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**COMMON INTEREST COMMUNITY NUMBER 56
A PLANNED COMMUNITY**

WATERS OF VERMILION

DECLARATION

THIS DECLARATION FOR COMMON INTEREST COMMUNITY NO. 56, WATERS OF VERMILION, is made as of this 7th day of April, 2003 by **WATERS OF VERMILION LLC**, a Minnesota limited liability company (the "Declarant"), pursuant to Minnesota Statutes, Chapter 515B, known as the "Minnesota Common Interest Ownership Act," and laws amendatory thereof and supplemental thereto, (the "Act").

RECITALS

A. Declarant is the owner in fee simple of the real property situated in the Greenwood Township, in the County of St. Louis, in the State of Minnesota, legally described on Exhibit A attached hereto and incorporated herein by reference (the "Subject Property").

B. Declarant has deemed it desirable for the preservation of the value of the Subject Property to submit the same, together with the buildings, structures, improvements and other permanent fixtures thereon to the provisions of the Act, and to incorporate under the laws of the State of Minnesota the Waters of Vermilion Community Association for the purpose of administering the Subject Property.

C. Declarant proposes to sell, dispose of and convey interests or estates in and to the Subject Property, together with the buildings, structures, improvements and other permanent

fixtures of whatsoever kind thereon, and any and all rights and privileges belonging to or in any way appertaining thereto, and to accomplish this purpose desires to submit the Subject Property to the requirements of the Act, as a Planned Community.

D. Declarant desires and intends that the owners, mortgagees, occupants, and other persons hereafter acquiring any interest in the Subject Property shall at all times enjoy the rights, easements, privileges, and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the Planned Community form of ownership on the Subject Property and are established for the purposes of enhancing and perfecting the value, desirability and attractiveness of the same.

NOW, THEREFORE, Declarant, as the sole owner of the Subject Property and for the purposes above set forth, hereby declares as follows:

ARTICLE I. DEFINITIONS

The terms and phrases used in this Declaration shall have the meanings ascribed to them in Section 515B.1-103 of the Act except as those meanings are modified or supplemented below.

A. Act. "Act" means the Minnesota Common Interest Ownership Act, Minnesota Statutes, Chapter 515B.

B. Association. "Association" or "Unit Owners Association" means the Unit Owners Association organized under Section 515B.3-101 of the Act in general and in particular Waters of Vermilion Community Association, a nonprofit corporation organized under Chapter 317A of Minnesota Statutes, as amended, of which each Lot Owner shall by virtue of such ownership interest be a member, and which has been established for the purposes of administering, managing, maintaining, operating, repairing, altering and improving the Common Elements of the Subject Property for the collective benefit of the members.

C. Board. "Board" means the Board of Directors of Waters of Vermilion Association.

D. Bylaws. "Bylaws" means the Bylaws of the Association.

E. Common Element. "Common Element" means all roads; trails; street lighting; storm water sewers, utilities and other improvements, including any community sewage treatment or water supply system; any central lodge, boathouse, workshop, or similar amenities; any docks, water access or beach areas; all open space depicted on the Common Interest Community Plat that is not part of a Unit; and any other area, facility, fixture or element which is owned by the Association and designed or intended for common use.

F. Common Expenses. "Common Expenses" means expenditures made or liabilities incurred by or on behalf of the Association, less any income from non-Lot Owner sources, together

with any allocations for reserves including all expenses for the administration, operation and management of the Association and Waters of Vermilion determined and assessed by the Board.

G. Common Interest Community Plat. "Common Interest Community Plat" means that certain Common Interest Community Plat of Waters of Vermilion meeting the requirements of Section 515B.2-110(d) of the Act, as amended, prepared by LHB Engineers and Architects and to be recorded with and incorporated as a part of this Declaration, and satisfying the requirements of Minnesota Statutes Sections 505, 508 or 508A and Greenwood Township, St. Louis County, Minnesota.

H. Declarant. "Declarant" means Waters of Vermilion LLC, a Minnesota limited liability company, its successors or assigns.

I. Declarant Control Period. "Declarant Control Period" means the period commencing on the date of conveyance of the first Lot to a Lot Owner other than Declarant and continuing until the earlier of the date three (3) years after said date or the date sixty (60) days after conveyance of seventy-five percent (75%) of the Lots to Lot Owners other than Declarant.

J. Dwelling. "Dwelling" means a part of a building consisting of one or more floors designed for occupancy as a single family residence, located within the boundaries of a Lot.

K. Limited Common Element. "Limited Common Element" means a portion of the Common Elements allocated by the Declaration or by operation of Section 515B.2-102(d) or (f) of the Act for the exclusive use of one or more but fewer than all of the Units. Paragraph K of Article II allocates those Limited Common Elements not specifically described in Section 515B.2-102(d) and (f) of the Act to specific Units or group(s) thereof. Section 515B.2-102(d) of the Act provides as follows:

"If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside of the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements."

Section 515B.2-102(f) of the Act provides as follows:

"Improvements such as shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, decks, patios, perimeter doors and windows, constructed as part of the original construction to serve a single unit, and authorized replacements and modifications thereof, if located outside the unit's boundaries, are limited common elements allocated exclusively to that unit."

L. Lot. "Lot" means a "Unit" as defined under the Act.

M. Member. "Member" means each Owner of any Lot. Where a Lot is being sold by the Owner to a contract vendee who is entitled to possession, the contract vendee shall be considered the Member if (i) the rights of the contract vendor hereunder are delegated to the vendee under such contract for deed and (ii) the vendee shall furnish proof of such delegation to the Association. Membership shall be appurtenant to and may not be separated from ownership of the Lot.

N. Mortgagee. "Mortgagee" means the owner of any recorded mortgage of a Lot and the successors or assigns of such mortgagee or any persons named as vendor or seller under any contract for deed of a Lot and the successors or assigns of such vendor.

O. Owner or Lot Owner. "Owner or Lot Owner" means Declarant, for so long as it owns a Lot, and each person to whom ownership of a Lot has been conveyed or transferred, but does not include a holder of an interest as security for an obligation.

P. Planned Community. "Planned Community" means a "Planned Community" as defined under the Act, and specifically Waters of Vermilion, the Planned Community created by this Declaration.

Q. Purchaser. "Purchaser" means the holder of a Lot interest (i.e., fee owner or a contract for deed vendee), or the proposed purchaser of such an interest who holds a valid and binding purchase agreement for a Lot.

R. Recording Officer. "Recording Officer" means the County Recorder or Registrar of Titles of St. Louis County, Minnesota.

S. Rules and Regulations. "Rules and Regulations" means the Rules and Regulations of the Association adopted by the Board of the Association.

T. Security for an Obligation. "Security for an Obligation" means the vendor's interest in a contract for deed, mortgagee's interest in a mortgage, purchaser's interest under a sheriff's certificate of sale during the period of redemption, or the holder's interest in a lien.

U. Subject Property. "Subject Property" means that certain real property situated in Greenwood Township, in St. Louis County, in the State of Minnesota legally described on Exhibit A of this Declaration, together with the buildings, structures, and other permanent fixtures of whatsoever kind thereon, and any and all rights and privileges belonging to or in any other way appertaining thereto, and any and all rights and privileges belonging to or in any other way appertaining thereto.

V. Termination of Declarant Control. "Termination of Declarant Control" means the conclusion of the Declarant Control Period.

W. Unit. "Unit" means a portion of the Planned Community designated for separate ownership, the boundaries of which are depicted and delineated on the Common Interest Community Plat.

X. Waters of Vermilion. "Waters of Vermilion" means a Planned Community, portions of which are designated for separate ownership and the remainder of which is designated for common ownership by the Lot Owners and management through the Unit Owner's Association. Specifically, as the term is used herein, it means and refers to Common Interest Community No. 56, Waters of Vermilion, as established by this Declaration.

ARTICLE II.

SUBMISSION OF PROPERTY TO ACT; ACT REQUIREMENTS

A. Submission. Declarant hereby submits the Subject Property to the provisions of the Act, and the Subject Property shall be conveyed, encumbered, held, leased, occupied, rented and used subject to all conditions, covenants, limitations, obligations, restrictions and uses expressed in this Declaration or in the Act. All such conditions, covenants, limitations, obligations, restrictions and uses are declared and agreed to be in furtherance of a plan for and be a burden and benefit to Declarant, its grantees, successors and assigns and any persons acquiring or owning an interest in the Subject Property, their grantees, successors and assigns.

