

BURGEN SUNRISE

COMMON INTEREST COMMUNITY NO. 216

(A Planned Community)

DECLARATION

This Declaration is made in the County of Douglas, State of Minnesota, on this ____ day of _____, 2006, by Blue Spruce Development, Inc., a Minnesota Corporation, (the "Declarant"), pursuant to the provisions of Minnesota Statutes Chapter 515B, known as the Minnesota Common Interest Ownership Act (the "Act"), for the purpose of creating Burgen Sunrise, A Planned Community.

WHEREAS, Declarant is the owner of certain real property located in Douglas County, Minnesota, legally described as "Burgen Sunrise" and Declarant desires to submit said real property and all improvements thereon (collectively the "Property") to the Act, and,

WHEREAS, Declarant also owns the real property legally described in Exhibit B attached hereto (the "Additional Real Estate"), and has the option to add all or a part of the Additional Real Estate to the Property, and

WHEREAS, Declarant desires to establish on the Property, and any Additional Real Estate added thereto, a plan for a permanent residential community to be owned, occupied and operated for the use, health, safety and welfare of its resident Owners and Occupants, and for the purpose of preserving the value, the structural quality, and the original architectural and aesthetic character, of the Property, and

WHEREAS, the Property is not subject to an ordinance referred to in Section 515B.1-106 of the Act, governing conversions to common interest ownership, and is not subject to a master association as defined in the Act.

THEREFORE, Declarant makes the Declaration and submits the Property to the Act as a planned community under the name "Burgen Sunrise", initially consisting of the Units referred to in Section 2, declaring that this Declaration shall constitute covenants to run with the Property,

and that the Property, and all Additional Real Estate added thereto, shall be owned, used, occupied and conveyed subject to the covenants, restrictions, easements, charges and liens set forth herein, all of which shall be binding upon all Persons owning or acquiring any right, title or interest therein, and their heirs, personal representatives, successors and assigns.

SECTION 1 DEFINITIONS

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

1.1 "Additional Real Estate" shall mean the real property legally described in Exhibit B, including all improvements located thereon now or in the future, and all easements and rights appurtenant thereto, which property Declarant has the right to add to the common interest community.

1.2 "Association" shall mean Burgen Sunrise Association, a nonprofit corporation which has been created pursuant to chapter 317A, of the laws of the State of Minnesota and Minnesota Statutes Section 515B.3-101, whose members consist of all Owners as defined herein.

1.3 "Board" shall mean the Board of Directors of the Association as provided for in the By-Laws.

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

1.5 "Common Elements" shall mean all parts of the Property except the Units, including all improvements thereon, owned by the Association for the common benefit of the Owners and Occupants. The Property does not contain any Common Elements as of the date of adoption of this Declaration, but Declarant reserves the right to designate one or more of the Units as Common Elements in the future.

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

1.7 "Dwelling" shall mean a part of a building consisting of one or more floors, designed and intended for occupancy as a single family residence, and located within the boundaries of a Unit contained upon Lots 1, 2 and 3, Block One; Lots 1 through 25, Block Two; and Lots 1, 2 and 3, Block Three; all in Burgen.Sunrise, Common Interest Community No. 216.

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

1.9 "Governing Documents" shall mean this Declaration, and the Articles of Incorporation and By-Laws of the Association, as amended from time to time, all of which shall govern the use and operation of the Property.

1.10 "Member" shall mean all persons who are members of the Association by virtue of being Owners as defined in this Declaration. The words "Owner" and "Member" may be used interchangeably in the Governing Documents.

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

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

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

1.14 "Plat" shall mean the recorded plat depicting the Property pursuant to the requirements of Section 515B.2-110(d) of the Act, and satisfying the requirements of Minnesota Statutes Chapter 505, 508 or 508A, as applicable, including any amended or supplemental Plat recorded from time to time in accordance with the Act.

1.15 "Property" shall mean all of the real property submitted to this Declaration, including the Dwellings, Common Elements, and Units and all other structures and improvements located thereon now or in the future. The Property as of the date of this Declaration is legally described as "Burgen Sunrise".

1.16 "Rules and Regulations" shall mean the Rules and Regulations of the Association as approved from time to time pursuant to Section 5.6.

1.17 "Unit" shall mean any platted lot subject to this Declaration upon which a Dwelling is located or intended to be located, as shown on the Plat, including all improvements thereon, but excluding the Common Elements. Declarant reserves the right to designate one or more of the Units as Common Elements in the future.

Any terms used in the Governing Documents, and defined in the Act and not in this Section, shall have the meaning set forth in the Act.

SECTION 2 DESCRIPTION OF UNITS AND APPURTENANCES

2.1 "Units" There are thirty-one (31) Units, all of which are restricted exclusively to residential use, contained upon Lots 1, 2 and 3, Block One; Lots 1 through 25, Block Two; and Lots 1, 2 and 3, Block Three; all in Burgen Sunrise, Common Interest Community No. 216. Each Unit constitutes a separate parcel of real estate. No additional Units may be created by the subdivision or conversion of Units pursuant to Section 515B.2-112 of the Act. The Unit identifiers and locations of the Units are as shown on the Plat, which is incorporated herein by reference, and the schedule of Units is set forth on Exhibit A. The Unit identifier for a Unit shall be its lot and block numbers and the subdivision name.

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

SECTION 3 COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

3.1. Reserved for future use.

SECTION 4 ASSOCIATION MEMBERSHIP: RIGHTS AND OBLIGATIONS

Membership in the Association, and the allocation to each Unit of a portion of the votes in the Association and a portion of the Common Expenses of the Association shall be governed by the following provisions:

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

4.2. "Voting and Common Expenses" Voting rights are allocated equally among the Units and Common Expense obligations shall be allocated among Owners of Units in accordance with Exhibit C attached hereto; except that special allocations of Common Expenses shall be permitted as provided in Section 6.1.

