

**Declaration of Protective Covenants  
For  
Diamond Bluff Prairie Estates Homeowners' Association**

**THIS DECLARATION** is made this 20th day of August, 2003, by Diamond Bluff Investments, LLC, a Minnesota limited liability company, (hereinafter referred to as the "Declarant").

**WITNESSETH**

**WHEREAS**, Declarant is the Owner of the real property described on Exhibits A and B attached hereto and made a part of this Declaration (hereinafter referred to as "Diamond Bluff") and desires to create a community of compatible and complementary residential homes with certain Common Property as hereinafter defined available for the benefit of the residents of Diamond Bluff and to protect the value and desirability of Diamond Bluff; and

**WHEREAS**, Declarant will deed certain property within Diamond Bluff to Pierce County for park purposes and said property shall not be subject to this Declaration for so long as said property is owned by Pierce County;

**WHEREAS**, Declarant deems it desirable for the preservation of Diamond Bluff and for the assurance of consistent quality and architectural design to establish certain conditions, restrictions and covenants regarding the development and maintenance of Diamond Bluff; and

**WHEREAS**, Declarant deems it desirable for the purpose of efficiency to create a homeowners' association and an architectural review committee to which shall be delegated and assigned the powers of administering and enforcing certain of the conditions covenants, and restrictions contained and referred to herein,

**NOW, THEREFORE**, Declarant hereby declares that Diamond Bluff, and such additions thereto as may be hereinafter brought within the jurisdiction of said homeowners' association, shall be held, transferred, sold, conveyed, leased, occupied and developed subject to the restrictions, covenants, conditions, easements and charges and liens hereinafter set forth which are for the purpose of protecting the value and desirability of Diamond Bluff and shall run with the real Property as hereinafter defined and be binding upon all parties including their heirs, successors, assigns and lessees, having any right, title or interest in the described Property or any part thereof, and shall inure to the benefit of each Owner thereof and his heirs, successors, assigns and lessees.

**ARTICLE I  
DEFINITIONS**

The following terms, when used in this Declaration, shall have the following definitions, except as otherwise specifically provided:

- 1.1 "Additional Property"** shall mean and refer to real property and improvements located adjacent to the Property which Declarant may develop in the future. Upon amending this Declaration to add said property and platting said adjacent property, said adjacent property shall be subject to the terms and conditions of this Declaration.

- 1.2** “**Association**” shall mean the Diamond Bluff Prairie Estates Homeowners’ Association, a Wisconsin non-stock corporation.
- 1.3** “**Board of Directors**” or “**Board**” or “**Directors**” shall mean the Board of Directors of the Association.
- 1.4** “**Committee**” shall mean the Architectural Review Committee comprised of three individuals, pursuant to Article IX of the Bylaws of Diamond Bluff Prairie Estates Homeowners’ Association, Inc., whom, so long as Declarant owns a buildable Lot, shall be appointed by Declarant. At such time as Declarant no longer owns a buildable Lot, the members of the Committee shall be deemed to have resigned and the rights and responsibilities shall transfer to the Board of Directors of the Association.
- 1.5** “**Common Property**” shall mean the Outlots as described on Exhibit B attached hereto and as shown on the plat of Diamond Bluff, including any Outlots which may be created by Additional Property being added in future phases of the project.
- 1.6** “**Declarant**” shall mean and refer to Diamond Bluff Investments, LLC, a Minnesota limited liability company, its successors and assigns.
- 1.7** “**Lot**” or “**Lots**” shall mean and refer to the real property more particularly described as any one or all of the lots described on Exhibit A attached hereto and as shown on the plat of Diamond Bluff, including any lots which may be created by Additional Property being added in future phases of the project.
- 1.8** “**Member**” shall mean all Owners who are Members of the Association as provided in **Article V** hereof and Article VI of the Articles of Incorporation--Nonstock Corporation of Diamond Bluff Prairie Estates Homeowners’ Association, Inc.
- 1.9** “**Mortgage**” shall mean any mortgage or other security instrument by which a Lot or any part thereof is encumbered.
- 1.10** “**Mortgagee**” shall mean any person named as the mortgagee under any such Mortgage or any successors to the interest of such person under such Mortgage.
- 1.11** “**Outlots**” shall mean and refer to the Common Property described on Exhibit B owned by the Association, and as such, are exempt from the payment of assessments as defined herein.
- 1.12** “**Owner**” shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any Lot subject to this Declaration, but shall not mean or refer to the Present Property Owner hereinafter defined nor to the Mortgagee of any such Lot unless and until such Mortgagee has acquired title pursuant to foreclosure of said Mortgage, and the period within 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 be considered the Owner of the Lot upon furnishing adequate proof to the Association.