B. Name; Common Interest Community Number; Type of Common Interest Community. The Subject Property shall be a residential single-family Planned Community and shall hereafter be known as "Waters of Vermilion." The Common Interest Community Number for the Subject Property is 56. Pursuant to Section 2-105(a)(2) of the Act, Waters of Vermilion is not subject to any master association.

C. Division of the Subject Property Into Separate Estates in Fee Simple Absolute. Declarant, in accordance with the requirements and provisions of the Act and in order to establish a plan of Lot ownership for the Planned Community, does hereby divide the Subject Property into 45 Lots, each separately designated and legally described estates in fee simple absolute. All of said Lots are designed for residential and not for commercial purposes, and descriptions as to the boundaries of the Lots and restrictions as to the use thereof are hereinafter set forth.

D. Creation of Additional Lots by Subdivision or Conversion; Prohibition on Sale of Main Lodge. No Lots may be created by the subdivision or conversion of Lots pursuant to Section 515B.2-112 of the Act. The "main lodge" located on the Common Area and identified on the Common Interest Community Plat may not be converted into a Lot or conveyed by the Association to any person or entity.

E. Association. The "Waters of Vermilion Community Association" has been incorporated as a nonprofit corporation organized under Chapter 317A of Minnesota Statutes, as amended. The Association is not subject to any master association.

F. Legal Description of Lots. The legal description of the Subject Property is as set forth in Exhibit A of this Declaration. The Lots will be conveyed by use of the following legal description, or any other valid description allowed by law:

LOT (UNIT) NUMBER _____, WATERS OF VERMILION, COMMON INTEREST COMMUNITY NO. 56, ST. LOUIS COUNTY, MINNESOTA.

G. Common Interest Community Plat. The Common Interest Community Plat of the Planned Community, meeting the requirements of Section 515B.2-110 of the Act, as amended, prepared by LHB Engineers & Architects, dated January 9, 2003, is incorporated herein by reference and made a part hereof.

H. Allocation of Common Element Interests, Votes, and Common Expense Liabilities to Lots. Each Lot shall be entitled to one vote in the Association, and each Lot shall have a one-forty-fifth (1/45) undivided interest in the Common Elements and a one-forty fifth (1/45) share of Common Expense liabilities. Such allocations are based on an equal allocation of voting power, interest in the Common Elements and Common Expense liability to each Lot. Notwithstanding any provision to the contrary, the Association, pursuant to Section 515B.3-115(e) of the Act, may assess any Common Expense benefiting fewer than all of the Lot(s) against the Lots benefited by the item of improvement, maintenance, repair or alteration giving rise to such expense. The Owner or some natural person designated to act as proxy on behalf of the Owner, and who need not be an Owner, may cast the vote allocated to such Lot at meetings of the Association.

I. Restrictions on Use, Occupancy and Alienation of Lots. Any restrictions on the use, occupancy and alienation of Lots in Waters of Vermilion are as set forth in Article IV herein, and/or in the Rules and Regulations promulgated by the Association.

J. Statement Pursuant to Section 515B.1-106 of the Act. The Planned Community has not been created in violation of any zoning, subdivision, building, housing, environmental protection, heritage preservation, or other real estate use law, ordinance, regulation, rule or charter provision. Any conditions of any such law, ordinance, regulation, rule or charter provision have been complied with in the creation of the Planned Community.

K. Allocation of Limited Common Elements Not Described in Section 515B.2-102(d) and (f) of the Act. In addition to the Limited Common Elements allocated to each Unit by operation of Section 515B.2-102(d) and (f) of the Act, each Unit may be allocated certain Limited Common Elements consisting of a parking area within the designated "parking areas" on the Common Interest Community Plat, in a location approved by the Board.

L. Special Declarant Rights. The Declarant shall have the following Special Declarant Rights pursuant to the Act:

1. To complete improvements indicated on the Common Interest Community Plat.

2. To maintain sales and/or rental offices and management offices, should it so desire, and models and signs advertising Lots in Waters of Vermilion until all Lots therein have been sold (Section 515B.2-116 of the Act);

3. To appoint or remove any member of the Board as provided in Article IV of the Bylaws until the Termination of Declarant Control (Section 515B.3-103(c) of the Act); and

4. To have an easement throughout the Subject Property for the purposes of pedestrian egress and ingress and completion of such construction work as is necessary to complete the improvements within Waters of Vermilion, and to exercise Special Declarant Rights arising under the Act or reserved in this Declaration, which easement shall terminate upon the later of: (a) the sale of the last Lot in Waters of Vermilion and the completion of all work thereon and (b) the termination of the Declarant Control Period. (Section 515B.2-117 of the Act).

ARTICLE III.
EASEMENTS; MAINTENANCE OBLIGATIONS OF OWNERS;
ASSOCIATION MAINTENANCE

A. Owners' Easements. Each Lot in Waters of Vermilion shall be benefited by the following easements:

1. A nonexclusive easement appurtenant to such Lot for open space purposes over all Common Elements (except for Limited Common Elements), subject, however, to the following: (i) the right of the Association to regulate the use thereof and prescribe rules and regulations with respect to such use; (ii) the right of the Association, by a vote of two-thirds of the Board of Directors or a majority of the Members, to encumber, transfer, dedicate or grant easements over any part of such Common Area; and (iii) a nonexclusive easement over all Common Elements in favor of Greenwood Township for police, fire and emergency vehicles, or for the exercise of any other police power function of Greenwood Township.

2. A nonexclusive easement appurtenant to such Lot for access to a public roadway on or across those portions of the Common Elements designated for use as roadways, walkways or trails as shown on the Plat or as designated by the Board, subject, however, to the right of the Association to regulate the use thereof and prescribe rules and regulations with respect to such access.

3. A nonexclusive easement appurtenant to such Lot for use and enjoyment on and across the Common Elements (except for Limited Common Elements), and for use and enjoyment of any Limited Common Elements allocated to the Lot, subject, however, to the right of the Association to regulate the use thereof and prescribe rules and regulations with respect to such use.

4. Nonexclusive easements appurtenant to such Lot for all services, utilities and utility lines and facilities servicing the Lot over all Common Elements (except for Limited Common Elements), subject, however, to the right of the Association to regulate the use thereof and prescribe rules and regulations with respect to such use and the locations of such easements.

B. Association Easements. The Association shall have and enjoy the following easements, which shall be considered easements in gross and not appurtenant to any specific property of the Association:

A perpetual nonexclusive easement for ingress and egress over and across any Lot for the performance of any maintenance or repair that, under the terms of this Declaration, is an obligation of, or that may be performed at the option of, the Association on any Lot, including specifically, without limitation:

1. a perpetual nonexclusive easement to install, maintain and replace the grass and landscaping on each Lot (exclusive of flower and vegetable gardens);

2. a perpetual nonexclusive easement to lay, repair, maintain and replace utility lines on, over, under and across each Lot to provide utility service to the wall of each Dwelling; and

3. a perpetual nonexclusive easement for drainage purposes on, over, under and across that part of each Lot that is not improved with a Dwelling;

provided that the Association shall, at its expense, repair or replace any damage caused to any Lot or Dwelling by any entry made by the Association hereunder.

C. Easements and Rights of Declarant. The Declarant shall have and enjoy a nonexclusive easement in gross over all Common Elements in Waters of Vermilion to install utilities or otherwise complete construction required in conjunction with the initial development of Waters of Vermilion, and to use the Common Elements for storage of materials for purposes reasonably related to said initial construction; provided, however, that Declarant shall promptly repair or restore any Common Elements so used at its expense. Further, the Declarant may, without vote of the membership of the Association, cause the Board of Directors to execute and deliver such easements or other conveyances for the creation of utilities or other dedications as may be required incident to the initial development of Waters of Vermilion and may use one or more Lots or Dwellings owned by it as models or for sales offices during such initial construction and sale period.

D. Individual Maintenance. Each Owner of a Lot, by acceptance of a deed therefor, covenants and agrees to maintain the exterior of his or her Dwelling on his or her Lot and any parking structure, accessory structures and all vegetable and flower gardens on his or her Lot. In the event any Owner shall fail to perform appropriate maintenance, then the Association shall

have the right to enter upon such Lot to perform such maintenance, and the cost thereof shall be charged to the Lot Owner.