4.3 "Appurtenant Rights and Obligations" The ownership of a Unit shall include the voting rights and Common Expense obligations described in Section 4.2. Said rights, obligations and interests, and the title to the Units, shall not be separated or conveyed separately. The allocation of the rights, obligations and interests described in this Section may not be changed, except in accordance with the Governing Documents and the Act.

4.4 "Authority to Vote" The Owner, or some natural person designated to act as proxy on behalf of the Owner, and who need not be an Owner, may cast the vote allocated to such Unit at meetings of the Association provided, that if there are multiple Owners of a Unit, only the Owner or other Person designated pursuant to the provisions of the By-Laws may cast such vote. The voting rights of Owners are more fully described in Article III of the By-Laws.

SECTION 5 ADMINISTRATION

5.1 "General" The administration and operation of the Association and the Property, including but not limited to the acts required of the Association, shall be governed by the Act, Governing Documents and Rules and Regulations, if any, of the Association.

SECTION 6 ASSESSMENTS FOR COMMON EXPENSES

6.1 General. Assessments for Common Expenses shall be determined and assessed against the Units by the Board, in its discretion; subject to the limitations set forth in Sections 6.2 and 6.3, and the requirements of the By-Laws. Assessments for Common Expenses shall include annual assessments and may include special assessments. Assessments shall be allocated among the Units according to the Common Expense allocations set forth in Section 4.2. and the attached Exhibit C, subject to the following qualifications:

- a. Reserved for future use.
- b. Any Common Expense or portion thereof benefitting fewer than all of the Units may be assessed exclusively against the Units benefitted, on the basis of (i) equality, (ii) square footage of the area being maintained, repaired or replaced, or (iii) the actual cost incurred with respect to each Unit.
- c. The costs of insurance may be assessed in proportion to value, risk or coverage, and the costs of utilities may be assessed in proportion to usage.
- d. Reasonable attorneys fees and other costs incurred by the Association in connection with (i) the collection of assessments and (ii) the enforcement of the Governing Documents, the Act, or the Rules and Regulations, against an Owner or Occupant or their guests, may be assessed against the Owner's Unit.

- e. Fees, charges, late charges, fines and interest may be assessed as provided in Section 515B.3-116(a) of the Act.
- f. Assessments levied under Section 515B.3-116 of the Act to pay a judgment against the Association may be levied only against the Units existing at the time the judgment was entered, in proportion to their Common Expense liabilities.
- g. If any damage to the Common Elements or another Unit is caused by the act or omission of any Owner or Occupant, or their guests, the Association may assess the costs of repairing the damage exclusively against the Owner's Unit to the extent not covered by insurance.
- h. If any installment of an assessment becomes more than 30 days past due, then the Association may, upon 10 days written notice of the Owner, declare the entire amount of the assessment immediately due and payable in full.
- i. If Common Expense liabilities are reallocated for any purpose authorized by the Act, Common Expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense liabilities.
- j. Assessments under Subsections 6.1 a-h shall not be considered special assessments as described in Section 6.3.

6.2 Annual Assessments. Annual assessments shall be established and levied by the Board, subject only to the limitations set forth in Section 6.2 and 6.3, payable in installments and on such dates as established by the Board. Each annual assessment shall cover all of the anticipated Common Expenses of the Association for that year. Annual assessments shall provide, among other things, for contributions to a separate reserve fund sufficient to cover the periodic cost of maintenance, repair and replacement of the Common Elements, if any, and those parts of the Units for which the Association is responsible. Assessments shall be paid in accordance with Article IX of the By-Laws.

6.3 Special Assessments. In addition to annual assessments, and subject to the limitations set forth hereafter, the Board may levy in any assessment year a special assessment against all Units for the purpose of defraying in whole or in part (i) the cost of any foreseen or unbudgeted Common Expense, (ii) general or specific reserves for maintenance, repair or replacement, and (iii) the maintenance, repair or replacement of any part of the Property, and any fixtures or other property related thereto. Notwithstanding the foregoing, any special assessment shall be subject to approval by the vote of a majority of those Owners voting, in person or by proxy, at a meeting called for that purpose. Written notice of the meeting shall be sent to all Owners not less than 21 days nor more than 30 days in advance of the meeting.

6.4 Liability of Owners for Assessments. The obligation of an Owner to pay assessments shall commence at the later of (i) the recording of the Declaration or amendment thereto which creates the Owner's Unit, or (ii) the time at which the Owner acquires title to the Unit, subject to the alternative assessment program described in Section 6.5. The Owner at the time an assessment is payable with respect to the Unit shall be personally liable for the share of the Common Expenses assessed against such Unit. Such liability shall be joint and several where there are multiple Owners. The liability is absolute and unconditional. No Owner is exempt from liability for payment of his or her share of Common Expenses by right of set-off, by waiver of use or enjoyment of any part of the Property, by absence from or abandonment of the Unit, by the waiver of any other rights, or by reason of any claim against the Association or its officers, directors or agents, or for their failure to fulfill any duties under the Governing Documents or the Act. The Association may invoke the charges, sanctions and remedies set forth in Section 13, in addition to any remedies provided elsewhere in the Governing Documents or by law, for the purpose of enforcing its rights hereunder.