The Owner of any Lot created by the addition of Additional Property shall become a member of the Association upon recording of an amendment to this Declaration creating said Lot.

- 1.13 **“Plans”** shall mean and refer to the plans and specifications, proposals, and site plans submitted by Owners to the Architectural Review Committee prior to construction upon any Lot.
- 1.14 **“Present Property Owner”** shall mean and refer to Declarant.
- 1.15 **“Property”** shall mean and refer to that certain real property described on Exhibits A and B attached hereto and made a part hereof and such Additional Property as may hereafter be brought within the jurisdiction of the Declaration and of the Association.

**ARTICLE II  
PROPERTY SUBJECT TO THIS DECLARATION**

- 2.1 **Property.** This Declaration shall govern the real property described on Exhibits A and B attached hereto. These declarations shall automatically apply to each subsequent phase *unless* specifically exempted.
- 2.2 **Common Property.** Declarant shall transfer and convey the Common Property to the Association after all Lots are sold for the common use, enjoyment, maintenance and improvement of all of the Owners in accordance with the Articles of Incorporation and By-Laws of the Association and in accordance with the terms and conditions hereof. After conveyance of the Common Property to the Association, Declarant shall have no further responsibility of any sort to the Association or the Owners for the maintenance or improvement of the Common Property.

**ARTICLE III  
ADDITIONAL PROPERTY SUBJECT TO THIS DECLARATION**

- 3.1 **Additions to Existing Property.** The Declarant, its successors and assigns, shall have the right, without consent of the Members or Mortgagees, to bring within the design of this Declaration any Additional Real Property, or any part thereof, which is contiguous with the real Property, described hereinabove, and by this reference incorporated herein for all purposes. The Declarant makes no representations or warranties as to when Additional Property may be brought into the design of the Declaration or the nature of the development phases that are anticipated hereby. All Additional Property will be a part of the Declaration and will be subject to the Articles and Bylaws of the Association and the rules and regulations which may be established for the protection of all Owners and will share in costs and expenses as anticipated herein. Further, all Owners will share in the costs and expenses to maintain, repair and improve all Common Property which may be added to this Declaration.

**ARTICLE IV  
ASSESSMENTS**

- 4.1 **Lien Subordination.** Any Lien for Annual Assessments or Special Assessments created as a result of the provisions contained in this article shall be subordinate to the first Mortgage, if any, on the affected Lot.

- 4.2 Creation of the Lien and Personal Obligation of Assessments.** Each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, who is a Class A Member according to 5.2 below, is deemed to covenant and agrees to pay to the Association (1) Annual Assessments or charges (including Real Estate Taxes assessed for Common Property), (2) Special Assessments for common wells, and (3) Special Assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The Annual Assessments and Special Assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, 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 not pass to the Owner's successors-in-title unless expressly assumed by them but shall continue as a lien on the Lot.
- 4.3 Annual Assessment.** Unless otherwise provided herein or in the Articles and By-Laws of the Association, the Board of Directors of the Association shall set the Annual Assessment to be paid by each Owner and shall notify each Owner at least sixty (60) days prior to the time said Annual Assessments shall become due. The Annual Assessment may not be increased by more than ten (10%) percent in any one year without approval of two-third of the Members of the Association. Each Annual Assessment shall cover all of the anticipated common expenses of the Association for that year which are to be shared equally by all Lots. Annual Assessments shall provide, among other things, for an adequate reserve fund for the maintenance, repair and replacement of the Common Property and those parts of the Property for which the Association is responsible.
- 4.4 Special Assessments.** In addition to the Annual Assessments authorized above, the Board of Directors of the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any unforeseen or unbudgeted common expense, including construction, reconstruction, repair or replacement of:
- (a) Common Wells.** The water source for each Lot will be a well or a common well and pumphouse. No common well and pumphouse shall serve more than six (6) Lots unless approved in writing by the State of Wisconsin, including the Lot or Lots upon which the common well and pumphouse are situated, unless approved by the local municipality. Any common well, pumphouse and waterline Special Assessment shall be assessed against only those Lots served by said common well, pumphouse and waterline. The Board of Directors shall be responsible for determining common well repairs needed, soliciting bids, contracting the repairs, reconstruction, or replacement of items to be completed, and assessing the affected Lots for all expenses and costs.
  - (b) Capital Improvements.** Any capital improvement upon Common Property, including fixtures, personal property and landscaping, shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a special meeting duly called for this purpose.
- 4.5 Notice of Meetings.** Written notice of any meeting called for the purpose of taking any action authorized under Article IV shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At any such meeting called, the presence of

Members or of proxies entitled to cast two-thirds (2/3) of all the votes of each class of Membership shall constitute a quorum.