E. Maintenance by Association. The Association shall provide the following maintenance:

1. all landscaping in the Common Elements and for each Lot (except for flower and vegetable gardens located on any Lot);
2. maintenance, repair and replacement of any entrance signs and lighting located within the Common Elements of Waters of Vermilion;
3. snow and ice removal from roadways within the Common Elements and driveways and front walkways on Lots;
4. maintenance, repair and replacement of all streets, underground private utilities, including utility connections on the Lots, sidewalks and boulevards; and
5. maintenance, repair and replacement of any community sewage treatment or water supply system;
6. maintenance, repair and replacement of any central lodge, boathouse, workshop, or similar amenities, and any docks, water access or beach areas;
7. maintenance of the open spaces and wetlands located on the Common Elements.

The expense of any maintenance performed by the Association hereunder shall be assessed either through annual general assessments or, with respect to maintenance performed on an individual Lot, through Lot Maintenance Assessments. Maintenance, for purposes of this Declaration, shall include, as necessary, any hazard and liability insurance deemed necessary by the Association.

F. Easements to Run With Land. Except as otherwise specifically provided, all easement rights and obligations created in this Article are affirmative and negative easements, running with the land, perpetually in full force and effect and at all times shall inure to the benefit of and be binding upon Declarant, its successors and assigns, and any Lot Owner, purchaser, mortgagee, holder of a security for an obligation and any other person having any interest in Waters of Vermilion or any part or portion thereof.

ARTICLE IV. RESTRICTIONS, CONDITIONS AND COVENANTS

A. Membership in Association. Each Lot Owner shall, by virtue of such ownership interest, be a Member of the Association and shall remain a Member of the Association until such

time as the ownership interest in the Lot ceases for any reason, at which time the Lot Owner's membership in said Association shall automatically cease. When one or more persons hold an ownership interest in a Lot, all such persons shall be Members.

B. Compliance with Declaration, Bylaws and Rules and Regulations of Association. Each Lot Owner and occupant of a Lot shall comply with all of the provisions of this Declaration, the Bylaws, such Rules and Regulations as, from time to time, may be promulgated by the Association, as amended from time to time, and decisions of the Association made pursuant to the authority granted to the Association in the foregoing documents, and failure to comply with any such provisions and Rules and Regulations shall be grounds for an action to recover damages or for injunctive relief.

C. Administration of Waters of Vermilion. The administration of Waters of Vermilion shall be by the Board in accordance with the provisions of this Declaration and the Bylaws.

D. Purposes for Which Lots are Restricted as to Use. Lots and the Dwellings thereon shall be occupied and used by the respective Owners, their families, and social guests, only as private residential dwellings, provided, however, that an Owner may pursue any home vocation that does not violate this Declaration or the Act, nor adversely affect other Lot Owners. Parking structures shall be restricted exclusively to parking of vehicles and storage of personal property incidental to the residential use of the Lot and may not under any circumstances be converted to any other use. No time shares of any Lot are permitted.

E. Restriction on Renting or Leasing of Lots. Waters of Vermilion is intended and designed to be an owner-occupied single-family residential development. No Lot may be leased, rented or occupied, regardless of whether consideration is paid in connection with the occupancy, except as follows:

1. A Member or Lot Owner may lease a Lot only in accordance with the following conditions: (i) such lease shall not interfere with the overall quality of Waters of Vermilion or the enjoyment of the Common Elements or Lots by any other Member; (ii) the Lot shall not be leased for transient or hotel purposes; (iii) no subleases of any Lot shall be permitted without prior written consent of the Association; (iv) the lease shall be for the entire Lot, not an individual room or rooms; (v) the lease shall be in writing; (vi) the lessee who has the legal right to possess the Member's/Owner's Lot shall have the right to use any common facilities, parking, and any other Waters of Vermilion amenities in lieu of the Member/Owner and the Member's/Owner's family; and (vii) the lease shall provide that it is subject to this Declaration, the Rules and Regulations, and the Act, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease.

2. No lease or other occupancy agreement with respect to a Lot shall be for a term of less than one week. In addition, no Lot may be leased or occupied pursuant to a Short Term Lease (as defined below) except when such Short Term Lease has been arranged through and with the consent of the Association.

3. No Member or Lot Owner shall enter into a Short Term Lease for a Lot with any other party except for a Short Term Lease arranged through and with the consent of the Association. Members/Lot Owners who desire to lease their Lots to third parties may enter into arrangements with the Association whereby the Association will make such Member's/Owner's Lot available for lease on a short term or long term basis. The Association (i) may from time to time establish policies and Rules and Regulations regarding Short Term Leases and Long Term Leases (as defined below), and (ii) may from time to time employ (on terms as it shall determine are appropriate) an agent to promote Short Term Leases and Long Term Leases of Lots.

4. Subject to the provisions of this Declaration, Members or Lot Owners may enter into a Long Term Lease of a Lot directly with any other party.

5. The Association may also impose such reasonable Rules and Regulations as may be necessary to implement procedures for leasing consistent with this Section E.

For purposes of this Section E, the phrase "Long Term Lease" shall mean a lease or other occupancy agreement for a period greater than three consecutive months, and the phrase "Short Term Lease" shall mean a lease or other occupancy agreement for a period of from one week to three months.

F. Restrictions on Alienation of Lots. Pursuant to the requirements of Minnesota Statutes § 515B.2-105(11), there are no material restrictions created by this Declaration on the alienation of Lots except as specifically set forth herein.

G. Impairment of Structural Integrity of Lot or Dwelling. Nothing shall be done, placed, installed, or erected in any Lot or in, upon or to the Common Elements that would impair the structural integrity of the Dwelling on the Lot or that would change the topography of a Lot in a fashion detrimental to an adjacent Lot or the Common Elements.

H. Alterations of Common Elements; Lease of Common Elements. Except as otherwise permitted by the Act or this Declaration, the Common Elements shall not be altered or removed, and no alterations, additions or improvements shall be installed, placed or constructed thereon or therein except by the Association or upon the written consent of the Board. Pursuant to the Act, the Association may lease portions of the Common Elements (for commercial or other purposes) on such terms as it shall determine are appropriate. Such purposes may include the living quarters for a resident on-site manager, a rental office for an agent engaged to lease Lots pursuant to Article IV, Section E, a coffee shop, and/or other retail operations. As provided in Article II, Section D, the Association may not convey title to the "main lodge" on the Common Area to any person or entity. The Association may create additional trail, or relocate or discontinue any existing trails, that are located on the Common Area.

I. Alterations of Lots. No changes or alterations of any kind, whether structural or non-structural, shall be made to the exterior of the Dwelling on the Lot or the front yard area of a Lot without the prior written consent of the Board, and no approved proposals or plans for changes or alterations to the exterior of a Dwelling on the Lot or the front yard area of a Lot shall be modified or amended without the further written consent of the Board. The Board's consent shall be requested by a written application submitted by the Lot Owner. Unless the Board gives the Lot Owner a notice denying or limiting its consent within sixty (60) days after delivery of the application, the consent may be presumed by the Lot Owner. The Board may require that a Lot Owner furnish adequate plans and specifications to describe the nature of the proposed changes and alterations. The Board may create an architectural review committee (the "ACC") to assist in these responsibilities. Members of the ACC need not be members of the Board. The Board may promulgate detailed standards and procedures governing its or the ACC's areas of responsibility, review, and practice. In addition, the Board may establish typical or standard improvements that shall be deemed pre-approved.

J. Indemnification for Lot or Common Element Alterations. The Board shall require that a Lot Owner intending to make alterations to the Owner's Dwelling or the Lot front yard (which have been first approved by the Board) furnish the Association with adequate assurances that such Owner will indemnify, defend and hold harmless the Association and other Lot Owners from mechanics' liens or other claims arising from structural alterations or modifications of the Lots or Common Elements. The Board may require that a Lot Owner provide a deposit, performance bond or other assurance that any Common Element removed or altered incident to an approved alteration will be repaired and restored as required by the Board. The Board shall have the right to complete, pay for and assess the Lot and the Lot Owner for any alterations commenced but not completed.

K. Pets. The policy of Waters of Vermilion with respect to pets shall be as from time to time established in the Rules and Regulations of the Association.

L. Home Occupations, Prohibited Activities and Signs. Notwithstanding Section D of this Article IV to the contrary, a Lot Owner or occupant may engage within the boundaries of the Lot in a home occupation including but not limited to office and studio uses, and such other uses which by custom are considered accessory to a dwelling, provided all such uses shall be in accordance with the ordinances of Greenwood Township; and provided, further, that no sign advertising such occupation shall be displayed. Other than home occupations, no business activity, trade or occupation of any kind shall be conducted, maintained or permitted on any part of Waters of Vermilion.

