

GRANT OF CONSERVATION EASEMENT AND RESTRICTIONS

THIS GRANT OF CONSERVATION EASEMENT is made this _____ day of _____, 2006, by and between Blue Spruce Development, Inc., a Minnesota Corporation (“Grantor”) and the City of Alexandria, a municipal subdivision in and for the State of Minnesota (“Grantee”).

I. RECITALS

1. Grantor is the owner of the following described real estate situated in Douglas County, Minnesota, to-wit:

Lots 14 through 25, inclusive, Block Two, Burgen Sunrise, Common Interest Community No. 216, Douglas County, Minnesota (“Grantor’s Land”)

2. Grantor has been given approval by Grantee to file the final Plat of Burgen Sunrise, Common Interest Community No. 216, subject to the condition that Grantor execute this Conservation Easement thereby affecting all that portion of the Grantor’s Land described as follows:

All that portion of the Grantor’s Land lying within one hundred feet (100') landward of the ordinary high watermark of Lake Burgen or all that portion of the Grantor’s Land lying between the Ordinary Highwater Mark of Lake Burgen and the top of the Bluff (as defined in the Alexandria City Code), if any, whichever is greater (“Protected Property”), subject to certain reserved rights as provided for in Section V. herein.

3. The Protected Property will assist in the preservation of aquatic and terrestrial habitats for fish and wildlife and has significant and substantial value as a natural, ecological, aesthetic, and scientific zone to protect environmentally sensitive fish spawning grounds in Lake Burgen.

4. Grantor and Grantee recognize the value of the natural, ecological and aesthetic features of the Protected Property and are committed to its conservation and preservation in perpetuity by restricting use of the Protected Property in a manner consistent with the terms of this Conservation Easement.

5. This Conservation Easement represents a “conservation easement” pursuant to Chapter 84C of Minnesota Statutes. Grantee is qualified to acquire and hold conservation easements under Section 170(h)(3) of the Internal Revenue Code and any amendments and any regulations promulgated thereunder and Minnesota Statutes Chapter 84C.

6. Grantor and Grantee recognize the conservation values of the Protected Property and desire, intend and have the common purpose of conserving and preserving in perpetuity the Protected Property as a “relatively natural habitat of fish, wildlife, or plants or similar ecosystem”, as that

phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code, as that Section may be amended from time to time, and in the regulations promulgated thereunder, by placing restrictions upon the use of the Protected Property and by transferring from the Grantor to the Grantee through the creation of a conservation easement on, over and across the Protected Property affirmative rights to ensure the preservation of the natural elements and values of the Protected Property and to conserve and protect its animal and plant populations and habitat, subject to the reservation of rights in Section V.

7. Grantee is empowered to acquire and hold interests in real property and to accept a conservation easement pursuant to Chapter 84C of Minnesota Statutes thereby imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic or open-space values of real property and maintaining or enhancing the water quality in Lake Burgen.

II. GRANT

NOW, THEREFORE, Grantor for and in consideration of the facts above recited and of the mutual covenants, terms, conditions, and restrictions contained in this Conservation Easement and pursuant to Chapter 84C of Minnesota Statutes and other applicable laws, does hereby grant and convey an absolute and unconditional Conservation Easement unto Grantee, its successors or assigns, in perpetuity over the Protected Property, subject, however, to the reserved rights set forth in Section V. of this Conservation Easement. The scope of the Conservation Easement is defined by, and subject to, the terms and conditions set forth below. By this Conservation Easement, the general public is not allowed to enter the Protected Property.

III. AFFIRMATIVE RIGHTS

Subject to the rights expressly reserved unto Grantor in Section V., Grantor grants and conveys to Grantee the following Conservation Easement rights:

1. The right to manage the Protected Property so as to preserve and enhance the ecology thereof and the natural communities contained therein.
2. The right to enter upon the Protected Property in a reasonable manner, and at reasonable times upon reasonable advance notice, solely for the purpose of managing the Protected Property and monitoring compliance with the Conservation Easement.
3. The right to enforce by proceedings, at law or in equity, the covenants contained in Section IV. of this Conservation Easement. This right shall include, but shall not be limited to, the right: (a) to bring an action in any court of competent jurisdiction to enforce the terms of this Conservation Easement; (b) to require that any person who has vandalized or damaged the Protected Property restore the same to its prior condition; (c) to enjoin non-compliance with the covenants by temporary or permanent injunction; and (d) to recover from the persons responsible any damages arising from such non-compliance. To the extent one of the violations or breaches referred to in items (b) or (c) of the preceding sentence has been committed by, or at the instruction or behest of, one or more of the owners or occupants of Grantor's Land, or their invitees, the Grantee may also bring an enforcement action against, and seek damages from, such culpable owner, occupant, or invitee. Such damages, when recovered, may be applied by the Grantee, in its discretion, to corrective action on the Protected Property, if necessary. Nothing in this Conservation Easement shall be construed to entitle the Grantee to institute any enforcement proceeding against the Grantor for any changes to the Protected Property due to causes beyond the Grantor's control, such as changes caused by fire, flood, storm, civil authorities undertaking emergency action or

third parties not under the control or supervision of, or not acting with the consent of, the Grantor.

