shall be the sole judge of whether the criteria are satisfied. The maintenance of any alteration or addition to the original improvements, such as any add-on to the standard patio, shall be the responsibility of the Owner or its successor.

6.11 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 Unit into separate time periods, is prohibited.

6.12 Access to Units. In case of emergency, all Units are subject to entry, without notice and at any time, by an 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 Sections 8 and 11 and for enforcement purposes under Section 12.

6.13 No Unsightly Activities. No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out on any portion of a Unit so as to be visible from outside the Dwelling, nor shall a clothesline, including retractable, be installed or maintained anywhere on the exterior areas of the Unit.

6.14 Outside Storage. Outside storage of any items including, without limitation, sporting equipment, toys, camping equipment, garbage, trash, or cooking equipment (except seasonal furniture and one gas or covered charcoal grill per Unit) shall only be allowed with the prior written approval of the Association. Notwithstanding the above, outside storage of said items shall be allowed if contained within one low profile storage container, which shall be allowed.

6.15 Vehicle Storage. No boats, snowmobiles, trailers, camping vehicles, buses, camper tops, all terrain vehicles, tractor/trailers, trucks in excess of 9,000 pounds, or unlicensed or inoperable vehicles shall at anytime be stored or parked on any part of the Unit or Property except inside the garage and out of view of others.

6.16 Repairs to Vehicles. Except for emergency repairs, no repairs or adjustments to motor vehicles may be completed on the Property or on the Unit except in the garage out of view of others and only on vehicles registered to the Owners or Occupants of the Unit.

6.17 Landscaping. No sod, soil, sand, or gravel shall be sold or removed from any part of the Unit or the Property. No landscaping of any kind may be done without the prior written consent of the Association in accordance with Section 7. No tree or shrub on a Unit shall be destroyed or removed except as approved in writing by the Association. Any additional plantings requested by an Owner and authorized by the Association shall be maintained by said Owner or successor.

6.18 Hazardous Materials. No storage of hazardous or flammable materials on the Property shall be allowed except for reasonable quantities of usual household materials.

6.19 No Discharge of Firearms. No discharging of firearms or hunting shall be allowed on any portion of the Property.

6.20 Signs. No advertisement, poster or sign of any sort, except "for sale" signs which

shall be allowed, may be placed on the exterior of a Unit or in a window such that it could be seen from the outside except as authorized by the Association.

6.21 No Additional Equipment Installed. No additional air conditioning equipment or other equipment may be installed on the exterior of a Dwelling without the prior written consent of the Association. No exterior television, radio, satellite or microwave antenna of any sort may be erected upon the exterior of a Dwelling or upon any area of a Unit without the Association's prior written consent, except one standard size satellite TV dish.

6.22 Well. No independent water wells are permitted.

6.23 Solid Waste. All solid waste shall be disposed of in accordance with the applicable ordinances. There shall be no accumulation of garbage or refuse upon any Unit in **Stirling Waters** and the same shall be removed at periodic intervals of at least weekly. Storage containers for waste materials must be within the dwelling or garage, excepting only the day of scheduled refuse pickup. Construction or remodeling debris shall be removed within one week if the materials are not within enclosures or dwelling or garage excepting only initial construction. Waste or refuse may not be burned on site within or without the dwelling or garage including heating appliances or fireplaces.

6.24 Brush Piles. No Unit shall maintain any form of brush pile, compost pile, or any waste debris collection site.

6.25 Restriction Against Further Subdivision. No Unit shall be subdivided or separated into a smaller parcel, provided that this restriction shall not prohibit deeds for correction or deeds to adjust boundary lines between adjoining Lots where no additional parcel is created or similar or corrective instruments.

6.26 Fencing. No fence, hedge, boundary wall, retaining wall, or combination thereof shall be erected, constructed, grown or maintained on or around any building site or lot in said subdivision, without the written approval of the association, as to its location, material, style, height and harmony with the landscaping design in the area. No privacy fences will be allowed. The only fencing which the association may consider to allow is powder-coated chain link fence or baluster type vinyl, or iron.

6.27 Ponds, Wetlands, and Trees. Ponds, marshes, wetlands areas, vegetation, and trees, whether natural or otherwise, shall be maintained in substantially the same condition as originally established, subject only to i) changes authorized by the association consistent with all statutes, requirements, rules and regulations imposed on such areas and items by governmental authorities having jurisdiction and ii) the prior approval of any such governmental authorities, if required. No cutting, mowing, trimming, draining, dredging or other alterations of such areas and items shall be permitted except as authorized by this Section 6.28, it being the intention that such areas and items remain and be maintained in substantially their condition as of the date of recording of this Declaration, and subject to natural changes.