**4.6 Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Lots as to the repair, maintenance and improvement of Common Property and may be collected on an annual basis, except as modified in paragraph 4.7 below regarding the commencement of assessments.

**4.7 Commencement of Annual Assessments.** Initial Annual Assessments shall be due commencing with the month a Lot is closed. The first annual assessment shall be adjusted according to the number of months remaining on the calendar year. The Board of Directors of the Association shall fix the amount of the annual assessment against each Lot in advance of each Annual Assessment period, as otherwise provided for herein, except that the initial Annual Assessment for each Lot shall be Four Hundred and 00/100 (\$400.00) Dollars per Lot payable annually, which sum shall remain fixed until changed by the Board of Directors of the Association. Written notice of the annual assessments shall be sent to every Owner subject thereto in accordance with 4.3 above. Declarant has no obligation for assessments. The due dates shall be established by the Board of Directors of the Association. At the time the Board fixes the amount of Annual Assessments, it shall adopt a budget for the following fiscal year and cause a copy of such budget in reasonable detail to be furnished to each Owner.

**4.8 Effect of Non-Payment of Assessments; Remedies of the Association; the Lien; personal Obligation of the Owner.**

(a) If any Annual Assessment or Special Assessment is not paid on the date when due, then such assessment shall become delinquent and shall, together with such reasonable interest thereon and costs of collection thereof, as hereinafter provided, become a lien on such Lot or Lots which shall bind such Lot or Lots in the hands of the then Owner, his or her heir, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessments, however, shall remain his or her personal obligation and shall not pass to his or her successor-in-title unless expressly assumed by them. Any such lien shall run in favor of the Association.

(b) To evidence a lien for sums assessed pursuant to this Article, the Association may prepare a written notice of lien setting forth the amount of the assessment, the due date, the amount remaining unpaid, the name of the Owner of the Lot and a description of the Lot and file or record the same with the Pierce County Register of Deeds, but such notice of lien shall not be recorded until such assessment has been wholly or partially unpaid for at least sixty (60) days from the due date. Such lien may be enforced and foreclosed by the Association in the manner prescribed by Wisconsin Statutes for the foreclosure of a mechanic's lien. Each owner, by acceptance of a deed for any Lot, does further hereby give full and complete power to the Association to enforce a lien for Annual Assessments and Special Assessments hereunder and consents to the collection of the assessment lien through whatever means are then available at law, or in equity. The person personally obligated to pay such lien shall also be required to pay the Association any assessments against the Lot which shall become due during any period of enforcement of lien rights. A release of the notice of lien shall be executed by an officer of the Association and recorded upon payment of all sums secured by such lien.

- (c) Any Annual Assessment or Special Assessment not paid within thirty (30) days after the due date shall bear reasonable interest from the due date until paid. Said interest, together with the costs of collection incurred by the Association shall be the responsibility of the Owner owing said assessment. Said interest and costs of collection shall be paid by the Owner whether or not a foreclosure action is started. No Owner may waive or otherwise escape personal liability for the assessments provided for herein by abandonment of his Lot or by nonuse of the Common Property.

## ARTICLE V MEMBERSHIP AND VOTING RIGHTS

- 5.1 Membership.** Each Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of such Lot.
- 5.2 Voting Rights.** The Association shall have two classes of voting Membership:
- Class A.** Class A Members shall be all Owners of one or more Lots, except Declarant. Each Class A Member shall be entitled to one vote for each Lot owned by him or her. When more than one person owns 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 vote be cast with respect to any Lot.
- Class B.** Class B Member shall be the Declarant. The Class B member shall be entitled to ten votes for each Lot owned by it.
- 5.3 Class B Membership Termination.** The Class B Membership held by the Declarant shall be terminated upon the earlier of:
- (a) The sale of one hundred percent (100%) of all Lots; or
  - (b) The passage of twenty (20) years from the date of recording of these covenants.
- 5.4 Class B Membership Conversion.** Immediately and simultaneous with the termination of Class B Membership on any Lot, as provided above, the Membership for that Lot shall convert to and become Class A Membership.
- 5.5 Notice of Meetings.** Written notice of any meeting called for the purpose of taking any action by the Membership shall be sent to all Members not less than thirty (30) days, nor more than sixty (60) days in advance of the meeting. At any such meeting called, the presence of Members or of proxies entitled to cast two-thirds (2/3) of all the votes of each class of Membership shall constitute a quorum.

