

7648222

*ML*  
*1/6*

REC FEE *22*  
COPY FEE *15*

OFFICE OF COUNTY RECORDER  
HENNEPIN COUNTY, MINNESOTA

CERTIFIED FILED AND OR  
RECORDED ON

2002 FEB -8 PM 12: 19

DOCUMENT # 7648222

*Michael A. Kelly* CO. REC.

BY *[Signature]* DEPUTY

A-5

**DECLARATION OF COVENANTS  
FOR  
HUNTERS CREST**

City of Minnetrista  
County of Hennepin  
State of Minnesota

2002 AND PRIOR TAXES PAID  
TAXPAYER SERVICES  
TRANSFER ENTERED

FEB 07 2002

HENNEPIN CO. *[Signature]* DEPUTY

**DECLARATION OF COVENANTS  
FOR  
HUNTERS CREST**

**THIS DECLARATION** is made this 15 day of January, 2002 by Sienna Corporation, a Minnesota Corporation ("**Developer**").

**RECITALS**

A. Developer is the owner of the Active Development Area, as that term is defined in Article I, Section 1 a, of this Declaration.

B. The Community, **as that term is defined in Article I, Section 1 c, of this Declaration**, will be developed by Developer with subdivision improvements for detached, single-family homes, and shall thereafter be further developed in a manner that exempts the Community from the provisions of the Minnesota Common Interest Ownership Act (the "Act"). Developer has elected to incorporate certain provisions of the Act into this Declaration, but the Act will apply to the Community only to the extent specifically provided for in this Declaration.

C. **Developer** has reserved in this Declaration a number of Special Developer Rights, including the right to add to the Community all or portions of the Future Development Area, **as that term is defined in Article I, Section 1 f, of this Declaration**.

**DECLARATION**

**THEREFORE**, in order to provide for the preservation, enhancement and administration of the Community, Developer hereby subjects the Active Development Area to the provisions of this Declaration. The covenants, conditions, restrictions, reservations and easements contained in this Declaration shall run with the land comprising the Community, and bind all parties having any right, title or interest in any portion of the Community, as well as their heirs, successors and assigns. The provisions of this Declaration shall not apply to any portion of the Future Development Area unless and until Developer elects to make all or any portion of the Future Development Area subject to this Declaration.

## ARTICLE I

### DEFINITIONS

#### Section 1. Definitions Applicable to Land Within the Community and/or the Future Development Area.

- a. **"Active Development Area"** means Lots 1 through 15, Block 1; Lots 1 through 6, Block 2; Lots 1 through 12, Block 3; Lots 1 through 6, Block 4; Lots 1 through 11, Block 5; Lots 1 through 8, Block 6; Lots 1 and 2, Block 7; Lots 1-8, Block 8; and Outlots A, B C and D, Hunters Crest Addition, Hennepin County, Minnesota, and represents those Lots and Outlots initially comprising the Community.
- b. **"Common Areas"** means those Outlots within the Community, and the improvements thereon or thereto, owned by the Association for the common use and enjoyment of the Owners of Lots in the Community. The Common Areas owned by the Association at the time of the conveyance of the first Lot will consist of Outlots A, C and D, Hunters Crest Addition. Developer has reserved the right to add additional Common Areas to the Community pursuant to Article III, Section 5 of this Declaration.
- c. **"Community"** initially means the Active Development Area, but shall include those portions, if any, of the Future Development Area as may from time to time be made subject to this Declaration at the election of Developer, pursuant to Article I, Section 5 of this Declaration.
- d. **"Entrance Improvements"** means monuments, signs, walls, fences, vegetation, landscaping structures, lighting, sprinkler systems, utility lines and related improvements at the major entrances to the Active Development Area.
- e. **"Entrance Easement Areas"** initially means part of Outlot A and C, Hunters Crest Addition, but shall include any additional Entrance Easement Areas designated by Developer at such times as Developer elects to add any portions of the Future Development Area to the Community.
- f. **"Future Development Area"** means Outlot E Hunters Crest Addition, Hennepin County, Minnesota. Developer has reserved the right to add all or part of the Future Development Area to the Community pursuant to Article III, Section 5 of this Declaration. Developer has also reserved the right to subject portions of the Active Development Area to access and utility easements for the benefit of the Future Development Area pursuant to Article III, Sections 3 and 4.
- g. **"Lots"** initially means the platted lots in Active Development Area, but shall include any platted lots in the Future Development Area to the extent Developer elects to add those lots to the Community by subjecting those lots to the provisions of this Declaration.

h. **"NURP Ponds"** means those portions of the Active Development Area, Future Development Area and/or areas adjacent to either, shown on the Site Plan and labeled thereon as NURP Ponds.

i. **"Wetlands"** means those portions of the Active Development Area, Future Development Area and/or areas adjacent to either, shown on the Site Plan and labeled thereon as "Wetlands" and/or "NURP Ponds" which are subject to the Wetland Buffer Easement.