6.28 Raingardens. Instead of storm sewers, runoff water will be controlled in "RAINGARDENS", which are drainage depressions located within the side yard drainage and utility easements of all lots. No structure, planting, or other material shall be placed or permitted to remain in those easement areas except as authorized by the Declarant or Association. Special vegetation will be planted in those areas to facilitate the percolation of the collected water. No cutting, spraying, burning, or substitution of said plantings shall be allowed, except as authorized by the Declarant or Association. The maintenance of said Raingardens will be provided by Declarant for the first three years of the development. Maintenance of the Raingardens for subsequent years will be the responsibility of the Owner..

6.29 Drainage and Utility Easements. Easements for the installation and maintenance of municipal and public utility and drainage facilities are reserved over lands as shown on the plat and subject to the following provisions:

- a. Except as provided below, all claims for damages, if any, arising out of the construction, maintenance, and repair of utilities, or on account of temporary or other inconvenience caused thereby against the interested Owners, or any utility company or municipality, or any other heirs, successors, assigns, agents, or servants are waived by purchasers of lots within the subdivision.
- b. No structure, planting, or other materials shall be placed or permitted to remain within utility easements which may damage or interfere with the installation and maintenance of utilities or within drainage easements which may obstruct or retard the flow of water through the drainage channels (Raingardens) within the easements.
- c. The easement areas of each lot and all improvements therein shall be maintained continuously by the Owner of the lot, except for those improvements for which a public authority or utility company or the City of St. Cloud is responsible.

6.30 Buffer Zone. A 40 foot buffer area has been established around sensitive wetlands areas around the following lots to protect the natural resources of this development: Lots 1 through 7, Block 1. **Stone Gate.** (See Exhibit C, Natural Resources Management Plan for prohibited uses of the wetlands and buffer area. No structure shall be permitted in the buffer area as well as the adjoining wetland.

6.31 Additional Rules and Regulations. The Association may adopt additional rules and regulations regarding the use and enjoyment of the Property; provided, no such rules or regulations may contradict the express provisions of the Governing Documents of the Association.

SECTION 7

ARCHITECTURAL STANDARDS

7.1 Restrictions on Alterations. One of the purposes of this Declaration is to ensure that those parts of the Units which are visible from the exterior be kept architecturally attractive and uniform in appearance. The following restrictions and requirements shall apply to alterations on the Property:

- (a) Except as expressly provided in this Section, and except for alterations made by Successor Declarant in consideration of its initial sale of a Unit, no structure, building, addition, deck, patio, fence, wall, enclosure, window, exterior door, antenna or other type of sending or receiving apparatus, sign, display, decoration, color change, shrubs or trees, material topographical or landscaping change, nor any other exterior improvements to or alteration of any Dwelling or any other part of a Unit which is visible from the exterior of the Unit which affects the Common Area or another Unit, or (collectively referred to as "alterations"), shall be commenced, erected or maintained in a Unit, 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 the Board of Directors or a committee appointed by it. Successor Declarant's written consent shall also be required for alterations until Successor Declarant no longer owns any unsold Unit and has no further rights to add Additional Real Estate to the Property.
- (b) The Board may appoint and supervise an architectural committee, and specifically delegate to it part or all of the functions which the Board exercises under this Section 7, in which case the references to the Board shall refer to the architectural committee where appropriate. The architectural committee shall be subject to the supervision of the Board.
- (c) The Board shall establish the criteria for approval of alterations, which shall include and require, at a minimum:
 - (1) Substantial uniformity of color, size, location, type and design in relation to existing dwellings and topography;
 - (2) Comparable or better quality of materials as used in existing dwellings;
 - (3) Ease of maintenance and repair;
 - (4) Adequate protection of the Property, the Association, Owners and Occupants from liability and liens arising out of the proposed alterations;
 - (5) Substantial preservation of other Owners' sight lines, if material; and
 - (6) Compliance with governmental laws, codes and regulations.
- (d) Declarant's or its assigns' construction in connection with the initial sale

of Units owned by it is exempt from Section 7, but not Section 13.1.

- (c) Approval of alterations which encroach upon another Unit shall create an appurtenant easement for such encroachment in favor of the Unit with respect to which alterations are approved, notwithstanding any contrary requirement in the Governing Documents or the Act. A file of the resolution approving all alterations shall be maintained permanently as a part of the Association's records.