## ARTICLE VI COMMON PROPERTY

- 6.1 Owner's Easement of Enjoyment; Common Property.** Every Owner shall have the right and easement of enjoyment, subject to the obligation of maintenance, protection and preservation therewith, in and to the Common Property which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to assess each Owner its prorata share for the repair and protection of any improvements situated upon the Common Property;
- (b) The right of the Association to suspend the voting rights of an Owner for any period during which any Annual Assessment or Special Assessment against that Owner's Lot remains unpaid;
- (c) The right of the Association to dedicate or transfer all or any part of or an interest in any part of the Common Property to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless approved by two-thirds (2/3) of each class of Members at a meeting called for said purpose.

**6.2 Obstructions.** There shall be no obstruction of the Common Property, nor shall any Owner be allowed to keep or store anything on any part of the Common Property. Nothing shall be altered on, or constructed in, or removed from the Common Property except as authorized and permitted by the Declarant during the period Declarant holds title to said Common Property or upon the written consent of the Association during the period the Association holds title to said Common Property.

**6.3 Additional Common Property.** In the event Declarant or the Association add Additional Property to Diamond Bluff, any new Outlots designated as part of the Additional Property shall become part of the Common Property hereof and shall be used and governed in accordance with the terms and conditions in the Association's Articles of Incorporation and Bylaws and the terms and conditions of this Declaration.

## **ARTICLE VII ARCHITECTURAL REVIEW**

**7.1 Review by Committee.** No building, structure, fence, wall, patio, swimming pool, tennis court or other structure shall be commenced, constructed, altered or maintained upon any Lot, or portion thereof, nor shall any exterior addition to or change or alteration therein be made, unless and until the Plans showing the nature, kind, shape, height, materials, color, surrounding landscaping, and location of the same shall have been filed in writing with and have been approved in writing by the Committee. The Plans shall contain details of design, elevation, site grade, erosion control, fencing and location and dimensions of structures, walks and driveways and shall also state the type of construction and exterior materials to be used in construction, with material samples required at the discretion of the Committee.

The Committee shall not unreasonably withhold approval of any Plan submitted pursuant hereto; provided, however, that failure to meet the covenants and restrictions, and conditions contained herein shall be grounds for the Committee's reasonable rejection of such Plans. Plans approved by the Committee shall permit the Owner of a Lot to construct in accordance with said Plans subject to applicable State laws and ordinances of the Townships of Oak Grove and Diamond Bluff, Wisconsin, as well as ordinances of Pierce County, Wisconsin.

Tree or dirt removal, excavation or construction shall not be commenced until approval therefore has been received from the Committee in writing, or in the form of an approved signature upon said Plans. All buildings, structures, or improvements, including installation of sod or seed over areas disturbed from construction activities, must be completed within six (6)

months of occupancy; otherwise, all approvals become null and void and the Association may complete the building, structure or improvements pursuant to the Plans and assess the Lot or place a lien against the Lot and proceed to collect said lien or assessment pursuant to paragraph 4.8 hereof.

Any deviation in construction on any Lot from approved Plans, which in the judgment of the Committee is of substantial detriment to the appearance of the structure or the surrounding area, shall be corrected to conform to the approved Plans at the expense of the Owner of that Lot.

- 7.2 **Material Specifications:** Siding & Soffit & Facia Products shall be of natural earth tones of the following products, Maintenance Free Fiber-Cement Trim Boards & Siding by James Hardie and of Redwood and Cedar as approved by the Architectural Control Committee. The use of brick, stone, or stucco is encouraged. The Plans must include specific information as to type and colors of all exterior materials, including roofing materials, and such submission of all exterior material plans shall be subject to approval by the Architectural Control Committee.

The Committee must approve any and all fences prior to their construction, except fences installed by Declarant. All fencing will be uniform in size, type, material, and color, as specified by the Committee.

- 7.3 **Committee Membership.** The committee shall have three Members. Members shall be appointed by and serve at the pleasure of the Declarant, and the Declarant shall have the authority and power to appoint successors and/or replacements until Declarant has sold all of the Lots in Diamond Bluff, or sooner at the option of the Declarant. At that time, the Members of the Committee shall be deemed to have resigned. Upon such resignation, the then record Owners of a majority of the Lots shall have the power to elect successors and/or new Members to the Committee.