IV. COVENANTS

In furtherance of the foregoing rights of the Grantee, and subject to the rights expressly reserved by Grantor in Section V., Grantor, intending to bind and benefit itself and its successors in title to Grantor's Land, makes the following perpetual covenants/restrictions with respect to the Protected Property:

1. No residential, industrial, or commercial activity shall be undertaken or allowed on the Protected Property, except as allowed by Section V.
2. No members of the public shall have a right of access to or passage across the Protected Property except as expressly contemplated and/or reserved in this Conservation Easement.
3. No temporary or permanent buildings, camping accommodations or mobile homes, advertising signs, billboards or other advertising material, or any other such structures, shall be constructed or placed on the Protected Property, except as allowed by Section V.
4. No tilling, plowing or cultivation; littering or dumping of trash or other material; filling, excavation, mining or drilling; dredging; removal of topsoil, sand, gravel, rocks, minerals and other materials; building of any roads or trails or change of the topography in any manner shall be allowed to take place on the Protected Property, except as allowed by Section V.
5. No application of insecticides or herbicides shall be made on or to the Protected Property, except those used for management purposes by the Grantee or as approved by Grantee, and further except that noxious weeds may be controlled by use of an approved herbicide.
6. No snowmobiles, dunebuggies, motorcycles, all-terrain vehicles, or any other types of motorized vehicles shall be allowed on the Protected Property except for administrative and management purposes by the Grantee.
7. No horses or grazing livestock shall be allowed on the Protected Property, nor shall there be any hunting, fishing, trapping or camping, on the Protected Property.
8. No destruction, cutting, trimming, mowing, altering, or removal of native plants, living or dead, shall be allowed on the Protected Property except for management purposes of the Grantee and as approved by Grantee, further except for the removal of dead or damaged trees and of trees representing a safety hazard, and further except as allowed by Section V.
9. No fires shall be allowed on the Protected Property, except fires that may be used for management purposes by the Grantee, in which case the Grantee shall be deemed to have, and hereby does, indemnify and hold harmless the owners of the Protected Property and Grantor's Land, from and against any, and all losses, damages, fines, penalties, obligations, and claims thereof arising from any such use or permitting of fire by Grantee, subject to limitations on the Grantee's liability under Minn. Stat. §3.736 and Minn. Stat. Chapter 466 and successor statutes.
10. No new plant or animal species shall be introduced to the Protected Property, except those native species that are consistent with the protective purposes of this Conservation Easement and with the prior written consent of the Grantee.

11. No manipulation or alteration of surface or subsurface springs or other bodies of water or any activities on or uses that may be detrimental to water purity or quality shall be allowed on the Protected Property.

12. No filling, excavation or drainage of any existing wetlands shall occur and no alteration of existing water courses shall occur on the Protected Property.

13. No walkways, access paths, stairways, swimming beaches, decks, patios, retaining walls or other improvements shall be constructed or placed on the Protected Property, except as allowed in Section V.

14. No additional Subdivision of Grantors Land shall occur, except that a portion of a Lot may be conveyed to the Owner of an adjacent Lot so long as a nonconforming Lot is not created by such Subdivision and conveyance.

V. RESERVED RIGHTS

The rights of Grantee under the Conservation Easement, and the covenants of Grantor, are hereby expressly made subject and subordinate to the following rights reserved by Grantor:

1. Grantor reserves the right, subject to the applicable rules and regulations of the Alexandria City Code, to clear vegetation from and the right to maintain such cleared area within those portions of the Protected Property described as follows, and to construct and place walkways, access paths, stairways, swimming beaches, decks, patios, retaining walls and any related improvements within those portions of the Protected Property described as follows:

A. A twenty foot (20') strip of land, as determined at the time of the submittal of a building permit or as otherwise established based upon documentation provided to Grantee, within each of Lots 14 through 25, Block Two, Burgen Sunrise to enable the owners and occupants of each of said Lots 14 through 25 to gain access to Lake Burgen; to gain access to their boat dock and boat lift through such twenty foot (20') portion of the Protected Property; to store their boat dock and boat lift; to install and remove their boat dock and boat lift; and to operate all-terrain vehicles and golf carts within such twenty foot (20') portion of the Protected Property for the purpose of exercising the rights reserved by this Section V so long as such operation does not cause erosion into Lake Burgen. A change in the location of the twenty-foot (20') strip must be approved by Grantee.

2. Grantor, for its behalf and on behalf of its successors and assigns, reserves all the rights and privileges of the owner of the Protected Property, except for the right to undertake activities which are expressly or specifically prohibited by this Conservation Easement or which are clearly inconsistent with or detrimental to the protective purposes of this Conservation Easement. Grantor also relinquishes riparian rights with respect to the Protected Property, except that Grantor reserves its riparian rights with respect to the twenty foot (20') strips of land for access to Lake Burgen as specified in Section V.1.A. above.