The Board, or the appointed committee as so authorized by the Board, shall be the sole judge of whether the criteria are satisfied.

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 alterations, in form and content acceptable to the Board of Directors, shall be submitted to the Board of Directors at least sixty (60) days prior to the projected commencement of construction. No alterations shall be commenced prior to approval.
- (b) The Board of Directors shall give the Owner written notice of approval or disapproval. If the Board fails to approve or disapprove within sixty (60) days after receipt of said plans and specifications and all other information requested by the Board of Directors, then approval will not be required, and this Section shall be deemed to have fully complied with so long as the alterations are done in accordance with the plans, specifications and related information which were submitted.
- (c) If no request for approval is submitted, approval shall be deemed to be denied.

7.3 Remedies for Violations. The Association or the Declarant 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 Unit and a personal obligation of the Owner. In addition, the Association shall have the right to enter the Owner's Unit and to restore any part of the Dwelling or Unit 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 Unit.

7.4 Hold Harmless. The Owner who causes an alteration to be made, regardless of whether the alteration is approved by the Board, shall be solely responsible for the construction standards and specifications relating to the alteration, and the construction work. The Owner,

and not the Association, is responsible for determining whether any alteration is in violation of any restrictions imposed by any governmental authority having jurisdiction over the Property. The Owner shall hold the Association harmless and indemnify the Association, and its officers and directors, from and against any expenses, claims, damages, losses or other liabilities, including without limitation attorneys' fees and costs of litigation, arising out of (i) any alteration which violates any governmental laws, codes, ordinances or regulations, (ii) the adequacy of the specifications for construction of the alterations, and (iii) the construction of the alterations.

SECTION 8 MAINTENANCE

8.1 Maintenance by Association. The Declarant shall be responsible for the maintenance of the Raingardens for the first three years of the project. The association shall be responsible for lawn maintenance and snow removal from driveways, parking areas, sidewalks and private roads (including driveways and sidewalks located within Units), but shall not be required to remove snow from decks and patios. The Association's obligations shall exclude any other items not specifically referred to in this Section, unless otherwise approved under Section 8.2. The Association shall have easements as described in Section 11 to perform its obligations under this Section 8.

8.2 Optional Maintenance by Association. In addition to the maintenance described in Section 8.1, the Association may, with the approval of a majority of votes cast in person or by proxy at a meeting called for such purposes, undertake to provide additional exterior maintenance to the Units but not to the buildings, which would result in the possible loss of the exemption from the Minnesota Common Interest Ownership Act.

8.3 Maintenance by Owner. Except for the maintenance required to be provided by the Association under Section 8.1 or 8.2, all other maintenance of the Dwellings and Units shall be the sole responsibility and expense of the Owners. This responsibility includes all exterior maintenance of the dwelling. However, the Owners and Occupants shall have a duty to promptly notify the Association of defects in or damage to those parts of the Property which the Association is obligated to maintain. The Association may require that any exterior maintenance to be performed by the Owner be accomplished pursuant to specific uniform criteria established by the Association. However, the Association may also undertake any exterior maintenance, which the responsible Owner fails to or improperly performs, and assess the Unit and the Owner for the cost thereof, if the Owner has been provided written notice at least 60 days prior to the Association acting. Such cost shall be a personal obligation of the Owner and a lien against the Owner's Unit.

8.4 Damage Caused by Owner. Notwithstanding any provision to the contrary in this Section, if, in the judgment of the Association, the need for maintenance of any part of the Property is caused by the willful or negligent act or omission of an Owner or Occupant, or their guests, or by a condition in a Unit which the Owner or Occupant has willfully or negligently allowed to exist, the Association may cause such damage or condition to be repaired or corrected (and enter the yard area of upon any Unit to do so), and the cost thereof may be charged and

assessed 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 9 INSURANCE

9.1 Required Coverage. The Association shall obtain and maintain policies of insurance issued by a reputable insurance company or companies authorized to do business in the State of Minnesota, as follows:

- (a) Directors and officers liability insurance, if approved by the Board, with such reasonable limits and coverages as the Board shall determine from time to time.
- (b) 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, and Deductibles. All insurance premiums shall be assessed and paid as an annual Assessment, and allocated among the Units as determined by the Board consistent with the Governing Documents.

9.3 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 cancelled or substantially modified, for any reason without at least thirty (30) days prior written notice to the Association.