- 7.4 **Architectural Liability.** Driveways, parking and lawn areas shall conform to natural grades, with wooded areas substantially preserved and native growth protected. Prior to construction, the Committee reserves the right to require, at its sole discretion, that a tree assessment be conducted and certified by a qualified forester. Neither Declarant nor any Member of the Committee shall be liable for damages to anyone who has submitted plans for approval, nor to any Owner by reason of mistaken judgment, negligence, or nonfeasance of themselves, their agents or employees arising out of or in connection with the approval or rejection of any such plans. The Committee shall be concerned about aesthetic characteristics only and does not assert specific architectural expertise. It is the sole duty and responsibility of the Owner to employ an architect or other person to design the requested modifications in a safe and architecturally sound manner.

- 7.5 **Landscaping.** Top soil shall be replaced to proposed finished grade, and sod, seed or other finished landscaping features installed within six (6) months of occupancy over a minimum of all area disturbed by construction activity. For purposes of this section, finished landscaping shall mean:

- (a) All Lot area within 50 feet of the foundation of any building or structure.
- (b) A minimum aggregate total of 20,000 square feet in area
- (c) Restore all disturbed areas
- (d) Maintain erosion control during construction

(e) All Lot area within 10' of either shoulder of the driveway.

**7.6 Compensation.** Members of the Committee shall not be entitled to compensation for services performed by them pursuant to this Article.

**7.7 Remedies for Violations.** The Association may undertake any measures, legal or administrative, to enforce compliance with this Article and shall be entitled to recover from the Owner causing the violation all attorney's fees and costs of enforcement, whether or not a legal action is started. Such attorney's fees and costs shall be a lien against the Lot and a personal obligation of the Owner. In addition, the Association shall have the right to enter the Lot and to restore any part of the Lot to its prior condition if any alteration were made in violation of this Article and the cost of such restoration shall be a personal obligation of the Owner and a lien against the Lot. Any lien created under this paragraph 7.7 may be collected in the same manner as a lien for Annual Assessments or Special Assessments in paragraph 4.8 above.

## **ARTICLE VIII LAND USE REQUIREMENTS**

**8.1 Single Family Residence.** Lots within Diamond Bluff shall be used only for residential purposes, except that the Declarant or its designee shall be entitled to maintain model homes upon the Lots. No building or structure shall be erected, altered, placed or permitted to remain on any Lot except one residential single family dwelling with a private attached garage designed to accommodate a minimum of two automobiles, and accessory structures to include a detached garage or storage facility, gazebo, observation decks and anything else the committee may approve. All accessory structures must be compatible in architectural style and be built of substantially the same type of materials as the single family dwelling located on the Lot. All accessory structures are subject to review and written approval from the Committee prior to construction. In addition, no accessory structure may be built or used without full compliance with the applicable zoning regulations of the Townships of Oak Grove and/or Diamond Bluff and Pierce County, Wisconsin.

**8.2 Square Footage of Single Family Residence.** The size of any single family residence, exclusive of one story open porches, decks, basements, garages and accessory structures shall be:

- (a) A one-story residence must have an above-grade finished area within the main structure of no less than one thousand six hundred (1,600) square feet.
- (b) A multi-level residence must have finished floor area on the upper two (2) levels of no less than one thousand eight hundred (1,600) square feet.
- (c) A story and a half residence must have finished floor area within the ground floor of the structure of no less than one thousand four hundred (1,400) square feet, and a total on the total finished square footage of not less than two thousand two hundred square feet (2,200) square feet of floor area excluding basement finish.
- (d) A two-story residence must have above-grade finished floor area of no less than one thousand one hundred (1,100) square feet and a total of the ground and second floor of not less than two thousand two hundred (2,200) square feet.
- (e) Any exceptions to the above will only be considered if the overall value of home and Lot and other improvements is clearly compatible with the overall value of other homes constructed within Diamond Bluff, at the sole discretion of the Committee.

- (f) The square footage of enclosed three seasoned screen porches shall not count towards minimum square footage requirements, unless built above a full foundation or heated crawl space, or unless otherwise approved by the Committee.
- (g) The square footage of any floor shall be calculated by measuring from the outside exterior wall to opposite outside exterior wall.
- (h) The classification of any particular house as a one story, multi-level, story and a half, or two story residences shall be made by the Committee in its reasonable judgment.
- (i) The size of any accessory structure shall be a matter in the sole discretion of the Committee.

**8.3 Height of Single Family Residence.** No building or structure shall be constructed, altered, or maintained on any Lot which is more than two stories in height from ground to eave line, unless approved by the Committee. For purpose of building height, an exposed walkout basement shall not be included as part of the building height. Certain Lots with suitable topography and architectural design may be evaluated by the Committee to consider an exception.

**8.4 Easements.**

(a) **Utilities.** Easements for installation and maintenance of utilities are reserved as filed and recorded with the Pierce County Register of Deeds, unless vacated by action of the municipal authority. Within these easement areas, no structure shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities. The easement area of each Lot shall be maintained continuously by the Owner of the Lot except for improvements made by a public authority, utility company, or agent of the Association.