M. Rules and Regulations. In addition to the foregoing restrictions, conditions and covenants concerning the use of Waters of Vermilion, reasonable Rules and Regulations, not in conflict therewith and supplementary thereto, may be promulgated and amended from time to time by the Board. Copies of such Rules and Regulations and amendments thereto shall be furnished by the Association to each Lot Owner.

N. Restrictions, Conditions and Covenants to Run With Land. Each grantee of Declarant, by the acceptance of a deed of conveyance, and each Lot Owner who acquires such interest hereafter, accepts such deed or such interest, as the case may be, subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having, at any time, any interest or estate in said land, and shall inure to the benefit of the Lot Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed or other conveyance.

O. Non-Waiver of Covenants. No covenants, restrictions, conditions, obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

P. Termination. The procedures that the Association and the Lot Owners must follow in the event of a decision to terminate the Planned Community, except in the case of a taking of all the Lots by eminent domain, are set forth in Section 515B.2-119 of the Act and shall be complied with by the Association.

**ARTICLE V.
MANAGEMENT, REPAIRS,
ALTERATIONS AND IMPROVEMENTS**

A. Damage. If damage is inflicted on the Common Elements, the Lot Owner responsible for the damage, or the Association, if it is responsible, is liable, at its expense, for the prompt repair thereof.

B. Waiver of Claims. Anything herein to the contrary notwithstanding, the Association agrees that it shall make no claim against the Lot Owner or occupant, and each Lot Owner and occupant agrees to make no claim against the Association, the members of the Board, officers of the Association, or employees or agents of any thereof, or against the property manager or its officers, employees or agents, or other Lot Owners or occupants, for any loss or damage to Waters of Vermilion, or to a Lot or personal property, even if caused by the act or neglect of any one or more of such persons, due to a peril insured against by casualty insurance purchased by the Association, or any Lot Owners to the extent of the insurance proceeds recovered under all such policies of insurance, and all such claims, to the extent of such recovery, are hereby waived and released; provided, however, that this waiver shall not apply to vandalism or malicious mischief and shall apply only during such time as the applicable policy or policies shall contain a clause or endorsement to the effect that any such release shall not adversely affect or impair said policy or policies, or prejudice the right of the insured to recover thereunder, and each Lot Owner, and the Board, agree that their respective insurance policies shall contain such a clause or endorsement, if

available at reasonable cost in the opinion of the party insured thereunder. The Board shall have the right to determine who shall pay the deductible portion not covered by insurance.

C. Mechanics' Liens. Before the commencement of any construction, alteration, modification, remodeling, or renovation of any Dwelling or any other activity which may give rise to mechanics' liens or other claims, the Association may require the Lot Owner or Owners involved to post a bond in favor of the Association and other non-involved Lot Owners equal to one hundred twenty-five percent (125%) of the estimated cost of completion, which bond shall indemnify the Association and other non-involved Owners against any such mechanics' liens or other claims.

The foregoing paragraph notwithstanding, the Lot Owner or Owners so involved shall promptly pay for all material, equipment, and labor used in any such construction, alteration, modification, remodeling, renovation, or other activity and in any event shall so pay therefor within thirty (30) days of the filing of any mechanic's lien or other claim, provided, however, that if any such Lot Owner or Owners choose to contest the validity of such lien or claim, the Association may require such Owner or Owners to post a bond (assuming that no other similar bond is then in effect) in favor of the Association and other non-involved Lot Owners equal to one hundred twenty-five percent (125%) of the amount claimed by the holder of such lien or claim, which bond shall indemnify the Association and other non-involved Lot Owners against such lien or claim.

D. Professional Management. Any agreement for professional management services or any other contract providing for services of the Declarant entered into by Declarant may not be for a term in excess of two (2) years and shall provide for termination by either party without cause upon no more than ninety (90) days prior written notice by one party to the other. There shall be no termination fee.

ARTICLE VI. ASSESSMENTS AND LIENS FOR ASSESSMENTS

Assessments against the Owners shall be levied by a majority vote of the Board and paid by the Owners to the Association in accordance with the following provisions:

A. Obligation for Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association, commencing on the date of delivery of the deed: (i) annual assessments or charges, and (ii) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also become the personal obligation of the Lot Owner at the time the assessment becomes due. The personal obligation for delinquent assessments shall not pass to such Lot Owner's successors in title, unless expressly assumed by them. Assessments against all Lots shall be levied at the time of the conveyance of a Lot to an Owner

other than the Declarant, subject to the Association's right to assess certain Common Expenses against only the Lots benefited as provided in Section B below. Except as provided by Sections B and S, below, assessments shall be allocated equally among the Lot Owners. During 2003 the Association shall give Members at least ten (10) days prior written notice of the assessment due for the following month or months, and the charges may be a lesser amount than the proposed annual assessment. The failure or delay of the Board to send notice to each Member as provided above shall not constitute a waiver or release in any manner of the Member's obligation to pay the assessment whenever it shall be determined, and in the absence of any notice each Member shall continue to pay the monthly assessment at the then existing monthly rate until such Member has receipt of the assessment amount.

B. Assessments Against Fewer Than All Lots. The Association may assess any Common Expense benefiting fewer than all of the Lots against only the Lots benefited. In that case, the Common Expense shall be allocated equally among all of the Lots benefited by such Common Expense, as provided in Section 515B.3-115(e)(2) of the Act.

C. Annual Assessment. The annual assessment shall be established by the Board in accordance with the provisions of this Article VI. If additional Lots are added to the Subject Property by the addition of all or any portion of the Additional Real Estate, Declarant shall be responsible for the payment of all monthly installments of annual assessments on any such additional Lot(s) due after the date that the Amended Declaration creating such additional Lot(s) is filed for record with the Recording Officer (the "Filing Date"). The initial payment of monthly installments for each additional Lot shall be the installment amount payable by the Owner of each Lot in Waters of Vermilion prior to the Filing Date (the "Pre-Filing Installment Amount"), pro-rated for the period commencing with the Filing Date and ending with the date upon which such initial monthly installment is due, subject to reduction pursuant to Section S of this Article VI. Subsequent monthly installments shall be in the amount equal to the Pre-Filing Installment Amount until the Association determines the next subsequent annual assessment, subject to reduction pursuant to Section S of this Article VI.

D. Special Assessments. In addition to the annual assessments levied as provided in this Article VI, the Board may, in its discretion, levy special assessments at such other and additional times as, in its judgment, are required for the proper management, maintenance, repair and operation of the Common Elements. Such special assessments shall be due and payable as determined by the Board.

E. Assessment Rate. Both annual and special assessments shall be assessed equally among the Lots and may be collected on a monthly basis, provided, however, that assessments arising out of the negligence or nonperformance of any obligation of an Owner shall be for additional nonuniform amounts and shall be immediately due in full from the Owner and assessments against fewer than all Lots shall be set pursuant to Section B above.

F. Lien for Unpaid Assessments, Interest and Late Fees. All assessments, both annual and special, shall become a lien upon a Lot on the date the assessment or the installment of an

assessment becomes due, or if the assessment is not payable in installments, then on the date the Board of Directors determines the assessment is due and payable.

The lien for all unpaid assessments shall include interest, costs, receiver's fees, collection fees, filing fees, reasonable attorneys' fees and late fees.

G. Priority of Lien. The lien for assessments is prior to all other liens and encumbrances on the Lot except (i) liens and encumbrances recorded before the recording of this Declaration, (ii) any recorded mortgage on the Lot securing a first mortgage; and (iii) liens for real estate taxes and other governmental assessments or charges against the Lot; provided, however, that if a first mortgage on a Lot is foreclosed and no Owner redeems during the period of redemption provided by Minnesota Statutes, Chapters 580, 581, or 582, then the holder of the sheriff's certificate of sale from the foreclosure of the first mortgage shall take title to the Lot subject to unpaid assessments for Common Expenses levied pursuant to Minnesota Statutes, Sections 515B.3-115(a), (e)(1) to (3), and (i), which became due, without acceleration, during the six months immediately preceding the first day following the end of the Owner's period of redemption. This provision does not affect the priority of mechanics' or materialmen's liens. Fees, late charges and interest charges pursuant to this Declaration are enforceable as assessments.