**Section 2. Definitions Applicable to Persons and Entities.**

a. **"Association"** means Hunters Crest Homeowners Association, Inc., a Minnesota nonprofit corporation, its successors and assigns. The Association shall have all of the powers provided by the provisions of Section 515B.3-102 of the Act.

b. **"Board"** means the board of directors of the Association.

c. **"Builder"** means any professional builder within the Builder Pool and/or any other professional builder designated by Developer.

d. **"Builder Pool"** means those Builders authorized to purchase Lots from Developer.

e. **"City"** means the City of Minnetrista, a Minnesota municipal corporation.

f. **"Developer"** means Sienna Corporation, a Minnesota corporation, or its successors and assigns. Developer also includes: (i) any party to whom Developer makes a written assignment of any of its Special Developer Rights in connection with the Development of any portion of the Community or the Future Development Area; and (ii) any party who may acquire any Lots owned by the Developer through foreclosure of a mortgage, by receiving a deed in lieu of foreclosure, or otherwise.

g. **"Member"** means all Persons who are Members of the Association by virtue of being Owners. The words Owner and Member are sometimes used interchangeably in the Community Documents.

h. **"Occupant"** means any Person, other than an Owner, occupying a Lot.

i. **"Owner"** means the record owner, whether one or more persons or entities, of the fee simple title to any Lot except that, where a Lot is being sold on a contract for deed and the contract vendee is in possession of the Lot, then the vendee and not the vendor shall be deemed to be the Owner.

j. **"Person"** and **"Persons"** include natural individuals, corporations, limited liability companies, partnerships, or other parties capable of holding title to a Lot.

**Section 3. Other Definitions.**

- a. **"Common Expenses"** means the expenses incurred by or on behalf of the Association in connection with its operation.
- b. **"Community Documents"** means this Declaration, the Articles of Incorporation and Bylaws of the Association (as amended from time to time), and the Rules and Regulations adopted, from time to time, by the Association. The Community Documents shall govern the development, use and enjoyment of the Community.
- c. **"Landscape Plan"** means the plan for landscaping the Community as approved by the City.
- d. **"Special Developer Rights"** means the following rights which Developer has reserved to itself and its designated successors: (i) the right to add all or portions of the Future Development Area to the Community (as provided in Article I, Section 5 of this Declaration); (ii) the right to create certain utility and access easements over and under the Common Areas for the benefit of the Owners of the portions of the Future Development Area, whether or not the Future Development Area is added to the Community **(as provided in Article III, Sections 3 and 4, of this Declaration)**; (iii) the right to relocate boundaries of Lots and to otherwise alter Lots it owns (as provided in Article III, Section 6 of this Declaration); (iv) the right to construct, operate and maintain one or more sales offices, Lots with model homes and other development, sales and rental facilities within the Common Areas and any Lots owned by Developer from time to time, located anywhere in the Community or the Future Development Area (as provided in Article III, Section 7 of this Declaration); (v) the reservation of easements, for itself, its employees, representatives, agents and Builders through and over the Common Areas for the purpose of exercising its Special Developer Rights, as provided in Article III, Section 4 of this Declaration; (vi) the right to erect and maintain signs and other sales displays offering any of the Lots for sale, and to locate such signs on any Lot owned by Developer or its designees, and/or on the Common Areas, as provided in Article III, Section 8 of this Declaration; (vii) the right to erect and maintain Entrance Improvements on the Entrance Easement Areas, as provided in Article III, Section 2 of this Declaration; (viii) the right to delegate to Builders all or certain of Developer's Special Development Rights; and (ix) the right to require the Association to obtain Developer's consent to any amendment of the Community Documents (as provided in Article X, Section 4 of this Declaration).
- e. **"Site Plan"** shall mean the drawing depicting Developer's proposed plan of development for the Active Development Area and the Future Development Area. Although Developer presently hopes to develop the Community in the manner shown on the Site Plan, Developer does not commit itself to do so, and reserves the right to depart from the plan of development shown on the Site Plan in any manner Developer considers appropriate.
- f. **"Wetland Buffer Easement"** shall mean the easement for protecting the quality of water in, or buffering the flow of water into, the Wetlands and/or NURP Ponds, as more fully described in Article V, Section 4, below.