(b) **Common Wells.** Declarant hereby grants, declares imposes upon and burdens each Lot served by a common well and pumphouse with a nonexclusive, permanent, perpetual right-of-way easement for access, ingress and egress over, under and across said Lot for the purpose of construction, repair, maintenance, or reconstruction of the common well, pumphouse and waterlines as laid out on said Lot. Said easement shall be 15' wide on either side of the common well, pumphouse and waterline and shall burden the Lots upon which it is located and be an appurtenant easement to the Lots which it serves. This easement shall run with the title to the Lots burdened by and benefited by the common well, pumphouse and waterlines, and bind all persons who now or hereafter have any right, title or interest in said Lots, their successors, assigns and mortgagees. The Owners agree at all times to keep the easement areas clear of all buildings, structures, fences, trees, shrubbery, undergrowth, roots and other obstructions that may interfere with the use and repair of the common well, pumphouse and waterlines.

**8.5 Mail Boxes.** The design and construction of the mail box shall be at the discretion of the Committee. The Owners shall maintain uniformity in their mail boxes. All replacement of aging, broken or damaged mailboxes, subsequent to the initial installation, shall be in a manner and type that is compatible with all other existing mailboxes, in order to insure lasting continuity of mailbox construction and design within all of Diamond Bluff.

**8.6 Utilities.** All utility connection facilities including water, sewer, natural gas (if available), telephone, electric and cable TV (if available) shall be underground. Liquid petroleum tanks

used in conjunction with the heating of newly constructed homes will be allowed; however, said liquid petroleum tanks shall be installed in such a way as to prevent their being exposed to public view and shall be removed as soon as possible if natural gas becomes available for hook-up at the street frontage of any affected Lot.

- 8.7 House Placement.** The placement of any house on a Lot shall be subject to careful review by the Committee in order to insure compatibility with all existing or proposed house locations on adjacent Lots and in order to insure compliance with any applicable township, county, or state regulation.
- 8.8 Construction Commencement.** No structure or building of any kind shall be commenced, erected or maintained on any Lot unless and until the plans and specifications showing the nature, kind, shape, height, color, materials, and locations of the same have been approved in writing as to harmony of the external design, color, size, and location in relation to surrounding structures and topography.
- 8.9 Guardrails.** The Association may, at its sole cost and expense, erect, construct and maintain guard rails as deemed appropriate and/or necessary on the Property after receiving approval from the Township of Oak Grove and all other appropriate governmental authorities.
- 8.10 Sewer and Water.** The Owner of any Lot must construct his or her own water supply and sewer facilities to conform to County and State requirements. All sewer and water construction facilities shall be first approved by the Committee before construction is commenced. In addition, construction shall comply with all zoning and building laws and regulations of the Townships of Oak Grove or Diamond Bluff, as applicable, and Pierce County, Wisconsin. Shared water facilities and/or wells may be permitted if approved by the appropriate governmental authorities providing it is adequate to serve the intended Lots.
- 8.11 Stormwater Drainage, Detention Ponds and/or Erosion Control.** Easements for installation and maintenance of stormwater drainage, drainage ponds, detention ponds and/or erosion control are reserved as filed and recorded with the Pierce County Register of Deeds, unless vacated by action of the municipal authority. Within these easement areas, no structure shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of the stormwater drainage, drainage ponds, detention ponds and/or erosion control, or which may change the flow of drainage channels in the easement or which may obstruct or retard the flow of water through drainage channels in the easement areas. The Association shall be solely responsible for any and all maintenance, management and/or repair of any stormwater drainage areas, drainage ponds, detention ponds or erosion control areas as shown on the plat of Diamond Bluff (whether located on a Lot or Outlot) or draining from it. The cost of said maintenance, management and/or repairs shall be deemed a Special Assessment pursuant to paragraph 4.4 hereinabove and allocated against all Lots. In the event the Association fails to maintain, manage or control the stormwater drainage areas, drainage ponds, detentions ponds or erosion control areas, the Town of Oak Grove has the authority, but not the obligation, to perform such maintenance or repairs as have not been performed by the Association after the Town of Oak Grove giving a fifteen (15) day written notice to the Association and charge same against the Lots in the Association pro rata pursuant to Wis. Stats. 66.0627. The Town of Oak Grove shall have no liability for property damage or personal injury that may result from any detention ponds or drainage area. The obligations of the Association for continued maintenance stormwater drainage, drainage ponds, detention ponds

and/or erosion control shall not be amended without prior written approval of the Town of Oak Grove.