6.5 Declarant's Alternative Assessment Program. Notwithstanding anything to the contrary in this Section 6, if a Common Expense assessment has been levied, any Unit owned by Declarant for initial sale shall be assessed at the rate of 25% of the assessment levied on other Units of the same type until construction of the Dwelling is substantially completed and a Certificate of Occupancy is issued by the City of Alexandria relative to such Dwelling. This reduced assessment shall apply to each Unit owned by Declarant at the time that the Unit is created, and shall continue until construction of the Unit is substantially completed and the Unit is ready for occupancy, or until the passage of three (3) months after the issuance of a building permit with respect to such Unit, whichever shall earlier occur. 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.

6.6 Assessment Lien. The Association has a lien on a Unit for any assessment levied against the Owner of that Unit from the time the assessment becomes due. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due. Fees, charges, late charges, fines and interest charges imposed by the Association pursuant to Section 515B.3-102(a)(10), (11) and (12) of the Act are liens, and are enforceable as assessments, under this Section. Recording of the Declaration constitutes record notice and perfection of any lien under this Section, and no further recordation of any notice of or claim for the lien is required.

6.7 Remedies. The Association shall have the right to pursue any remedy at law or in equity against the Owner who fails to pay any assessment or charge against the Unit.

6.8 Reserved for future use.

6.9 Voluntary Conveyances: Statement of Assessments. In a voluntary conveyance of a Unit, the buyer shall not be personally liable for any unpaid assessments and other charges made

by the Association against the seller or the seller's Unit prior to the time of conveyance to the buyer, unless expressly assumed by the buyer. However, the lien of such assessments shall remain against the Unit until satisfied. Any seller or buyer shall be entitled to a statement, in recordable form, from the Association setting forth the amount of the unpaid assessments against the Unit, including all assessments payable in the Association's current fiscal year, which statement shall be binding on the Association, seller and buyer.

SECTION 7 RESTRICTIONS ON USE OF PROPERTY

All Owners and Occupants, and all secured parties, by their acceptance or assertion of an interest in the Property, or by their occupancy of a Unit, covenant and agree that, in addition to any other restrictions which may be imposed by the Act or the Governing Documents, the occupancy, use, operation, alienation and conveyance of the Property shall be subject to the following restrictions:

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

7.2 Subdivision Prohibited. Except as permitted by the Act, no Unit may be subdivided or partitioned without the prior written approval of all Owners and all secured parties holding first mortgages on the Units. Notwithstanding the foregoing, a Unit may be subdivided so as to add a portion of such Unit to an adjacent Unit only if approved by the zoning authority.

7.3 Residential Use. The Units shall be used by Owners and Occupants and their guests exclusively as residential dwellings shall be used for residential-related purposes, and not for transient, hotel, commercial, business or other non-residential purposes.

7.4 Business Use Restricted. No business, trade, occupation or profession of any kind, whether carried on for profit or otherwise, shall be conducted, maintained or permitted in any Unit; except (i) an Owner or Occupant residing in a Unit may keep and maintain his or her business or professional records in such Unit and handle matters relating to such business by telephone or correspondence therefrom, provided that such uses are incidental to the residential use, do not involve physical alteration of the Unit and do not involve any observable business activity such as signs, advertising displays, bulk mailings, deliveries, or visitation or use of the Unit by customers or employees; (ii) the Association may maintain offices on the Property for management and related purposes; and (iii) an Owner or Occupant may conduct a home occupation upon a Unit after obtaining a Conditional Use Permit from the City of Alexandria. In no event shall a daycare center be operated upon any Unit if such daycare center is providing

services for more than five (5) children. In no event shall any signs be allowed to be displayed or erected within any portion of the Property advertising a business or commercial enterprise.

7.5 Inoperable Motor Vehicles. No Owner or Occupant of any Unit shall allow a motor vehicle to remain on such Unit for a period of more than fifteen (15) days if such motor vehicle lacks vital component parts or is in an inoperable condition, unless it is fully concealed in an enclosed garage or outbuilding.

7.6 Quiet Enjoyment; Interference Prohibited. All Owners and Occupants and their guests shall have a right of quiet enjoyment in their respective Units, and shall use the Property in such a manner as will not cause a nuisance, nor unduly restrict, interfere with or impede the use of the Property by other Owners and Occupants and their guests. No weeds, underbrush or other unsightly growth shall be permitted to grow or remain upon any Unit, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain upon any Unit. All grass and foliage shall be mowed and maintained in such manner so as not to become unsightly. Units that are not occupied by a Dwelling shall be mowed at least once each month during the growing season. Owners shall establish a lawn upon their Unit within twelve (12) months following the commencement of construction of any Dwelling or other structure.

7.7 Compliance with Law. No use shall be made of the Property which would violate any then existing municipal codes or ordinances, or state or federal laws, nor shall any act or use be permitted which could cause waste to the Property, cause a material increase in insurance rates on the Property, or otherwise cause any unusual liability, health or safety risk, or expense, for the Association or any Owner or Occupant.

7.8 Time Shares Prohibited. The time share form of ownership, or any comparable form of lease, occupancy rights or ownership which has the effect of dividing the ownership or occupancy of a Unit into separate time periods, is prohibited.

7.9 Pets. Dogs and cats shall not be raised, bred, kept or maintained for any commercial purposes. Each Unit shall not have a combined number of dogs and cats in excess of three (3) at any time. The owner of such dogs and cats shall be responsible for policing waste materials and shall, at all times, control such pets so as not to create a nuisance for the owners and occupants of other Units within the Property. Dog owners shall take reasonable steps to limit barking and to limit any disturbance to neighbors which may be caused by the barking of dogs. All such dogs and cats shall be kept under the control of their owner at all times. Outdoor kennels shall be allowed so long as the owner or occupant of the Unit controls barking so as not to become a nuisance or annoyance to the neighborhood. No other animals, fowl or poultry of any kind shall be kept, raised or bred in or upon any Unit.