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

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

9.6 Owner's Personal Insurance. Each Owner shall be responsible for insurance coverage of his own Unit at his or her own expense covering fire, other casualty, all risk, personal property and personal liability. All insurance policies maintained by Owners shall provide that they are without contribution as against any insurance purchased by the Association.

SECTION 10 RECONSTRUCTION, CONDEMNATION AND EMINENT DOMAIN

10.1 Reconstruction. The obligations and procedures for the repair, reconstruction, or disposition of the Property, following damage or destruction thereof, shall be governed by the Act. The Association shall have all authority necessary to cause the Property to be reconstructed, including without limitation the authority:

(a) To require the Owners to enter into reconstruction contracts on their respective Units; or

(b) To contract for the reconstruction of the Units on behalf of the Owners.

Notice of substantial damage or destruction shall be given pursuant to Section 15.10.

10.2 Condemnation and Eminent Domain. In the event of a taking of any part of the Property by condemnation or eminent domain, the provisions of the Act shall govern; provided:

(a) That notice shall be given pursuant to Section 15.10. Eligible Mortgagees shall be entitled to priority for condemnation awards in accordance with the priorities established by the Governing Documents, as their interests may appear;

(b) That the Association shall be the attorney-in-fact to represent the Owners in any related proceedings, negotiations, settlements or agreements; and

(c) That any awards or proceeds shall be payable to the Association for the benefit of the Owners, and the mortgagees, of their Units.

10.3 Termination and Liquidation. The termination of the common interest community, and the distribution of any proceeds therefrom, shall be made to Owners and their mortgage holders, as their interests may appear, as provided in the Act.

10.4 Notice. The Association shall give written notice of any condemnation proceedings or substantial destruction of the Property to an Eligible Mortgagee entitled to notice pursuant to Section 15.10.

10.5 Association Authority. In all cases involving reconstruction, condemnation, eminent domain, termination or liquidation of the common interest community, the Association shall have authority to act on behalf of the Owners in all proceedings, negotiations and settlement of claims. All proceeds shall be payable to the Association to hold and distribute to the benefit of the Owners and their mortgage holders, as their interest may appear.

SECTION 11 EASEMENTS

11.1 Easement for Encroachments. Each Unit, and the rights of the Owners and Occupants therein, shall be subject to an exclusive easement for encroachments in favor of the

adjoining Units for fireplaces, walls, roof overhangs, air conditioning systems, decks, balconies, porches, patios, utility installations and other appurtenances (i) which are part of the original construction of the adjoining Unit or the Property or (ii) which are added in compliance with Section 7. If there is an encroachment by a Dwelling, or other building or improvement located in a Unit, upon another Unit or Dwelling as a result of the construction, reconstruction, repair, shifting, settlement or movement of any part of the Property, an appurtenant easement for the encroachment, for the use, enjoyment and habitation of any encroaching Dwelling, building or improvement, and for the maintenance thereof, shall exist; provided, that with respect to improvements or alterations added pursuant to Section 7, no easement shall exist unless the same have been approved, and the proposed improvements constructed, as required by this Declaration. Such easements shall continue for as long as the encroachment exists and shall not affect the marketability of title.

11.2 Easement for Maintenance, Repair, Replacement and Reconstruction. Each Unit, and the rights of the Owners and Occupants thereof, shall be subject to the rights of the Association to an exclusive, appurtenant easement on and over the Units for the purposes of maintenance, repair, replacement and reconstruction of the Dwellings and other improvements located within the Units to include the irrigation systems, and utilities serving the Units, to the extent necessary to fulfill the Association's obligations under the Governing Documents.

11.3 Utility Easements. The Property shall be subject to non-exclusive, appurtenant easements in favor of all public utility companies and other utility providers for the installation, use, maintenance, repair and replacement of all utilities, such as natural gas, electricity, cable TV and other electronic communications, water, sewer, septic systems, wells, and similar services, and metering and control devices, which exist or are constructed as part of the development of the Property or the Additional Real Estate, or which are referred to in the Plat or otherwise described in this Declaration or any other duly recorded instrument. Each Unit, and the rights of the Owners and Occupants thereof, shall also be subject to a non-exclusive, appurtenant easement in favor of the other Units for all such utilities and services; provided, that the utilities and services shall be installed, used, maintained and repaired so as not to interfere with the use and quiet enjoyment of the Units by the Owners and Occupants, nor affect the structural or architectural integrity of the Units or Dwellings.