## ARTICLE II

### RESTRICTIONS AND COVENANTS AFFECTING THE COMMUNITY

#### Section 1. Residential Purposes.

Each Lot shall be used only for one, detached, single-family house and customary ancillary uses. No Lot may be used for any commercial purpose, except that Lots or portions of Lots may be used: (i) by Developer and Builders in the manner described in Article III of this Declaration; and (ii) by Lot owners for home occupations that are permitted by the applicable zoning ordinances; provided, however, no Lot may be used for unlicensed residential care facilities, unlicensed day care facilities, or commercial agriculture, even if such uses would be permitted by applicable zoning ordinances.

#### Section 2. Building Specifications

a. **Height.** No dwelling shall be erected, altered, placed or permitted to remain on a Lot other than one detached, single-family house not to exceed two stories in height, as measured from grade. If the house includes a walk-out or look-out basement, the basement shall not be counted as a story.

b. **Garages.** Each house shall have one or more attached, fully-enclosed garages. No carport(s) or detached garages shall be erected, altered, placed or permitted to remain on a Lot. Garages may contain space for any number of cars, but from the street in front of the house it must appear that there is garage space for no more than three cars.

c. **Storage Structures.** Attached structures for storage purposes are permitted, but any storage structure large enough to hold an automobile shall be considered a garage, whether or not it is used as a garage. Each storage structure on a Lot shall be of the same color and constructed of the same exterior materials (including siding and roofing) as the house on the Lot and shall be subject to Architectural Control Committee approval.

d. **Completion.** The exterior of each house or other structure constructed or placed on a Lot shall be completely finished within nine (9) months after commencement of construction.

#### Section 3. Setbacks.

All structures permitted by this Declaration shall be constructed or placed on Lots so as to be sufficiently set back from all Lot lines as to comply with applicable City ordinances, as modified by any applicable planned unit development agreement or permit.

#### Section 4. Prohibition of Damage and Certain Activities.

No illegal, noxious, or offensive trade or activity shall be conducted upon any Lot, nor shall anything be done within the Community which would: (i) violate any then existing municipal codes or ordinances; (ii) cause a material increase in insurance rates of neighboring homes; (iii) cause any unusual liability, health or safety risk, or expense, for the Association or any

Owner or Occupant; or become an unreasonable annoyance or a nuisance to any Occupant of the Community. All Owners, Occupants and their guests shall use the Common Areas in a reasonable manner that does not unduly interfere with the use of the Common Areas by other Owners, Occupants and their guests.

**Section 5. Prohibited Dwellings.**

No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any Lot at any time (either temporarily or permanently) as a dwelling.

**Section 6. Lawn Ornaments.**

Lawn ornaments (such as statuettes, birdbaths, windmills and whirly-gigs) and lawn art (such as sculpture and statues) are prohibited in front yards and side yards.

**Section 7. Antennas.**

Satellite dishes less than 30 inches in diameter are allowed on every Lot; provided, however, the location of such satellite dishes must be reviewed and approved by the Architectural Control Committee prior to installation. No other exterior antenna, aerial, tower, wire, line, cable, dish or other device for transmitting or receiving radio, television, microwave, laser or other electromagnetic signals ("Antenna") shall be located on any Lot without the written permission of the Architectural Control Committee. The Architectural Control Committee shall deny permission if it determines, in its sole discretion, that the Antenna would be offensive to the sight (taking into account the visibility of the Antenna during all seasons of the year) from other Lots within the Community (or which are located in portions of the Future Development Area) located nearby. Any structure intended to shield an exterior Antenna from sight shall also be subject to review and prior approval by the Architectural Control Committee.

**Section 8. Animals.**

No animals of any kind shall be raised, bred or kept on any Lot, except that dogs, cats and other household pets may be kept, provided they are not kept, bred, or maintained for any commercial purpose. No more than two dogs and two cats shall be kept on a Lot at any one time and the total number of pets shall not exceed three.