7.10 Campers. No trailer homes, mobile homes, boat trailers, utility trailers, boats, four wheelers, fish houses, snowmobiles, ATVs, pickup campers, tent trailers, or recreational vehicles may be stored upon the Property unless fully concealed within the Owner's garage or outbuilding,

nor shall any such home or vehicle be used for a temporary or permanent residence upon the Property, except that storage or use of only one (1) such item may occur on an Owner's Unit for not longer than four (4) weeks during any calendar year and also except as set forth in Section 7.11. Either one (1) motor home or one (1) camper may be used upon a Unit for up to six (6) months during each calendar year without being concealed within a garage or outbuilding subject to the following requirements:

- (i) the motor home or camper must be attached to public sewer if the Unit is being used for a temporary residence for more than thirty (30) days during any calendar year.
- (ii) the motor home or camper cannot be stored outside of a garage or outbuilding for more than three (3) months during any calendar year unless such motor home or camper is being actively used or resided in.
- (iii) the three (3) and six (6) month limitations can be modified if approved in writing by the Owners of adjacent Units.

7.11 Storage. No personal property shall be placed or stored outside of any building on any Unit unless such item of personal property is appropriate for seasonal use at such particular time (e.g. a picnic table or boat may be stored outside of a building during the summer and a snowmobile or fish house may be stored outside during the winter). Notwithstanding the foregoing, each Unit (i) may contain a swing set or other playground and recreational equipment, (ii) may contain one (1) enclosed trailer that does not exceed twenty-four (24) feet in length which may be stored outside of a building at any time so long as it is maintained in such condition so as not to become unsightly or a nuisance to the neighborhood, and (iii) may contain the boat dock and boat lift owned by the Owner or Occupant of the Unit, on a year round basis. No semi trailers shall be stored outside of a building on any Unit.

7.12 Signs. No sign of any kind shall be displayed to the public view on any Unit except (a) the undersigned reserves for itself and its agents the right to place any advertising sign upon any Unit until sold by the undersigned; and (b) an owner of any Unit, other than the undersigned, may place a sign measuring less than six (6) square feet in size advertising that a Unit or home is available for sale.

7.13 Restricted Dwellings. No structure of a temporary character, trailer, mobile home, manufactured home, basement home, tent, shack, garage, barn or other outbuilding shall be constructed or used upon any Unit at any time as a residence. The term "manufactured home" shall mean a structure, transportable in one or more sections, which has wheels and axles, which is built on a permanent chassis, and which is designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein. The term "manufactured home" shall be synonymous with the term "mobile home". Manufactured homes shall not be allowed regardless of whether or not they are affixed to land. The term "manufactured home" shall not

include a “modular home” as defined herein. Lots may contain a prefabricated, prebuilt or modular home so long as it is not a manufactured home and so long as it is not a used home. The term “modular home” as used herein shall mean any home which is of closed construction, i.e. constructed in such a manner that concealed parts or processes of manufacture cannot be inspected at the site without disassembly, damage or construction, and which is made or assembled in manufacturing facilities off the building site, for installation, or assembly and installation, on the building site, and includes closed wall panelized housing. The term “modular home” does not include a mobile home or a manufactured home.

7.14 Refuse. No refuse pile or unsightly objects shall be allowed to be placed or subject to remain on any Unit and no noxious or poisonous weeds shall be permitted to grow on any of the Units. No Unit shall be used or maintained a dumping ground for rubbish, trash, garbage or other waste. Refuse shall not be kept except in sanitary containers.

7.15 Nuisance. No outside toilet shall be permitted on any Unit, except during the construction of a dwelling or building. No noxious or offensive activity shall be carried on upon any Unit, nor shall anything be done thereon which may be or may become a nuisance or any annoyance to the neighborhood. A lawn shall be sodded or seeded on each Unit within twelve (12) months after commencement of construction of a Dwelling upon such Unit, and shall be mowed at least three times per month during the growing season.

7.16 Dwelling Specifications. A one-story Dwelling contained upon any Unit shall have a minimum of 1,250 square feet of finished living space, excluding the basement. A two-story Dwelling contained upon any Unit shall have a minimum of 1,700 square feet of finished living space, excluding the basement; and shall have a minimum of 1,000 square feet of finished living space on the main level. A multi-level Dwelling contained upon any Unit shall have a minimum of 1,700 square feet of finished living space, excluding the lowest level. All Dwellings shall have a minimum roof pitch of 6/12 on at least 75% of the roof surface of such Dwelling. The exterior siding of all structures shall only utilize colors for which prefinished siding is readily available. The exterior of all Dwellings and other structures shall be substantially completed within nine (9) months after construction commences. All Dwellings shall have an attached garage which shall be not less than eight hundred (800) square feet. No Dwelling shall have an appearance similar to an outbuilding, storage building or pole barn.

7.17 Completion. No building shall have construction commenced and be left uncompleted on the exterior for a period in excess of nine (9) months.

7.18 Relocated Structures. No Unit shall contain any new or used structure which has been moved in or relocated from another location.

7.19 Driveway. Each Unit shall have a private driveway installed within eighteen (18) months after commencement of construction of the dwelling on such Unit, which private driveway shall utilize asphalt, concrete, paving stone, or other similar durable surface.

