

APPLE BLOSSOM POINTE ASSOCIATION

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

This declaration made this _____ day of February, 2004 by Old Hickory Land Corporation II, Inc., a Minnesota Corporation, hereinafter called Declarant.

Whereas, Declarant is the owner of real property located in the City of La Crescent, County of Winona, State of Minnesota, which is more particularly described as:

ALL OF THE APPLE BLOSSOM POINTE, A SUBDIVISION TO THE CITY OF LA CRESCENT.

Whereas, Declarant desires to create thereon a residential community with open spaces and common facilities for the benefit of the owners thereof; and

Whereas, Declarant desires to provide for the preservation of the values of the lots and for the maintenance of said open spaces and common facilities, and to that end desires to subject the real property described to the covenants, restrictions, easements, charges and liens hereafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

Whereas, Declarant deems it desirable for the preservation of the values of said lots to create an agency to which shall be delegated and assigned the power to maintain and administer the common properties and enforce the covenants and restrictions and collect and disburse the assessments and charges hereinafter created; and

Whereas, Declarant has created Apple Blossom Pointe Association for the purpose of exercising the functions of regulating and funding of the open spaces and facilities, along with restrictions on the construction and use of Lots in Apple Blossom Point Subdivision;

Now, therefore, Declarant declares that the real property described hereinabove shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (hereinafter referred to as covenants and restrictions) hereinafter set forth, which covenants and restrictions shall run with the real property and be binding on all parties having any right, title or interest in the properties or any part thereof, and their heirs, successors and assigns.

ARTICLE I

DEFINITIONS

The following words, when used in this Declaration shall have the following meanings:

- a. "Association" shall mean and refer to Apple Blossom Pointe Association, its successors and assigns.
- b. "Common Properties" shall mean and refer to all of the scenic and conservation easement as referenced in the plat of Apple Blossom Pointe, a Subdivision to the City of La Crescent.
- c. "Declarant" shall mean and refer to Old Hickory Land Corporation II, Inc., a Minnesota Corporation.
- d. "Developer" shall mean and refer to Old Hickory Land Corporation II, Inc., a Minnesota Corporation.
- e. "Apple Blossom Pointe Subdivision" shall mean and refer to all properties subject to this Declaration.
- f. "Lot" shall mean and refer to any platted lot in the Properties.
- g. "Member" shall mean and refer to all Owners who are members of the Association as provided in Article III, Section 1, hereof.
- h. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon Apple Blossom Pointe Association, but notwithstanding any applicable theory of mortgages, shall not mean or refer to a mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or deed in lieu of foreclosure.
- i. "Properties" shall mean and refer to all of the real property subject to this Declaration, and all improvements now or hereafter located thereon.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the City of La Crescent, County of Winona and State of Minnesota, and is more particularly described as follows:

Lots One through Twenty-six (1-26) of Block One (1), all being a part of Apple Blossom Pointe, a Subdivision to the City of La Crescent.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. MEMBERSHIP. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold a interest merely as security for the performance of an obligation unless and until such mortgagee has acquired title pursuant to foreclosure of said mortgage and the period in which the fee owner may redeem from such foreclosure has terminated. Where any such Lot is being sold by the fee owner to a contract vendee who is entitled to possession of the Lot, the contract vendee shall only be considered the owner of the Lot if (i) the voting rights of the contract for deed vendor 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 any and may not be separated from ownership of any Lot.

Section 2. VOTING RIGHTS. The Association shall have one (1) class of voting membership:

Members shall be all those owners referred to in Section 1, and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

ARTICLE IV

PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. MEMBERS' EASEMENTS OF ENJOYMENT. Every Member shall have a non-exclusive easement over the Common Properties for open-space and recreational purposes. Such easement shall be appurtenant to and shall pass with title to every Lot.

Section 2. EXTENT OF MEMBERS' EASEMENTS. The rights and easements created hereby and the title of the Owners to the Common Properties shall be subject to the following, and as further provided herein:

- a. The right of the Association, as provided in its Buy-Laws, to suspend the voting and enjoyment rights of any Member for any period during which any assessment remains unpaid, as provided in the Association's By-Laws; provided;
- b. The right of the Declarant to make use of such portions of the Common Properties as may be necessary and incidental to the construction of the initial improvements upon Apple Blossom Pointe Association, including, without limitation, vehicular ingress and egress, vehicular parking, storage and maintenance of models and signs advertising Living Units in Apple Blossom Pointe Association together with the right of the Declarant to execute and deliver any and all necessary conveyances or dedications to governmental authorities or public utilities deemed necessary by Declarant for the purpose of providing public utilities to Apple Blossom Pointe Association; provided, however, that the Declarant shall promptly restore any damage to the Common Properties by reason of any construction incident to the foregoing.