**Section 9. Driveway; Parking; Vehicles.**

All driveways and parking areas constructed on any Lot shall be paved with an asphalt, brick, concrete or bituminous surface. Operable automobiles may be kept, stored or parked only on paved driveways, on paved parking areas, or in enclosed garages. Other vehicles shall be kept, stored or parked only in enclosed garages. "Other vehicles" means all motorized and all non-motorized vehicles except operable automobiles, such as the following: automobiles that are inoperable, trucks, buses, vans, recreational vehicles, all-terrain vehicles, ambulances, hearses, motorcycles, motorbikes, bicycles, snowmobiles, jet skis, canoes, boats, and other watercraft, aircraft, house trailers, camping trailers, other trailers, lawn mowers, lawn tractors, over-the-road tractors, and other tractors. Notwithstanding the foregoing prohibition, guests of the owner of a

Lot visiting for less than 15 days in any 30 day period may park their vehicles on unenclosed paved areas of the Lot.

**Section 10. Signs.**

No sign of any kind shall be displayed to the public view on any Lot, except signs that comply with municipal ordinances and have been approved by the Architectural Control Committee pursuant to Article IV of this Declaration; subject, however, to the reservation by Developer of the right of Developer and Builders to place advertising signs on Lots and/or homes for sale.

**Section 11. Leases.**

Any lease between an Owner and a tenant: (i) shall be in writing; (ii) shall provide that the terms of the lease are subject in all respects to the provisions of this Declaration and to the provisions of the Articles of Incorporation, By-Laws and Rules and Regulations of the Association (collectively, the "**Community Documents**"); (iii) shall provide that failure by the tenant to comply with the terms of such documents shall be a default under the lease; and (iv) permit the Association to terminate the lease in the event of a violation by a tenant of a provision of any of the Community Documents.

**Section 12. Restoration of Lots.**

Every area on each Lot where natural vegetation has been removed but not replaced with improvements or landscaping must be completely sodded. If a certificate of occupancy for a house is issued in October through April, installation of sod must be completed by the July 15th following issuance of the certificate of occupancy. If a certificate of occupancy for a house is issued in May through September, the installation of sod must be completed within 60 days after issuance of the certificate of occupancy.

**Section 13. Boulevard Trees.**

Developer hereby reserves to itself, and grants to the Association, easements allowing Developer and/or the Association to plant, maintain, and replace trees in the unpaved portion of every street right-of-way and in that portion of each Lot lying within 15 feet of a street right-of-way ("**Tree Easement Area**"). Neither Developer nor the Association shall be obligated to plant any particular trees in the first instance, but if the Developer or the Association plants any tree within any Tree Easement Area, then:

- (i) The Owner of the Lot closest to a tree shall properly maintain the tree for so long as it lives and shall remove the tree if it dies or becomes diseased.
- (ii) The Association and Developer shall have the right (but not the obligation) to replace any tree in a Tree Easement Area if it dies or becomes diseased, or to remove the tree and not replace it.

The easements reserved in this Section 13 shall be non-exclusive, irrevocable, assignable, commercial easements in gross for the benefit of Developer, the Association and their respective



successors and assigns. The easement in favor of the Association shall be perpetual, but the easement in favor of the Developer shall expire when the Developer no longer owns any Lot in the Community.

### ARTICLE III

#### RESERVATION OF SPECIAL DEVELOPER RIGHTS AND CREATION OF ADDITIONAL COVENANTS AFFECTING THE COMMUNITY

##### **Section 1. Entrance Improvements and Easement Rights and Obligations Related to Entrance Improvements.**

Developer hereby reserves to itself and grants to the Association easements to install, operate, maintain, repair and replace Entrance Improvements in the Entrance Easement Areas. Developer shall have the right, but not the obligation, to perform such work as may be necessary or appropriate to do so. The Association shall have the right, but not the obligation, to install Entrance Improvements within each Entrance Easement Area. If Developer or the Association install Entrance Improvements in the Entrance Easement Areas, the Association shall be responsible for operating, maintaining, repairing and replacing them in a manner that preserves the Entrance Improvements in good operating order and good appearance. So long as the Developer owns any Lot, no Entrance Improvements shall be removed without being replaced by Entrance Improvements of comparable quality. The easements described in this section shall be non-exclusive, perpetual, irrevocable, assignable, commercial easements in gross for the benefit of the Developer, the Association and their respective successors and assigns; provided, however, that the easement in favor of Developer shall expire when Developer no longer owns any Lot in the Community.