H. Preparation of Proposed Budget and Levying of Assessment. Each year, at least thirty (30) days prior to the beginning of the Association's fiscal year, the Board shall estimate the total amount necessary to pay the Common Expenses which will be required during the next fiscal year together with the reasonable amount considered by the Board to be necessary for reserves for such things as maintenance, alterations and improvements, reconstruction and repair, and emergencies. At least thirty (30) days prior to the beginning of the Association's fiscal year, the Board shall provide or mail to each Lot Owner the estimated amount of the assessment that Lot Owner shall pay in the next fiscal year.

I. Payment of Assessments. Following the levying of an assessment as provided in the previous paragraph, on the first of each and every month of said fiscal year thereafter, each Member shall be obligated to pay to the Association, one-twelfth (1/12) of the assessment levied pursuant to the preceding paragraph herein.

J. Failure to Prepare Annual Budget and Levy Annual Assessments. The failure or delay of the Board to prepare the proposed annual budget and to levy assessments upon each Member as provided above shall not constitute a waiver or release in any manner of such Member's obligation to pay annual assessments whenever the same shall be determined, and in the absence of any annual budget, each Member shall continue to pay the monthly assessment at the then existing monthly rate until such Member has receipt of the new annual or special assessment levied.

K. Late Fees and Interest on Unpaid Assessments. Assessments and installments thereof paid on or before ten (10) days after the date when due shall not bear interest or penalty. All sums not paid on or before ten (10) days after the date when due shall bear interest at the rate of eight percent (8%) per annum from the date when due until paid. In addition, there shall be a late charge, as set by the Board from time to time, for all sums not paid on or before ten (10) days after

the date due. All payments upon account shall be applied first to any interest or penalty, and then to assessment payment first due. This provision applies to both annual and special assessments. If any installment of an assessment becomes more than sixty (60) days past due, then the Board may, upon ten (10) days' written notice to the Owner, declare the entire amount of the assessment immediately due and payable in full.

L. Assessment Roll Available for Inspection. The assessments against all Lots shall be set forth upon a roll of the Lots which shall be available in the office of the Association for inspection at all reasonable times by Members or their duly authorized representatives. Such roll shall indicate for each Lot the name and address of the Member, the assessments for all purposes, and the amounts of all assessments paid and unpaid. A certificate made by the Association as to the status of a Member's assessment account shall limit the liability of any person for whom such certificate is made. The Association shall issue such certificates to such persons as a Member may authorize in writing.

M. No Exception or Waiver of Payment of Assessments. No Member shall be exempt from liability for contributions towards the Common Expenses by waiver of the Member's use or enjoyment of any portion of the Member's Lot or by the abandonment of the Member's Lot or any other improvement.

N. Acceleration. All sums assessed by the Association for annual assessments shall be payable monthly, except as determined by the Board of Directors, and special assessments allocable to any Lot shall be payable monthly or as designated by the Board. In the event of default in the payment of annual or special assessments, the Association may, upon ten (10) days prior written notice declare the entire assessment due and payable in full. An installment for an assessment, whether annual or special, is considered to be in default sixty (60) days after such assessment, or the installment therefor, is due.

O. Foreclosure of Lien. The Association's lien may be foreclosed as provided by laws of the State of Minnesota as if it were a lien under a mortgage containing a power of sale. The rights of the parties shall be the same as those provided by the law except that (i) the period of redemption shall be six (6) months from the date of sale or a lesser period authorized by law, (ii) in a foreclosure by advertisement under Minnesota Statutes, Chapter 580, the foreclosing party shall be entitled to costs and disbursements of foreclosure, and attorneys' fees in the amount provided by Minnesota Statutes, Section 582.01, subdivision 1a, (iii) in a foreclosure by action under Minnesota Statutes, Chapter 581, the foreclosing party shall be entitled to costs and disbursements of foreclosure and attorneys' fees as the court may determine, and (iv) the amount of the Association's lien shall be deemed to be adequate consideration for the Lot subject to foreclosure, notwithstanding the value of the Lot.

P. No Further Perfection or Notice Required. The recording of this Declaration constitutes record notice and perfection of the lien and no further recording of any claimed lien for assessment is required.

Q. Purchaser at Foreclosure Sale not Liable for Unpaid Assessments. If a first mortgage on a Lot is foreclosed and no Owner redeems during the period of redemption provided by Minnesota Statutes, Chapter 580, 581, or 582, then the holder of the sheriff's certificate of sale from the foreclosure of the first mortgage shall take title to the Lot subject to unpaid assessments for Common Expenses levied pursuant to Minnesota Statutes, Section 515B.3-115(a), (e)(1) to (3), and (i), 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. Any unpaid assessment shall thereupon be spread over and become a lien on all Lots subject to assessments in proportion to their Common Expense Liability. Any such sale or transfer pursuant to foreclosure shall not relieve the purchaser or transferee of a Lot or the Lot itself from liability for the lien of any assessment made thereafter.

R. Adequate Reserve and Working Capital Funds. The assessments for Common Expenses shall include an adequate reserve fund for maintenance, repairs and replacement of those Common Elements that must be replaced on a periodic basis, and shall be payable in regular installments rather than by special assessments.

A segregated working capital fund equal to at least a two (2) months' estimated Common Expenses per Lot shall be established to ensure that the Association will have funds available during the initial months of Waters of Vermilion's existence. Lot Owners shall pay this amount at the time the Lot is conveyed. The contribution to the working capital fund required from each Lot Owner shall be made at the time of closing of the sale of that Lot by Declarant.

S. Alternative Assessment Program. The Declarant hereby establishes an alternative assessment program as permitted by Minnesota Statutes, Section 515B.3-115(b). Specifically, if a common expense assessment has been levied, any Lot owned by the Declarant shall be assessed at the rate of 25% of the assessment that would otherwise be levied on such Lot until the Lot or any building located in it is substantially completed. Substantial completion shall be evidenced by a certificate of occupancy by Greenwood Township, St. Louis County, Minnesota. Thereafter, such Lot shall be assessed at the full rate. This reduced assessment shall apply to each Lot owned by the Declarant, and shall continue as to each such Lot until substantial completion as previously described. In any event, this alternative assessment program shall end on the tenth anniversary of the recording of this Declaration. There are no assurances that this alternative assessment program will have no effect on the level of services for items set forth in the Association's budget.

ARTICLE VII. INSURANCE AND EMINENT DOMAIN

A. Association Shall Maintain Insurance. The Association shall obtain and continue in effect blanket property insurance and liability insurance, pursuant to Section 515B.3-113 of the Act but without prejudice to the right of the Lot Owner to obtain individual Lot insurance. Such policy or policies must include any additional endorsements, coverages and limits as may be required by the regulations of the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Federal Housing Administration (FHA) or the Secretary of

Veteran Affairs (VA), if required by one of these agencies as a precondition to their purchase, financing, insuring or guaranty of a mortgage of a Lot.

B. Notification of First Mortgagees. Upon written request to the Association identifying the name and address of the first mortgagee and the Lot number or address, such mortgagee shall be entitled to timely written notice of the following:

1. Any condemnation loss or any casualty loss which affects a material portion of Waters of Vermilion or any Lot on which there is a first mortgage held by such mortgagee;
2. Any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to a first mortgage held by such mortgagee, which remains uncured for a period of sixty (60) days;
3. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
4. Any proposed action which would require the consent of a specified percentage of eligible first mortgagees as specified in this Declaration.

C. Fire, Extended Coverage, Vandalism and Malicious Mischief. The Association shall secure a blanket policy of insurance in accordance with Section 515B.3-113 of the Act and covering fire, extended coverage, vandalism and malicious mischief with an all-risk endorsement, which policy will cover one hundred percent (100%) of the replacement cost of the Common Elements. Funds to cover the deductible amounts are to be included in the Association's operating reserve account, and the deductible amount shall not exceed \$10,000.00 or one percent (1%) of the face amount of the policy, whichever is less. The named insured shall be the "Waters of Vermilion Community, as Trustee for the use and benefit of the Lot Owners". Lot Owners shall be responsible for their own insurance coverage on their respective Dwellings and other improvements and personal property of the Lot Owner as provided in Section E of this Article.

D. Worker's Compensation Insurance. The Association may procure a worker's compensation insurance policy to meet the requirements of the laws of the State of Minnesota if such coverage is warranted.

E. Individual Insurance Policy for Lot Owner. Each Lot Owner shall obtain insurance, at the Lot Owner's own expense, affording fire, extended coverage, vandalism and malicious mischief coverage, with an all risk endorsement, and naming the Association as insurance trustee as provided herein for 100% of replacement cost of the Dwelling. In addition, the Lot Owner shall be responsible for such other coverage regarding personal property, additional living expense, personal liability and any other coverages obtainable to the extent and in the amounts that such Lot Owner deems necessary. Owner's shall provide evidence of insurance annually to the Association and such policies shall provide 30 days notice to the Association of cancellation.