7.20 Outbuildings. No building shall be constructed or placed upon any Unit within the Property that fails to comply with the following:

- a. A total of three (3) outbuildings shall be allowed on each Unit, subject to applicable governmental regulations.
- b. The cumulative size of all outbuildings on a Unit shall not exceed 1,500 square feet, no outbuildings shall have a sidewall greater than twelve (12) feet high, and no outbuilding shall be less than 100 square feet in size.
- c. The color of the siding and roofing material of any outbuilding shall be similar in color to the siding and roofing material of the dwelling on such Unit.
- d. No galvanized metal on any exterior surface.
- e. Such outbuilding shall have a minimum roof pitch of 6/12 or at least 75% of the roof surface and shall have a minimum overhang at the eave of one (1) foot and a minimum overhang at the gable of one (1) foot.

The term “outbuilding” as used herein shall mean any structure, other than the Dwelling with attached garage, located upon any Unit.

7.21 Right to Farm. The Owners of Units within the Property take title to such Units subject to the knowledge that the Units are contained adjacent to an agricultural area, and that the use and enjoyment of the Units may be detrimentally affected by odors, noises and slow-moving farm machinery that are associated with such agricultural uses. All Owners take title to their Units in recognition of and subject to such agricultural uses.

SECTION 8 ARCHITECTURAL CONTROL

8.1 Architectural Control. No Dwelling or other building shall be erected within any Unit until the construction plans and specifications and a site plan showing the nature, kind, shape, heights, color, materials, design, windows, siding, exterior doors, and locations of all buildings to be placed upon each such Unit have been approved by the Declarant, if the construction of any such building commences during the period of Declarant control as more fully set forth at Section 13.7 herein, or has been approved by the Board if Declarant no longer has control pursuant to Section 13.7 herein. The criteria for approval shall include and require, at a minimum, (i) construction and design consistent with a high-quality residential development, (ii) comparable or better quality of materials as used in a high-quality residential development, (iii) ease of maintenance and repair and (iv) compliance with governmental laws, codes and regulations.

8.2 Review Procedures. The following procedures shall govern requests for alterations

under this Section:

- a. Detailed plans, specifications and related information regarding any proposed alteration, in form and content acceptable to the Declarant or Board, as applicable pursuant to Section 8.1 (“Reviewer”), shall be personally served on Reviewer or mailed to Reviewer via certified mail, return receipt requested, at least sixty (60) days prior to the projected commencement of construction. No alterations shall be commenced prior to approval.
- b. The Reviewer shall give the Owner written notice of approval or disapproval. If Reviewer fails to approve or disapprove within sixty (60) days after receipt of said plans and specifications and all other information requested by Reviewer, then approval will not be required, and this Section shall be deemed to have been fully complied with so long as the alterations are done in accordance with the plans, specifications and related information which were submitted.
- c. If no request for approval is submitted in accordance with the requirements of 8.2.a., approval is denied, unless (i) the alterations are reasonably visible and (ii) no written notice of the violation has been given to the Owner in whose Unit the alterations are made, by the Declarant, Association or another Owner, within six months following the date of completion of the alterations. Notice may be direct written notice or the commencement of legal action by the Declarant, Association or an Owner. The Owner of the Unit in which the alterations are made shall have the burden of proof, by clear and convincing evidence, that the alterations were completed and reasonably visible for at least six months following completion and that the notice was not given.

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

SECTION 9 MAINTENANCE

9.1 Maintenance by Association. The Association shall have the responsibility for the maintenance of the Storm Water Retention Ponds contained upon Lots 2 and 3, Block One, and upon Lots 17, 18 and 19, Block Two, and of all Storm Water Drainage Systems contained within any Drainage Easement as dedicated on the Plat, unless such ponds and Drainage Easement areas are maintained by a Governmental Entity.

The City of Alexandria, a Governmental Entity, has the authority to inspect the Storm

Water Retention Ponds and all Storm Water Drainage Systems located on the Property to insure compliance with the plans for “Burgen Sunrise Addition”(“Plans”) as prepared by Widseth, Smith, Nolting dated June 24, 2005. If the City of Alexandria determines that the Storm Water Retention Ponds and/or the Storm Water Drainage Systems located on the Property are not being maintained or are not functioning pursuant to the Plans, the City of Alexandria shall give the Association (or the Owners of Units within the Property if the Association has been dissolved) written notice of such determination and a list of required actions. If the required actions have not been performed within thirty (30) days following the giving of such notice by the City of Alexandria or, if such required actions cannot be performed within such thirty (30) day period, materials steps have not been commenced to perform such required action, the City of Alexandria shall have the right to take such required actions to bring the Storm Water Retention Ponds and Storm Water Drainage Systems into compliance and to assess the Association (or individual property owners if the Association has been dissolved) for all costs and expenses incurred, including engineering fees and attorney’s fees. The Association specifically indemnifies and holds the City of Alexandria harmless from any liability in the maintenance of the Storm Water Retention Ponds and Storm Water Drainage Systems.

9.2 Maintenance by Owner. Except for the maintenance required to be provided by the Association under Section 9.1, all maintenance of the Dwellings and Units shall be the sole responsibility and expense of the Owners thereof. The Association may require that any maintenance to be performed by the Owner be accomplished pursuant to specific criteria established by the Association. The Association may also undertake any maintenance which the responsible Owner fails to or improperly performs and assess the Unit and the Owner for the cost thereof.