##### **Section 2. Street Extensions.**

Developer reserves an easement to extend streets that lead to the outer boundary of the Active Development Area into the Future Development Area and/or into other adjoining land. Until such streets are extended, Developer may install structures to prevent motor vehicles from entering the Future Development Area or other adjoining land.

##### **Section 3. Completion of Improvements.**

Developer reserves an easement to complete all improvements to the Common Areas, following conveyance of the Common Areas to the Association, as may be necessary or appropriate in Developer's sole judgment to appropriately develop the Community and/or the Future Development Area.

##### **Section 4. Easements for Utilities, Access and Performance of Work.**

To have and use easements, for itself, its employees, representatives, agents, Builders, and prospective purchasers through and over the Common Elements for the purpose of exercising its Special Developer Rights, including the right: (i) to locate utility lines in the Common Areas for the benefit of all or part of the Future Development Area; (ii) to have access to the Future Development

Area through the Common Areas of the Community; and (iii) to perform the work necessary to develop the Community and/or the Future Development Area, as provided for in Section 3 of this Article III.

**Section 5. Right to Add Portions of the Future Development Area to the Community.**

Developer reserves the right to add portions of the Future Development Area to the Community at any time and from time to time before the tenth (10<sup>th</sup>) anniversary of the date this Declaration is recorded. Developer is not required, however, to add any portion of the Future Development Area to the Community, and has reserved easements in the Common Areas of the Community for utility, access and street extension purposes for the benefit of the Future Development Area in the event Developer elects not to add the Future Development Area to the Community. Portions of the Future Development Area may be added to the Community by means of recording one or more Supplemental Declarations. Any such Supplemental Declaration shall require the signatures only of those Lot owners and mortgagees of the portions of the Future Development Area then being added to the Community. No consent of the Association or the Owners or mortgagees of Lots in the Community shall be required in connection with adding any portion or portions of the Future Development Area to the Community.

**Section 6. Relocate Boundaries and Alter Lots.**

Developer reserves the right to relocate boundaries between Lots it owns and to otherwise alter Lots and Outlots owned by Developer.

**Section 7. Sales Facilities.**

Developer reserves the following rights for itself and for Builders to whom Developer hereafter designates: (i) the right to construct, operate and maintain one or more sales offices, management offices, Lots with model homes and other development, sales and rental facilities on any Lots owned by Developer anywhere within the Community or in the Future Development Area; (ii) the right to place and use one or more trailers on Lots owned by Developer or on the Common Areas as construction office, for storage of building materials, or for any of the purposes described in clause (i); and (iii) the right to store materials and earth during the construction of improvements to the Common areas or in connection with the construction of houses on Lots.

**Section 8. Signs.**

Developer reserves the right to erect and maintain signs and other sales displays offering the Lots for sale. Such signs may be located by Developer in or on any Lot owned by Developer or its designated Builders and/or on the Common Areas.

**Section 9. Conveyance of Common Areas to the Association.**

Developer covenants to convey the following Outlots in Hunters Crest Addition to the Association promptly following the recording of this Declaration:

Outlots A, C and D, Hunters Crest Addition

Developer reserves the right to add to the Community all, some, or none of the other Outlots in Hunters Crest Addition in connection with the addition of portions of the Future Development Area to the Community.

**Section 10. Landscaping Islands.**

Developer shall have the right, but not the obligation, to install, repair, maintain and replace concrete curbs, plants, landscaping structures and utilities in circular islands in the end of each cul-de-sac in the Active Development Area. If Developer constructs any island, the Association shall have the right and the obligation to repair, maintain and replace all concrete curbs, plants, landscaping structures and utilities that the Developer has installed in the island.

**ARTICLE IV**

**ARCHITECTURAL CONTROL COMMITTEE**

**Section 1. Committee Members.**

The Architectural Control Committee (the "Committee") shall initially be composed of the partners of Sienna Corporation, 4940 Viking Drive, Suite 608, Edina, MN 55435; provided, however, that the Committee may designate a representative to act in its name. In the event of a death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor. Neither the members of the Committee, nor its designated representative, shall be entitled to any compensation for services performed pursuant to this covenant. After all of the Lots in the Active Development Area and Future Development Area have been sold by Developer or its successors and assigns, a Committee consisting of three (3) members shall be appointed by the Board of Directors of the Association.