F. Association as Insurance Trustee. In the event of destruction or damage by causes covered by insurance referred to above, all proceeds of said insurance coverage shall be payable to the Association as insurance trustee for the Owner of the damaged Lot(s) or Common Element(s) and to the mortgagee(s) of record as their interests appear. Said insurance proceeds shall be applied and administered as follows:

1. In the event of an insured loss to a Lot and/or Common Element(s), all insurance proceeds paid to the trustee shall be deposited in escrow with a title insurance company until the restoration or replacement has been completed;

2. The owner of a Lot and/or in the case of the Common Elements, the Association, to which an insurance loss occurs shall, within forty-five (45) days after the insurance proceeds are deposited with a title insurance company, enter into a firm contract with a qualified builder providing for the reconstruction or restoration of the Lot and/or Common Element to substantially the same condition as it existed immediately prior to the insured loss; provided, however, that no contract shall be entered into by such Owner for an amount in excess of the insurance proceeds then held by the title insurance company until additional funds are deposited by the Owner sufficient to cover all construction costs as determined by the title insurance company. The reconstruction or restoration shall be commenced and completed with due diligence, and in no event shall said work be completed later than two hundred ten (210) days after said insurance proceeds are deposited in escrow. The Association and mortgagee of record of the Lot affected shall have the right, but not the obligation, to deposit such additional funds in excess of insurance proceeds as may be required to permit reconstruction as herein provided;

3. In the event such Owner fails to enter into a contract as provided in Section F.2 above, or in the event that reconstruction is not commenced or completed as provided above, then the Association as insurance trustee, with consent of the mortgagee of record, or the mortgagee of record, with the consent of the Association as insurance trustee, shall have the right, but not the obligation, to enter into those contracts which it deems necessary to complete said restoration or reconstruction of the Lot and/or Common Element(s) and the Association as insurance trustee or the mortgagee shall have the right to have said insurance proceeds applied in satisfaction of any obligations incurred pursuant to said contract without liability of any kind to the Owner. The Association or the mortgagee may employ any bonded party or parties as its agent in exercising those functions given to it in this paragraph. The Association or the mortgagee shall be empowered to pay said agent a reasonable fee for the services rendered by such agent and to collect such charge from the Owner in the same manner as is provided in this Article for the collection of an insurance premium paid by the Association;

4. Disbursements of funds on deposit, pursuant to Section F.1 above, for contracts for reconstruction or restoration entered into under Sections F.2 and F.3 above shall be made by the title insurance company subject to the following:

(i) receipt by the title insurance company of such construction statements, list of subcontractors, lien waivers and receipts as it shall determine to be appropriate. Disbursements may be periodic or progress payments, and the title insurance company may make such inspections and withhold such payments as it deems necessary to ensure completion in compliance with plans and specifications. The title insurance company shall be entitled to charge, and the trustee shall be empowered to pay, a reasonable fee for the services rendered by the title insurance company. The trustee may collect such charge from the Owner in the same manner as is provided for in this Article for the collection of insurance premiums paid by the Association; and

(ii) in the event a contract is entered into pursuant to Section F.2 above, the written consent of such Owner to said payment shall be obtained by the title insurance company.

5. Nothing contained in this Article shall be construed to make the Association or its Board of Directors, or the mortgagee of record responsible for collection of any insurance proceeds; the Association, Board or mortgagee being responsible solely for the insurance proceeds which come into their hands. The Owner of the Lot and/or Common Element(s) damaged or destroyed by causes referred to above shall collect, or cause to be collected from the insurance carrier, proceeds of the policy covering his or her Lot, and/or Common Element(s) affected, for the use of the trustee or mortgagee as hereinabove provided; and

6. In the event that a restoration or reconstruction contract is not entered into, pursuant to the provisions of Sections F.2 and F.3 above, within one hundred eighty (180) days after deposit of insurance proceeds with the title insurance company for a damaged or destroyed Lot and/or Common Element(s), or if reconstruction or restoration is not promptly commenced or diligently pursued, said title insurance company shall disburse said proceeds to each mortgagee of record of the affected Lot as its interest appears to retire the indebtedness secured under the mortgage, and shall disburse the remaining deposits, if any, to the Owner or Owners as their respective interests may appear.

G. Required Endorsements and Provisions. The following endorsements are required if reasonably available in all physical damage casualty policies:

1. Agreed Amount and Inflation Guard Endorsement; and
2. Construction Code Endorsements, if there is a construction code provision that requires changes to undamaged portions of the buildings even when only part of Waters of Vermilion destroyed by an insured hazard. Typical endorsements include Demolition Cost Endorsements, Contingent Liability from Operation of Building Laws Endorsement and Increased Cost of Construction Endorsements; and

3. Steam Boiler and Machinery Coverage Endorsement, which provides that the insurer's minimum liability per accident equals at least the lesser of \$2,000,000 or the insurable value of the buildings housing such boiler or machinery if required by Mortgagee.

In addition, the following provisions must be contained within the Association general liability policy:

1. Any insurance trust agreement will be recognized;
2. The right of subrogation against Lot Owners will be waived;
3. The insurance will not be prejudiced by any acts or omissions of the Lot Owners that are not under the control of the Association; and
4. The policy will be primary even if a Lot Owner has other insurance that covers the same loss.

If any part of the Subject Property is in a special flood hazard area, the Association must maintain a blanket policy of flood insurance covering all Common Elements, the premiums for which are to be paid as a Common Expense. Funds to cover the deductible should be included in the operating reserve account.

H. Waiver of Subrogation and Notice of Change or Cancellation. All policies of physical damage casualty insurance including policies taken out by Lot Owners for their Dwelling or personal property shall contain waivers of subrogation and waivers of any defense based on co-insurance or of invalidity arising from any acts of the insured and it shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days prior written notice to the Association and to the first mortgagees of record of the Lots.

I. Lien for Premiums. The Association shall make payment of insurance premiums for insurance on the Dwellings on behalf of any Lot Owner not purchasing insurance. Such payment and the cost thereof shall be a charge on that Lot and a continuing lien on the Lot for whose benefit such premium payment is made, and also the personal obligation of the Owner of the Lots at the time such premium payment is made.

J. Comprehensive General Liability Insurance. The Association must maintain comprehensive general liability insurance coverage covering the Common Elements as defined in Article I. In addition, the Association must maintain liability insurance for any manager employed by the Association and officers and directors liability insurance for the officers and directors of the Association. The coverage shall be in amounts generally required by private institutional mortgage investors for Planned Community projects similar in construction, location, and use. However, the coverage shall be for at least \$2,000,000 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under the general liability policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the ownership, existence, use or management of the Lots and Common

Elements, and legal liability arising out of lawsuits related to employment contracts in which the Association is a party, or other acts or omissions of the Association. Such policies must provide that they may not be canceled or substantially modified by any party without at least thirty (30) days prior written notice to the Association. The Association shall, not less than every 10 years, adjust the amount of general liability coverage to an amount equal to approximately the value of \$2,000,000 adjusted to reflect the effects of inflation since 2002.

K. Waiver of Claim. Anything herein to the contrary notwithstanding, the Association agrees that it shall make no claim against the Lot Owner or occupant, and each Lot Owner and occupant agrees not to make a claim against the Association, the members of the Board, officers of the Association, or employees or agents of any thereof, or against the manager, if any, or its officers, employees or agents, or other Lot Owners or occupants, for any loss or damage to Waters of Vermilion, or to a Lot or Common Element, or to personal property, even if caused by the act or neglect of any one or more of such persons, due to a peril insured against by casualty insurance purchased by the Association, or any Lot Owner, to the extent of the insurance proceeds recovered under all such policies of insurance, and all such claims, to the extent of such recovery, are hereby waived and released; provided, however, that this waiver shall not apply to vandalism or malicious mischief and shall apply only during such time as the applicable policy or policies shall contain a clause or endorsement to the effect that any such release shall not adversely affect or impair said policy or policies, or prejudice the right of the insured to recover thereunder, and each Lot Owner and the Board agree that their respective insurance policies shall contain such a clause or endorsement if available at reasonable cost in the opinion of the party insured thereunder.