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

SECTION 10 INSURANCE

10.1 Required Coverage. The Association shall obtain and maintain, at a minimum, a master policy or policies of insurance in accordance with the insurance requirements set forth in the Act or otherwise required by law and the additional requirements set forth herein, issued by a reputable insurance company or companies authorized to do business in the State of Minnesota, as follows:

- a. Comprehensive public liability insurance covering the use, operation and maintenance of Common Elements, if any, with minimum limits of \$1,000,000 per occurrence, against claims for death, bodily injury and property damage, and such other risks as are customarily covered by such policies for projects similar in

construction, location and use to the Property. The policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner or Occupant because of negligent acts of the Association or other Owners or Occupants. The policy shall include such additional endorsements, coverage and limits with respect to such hazards as may be required by the regulations of the FHA or FNMA as a precondition to their insuring, purchasing or financing a mortgage on a Unit.

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

10.3 Owner's Personal Insurance. Each Owner shall obtain and maintain at his or her own expense fire and other casualty insurance on such Owner's Unit and Dwelling and personal property and shall also obtain and maintain personal liability insurance. All insurance policies maintained by Owners shall provide that they are without contribution as against the insurance purchased by the Association. Such fire and casualty insurance shall cover at a minimum the full insurable replacement cost of the Dwelling located on the Unit and shall be in a form satisfactory to the Association. It shall further provide that such policy shall not be canceled or substantially modified by any party without at least 30 days prior written notice to the Association. Each Owner shall furnish the Association satisfactory evidence of the maintenance of such insurance. The Association may, but shall not be required, to make payment of casualty insurance premiums on behalf of any Owner who defaults in his or her obligation to make such payments. Any amount so paid by the Association shall be immediately due and payable by such Owner and may be included in the maintenance assessment against such Unit.

SECTION 11 EASEMENTS

11.1 Drainage Easements. The Plat reflects certain Drainage Easements that are dedicated to the public for the purpose of controlling surface water run-off and/or providing storm water retention and control. The Association shall have the responsibility for the maintenance of all portions of the Property contained within any Drainage Easement as dedicated on the Plat, unless a Governmental Entity assumes the responsibility for such maintenance.

11.2 Utilities Easements. The Property shall be subject to non-exclusive, appurtenant easements for all utilities, and similar services, which exist from time to time, as constructed or referred to in the Plat, or as otherwise described in this Declaration or any other duly recorded instrument. Each Unit, and the rights of the Owners and Occupants thereof, shall be subject to a non-exclusive easement in favor of the Association and all utilities companies providing service to the Units for the installation and maintenance of utilities metering devices.

SECTION 12

COMPLIANCE AND REMEDIES

Each Owner and Occupant, and any other Person owning or acquiring any interest in the Property, shall be governed by and comply with the provisions of the Act, the Governing Documents, the Rules and Regulations, the decisions of the Association, and such amendments thereto as may be made from time to time. A failure to comply shall entitle the Association to exercise all remedies available at law in the Governing Documents, or in the Rules and Regulations, if any, including the right to:

- a. Impose late charges of up to 15% of each late payment of an assessment or installment thereof.
- b. In the event of default of more than 30 days in the payment of any assessment or installment thereof, all remaining installments of assessments assessed against the Unit owned by the defaulting Owner may be accelerated and shall then be payable in full if all delinquent assessments, together with all costs of collection and late charges, are not paid in full prior to the effective date of the acceleration. Reasonable advance written notice of the effective date of the acceleration shall be given to the defaulting Owner.
- c. Impose reasonable fines, penalties or charges for each violation of the Act, the Governing Documents or the Rules and Regulations of the Association.
- d. Suspend the rights of any Owner or Occupant and their guests to use any Common Elements available to the subject Unit. Such suspensions shall be limited to periods of default by such Owners and Occupants in their obligations under the Governing Document, and for up to 30 days thereafter, for each violation.
- e. Restore any portions of the Common Elements damaged or altered, or allowed to be damaged or altered, by any Owner or Occupant or their guests in violation of the governing Documents, and to assess the cost of such restoration against the responsible Owners and their Units.
- f. Enter any Unit in which, or as to which, a violation or breach of the Governing Documents exists which materially affects, or is likely to materially affect in the near future, the health or safety of the other Owners or Occupants, or their guests, or the safety and soundness of any Dwelling or other part of the Property or the property of the Owners or Occupants, and to summarily abate and remove, at the expense of the offending Owner or Occupant, any structure, thing or condition in the Unit which is causing the violation; provided, that any improvements which are a part of a Unit may be altered or demolished only pursuant to a court order or with the agreement of the Owner.

12.1 Rights to Hearing. In the case of imposition of any of the remedies authorized by c.

d. or e. of the above, the Board shall, upon written request of the offender, grant to the offender a fair and equitable hearing as contemplated and described more fully in the Act. The offender shall be given notice of the nature of the violation and the right to a hearing, and at least 10 days within which to request a hearing. The hearing shall be scheduled by the Board and held within thirty days of receipt of the hearing request by the Board, and with at least 10 days prior written notice to the offender. If the offending Owner fails to appear at the hearing then the right to a hearing shall be waived and the Board may take such action as it deems appropriate. The decision of the Board and the rules for the conduct of hearings established by the Board shall be final and binding on all parties. The Board's decision shall be delivered in writing to the offender within ten days following the hearing, if not delivered to the offender at the hearing.

12.2 Lien for Charges, Penalties, Etc. Any assessments, charges, fines, penalties or interest imposed under this Section shall be a lien against the Unit of the Owner or Occupant against whom the same are imposed and the personal obligation of such Owner in the same manner and with the same priority and effect as assessments under Section 6. The lien shall attach as of the date of imposition of the remedy, but shall not be final as to violations for which a hearing is held until the Board gives written notice following the hearing. All remedies shall be cumulative, and the exercise of, or failure to exercise, any remedy shall not be deemed a waiver of the right to pursue any others.