Section 3. TITLE TO COMMON PROPERTIES. Declarant shall convey marketable legal title to the Common Properties by way of any undivided one-twenty sixth (1/26) interest, as tenant in common, to the Owner of each Lot.

Section 4. TAXES AND SPECIAL ASSESSMENTS ON COMMON PROPERTIES. Taxes and special assessments that would normally be levied against the Common Properties by a governmental entity shall be paid for by the fee owner of the individual Lot which the Common Properties are a part.

Section 5. DELEGATION OF RIGHTS. An Owner may delegate his or her right and easement of enjoyment in and to the Common Properties to the members of his or her family, or a contract vendee who is entitled to possession of the Lot (subject to rules and regulations of the Association).

ARTICLE V

COVENANTS FOR ASSESSMENTS

Section 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. Declarant, for each Lot owned by it within Apple Blossom Pointe Association, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be and hereby is deemed to covenant and agree to pay to the Association annual assessments or charges. The annual assessment to be fixed, together with such interest thereon and costs of collection thereof and reasonable attorneys' fees as hereinafter provided, shall be a charge on the land and shall be a continuing lien on each such Lot against which each such assessment is made. Each such assessment, together with interest, costs of collection and reasonable attorneys' fees, as

hereinafter provided, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall pass to the owner's successors in title if not paid by the original Owner.

Section 2. PURPOSE OF ASSESSMENTS. The assessment levied by the Association under this Article V shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents of Apple Blossom Pointe Association and, in particular, for the maintenance of the common properties and enforcement of the provisions contained herein this Declaration of Covenants, Conditions, and Restrictions. An adequate reserve fund shall be maintained for maintenance, repairs and enforcement as determined by the Association.

Section 3. EFFECT OF NONPAYMENT OF ASSESSMENT: PERSONAL OBLIGATION OF THE OWNER; LIEN; REMEDIES OF ASSOCIATION. If any assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest at the rate of eight percent (8%) per annum from the due date, and the Association may bring an action at law against the owner personally obligated to pay the same. There shall also be added to the amount of such assessment the cost of preparing and filing the complaint in such action, and in the event that a judgment is obtained, such judgment shall include interest on the assessment, as above provided, and reasonable attorneys' fees to be fixed by the Court, together with all other costs of the action.

No Owner may waive or otherwise avoid liability for the assessments provided for herein by no use of the Common Properties or abandonment of his or her Lot.

ARTICLE VI

EASEMENTS

Section 1. The intent of the Common Properties is to preserve environmentally sensitive areas and open spaces. and to meet the following purposes:

1. To provide efficient use of the land use while maintaining contiguous blocks of economically viable agricultural land, natural woodlands, open space, preservation of historical features, scenic views, natural drainage systems and other desirable features of the natural environment.
2. To require the grouping of houses on sites that have low agricultural potential and low scenic and recreational appeal.
3. To provide for a diversity of lot sizes, housing choices and building densities to accommodate a variety of age and income groups.
4. To minimize the amount of infrastructure needed for the development of residential housing sites. Roads, wells, septic systems, and other needed improvements to be designed and constructed to minimize their impacts on the environment.

5. To encourage innovation and promote flexibility, economy and creativity in this low impact residential development.
6. To create neighborhoods with direct access to open space, distinct identities and sense of community.
7. To maximize the conservation and maintenance of open space by requiring large, aggregated, undeveloped lands.
8. To provide commonly owned open space areas for passive and/or active recreational use by residents of the development and, where specified, the larger community.
9. To preserve scenic views of the river valley from bluff top lands, scenic view of bluff top land from river valley and elements of the City's natural character.
10. To minimize the visual impacts of development from surrounding lands and roadways.
11. To reduce erosion and sedimentation by the retention of existing vegetation and the minimization of development on steep slopes.
12. To minimize storm water runoff impacts on sensitive bluff resources by maintaining pre-existing hydrological conditions to the greatest extent possible.
13. To implement the City of La Crescent's Comprehensive Plan.

Section 2. Permitted Uses. Permitted uses of the Common Properties are the permitted uses as defined by Ordinance No. 379, an ORDINANCE OF THE CITY OF LA CRESCENT CREATING THE CONSERVATION DEVELOPMENT DISTRICT. The Association shall develop and implement policies to enforce said Ordinance No. 379.