**Section 2. Work Requiring Committee Approval.**

No work of the following kind may be performed on any Lot without the prior review and written approval by the Committee of the plans and specifications for the proposed work:

- a. Clearing of one or more trees from a Lot;
- b. Grading a Lot;
- c. Constructing, erecting or installing any structure on a Lot, including (without limitation) the following structures: any house, garage, shed or other building; any porch,

deck or balcony; any fence, wall or gate; any mailbox, newspaper box, or light post; any exterior antenna (subject to Article II, Section 7); any retaining wall, terrace or other landscaping structure; any patio, driveway or parking area; any tennis court; and any swimming pool (whether above ground or below ground);

- d. Changing the exterior color, style or materials of any structure on a Lot; or
- e. Planting trees, shrubs and other plants if such plantings differ from the Landscape Plan for the Community approved by the City.

Nothing contained in this Section shall be interpreted in a manner that would require an Owner to obtain Committee approval in connection with renovating or performing other work in the interior of any structure.

### **Section 3. Review of Plans and Specifications.**

At least fourteen (14) days prior to submitting a building permit to the City, the Owner of the Lot shall submit to the Committee one complete set of plans and specifications (including, without limitation, full site plans, grading and drainage plans, certified survey, building elevations, roof pitches, exterior colors and materials). Within fourteen (14) days after receipt of plans and specifications, the Committee shall approve or disapprove them in writing. The Committee's approval of plans and specifications shall not constitute any representation, warranty or assurance that they comply with applicable municipal codes and ordinances. The Committee may disapprove plans and specifications only for one or more of the following reasons:

- a. Non-compliance with this Declaration, municipal ordinances or other governmental regulations;
- b. Non-compliance with the Architectural Guidelines as prepared by the Developer and as may be modified from time to time by the Committee;
- c. Failure of the proposed work to be compatible with the Lot, in terms of topography, soils and existing vegetation;
- d. Failure of the proposed work to be of the same standard (as determined by the Committee in its sole discretion) as other houses or other structures (as the case may be) built in the Community, in terms of style, general appearance, general size, height and width, and extent to which views are obstructed. Developer reserves the right, however, to establish different standards for houses and other structures in portions of the Future Development Area that are added to the Community); and/or
- e. Failure of the plans and specifications to show all information necessary, in the opinion of the Committee, to evaluate the foregoing characteristics.

The Committee's determinations concerning the plans and specifications shall be conclusive. If the Committee disapproves the plans and specifications, it shall endeavor to state in writing the reason(s) for such disapproval and the deficiencies which must be cured to obtain

approval. The Committee shall retain, for a period of three (3) years, all plans and specifications submitted to it and a record of all actions taken with regard to them. The Committee's approval shall not be considered to be a certification that the plans and/or specifications are correct, or that the proposed work is safe or conforms to applicable law.

No building permit shall be submitted to the City without first obtaining the approval of the Committee and the application signed by a representative of the Committee.

**Section 4. Remedies Against Owners.**

If any work which, under this Declaration, requires the Committee's approval, is commenced without first obtaining the Committee's approval of the plans and specifications, or if any work is completed other than in accordance with the plans and specifications as approved by the Committee, Developer, the Association or any Owner of a Lot may bring an action to enjoin further work and to compel the Owner to conform the work to the plans and specifications as approved by the Committee; provided, however, that any such action must be commenced and a notice of lis pendens must be filed within ninety (90) days after the date on which a certificate of occupancy is issued by the appropriate municipal authority, in the case of a house, or within ninety (90) days after the date of completion, in the case of any other work.

**Section 5. Remedies Against Committee.**

If the Committee fails to carry out its obligations under this Article IV, then any Owner of a Lot may bring an action to compel the members of the Committee to carry out the Committee's obligations; provided, however, that any such action must be commenced within ninety (90) days after the date on which a certificate of occupancy is issued by the appropriate municipal authority, in the case of a house, or within ninety (90) days after the date of completion, in the case of any other work. An action to compel the members of the Committee to carry out the Committee's obligations shall be the exclusive remedy of any Owner for failure of the Committee and/or its members to discharge such obligations. Under no circumstances shall Developer, the Committee or its members be liable to any person for damages, direct, indirect, consequential or otherwise.