3. Grantor reserves the right to erect erosion barriers, such as fabric blanket, rip rap, and other approved Minnesota DNR materials, necessary for the maintenance of the Protected Property without Grantee's consent, other than the normal approvals required by applicable Ordinances.

4. No walkways, access paths, stairways, swimming beaches, decks, patios, retaining walls or related improvements or alterations may be placed, constructed or erected within those portions of the Protected Property lying outside of the area described in Section V.1.A above.

Every right and/or easement reserved in this Section V. for the benefit of any of the owners and occupants of Grantor's Land and their respective invitees, is intended to constitute, and is hereby made, a direct grant of such a right or easement to such owners, occupants and invitees, without the need for any further or separate documentation.

VI. GENERAL PROVISIONS

1. This Conservation Easement shall run with the Protected Property. The Conservation Easement, including the covenants and reserved rights of the Grantor, shall, as applicable, bind and be for the benefit of the Grantor and owners of all of Grantor's Land and their respective heirs, personal representatives and assigns. The reserved rights and/or easements which are for the benefit of the owners and occupants of Grantor's Land and their respective invitees, run with and are appurtenant to those lots as well.

2. If the Grantor becomes delinquent in the payment of any taxes or assessments, to the extent that the Grantor may forfeit the Grantor's interest in the Protected Property, the Grantee, at its option, shall have the right to redeem and acquire the Grantor's fee interest in said Protected Property by paying funds to discharge said delinquent taxes or assessments, or to take other actions as may be necessary to protect the Grantee's interest in the Protected Property and to assure the continued enforceability of this Conservation Easement. In the event Grantee becomes the fee owner of the Protected Property, the Conservation Easement and all of its terms and conditions shall not be merged out of existence, but shall continue in force as covenants and servitudes binding the Protected Property and its owner, and benefitting Grantor's Land.

3. If Grantee becomes aware of an event or circumstance of material non-compliance with the terms and conditions set forth in this Conservation Easement, Grantee shall give written notice to the Grantor at the address set forth below or, in the event that Grantor has sold or otherwise conveyed the affected portion of Grantor's Land, Grantee shall give written notice to the then owner of such affected portion of Grantor's Land at the address on file in the office of the Douglas County Treasurer for the mailing of real estate tax statements of such event or circumstance of non-compliance. In such a case, the failure by the Grantor, its successors or assigns, to cause discontinuance, abatement or such other corrective action as may be requested by the Grantee, shall entitle Grantee to bring an action as provided in Section III.3 hereof.

4. Any notice required in this Conservation Easement shall be sent by certified mail, return receipt requested, to the following addresses or such address as may be specified by notice in writing for subsequent owners:

IF TO: GRANTOR
Blue Spruce Development, Inc.
901 Highway 29 North
Alexandria, Minnesota 56308

IF TO: GRANTEE
City of Alexandria
Attn: City Planner
Alexandria City Hall
704 Broadway
Alexandria, Minnesota 56308

IF TO: an owner or occupant of Grantor's Land, to the mailing address of the applicable Unit or Lot which is on file in the Office of the Douglas County Treasurer for the mailing of real

estate tax statements, or in an emergency situation, by personal notification of the occupant of the dwelling on the Unit or Lot.

The address for any party may be changed at any time by the giving of a notice under this Section.

5. Neither Grantee nor Grantor waives or forfeits the right to take action as may be necessary to insure compliance with the covenants and purposes of this Conservation Easement by any failure to act, and both Grantee and Grantor waive any defense of laches with respect to any delay by the other in acting to enforce any of the provisions or exercise any rights under this Conservation Easement.

6. If any provision of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall be affected thereby.

7. This Terms and Conditions Conservation Easement shall be governed by the laws of the State of Minnesota.

8. There are no third party beneficiaries of this Conservation Easement except the owners and occupants of Grantor's Land, and their invitees.

9. Nothing contained in this Conservation Easement shall be construed as affording the public access to any portion of the Protected Property other than access and use rights reserved herein in favor of the Grantor and the owners and occupants of Grantor's Land, and their invitees.

10. The Grantee may not assign or transfer this Conservation Easement or any rights conveyed herein except to an authorized holder as specified in Minnesota Statutes Section 84C.01(2). Any attempted transfer in violation of this restriction shall be void. Grantor agrees to include in any deed of conveyance of the Protected Property, an express reference that the Protected Property is subject to this Conservation Easement. The grantee of any such deed, and any successor or assign thereafter, shall be deemed in fact and in law to have assumed all of the obligations of the Grantor hereunder with respect to such portion of the Protected Property from and after the effective date of the conveyance, and the conveying Grantor shall automatically be released from any obligations accruing after said effective date with respect to the conveyed portion of the Protected Property.

11 Any disputed provisions of this Conservation Easement shall be construed so to take into account the mutual intent of the parties to protect natural resources.

12. Each party agrees that it will be responsible for its own acts and the results thereof and shall not be responsible for the acts of the other party and the results thereof. The Grantee's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minn. Stat. § 3.736, and Minn. Stat. Chapter 466 and other applicable law.

13. The term "Grantor" as used in this Conservation Easement shall be deemed to include the original Grantor, its successors, and assigns.