L. Evidence of Insurance. Every insurance policy protecting the interest of a first mortgagee must meet the following minimum requirements:

- (a) Be written by an insurance carrier which has a Best's general policy holder's rating of B+ or better; fall into a financial category of Class XI or better, and be specifically licensed or authorized by law to transact business in the State of Minnesota; or coverage from Lloyd's of London, or FAIR plan coverage if that is the only coverage that can be obtained at a reasonable cost.
- (b) Provide for at least one hundred eighty (180) days written notice to the Association and the first Mortgagee of the carrier's intention to cancel or not renew the policy.
- (c) Contain a provision established for limited liability of not less than one hundred percent (100%) of the outstanding mortgage balance of any first mortgage on a Lot.
- (d) Contain a "standard" or "union" mortgage clause (without contribution) in the form customarily used in Minnesota.

M. Fidelity Bonds. The Association shall maintain blanket fidelity bonds for anyone who handles or is responsible for funds held or administered by the Association. This includes any management agent employed by the Association, whether or not they receive compensation for their services. All bonds are to name the Association as an obligee. The premiums for such bonds

will be paid for by the Association. Any such bond should cover the following: (i) the maximum funds in the custody of the Association or its management agent at any time while the bond is in force; (ii) coverage must at least equal the sum of three months' assessments on all Lots in Waters of Vermilion plus the Association's reserve funds; and (iii) must provide for thirty (30) days' written notice to the Association or its insurance trustee before the bond can be canceled or substantially modified for any reason.

N. Association Rights and Obligations. The Association or its authorized agent may enter a Lot at reasonable times upon reasonable notice for the purpose of making appraisals or inspections for insurance purposes.

In addition to the foregoing powers, and not in limitation thereof, the Board of Directors shall have the authority at all times without action by the Owners to obtain and maintain in force all coverages and endorsements required by the Federal National Mortgage Association, the Federal Housing Administration or the U.S. Department of Veterans Affairs for the acceptance of mortgages on Lots, as such requirements are amended from time to time.

An Owner, in accepting title to a Lot, irrevocably consents to, constitutes and appoints the Association or its representative as his or her true and lawful attorney-in-fact to act in connection with all matters concerning the purchase or maintenance of all types of insurance pertaining to the Subject Property, the ownership of his or her Lot and all of the Common Elements appurtenant thereto, with any insurance company or group of companies, except such insurance as the Lot Owner may have obtained individually.

O. Priority. No provision of this Declaration or of the Bylaws shall be deemed to give a Lot Owner, or any other party, priority over any rights of first mortgagees of Lots, or their successors in interest, pursuant to their mortgages in the case of a distribution to the Lot Owners of insurance proceeds of condemnation awards for losses to or a taking of Lots and/or Common Elements.

P. Eminent Domain. The procedures that the Association must follow in the event of a taking (or a purchase in lieu of a taking) of part or all of the Common Elements by a condemning authority are set forth in Section 515B.1-107 of the Act and shall be complied with by the Association. The Association shall represent the Lot Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Elements, or part thereof. Each Lot Owner hereby grants the Board an irrevocable power of attorney for such purpose. Any proceeds from the settlement shall be payable to the Association for the benefit of the Lot Owners and their mortgage holders. Any distribution of funds in connection with the termination of the Planned Community must be made on a reasonable and equitable basis to the Lot Owners and mortgage holders as their interests appear.

**ARTICLE VIII.
ADDITIONAL REAL ESTATE**

No additional real estate may be added to Waters of Vermilion.

**ARTICLE IX.
AMENDMENTS TO DECLARATION**

A. Percentage of Lot Owners and Mortgagees. Except as provided in the Act (which provides that certain amendments may be executed by Declarant alone in accordance with the Act and Section D below), and except as limited by Section C below or by Article XI, Section E of this Agreement, this Declaration may be amended by the Association only by a vote or written agreement of Lot Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated, and sixty-seven percent (67%) of the first Mortgagees of Lots (each Mortgagee having one vote per Lot financed).

B. Recordation. Every Amendment to the Declaration shall be recorded in the office of the Recording Officer, and is effective only when recorded.

C. Limitations. Except to the extent expressly permitted or required by provisions of Sections 515B.1-101 to 515B.4-118 of the Act, no amendment may create or increase Special Declarant rights, increase the number of Lots, or change the boundaries of any Lot, the Common Element interest, Common Expense liability or voting strength in the Association allocated to a Lot, or the uses to which any Lot is restricted, in the absence of unanimous written agreement of the affected Lot Owners and Mortgagees.

D. Secretary's Affidavit. An affidavit of the secretary of the Association stating that the votes or agreements required by this Article have occurred shall be attached to the amendment and shall constitute prima facie evidence of the representations contained therein.

**ARTICLE X.
GENERAL PROVISIONS**

A. Interpretation of Declaration. This Declaration is set forth to comply with requirements of the Act. In the event of any conflict between this Declaration and the provisions of the Act, the provisions of the Act shall control. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the ownership and operation of a residential Planned Community project. Compound words beginning with the prefix "here" shall be read as referring to this Declaration and not merely to the part of it in which they appear.

B. Examination of Records. Lot Owners, lenders, and holders, insurers or guarantors of any first mortgage shall be entitled to inspect current copies of this Declaration, the Bylaws, and Rules and Regulations governing Waters of Vermilion and the books, records and financial

statements of the Association upon request during normal business hours or under other reasonable circumstances. Any person or entity holding a first mortgage on a Lot shall be entitled to have an audited financial statement for the immediately preceding fiscal year prepared at the expense of such person or entity holding a first mortgage.

C. Notices. All notices, objections, demands and other communications required or permitted to be given or served under this Declaration shall be in writing and shall be deemed to have been duly given if delivered in person or deposited in the United States mail, postage prepaid, for mailing by certified or registered mail, return receipt requested, as follows:

1. Member. In the case of each Member, to the Member's last address as shown on the records of the Association;

2. Association. In the case of the Association, to its President or management agent at the last address shown for such person on the records of the Association, or if not obtainable, to its registered office in the State of Minnesota; or

3. Declarant. In the case of the Declarant, Waters of Vermilion LLC, c/o Factor 10, LLC, 2225 E. Franklin Avenue, Minneapolis, MN 55404.

D. Successors and Assigns. This Declaration shall be binding upon and inure to the benefit of the Association, its Members and the Declarant, and their heirs, successors and assigns; provided, however, except as provided in this Declaration, that none of the parties shall assign any right or obligation hereunder in whole or in part, without the prior written consent of each of the other parties hereto, and any attempt to do so shall be void.

E. Severable Provisions. Each provision of this Declaration is intended to be severable. If any term or provision herein is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Declaration.

F. Titles, Headings or Captions and Reference to Gender. All titles, headings or captions in the paragraphs or sections of this Declaration are inserted for convenience of reference only and shall not constitute a part of this Declaration or as a limitation of the scope of the particular paragraphs or sections to which they apply. The masculine gender may be read as the feminine gender or the neuter gender, the neuter gender may be read as the masculine gender or feminine gender and the feminine gender may be read as the masculine gender or the neuter gender. Where appropriate the singular may be read as the plural and the plural may be read as singular.

G. Minor Revisions. The Declarant reserves the right to make *minor, non-material* changes to this Declaration and the Bylaws in order to comply with the requirements of its mortgagees, the Recording Officer, and any change in the Act.

H. Minnesota Law to Govern. This Declaration shall be construed and enforced in accordance with the laws of the State of Minnesota.

I. Right of Action. Failure of any Lot Owner or the Association to comply with the provisions of this Declaration, the Bylaws or any applicable Rule or Regulation adopted pursuant thereto shall give rise to a cause of action by any aggrieved Lot Owner or the Association.

ARTICLE XI.
PROVISIONS FOR MORTGAGEES

The following provisions shall take precedence over all other provisions of this Declaration, and in the event of any inconsistency or contradiction, the following provisions shall control:

A. No Right of First Refusal. No right of first refusal contained in this Declaration or the Bylaws of the Association shall impair the rights of any first Mortgagee to:

1. foreclose or take title to a Lot pursuant to the remedies provided in the Mortgagee's mortgage;
2. accept a deed or assignment in lieu of foreclosure in the event of default by a mortgagor; or
3. sell or lease a Lot acquired by the Mortgagee.