12.3 Costs of Proceeding and Attorneys Fees. With respect to any collection measures, or any measures or action, legal, administrative, or otherwise, which the Association takes to enforce the provisions of the Act, Governing Documents or Rules and Regulations, whether or not finally determined by a court or arbitrator, the Association may assess the violator and his or her Unit with any expenses incurred in connection with such enforcement, including without limitation fines or charges previously imposed by the Association, reasonable attorneys, fees, and interest (at the highest rate allowed by law) on the delinquent amounts owed to the Association.

12.4 Liability for Owners' and Occupants' acts. An owner shall be liable for the expense of any maintenance, repair or replacement of the Property rendered necessary by such Owner's acts or omissions, or by that of Occupants or guests in the Owner's Unit, to the extent that such expense is not covered by the proceeds of insurance carried by the Association or such Owner or Occupant. However, any insurance deductible amount and/or increase in insurance rates, resulting from the Owner's acts or omissions may be assessed against the Owner responsible for the condition and against his or her Unit.

12.5 Enforcement by Owners. The provisions of this Section shall not limit or impair the independent rights of other Owners to enforce the provisions of the Governing Documents, the Rules and Regulations, and the Act as provided therein.

SECTION 13

SPECIAL DECLARANT RIGHTS

Declarant hereby reserves exclusive and unconditional authority to exercise the following special Declarant rights within the meaning of Section 515B.1-103(32) of the Act for as long as it owns a Unit, or for such shorter period as may be specifically indicated:

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

13.2 Add Additional Real Estate. To add Additional Real Estate to the Property as described in Section 14.

13.3 Relocate Boundaries and Alter Units. To relocate boundaries between Units and to otherwise alter Units owned by it, to the extent permitted by Section 14.

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

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

13.6 Easements. To have and use easements, for itself, its employees, contractors, representatives, agents and prospective purchasers through and over the Common Elements for the purpose of exercising its special Declarant rights;

13.7 Control of Association. To control the operation and administration of the Association, including without limitation the power to appoint and remove the members of the Board pursuant to Section 515B.3-103 of the Act, until the earliest of : (i) voluntary surrender of control by Declarant, (ii) an Association meeting which shall be held within 60 days after conveyance of seventy-five percent (75%) of the total number of Units authorized to be included in the Property or (iii) the date five (5) years following the date of the first conveyance of a Unit to an Owner other than a Declarant. Notwithstanding the foregoing, the Owners other than a Declarant shall have the right to nominate and elect not less than 33 1/3% of the Directors at a meeting of the Owners which shall be held within 60 days following the conveyance by Declarant of 50% of the total number of Units authorized to be included in the Property.

13.8 Consent to Certain Amendments. As long as Declarant owns any unsold Unit, Declarant's written consent shall be required for any amendment to the Declaration.

SECTION 14 RIGHTS TO ADD ADDITIONAL REAL ESTATE,

RELOCATE UNIT BOUNDARIES AND ALTER UNITS

14.1 Declarant's Rights to Add Additional Real Estate. Declarant hereby expressly reserves the right to add the Additional Real Estate to the Property, by unilateral action under Section 515B.2-111 of the Act, subject to the following conditions:

- a. The right of Declarant to add the Additional Real Estate to the planned community shall terminate ten (10) years after the date of recording of this Declaration or upon earlier express written withdrawal of such right by Declarant or a successor Declarant unless extended by a vote of the Owners pursuant to Section 515B.2-106(2) of the Act. There are no other limitations on Declarant's rights hereunder, except as may be imposed by law.
- b. The Additional Real Estate is described in Exhibit B. The Additional Real Estate may be added to the Property in parcels consisting of one or more platted lots, or portions thereof.
- c. There are no assurances as to the times at which all or any part of the Additional Real Estate will be added to the Property, the order in which it will be added, the number of parcels per phase nor the size of the parcels. Declarant is under no obligation to add the Additional Real Estate to the Property, and the Additional Real Estate may be developed by Declarant or its successors in interest for other purposes, subject only to approval by the appropriate governmental authorities.
- d. The maximum number of Units that may be created within the Additional Real Estate described as such on the date of this Declaration is seventy (70). All Units created on the Additional Real Estate shall be restricted exclusively to residential use.
- e. All covenants and restrictions contained in this Declaration affecting the use, occupancy and alienation of Units shall apply to all Units created on the Additional Real Estate.
- f. The statements made in Subsections c through e above shall not apply to any Additional Real Estate which is not added to the Property.

14.2 Rights to Relocate Boundaries and Other Units. Subject to applicable law, the boundaries between adjoining Units may be related by an amendment to the Declaration upon the submission of an application prepared in accordance with the Act by the subject Unit Owner and approved by the Association.

SECTION 15

AMENDMENTS

This Declaration may be amended by the consent of (i) Owners of Units to which are allocated at least sixty-seven percent (67%) of the votes in the Association, (ii) the percentage of Eligible Mortgagees (based upon one vote per first mortgage owned) required by Section 16 as to matters prescribed by said Section and (iii) the consent of Declarant to certain amendments as provided in Section 13.8. Consent of the Owners may be obtained in writing or at a meeting of the Association duly held in accordance with the By-Laws. Consents of Eligible Mortgagees and the Declarant shall be in writing. Any amendment shall be subject to any greater requirements imposed by the Act. The Amendment shall be effective when recorded as provided in the Act. An affidavit by the Secretary of the Association as to the outcome of the vote, or the execution of the foregoing agreements or consents, shall be adequate evidence thereof for all purposes, including without limitation, the recording of the amendment.