11.4 Emergency Access to Units. In case of an emergency, all Units and the Common Area are subject to an easement for access, without notice and at any time, by an officer or member of the Board, by the Association's management agents or by any public safety personnel. The Board may require that an Owner or Occupant leave keys to the Unit with another Owner of his or her choice and to advise the manager or Board of the locations of the keys, so as to allow access for emergencies when the Owner or Occupant is absent for extended periods.

11.5 Project Sign Easements. Declarant shall have the right to erect and maintain monument signs identifying the common interest community and related decorative improvements on the Common Area. Those parts of the Property on which monument signs or related decorative improvements are located shall be subject to appurtenant, exclusive easements

in favor of the Association for the continuing use, maintenance, repair and replacement of said signs and improvements. In exercising its rights under said easements, the Association shall take reasonable care to avoid damaging the improvements to the Property.

11.6 Private Road Easement. A 75 foot easement exists in Lots 6, 7, 8 and 9, Block 2, Stone Gate where said Lots abut 30th Street South. Each of these Units are subject to this private road easement for the benefit of all Units and the Association. The Association shall be responsible for the maintenance, repair and snow removal of said private road.

11.7 Continuation and Scope of Easements. Notwithstanding anything in this Declaration to the contrary, in no event shall an Owner or Occupant be denied reasonable access to his or her Unit or the right to utility services thereto. The easements set forth in this Section 11 shall supplement and not limit any easements described elsewhere in this Declaration or recorded, and shall include reasonable access to the easement areas through the Units for purposes of maintenance, repair and replace the utility lines and related equipment.

SECTION 12 COMPLIANCE AND REMEDIES

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

12.1 Entitlement to Relief. The Association may commence legal action to recover sums due, for damage, for injunctive relief or to foreclose a lien owned by it, or any combination thereof, or an action for any other relief authorized by the Governing Documents or available at law or in equity. Legal relief may be sought by the Association against any Owner to enforce compliance with the Governing Documents, the Rules and Regulations or the decisions of the Association. Owners may also enforce compliance with the Governing Documents, the Rules and Regulations, or by a private legal action, independent of this Section. No Owner may withhold any assessments payable to the Association, or take or omit other action in violation of the Governing Documents or the Rules and Regulations as a measure to enforce such Owner's position, or for any other reason.

12.2 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, the Rules and Regulations:

- (a) Commence legal action for damages or equitable relief in any court of competent jurisdiction;

- (b) Impose late charges of up to the greater of \$20 or 15% of the amount past due, for each past due assessment or installment thereof, and impose interest up to the highest rate permitted by law accruing beginning on the first day of the month after the assessment or installment was due.
- (c) In the event of default of more than 30 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, together with all costs of collection and late charges are not paid in full prior to the effective date of the acceleration. Not less than ten (10) days advance written notice of the effective date of the acceleration shall be given to the defaulting Owner.
- (d) Impose reasonable fines, penalties or charges for each violation of the Governing Documents or the Rules and Regulations of the Association.
- (e) Suspend the rights of any Owner to vote when the Assessments due with respect to the Owner's Unit are past due. Such suspensions shall be limited to periods of default by such Owners and Occupants and obligations under the Governing Documents, and for up to thirty (30) days thereafter, for each violation.
- (f) Enter any Unit in which, or as to which, a violation or breach of the governing Documents exists which is likely to materially affect the health or safety of the other Owners or Occupants, or their guests, or the safety or soundness of any Dwelling or other part of the Property or the property of the Owners or Occupants, and to summarily abate and remove, at the expense of the offending Owner or Occupant, any structure, thing or condition in the Unit which is causing the violation; provided, that any improvements which are a part of a Unit may be altered or demolished only pursuant to a court order or with the agreement of the Owner
- (g) Foreclose any lien arising under the provisions of the Governing Documents or under law.
- (h) Take any other action permitted by the Governing Documents.

12.3 Rights to Hearing. In the case of imposition of any of the remedies authorized by Section 12.2 (d), (e), (f), or (g) of this Section, the Board shall, upon written request of the offender, grant to the offender a fair and equitable hearing. The offender shall be given notice of the nature of the violation and the right to a hearing, and at least 10 days within which to request a hearing. The hearing shall be scheduled by the Board and held within 30 days of receipt of the hearing request by the Board, and with at least ten (10) days prior written notice to the offender. If the offender fails to timely request a hearing or to appear at the hearing, then the right to a

hearing shall be deemed waived and the Board may take such action as it deems appropriate. The decision of the Board and the rules for the conduct of hearings established by the Board shall be final and binding on all parties. The Board's decision shall be delivered in writing to the offender within 10 days following the hearing, if not delivered to the offender at the hearing.