- 8.12 Lot Maintenance.** The Owner of any Lot must maintain it in good condition at all times, in accordance with all laws and ordinances of the State of Wisconsin, Pierce County and the Township of Oak Grove or Diamond Bluff, as applicable, including but not limited to the cutting of weeds and grass at or below four (4) inches in height at all times.

## **ARTICLE IX PROHIBITED ACTIVITIES AND USES**

- 9.1 Driveways.** No building or structure shall be constructed, altered or maintained on any Lot unless it has a driveway from a street running to the garage, which must be of sufficient area to park at least two cars entirely off the street. All driveways shall be constructed of concrete or bituminous surfacing, with completion of said driveway surfacing to be completed no later than one (1) year following the date of the certificate of occupancy of the single family residence constructed on the Lot
- 9.2 Temporary Structures and Equipment.** No building or structure of a temporary character and no trailer, self-propelled recreation vehicle, basement, tent, shack, garage or outbuilding shall be used at any time as a residential dwelling on any Lot. No commercial vehicles, tanks, or commercial equipment of any kind shall be stored on any Lots.
- 9.3 Signs.** No signs of any kind shall be displayed to the public view on any Lot except all name and address signs shall be of a dignified character and shall not be over six (6) square feet in size. No advertising sign of any kind shall be displayed in public view on any Lot except one sign of not more than sixteen (16) square feet advertising the Lot for sale or rent. Builder signs are absolutely prohibited unless separate written arrangements have been made with the Declarant. Model Home signs must be approved by Declarant.
- 9.4 Dogs, cats, and Other Domesticated Pets.** Dogs, cats or other household domesticated pets may be kept, provided such pets are not allowed to freely exit their respective Owner's Lot, without being adequately restrained on a leash. Any dog found to be a nuisance for any reason, in the sole discretion of the Board of Directors of the Association, may be required to be removed from the Lot. The right of enforcement of this provision shall rest solely in the hands of the Board of Directors of the Association, and their decision in such matters shall be incontestable. No Owner will be allowed to have more than two (2) dogs who reside on any Lot. Where dogs are allowed to freely occupy any particular Lot, the installation of an "invisible fence" is required, and the dog(s) residing on the Lot must wear an appropriate electric collar, so as to prevent them from exiting the Lot for any reason.
- 9.5 Nuisances.** No noxious or offensive activity or odors shall be permitted on or to escape from any Lot, nor shall anything be done thereon which is or may become an annoyance or a nuisance, either temporarily or permanently. The discharge of any form of firearms shall be considered an offensive activity, and shall not be permitted at any time. A dog allowed to bark repeatedly and for extended periods of time will be considered a nuisance, and will not be tolerated.

- 9.6 Garbage and Refuse Disposal.** No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. Garbage shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition, and placed in such a way as to prevent their being exposed to public view and/or becoming a nuisance.
- 9.7 Soil and Gravel Sale.** Except as approved by the Committee, no sod, soil or gravel shall be sold or removed from the Property; all soil or gravel available from any excavation for the construction or alteration of a single family residence and any accessory structure shall be hauled and disposed of at other points within or without the boundaries of the Property at the discretion of the Declarant.
- 9.8 Vehicles.** No buses, trucks, horse trailers, trailers, unlicensed automobiles, aircraft, tractors, watercraft or recreational vehicles of any kind shall be parked, kept or stored on any Lot for more than 48 hours unless parked, kept or stored within a closed garage or kept in such a way as to prevent their being exposed to public view and unless otherwise restricted or prohibited by local ordinance.
- 9.9 Tower Structures.** No poles, post, towers or antenna may be installed unless approved by the Committee. Any satellite dish must be approved as to type and location by the Committee prior to installation. Any object referred to in this provision, which is installed without specific written approval from the Committee, will be subject to removal at the sole discretion of the Committee.
- 9.10 Business Use.** All buildings and structures situated on the Lots shall only be used as single-family dwellings and accessory structures appurtenant thereto. Business use of the home shall be acceptable as long as it does not create excessive inconvenience, excessive traffic, excessive parking congestion or undue annoyance to the neighborhood except those businesses which are in the business of selling Lots and homes in Diamond Bluff.
- 9.11 Quiet Enjoyment.** All prospective purchasers and Owners are advised that Diamond Bluff is adjacent to active farming operations. The rural character of Diamond Bluff is benefited by the surrounding land use and is also impacted by the sights, sounds and smells of rural agriculture. Wisconsin law provides protection of farming operations by severely restricting nuisance actions relating thereto. Reference is made to Wisconsin Statutes 823.08 (regarding agricultural use).