ARTICLE VII

RESTRICTIONS

Section 1. RESIDENTIAL LAND USE. The use of all Lots shall be restricted to single family residential homes. Any such structure built shall not exceed two stories in height, excluding the basement level.

Section 2. ENVIRONMENTAL AND ARCHITECTURAL CONTROL. No building shall be erected, placed or altered on any parcel of land unless a set of building plans has been first submitted to the Developers, or the duly selected agent of the Developers, not less than 30 days prior to the start of construction.

All buildings must be in harmony with the external design and building size of existing structures and as to location, with respect to topography, finish grade elevations and exterior

building locations. It is the intention of this provision to preserve the natural grade and terrain and general appearance of the area insofar as possible, and to eliminate any excessive cut or fill, in order to perpetrate and exemplify the natural beauty of the area for the benefit of the Lots.

At the time of construction, or as soon thereafter as weather permits, the owner shall plant at least two shade trees on the boulevard for each Lot.

The Developers shall have 30 days to approve or reject the building plans submitted pursuant to this paragraph. Building plans not formally approved or rejected in 30 days shall be deemed approved unless enjoined by a court of competent jurisdiction.

Section 3. ENVIRONMENTAL AND ARCHITECTURAL CONTROL SUCCESSION. While the Developers retain ownership of a Lot in Apple Blossom Pointe Subdivision, environmental and architectural control shall be determined by the Developers or their duly authorized agent.

In the event of the Developer resigns from its duties in regard to environmental and architectural control, the Board of Directors of the Association shall assume all environmental and architectural control for Apple Blossom Point Subdivision. The Board of Directors of the Association may elect to delegate such control to one or more Association Member.

Section 4. UTILITY EASEMENTS. Utility easements shall be as shown on the plat of Apple Blossom Acres 1, a Subdivision.

Section 5. ADVERTISING SIGNS. No sign of any kind shall be displayed to the public view on any parcel of land, except one sign not more than five feet square advertising the property for sale, or used by a builder to advertise the property during the construction and sales period.

Section 6. PREVIOUSLY ERECTED BUILDINGS. No building previously erected elsewhere on a permanent foundation shall be moved on to any parcel of land.

Section 7. CONSTRUCTION PERIOD. Any building erected on any Lot shall be completed with 14 months from date of commencement, and no building shall be allowed to remain with tar paper, building paper sheathing, or similar covering, for a period longer than four (4) months.

Section 8. FENCES. Any fences which are constructed on any parcel of land must be built with wooden fencing material or other such materials as approved by the Developer. In the event of the resignation of the Developer, then the Board of Directors of the Association shall determine the type of fencing material and the manner in which any fence is built in Apple Blossom Pointe Subdivision.

Section 9. RECREATIONAL VEHICLE STORAGE. No boat, snowmobile, trailer, self-contained motor home, travel trailer, camper, tent or mobile home shall be stored for more than eight hours within the areas of the front and side set-back areas. Said vehicles stored elsewhere on said Lots shall be screened from view from adjoining Lots and only after approval from the Developers.

Section 10. STORAGE OF FIREWOOD. No firewood shall be stored within the front or side set-back areas and no firewood shall be stored on the premises except in inside storage areas.

Section 11. VACANT LOTS. Vacant Lots shall not be used for the storage of any materials, vehicles, boats, firewood and the like. Weeds shall be controlled in conformity with municipal ordinances.

Section 12. GARAGE CONSTRUCTION. There shall be built upon each Lot simultaneous with the building of each dwelling house a garage which shall be no smaller than a two car garage.

The garage may be either attached, "tucked under", or detached, but in any event must have an exterior appearance similar in color and material to the dwelling house.

Section 13. DRAINAGE. Run off shall not be altered in any such a way as to cause increased drainage upon any adjoining Lot in the development.

Drainage from each Lot shall be directed in such a way as to direct flow to the Lot lines and not directly, or indirectly, to any structure located elsewhere in this or adjacent Subdivisions.

Section 14. GENERAL PROVISIONS.

TERM: These covenants are to run with the parcels of land designated "Apple Blossom Pointe, a Subdivision to the City of La Crescent", and shall be binding on all parties and all persons claiming under them for a period of fifty (50) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten years unless an instrument signed by a majority of the then homeowners of the land parcels has been recorded, agreeing to change said covenants in whole or part.

ENFORCEMENT: Enforcement shall be by proceeding at law in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

SEVERABILITY: Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

AMENDMENT PROCEDURE: These covenants may be amended by a majority vote of the Lot owners of Apple Blossom Pointe, a Subdivision. The owner(s) of each Lot shall be