12.4 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 Association's right to pursue any others.

12.5 Cost of Proceeding and Attorneys Fees. With respect to any collection measures, or any measures or action, legal, administrative or otherwise, which the Association takes to enforce the provisions of the Governing Documents or the Rules and Regulations, whether or not finally determined by a court or arbitrator, the Association may assess the violator and his or her Unit 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. Attorney fees shall be available to the Association whether or not court action is necessary. Such expenses shall also include any collection or contingency fees or costs charged to the Association by a collection agency or other Person acting on behalf of the Association in collecting any delinquent amounts owed to the Association by an Owner or Occupant. Such collection or contingency fees or costs shall be the personal obligation of such Owner and shall be a lien against such Owner's Unit.

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

12.7 Enforcement by Owners. The provisions of this Section shall not limit or impair the independent rights of other Owners to enforce the provisions of the Governing Documents or the Rules and Regulations. Individual Owners who take action to enforce the provisions of the Governing Documents or the Rules and Regulations shall also be entitled to attorney's fees and their costs incurred in such enforcement from the Owner violating the Governing Documents and/or the Rules and Regulations.

SECTION 13
SPECIAL DECLARANT RIGHTS

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

13.1 Complete Improvements. To complete all the Units and other improvements indicated on the Plat, or otherwise included in Declarant's development plans or allowed by the Declaration, and to make alterations in the Units to accommodate its sales facilities or to exercise any special declarant rights.

13.2 Add Additional Real Estate. To add Additional Real Estate to the property as described in Section 16.

13.3 Sales Facilities. To construct, operate and maintain a sales office, management office, model Units and other development, sales and rental facilities and any Units owned by Declarant from time to time, located anywhere on the Property.

13.4 Signs. To erect and maintain signs and other sales displays offering the Units for sale or lease, in or on any Unit owned by Declarant.

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

13.6 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:

- (a) Voluntary surrender of control by Declarant; or
- (b) An Association meeting which shall be held within 60 days after conveyance to Owners other than a Declarant of 90% of the total number of Units authorized to be included in the Property.

13.7 Consent to Certain Amendments. As long as Declarant owns any unsold unit, Declarant's written consent shall be required for any amendment to the Governing Documents or Rules and Regulations.

SECTION 14 AMENDMENTS

14.1 Approval Requirements. Except for amendments by Declarant pursuant to Sections paragraph 515B.2-111 and 515B.2-112(c), this Declaration may be amended by the consent of:

- (a) Owners of Units to which are allocated at least sixty-seven percent (67%)

of the votes in the Association;

- (b) The consent of Declarant to certain amendments as provided in Section 13.6.

14.2 Procedures. Consent of the Owners may be obtained in writing or at a meeting of the Association duly held in accordance with the Bylaws. 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 15 RIGHTS OF ELIGIBLE MORTGAGEES

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

15.1 Consent to Certain Actions. The written consent of Eligible Mortgagees representing at least sixty-seven percent (67%) of the Units that are subject to first mortgages (based upon one vote per first mortgage owned) shall be required to:

- (a) Abandon or terminate the common interest community;
- (b) Change the allocations of voting rights, the expense, the obligations or interests in the Common Area;
- (c) Partition or subdivide a Unit except as permitted by statute;
- (d) Abandon, partition, subdivide, encumber or sell the Common Areas; or
- (e) Use hazard insurance proceeds for other than the repair, replacement or reconstruction of the Property, except as is otherwise provided by law.

15.2 Subdivision. No Unit may be partitioned or subdivided.

15.3 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.

15.4 Priority of Lien. Any holder of a first mortgage on a Unit or any purchaser of a first mortgage at a foreclosure sale, that comes into possession of a Unit by foreclosure of the first mortgage or by deed or assignment in lieu of foreclosure, takes the Unit free of any claims for unpaid assessments or any other charges or liens imposed against the Unit by the Association which have accrued against such Unit prior to the acquisition of possession of the Unit by said

first mortgage holder or purchaser; except that any unreimbursed assessments or charges may be reallocated among all Units in accordance with their interests in the Common Areas;

- (a) Except as provided in Section 5.7; and
- (b) Except that any unpaid assessments or charges with respect to the Unit may be reallocated among all Units in accordance with their interests in the Association.