## **ARTICLE X GENERAL PROVISIONS**

- 10.1 Duration.** The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty-five (25) years from the date this declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.
- 10.2 Access.** For the purpose solely of performing the maintenance, repair and upkeep of the Common Property and any improvements or structures thereon authorized by this Declaration, the Declarant or the Association, through a duly authorized agent or employee, shall have the right, after reasonable notice to the Owners, to enter upon any Lot to gain ingress and egress to all Common Property.

- 10.3 Enforcement.** Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction either to restrain violation or to recover damages and against the land to enforce any lien created by these covenants; and failure by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
  
- 10.4 Variances.** Declarant, in its sole discretion, hereby reserves the right to grant a reason-able variance or adjustment of these conditions and restrictions from time to time in order to overcome practical difficulties and prevent unnecessary difficulties from arising by reason of the application of the restrictions contained herein. Such variances or adjustments shall be granted only in cases where the granting thereof shall not be materially detrimental or injurious to other Owners or their improvements in the neighborhood and shall not defeat the general intent and purpose of these restrictions. Such right of variance shall terminate upon the Declarant selling the last Lot in Diamond Bluff, and any Additional Property which may be brought within the jurisdiction of the Declaration.
  
- 10.5 Notices.** Any notice required to be sent to any Member of the Association or to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid to the last known address of such Member or Owner appearing on the records of the Association at the time of such mailing within the time periods required.
  
- 10.6 Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall not effect any other provision which shall remain in full force and effect.
  
- 10.7 Amendment.** This Declaration may be amended at any time at a special meeting of the Membership called for the purpose of amending this Declaration and upon the vote of at least two-thirds of the eligible votes taken at said meeting pursuant to Article V hereof. Any amendment must be in recordable form and recorded with the Pierce County Register of Deeds.
  
- 10.8 Conflicts among Documents.** In the event of any conflict among the provisions of this Declaration, the Bylaws and the Rules and Regulations approved by the Association, this Declaration shall control, and as between the Bylaws and the Rules and Regulations, the Bylaws shall control.

IN WITNESS WHEREOF, the undersigned Declarant has hereunto set its hand as of the day and year first above written.

**Diamond Bluff Investments, LLC**  
A Minnesota limited Liability Company

\_\_\_\_\_  
Daniel C. Reiland, Chief Manager

\_\_\_\_\_  
James Struffert, Secretary/Treasurer

STATE OF MINNESOTA    )  
  )

COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this \_\_\_ day of August, 2003, by Daniel C. Reiland, the Chief Manager, and James Struffert, the Secretary/Treasurer of Diamond Bluff Investment, LLC, a Minnesota limited liability company, on behalf of the limited liability company.

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Notary Public

My Commission Expires:

THIS INSTRUMENT WAS DRAFTED BY:

MARVIN A. LISZT, ESQUIRE

BERNICK AND LIFSON, P.A.

5500 Wayzata Boulevard, Suite 1200

Minneapolis, Minnesota 55416-1270

Telephone: (763) 546-1200

**Exhibit A**

**Property**

**Estates of Diamond Bluff:**

Lots 11 and 12, Certified Survey Map No.373623 - Volume 6, Page 55

Lots 13 through 16, Certified Survey Map No. 373624 - Volume 6, Page 56

Lots 17 through 20, Certified Survey Map No. 373625 - Volume 6, Page 57

Lots 21 through 23, Certified Survey Map No. 373626 - Volume 6, Page 58

Lots 28 through 30, Certified Survey Map No. 373628 - Volume 6, Page 60

Lots 31 through 33, Certified Survey Map No. 373629 - Volume 6, Page 61

Lot 19, Certified Survey Map No. 373625 - Volume 6, Page 57 has been split  
and is now known as:

Lot 1, Certified Survey Map No. \_\_\_\_\_ - Volume \_\_\_\_\_, Page \_\_\_\_\_

Lot 2, Certified Survey Map No. \_\_\_\_\_ - Volume \_\_\_\_\_, Page \_\_\_\_\_

All of the foregoing Lots are located in Pierce County, Wisconsin.

**Diamond Bluff:**

Lots 1-86, Diamond Bluff, Pierce County, Wisconsin.

**Exhibit B**

**Common Property**

**Estates of Diamond Bluff:**

Outlot A, Certified Survey Map No. 373620, Volume 6, Page 52  
Outlot C, Certified Survey Map No. 373628, Volume 6, Page 60  
Pierce County, Wisconsin.

**Diamond Bluff:**

Outlots 1, 3 and 8, Diamond Bluff, Pierce County, Wisconsin.