B. Approval of Mortgagees. Unless at least sixty-seven percent (67%) of the first Mortgagees (based upon one vote for each mortgage owned) and Owners (other than the Declarant or builders) of the individual Lots have given their prior written approval, the Association shall not be entitled to:

1. by act or omission, seek to abandon or terminate the Planned Community;
2. change the pro rata interest or obligations of any individual Lot for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;
3. partition or subdivide any Lot;
4. by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements and the granting of the easements referenced at Article III of this Declaration shall not be deemed a transfer within the meaning of this clause); or
5. use hazard insurance proceeds for losses to any Waters of Vermilion property (whether to Lots or to Common Elements) or any condemnation award for a taking of the same for other than repair, replacement or reconstruction of such Waters of

Vermilion property substantially in accordance with this Declaration and the original plans and specifications for Waters of Vermilion.

6. materially amend this Article XI or any provision of this Declaration or of the Association's Bylaws which establishes, provides for, governs or regulates any of the following:

- (a) voting;
- (b) assessments, assessment liens or the subordination of any such lien;
- (c) reserves for maintenance, repair, or replacement of the Common Elements;
- (d) insurance or fidelity bonds;
- (e) rights to use the Common Elements;
- (f) responsibility for maintenance or repair of any portion of Waters of Vermilion;
- (g) expansion or contraction of Waters of Vermilion or the addition, annexation or withdrawal of property to or from Waters of Vermilion;
- (h) boundaries of any Lot;
- (i) interests in the Common Elements;
- (j) convertibility of Lots into Common Elements or Common Elements into Lots;
- (k) leasing of Lots;
- (l) imposition of any right of first refusal or any similar restriction on the right of a Lot Owner to sell, transfer or convey in any other manner the Owner's Lot;
- (m) establishment of self-management by the Association where the Association had previously been managed professionally; or
- (n) restoration or repair of a Dwelling on the Common Elements following a casualty or a partial condemnation in a manner other than that specified in this Declaration or in the Association's Bylaws.

C. Liens Prior to First Mortgage. All taxes, assessments and charges which may become liens prior to any first mortgage on any Lot under local law, shall relate only to the individual Lot and not to the Waters of Vermilion project as a whole.

D. Rights to Condemnation Proceeds. No provision of the Planned Community constituent documents gives a Lot Owner or any other party priority over any rights of the first Mortgagee of the Lot pursuant to its mortgage in the case of condemnation awards for losses or the taking of Lots and/or Common Elements.

E. Amendments. Notwithstanding any provisions in Article IX apparently to the contrary, neither this Section E nor any of the provisions of this Declaration governing amendment of this Declaration shall be amended without the written consent of all first Mortgagees of Lots.

F. Financial Statements. Upon written request from any party having an interest or prospective interest in any Lot, the Association shall prepare and furnish within a reasonable time, but at the sole expense of the party making the request, an audited financial statement of the Association for the immediately preceding fiscal year.

G. Association's Right of Entry. The Association shall have a right of entry upon each Lot at any time to effect emergency repairs and, upon 24 hours advance notice, between the hours of 9:00 a.m. and 5:00 p.m. to effect other repairs, improvements, replacements or maintenance deemed necessary by the Association.

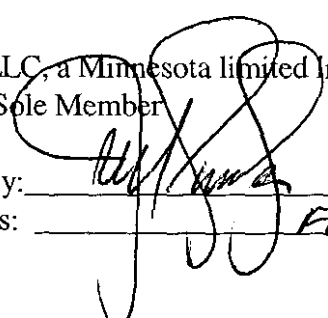
H. Notice to Mortgagees. The Association shall give the holder, insurer or guarantor of any mortgage on any Lot who has previously sent to the Association a written request for such information, stating the mortgagee's (or insurer's or guarantor's) name, address and the Lot number or address of the Lot on which it has (or insures or guarantees) a mortgage, timely written notice of following actions:

1. any condemnation or casualty loss that affects either a material portion of the Planned Community or the Lot secured by the party's mortgage;
2. any 60-day delinquency in the payment of assessments or charges owed by the Owner of any Lot on which it holds a mortgage;
3. a lapse, cancellation or material modification of any insurance policy maintained by the Association; and
4. any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the day and year first above written.

WATERS OF VERMILION LLC

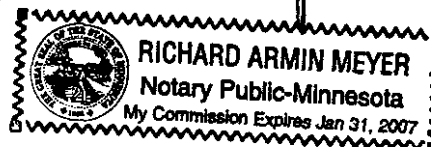
By: 10 LLC, a Minnesota limited liability company,
Its Sole Member

By: 
Its: FOUNDER

STATE OF MINNESOTA)
) ss.
 COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 10th day of April, 2003 by JOEL SCHURKE, the FOUNDER of 10 LLC, a Minnesota limited liability company, which is the sole member of Waters of Vermilion LLC, a Minnesota limited liability company, on behalf of 10 LLC as the sole member of such limited liability company.


 Notary Public



M1:877053.09

THIS INSTRUMENT WAS DRAFTED BY:

Paul S. Moe
 Faegre & Benson LLP
 2200 Wells Fargo Center
 90 South Seventh Street
 Minneapolis, MN 55402
 Phone: (612) 766-7000

EXHIBIT A
TO
DECLARATION

COMMON INTEREST COMMUNITY NO. 56

WATERS OF VERMILION

Legal Description of the Subject Property

Government Lot 2, Section 34, Township 62 North, Range 16 West of the 4th Principal Meridian, EXCEPT the westerly 600 feet thereof.

CONSENT TO DECLARATION

The Undersigned, Dougherty Funding LLC, a Delaware limited liability company and the holder of that certain Mortgage and Security Agreement and Fixture Financing Statement dated November 1, 2002, filed ~~December 7, 2002~~ as Document No. 00879238 in the office of the County Recorder of St. Louis County, Minnesota, does hereby consent to the foregoing Declaration.

DOUGHERTY FUNDING LLC

Dated: April 7, 2003

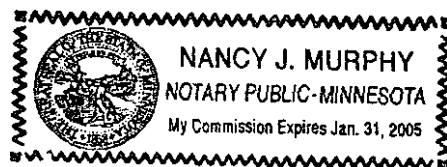
By: Scott Zibley
Its: SENIOR V.P.

STATE OF MINNESOTA)
) SS:
COUNTY OF Hennepin)

The foregoing instrument was acknowledged before me this 7th day of April, 2003, by Scott Zibley, the Sr. Vice President of Dougherty Funding LLC, a Minnesota limited liability company, on behalf of the limited liability company.

Nancy J. Murphy
Notary Public

MI:877053.09



0894322

** DUPLICATE RECORDING DATA **

St. Louis County Recorder
State of Minnesota

Document No. 00894322

on 4/11/2003
at 12:35PM

Mark A. Monacelli
County Recorder

** DUPLICATE RECORDING DATA **

AFR 88486

WATERS OF VERMILLION COMMON INTEREST COMMUNITY NO. 56

Dated: April 7, 2003

Plat code: 387445

Index to: Part of G.L. 2, 34-62-16,
Units 1-45, inclusive, and
Common Elements

Return to: Paul Voge @LHB

Afr: 88486
\$35.00 pd.

ST. LOUIS COUNTY RECORDER

MARK A. MONACELLI, COUNTY RECORDER

P.O. Box 157, Duluth, MN 55801-0157

Telephone 218-726-2677

ABSTRACT FILING REQUEST

AFR # _____

Date this form was completed 4/10/03 Client file _____Name PAUL VOGEL - LHS ENGINEERS + ARCHITECTSAddress 21 W. SUPERIOR STREET, SUITE 500
DULUTH, MN 55802Phone (218) 727-0446 Fax () _____Amount enclosed \$35 Check ☒ Cash _____ Dep. Acct. _____Return: Mail ☒ Pick-Up _____ Other (specify) _____

04102003

Signature _____

Record Order	Documents-Prioritize	Other services for this doc.	File in Torrens?	Space Below for Recorders's Use Only				DT & MT	Rec & SC
				CW	CC	WC			
80 1	DP							DT MT	30.60 5.00
2								DT MT	
3								DT MT	
4								DT MT	
5								DT MT	
6								DT MT	
7								DT MT	

Checks for filing fees should be payable to: COUNTY RECORDER.

Checks for deed, mortgage or real estate taxes or division fee should be payable to: COUNTY AUDITOR.

Note: Documents presented with this request are not filed until they are fully processed in the office of the COUNTY RECORDER.

For RECORDER's Use Only.

Do Not Write In this Box

Status DP Return _____ Deposit Acct.# _____ Coded _____ Logged 9

R.E. on _____; \$ _____. Div. on _____; \$ _____.

DOCUMENT# From _____ To _____