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

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

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

15.8 Access to Books and Records/Audit. Eligible Mortgagees shall have the right to examine the books and records of the Association upon reasonable notice during normal business hours, and to receive free of charge, upon written request, copies of the Association's annual reports and other financial statements. Financial statements, including those which are audited, shall be available within one hundred twenty (120) days of the end of the Association's fiscal year.

15.9 Notice Requirements. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor of a mortgage on a Unit, and the Unit 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 Unit securing the mortgage;
- (b) A 60 day delinquency in the payment of assessments or charges owed by the Owner of a Unit on which it holds a mortgage;
- (c) A lapse, cancellation or material modification of any insurance policy

maintained by the Association; and

- (d) A proposed action which requires the consent of a specified percentage of Eligible Mortgagees.

SECTION 16
RIGHT TO ADD ADDITIONAL REAL ESTATE

16.1 Time Limit. The right of Declarant to add the Additional Real Estate to the common interest community shall terminate ten (10) years after the date of recording of this Declaration or upon earlier express written withdrawal of such right by Declarant or a successor Declarant, unless extended by a vote of the Owners pursuant to Section 515B.2-106(2) of the Act. There are no other limitations on Declarant's rights hereunder, except as may be imposed by law.

16.2 Description. The Additional Real Estate is described in Exhibit B. The Additional Real Estate may be added to the Property in parcels consisting of one (1) or more platted lots, or portions thereof.

16.3 Limits on Obligation to Add. There are no assurances as to the times at which 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 has no obligation to add the Additional Real Estate to the Property. 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.

16.4 Architectural Compatibility. Any Units, Dwellings and other structures, erected upon the Additional Real Estate shall be compatible with the other Units, Dwellings and other structures which are part of the Property in terms of architectural style, quality of construction, principal materials employed in construction and size; subject (i) to any changes required by governmental authorities or lenders and (ii) to any interior and exterior changes made by Declarant to meet changes in the market.

16.5 Application of Covenants. All covenants and restrictions contained in this Declaration affecting the use, occupancy and alienation of Units shall apply to all Units created on the Additional Real Estate.

16.6 Effect on Excluded Property. The statements made in Subsections 16.1 through 16.5 shall not apply to any Additional Real Estate which is not added to the Property.

- (a) A condemnation loss or any casualty loss which affects a material portion of the Property or the Unit securing the mortgage;
- (b) A 60 day delinquency in the payment of assessments or charges owed by the Owner of a Unit 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 Mortgages.

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 attached exhibits.

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.

17.3 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 given Declarant written notice of such tender, the specific nature of the action and an opportunity to defend against the action.

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

17.5 Conflicts Among Documents. In the event of any conflict among the provisions of the Declaration, the Bylaws or any Rules and Regulations approved by the Association, the Declaration shall control, and as between the Bylaws and the Rules and Regulations, the Bylaws shall control.

17.6 Duration of Covenants. The covenants, conditions, restrictions, easements, liens and charges contained in this Declaration shall be perpetual, subject only to termination as provided in this Declaration.

17.7 Warranties. The General Contractor who constructs the dwelling shall be solely responsible for any warranties regarding construction. The Owner shall hold harmless the Declarant regarding any claim upon warranties, either expressed or implied, relating to the construction of the dwelling.

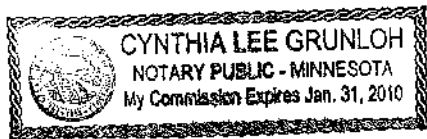
IN WITNESS WHEREOF, the undersigned has executed this instrument the day and year first set forth.

Lumber One Development Company, LLC

By: Ted R. Schmid
Ted R. Schmid
Its: Chief Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF STEARNS)

The foregoing instrument was acknowledged before me this 7th day of February, 2007, by Ted R. Schmid, the Chief Manager of Lumber One Development Company, LLC, on behalf of the Company.



Cynthia Lee Grunloh
Notary Public

THIS INSTRUMENT DRAFTED BY:
SCHROEDER LAW OFFICE
26 North Sixth Avenue; Suite 280
PO Box 1837
St. Cloud, MN 56302
320-252-7766

STIRLING WATERS

EXHIBIT A TO DECLARATION

LEGAL DESCRIPTION OF PROPERTY

Lots 1 through 8, Block 1, and Lots 1 through 9, Block 2, **STONE GATE**, according to the plat and survey thereof on file and of record in the Office of the County Recorder, Stearns County, Minnesota.