SECTION 16 RIGHTS OF ELIGIBLE MORTGAGEES

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

16.1 Consent to Certain Amendments. The written consent of Eligible Mortgagees representing at least fifty-one percent (51%) of the Units that are subject to first mortgages held by Eligible Mortgagees (based upon one vote per first mortgage owned) shall be required for any amendment to the Governing Documents which causes any change in the following: (i) voting rights; (ii) assessments, assessment liens, or priority of assessment liens; (iii) reserves for maintenance, repair and replacement of Common Elements; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in the Common Elements or Limited Common Elements, or rights to their use; (vi) redefinition of any Unit boundaries; (vii) convertability of Units into Common Elements or vice versa; (viii) expansion or contraction of the Property or the addition, annexation or withdrawal of property to or from the Property; (ix) insurance or fidelity bonds; (x) leasing of Units; (xi) imposition of any restrictions on an Owner's right to sell or transfer his or her Unit; (xii) a decision by the Association to establish self management when professional management is in effect as required previously by the Governing Documents or an Eligible Mortgagee; (xiii) restoration or repair of the Property (after a hazard damage or partial condemnation in a manner other than that specified in the Governing Documents; (xiv) any action to terminate the legal status of the Planned Community after substantial destruction or condemnation occurs; or (xv) any provisions that expressly benefit Eligible Mortgagees, or insurers or guarantors of mortgages.

16.2 Consent to Certain Actions. The written consent of Eligible Mortgagees representing at least fifty-one percent (51%) of the Units that are subject to first mortgages held by Eligible Mortgagees (based upon one vote per first mortgage owned) shall be required to (i) abandon or terminate the planned community; (ii) change the allocations of voting rights, Common Expense obligations or interest in the Common Elements; (iii) partition or subdivide a Unit except as permitted by statute; (iv) abandon, partition, subdivide, encumber or sell the

Common Elements; or (v) use hazard insurance proceeds for other than the repair, replacement or reconstruction of the Property, except as otherwise provided by law.

SECTION 17
MISCELLANEOUS

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

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

17.3. Notices. Unless specifically provided otherwise in the Governing Documents or the Act, all notices required to be given by or to the Association, the Board of Directors, the Association officers or the Owners or Occupants shall be in writing and shall be effective upon hand delivery, or mailing if properly addressed with postage prepaid and deposited in the United States mail; except that registrations pursuant to Section 2 of Article III of the By-Laws shall be effective upon receipt by the Association.

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

BLUE SPRUCE DEVELOPMENT, INC.
A MINNESOTA CORPORATION

By _____
Benedict J. Zacher
Its President

By _____
Carol J. Zacher
Its Secretary/Treasurer

BURGEN SUNRISE

EXHIBIT A TO DECLARATION

SCHEDULE OF UNITS/LEGAL DESCRIPTION OF UNITS

Units: Lot 1, 2 and 3, Block One; Lots 1 through 25, Block Two; and Lots 1, 2 and 3, Block Three; all in Burgen Sunrise, Common Interest Community No. 216

NOTE: Each Unit's unit identifier is its lot and block numbers and the subdivision name.

BURGEN SUNRISE

EXHIBIT B TO DECLARATION

ADDITIONAL REAL ESTATE

Government Lot 1, Section 33, Township 128 North, Range 37 West, Douglas County, Minnesota.

AND

33.00 ACRE PARCEL

That part of the Southeast Quarter, Section 32, Township 128 North, Range 37 West, Douglas County, Minnesota described as follows:

Commencing at the southwest corner of said Southeast Quarter; thence on an assumed bearing of North 89 degrees 50 minutes 24 seconds East along the south line of said Southeast Quarter a distance of 1662.94 feet to the point of beginning of the land to be described; thence North 00 degrees 13 minutes 12 seconds West 1505.56 feet; thence North 89 degrees 50 minutes 24 seconds East 954.78 feet to the east line of said Southeast Quarter; thence South 00 degrees 13 minutes 12 seconds East 1505.56 feet to the southeast corner of said Southeast Quarter; thence South 89 degrees 50 minutes 24 seconds West 954.78 feet to the point of beginning. Containing 33.00 acres more or less. Subject to an existing township road easement of record over a portion of the southerly part thereof.

AND

25.00 ACRE PARCEL

That part of the Southeast Quarter, Section 32, Township 128 North, Range 37 West, Douglas County, Minnesota, described as follows:

Commencing at the southwest corner of said Southeast Quarter; thence on an assumed bearing of North 89 degrees 50 minutes 24 seconds East along the south line of said Southeast Quarter a distance of 1662.94 feet; thence North 00 degrees 13 minutes 12 seconds West 1505.56 feet to the point of beginning of the land to be described; thence North 89 degrees 50 minutes 24 seconds East 954.78 feet to the east line of said Southeast Quarter; thence North 00 degrees 13 minutes 12 seconds West 1142.28 feet to the northeast corner of said Southeast Quarter; thence South 89 degrees 38 minutes 09 seconds West along the north line of said Southeast Quarter a distance of 954.78 feet; thence South 00 degrees 13 minutes 12 seconds East 1138.88 feet to the point of beginning. Containing 25.00 acres more or less.

BURGEN SUNRISE

EXHIBIT C TO DECLARATION

COMMON EXPENSE ALLOCATION

Common Expense allocations shall be based upon the following formula:

Subject to the alternative assessment program set forth in Section 6.5, the proportion of the Common Expense to be paid by each Owner shall be determined by a fraction, the numerator of which shall be the sum of 1.0 for each Unit and the denominator of which shall be 31.00. Consequently, each Owner of a Unit shall pay one thirty-first (1/31st) of the Common Expense, subject to such alternative assessment program and subject to the addition of the Additional Real Estate.