STIRLING WATERS

EXHIBIT B TO DECLARATION

LEGAL DESCRIPTION OF ADDITIONAL REAL ESTATE

Outlot F, **STONE GATE**, according to the plat and survey hereof on file and of record in the Office of the County Recorder, Stearns County, Minnesota.

EXHIBIT C

STONE GATE

**NATURAL RESOURCE MANAGEMENT PLAN
FOR STONE GATE AS RECOMMENDED BY THE EDT**

SECTION 1. Legal Description

_____ Preliminary plat of Stone Gate

SECTION 2. Wetland Protection Requirements

- a. A buffer of 40' shall be maintained around wetland areas D, H and I, as denoted on concept plan. The other smaller wetland areas shall not be required to have a buffer area.
- b. Wetland and buffer areas shall not be drained, or filled or any natural vegetative cover removed or altered. No mowing, placement of yard wastes, etc. shall be allowed in the delineated wetland and buffer area. The control of noxious weeds, as defined by the Minnesota law, is permitted via the best management practices of the City's Environmentally Sensitive Areas Ordinance. Plant species that are native to this wetland may be planted and maintained in the buffer area to enhance the wetland.
- c. No private motorized vehicles, ATV's etc. shall be allowed in the delineated wetlands and buffer areas.
- d. A monument shall be placed on each lot where the individual lot lines meet the buffer area or at that point where the buffer line changes direction on the lot or at a maximum distance of each 200', whichever is less. For the lots that are adjacent to a wetland without a buffer, a monument shall be placed on each lot where the individual lot lines meet the wetland area or at that point where the wetland line changes direction on the lot or at a maximum distance of each 200', whichever is less.
- e. Any fertilizer used for those lots adjacent to a delineated wetland shall be phosphorus free.
- f. Because there may be a small potential for tubercled rein-orchids to be present by the west and south portion of wetland D, a review of the west and south portion of wetland D by a qualified person or the DNR, to check for the presence of tubercled rein-orchids should be done in June or July of 2006.

SECTION 3. Oak Woodland/Brushland

Natural Area Site 103, (Oak Woodland/Brushland) as denoted on the concept plan shall have monuments placed at a maximum distance of 100' along the perimeter of the wooded area denoting restrictive use.

SECTION 4. Mitigation of Wetlands

Wetlands E and J and the narrow portion of Wetland D/G as denoted on the concept plan may be mitigated.

SECTION 5. Trail Locations

The location of the trails as denoted on the concept plan are acceptable to the FDT.

SECTION 6. Wildlife Protection Measures

Because there may be a small potential for Blanding's turtles to be on the property, the following measures should be undertaken by the developer, contractors, and owners to avoid or minimize impacts to Blanding's turtles and other wildlife populations:

- a. A flyer with an illustration of an adult Blanding's turtle should be given to all contractors working in the area. Homeowners should be informed of the potential presence of Blanding's turtles in the area.
- b. If a Blanding's turtle nests in your yard, do not disturb the nest, and do not allow pets near the nest.
- c. Silt fencing should be set up to keep turtles and other small wildlife out of construction areas. It is critical that silt fencing be removed after the area has been revegetated.

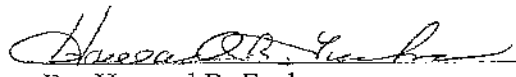
CONSENT TO DECLARATION

Fuchs Construction, Inc. purchased Lot 6, Block 1, STONE GATE, Stearns County, Minnesota, on December 12, 2006.

Fuchs Construction, Inc. hereby consents to the attached Declaration of STIRLING WATERS and agrees that Lot 6, Block 1, ~~STIRLING WATERS~~, Stearns County, Minnesota shall be subject to and bound by the provisions of said Declaration.

*STONE GATE

FUCHS CONSTRUCTION, INC.



By: Howard R. Fuchs

Its: CEO

STATE OF MINNESOTA)
) ss.
COUNTY OF STEARNS)

The foregoing instrument was acknowledged before me this 13th day of February, 2007, by Howard R. Fuchs, the CEO of Fuchs Construction, Inc., on behalf of the Company.


Notary Public

THIS INSTRUMENT DRAFTED BY:
SCHROEDER LAW OFFICE
26 North Sixth Avenue; Suite 280
PO Box 1837
St. Cloud, MN 56302
320-252-7766