**ARTICLE V**

**COMMON AREAS**

**Section 1. Right to Use Common Areas.**

Every Owner shall have a non-exclusive right and easement to reasonably use and enjoy the Common Areas, including the right of access to and use of the Association's improvements thereon. The Association may suspend this right and easement during any period when an Owner is not-current in paying annual or special assessments owed to the Association; provided, however, that nothing contained herein shall be interpreted to deprive an Owner of the right to have access to the Owner's Lot. The right and easement described in this Section 1 is appurtenant to and shall pass with the title to each Lot, even if not mentioned in an instrument of conveyance. Each Owner's right to use the Common Areas shall be subject to uniform rules and

regulations adopted by the Board. Use of the Common Areas shall be limited to those activities, which, in the judgment of the Board, are not likely to create a nuisance or be an annoyance to the occupants of neighboring Lots. Nevertheless, the Association may sponsor occasional special events (such as neighborhood picnics) upon any portion of the Common Areas.

**Section 2. Improvements in Common Areas.**

Only Developer and the Association shall have the right to install any improvements or plantings in the Common Areas. Upon the installation of any improvements and/or plantings in the Common Areas, the improvements and plantings shall become the property of the Association. Developer shall reasonably maintain and repair the improvements and plantings in the Common Areas through December 31, 2004; thereafter the Association shall be responsible for maintaining the improvements and plantings in the Common Areas without further obligation on the part of Developer. The Board may, in its discretion, choose to remove and not replace any improvements and plantings in the Common Areas. Developer makes no warranty regarding the improvements or plantings in the Common Areas other than that for the one year period after installation, all improvements and landscaping installed in any Common Areas and public rights-of-way by the Developer shall be free from defects in materials or workmanship.

**Section 3. Actions Affecting Common Areas.**

The Common Areas shall not be abandoned, partitioned, subdivided, encumbered, leased, sold, transferred or dedicated for public use, except by the recording of an instrument executed by the Association, approved by the Owners owning at least 60% of the Lots and, if the Developer owns any Lots, then by the Developer.

**Section 4. Wetland Buffer Easement; Obligation to Maintain NURP Ponds.**

The portions of the Active Development Area and the Future Development Area, shown on the Site Plan as Wetlands and/or NURP Ponds are hereby made subject to a permanent Wetland Buffer Easement in favor of the City which prohibits the use of said Wetlands and NURP Ponds for the following purposes:

- a. Moving or other vegetative disturbance;
- b. Application of fertilizer;
- c. Deposit of yard waste or other waste disposal;
- d. Placement of structures;
- e. Excavation, filling, or any other alteration of a Wetland that impedes the function of the Wetland in protecting the quality of water in, or buffering flows into, the Wetland or NURP Pond.

The Association shall monitor and maintain the portions of the Active Development Area and Future Development Area labeled on the Site Plan as Wetlands and NURP Ponds in accordance

with applicable requirements of the City, and the cost thereof shall be considered a Common Expense of the Association.

Declarant reserves for itself and its successors and assigns, and for the Owners of Lots in the Community and their successors and assigns, to enter upon the portions of the Active Development Area and Future Development Area labeled on the Site Plan as Wetlands and NURP Ponds to do and perform such acts as are necessary or appropriate to: (i) properly maintain said Wetlands and NURP Ponds; and (ii) enforce compliance with the terms of the Wetland Buffer Easement created by this Article V, Section 4, of this Declaration. Developer also reserves the right, on behalf of Developer and the Association, to have reasonable access from and to the portions of the Active Development Area and Future Development Area labeled on the Site Plan as Wetlands and NURP Ponds over such portions of the Active Development Area and Future Development Area as may be necessary or appropriate to carry out the acts described herein. Developer confers upon the City an affirmative right, but not the obligation, to perform neglected maintenance of said Wetlands and NURP Ponds if the Association fails to do so, and grants the City the right to enter upon the Wetlands and NURP Ponds, as well as the portions of the Community necessary to have access to and from the Wetlands and NURP Ponds, at any reasonable time, to enforce compliance with the terms of this Section of the Declaration. Notwithstanding anything in the foregoing apparently to the contrary, such entry upon the Active Development Area or Future Development Area for purposes of access to said Wetlands and NURP Ponds shall be done in a manner that does not damage the improvements constructed on any Lot.

**Section 5. Street Sweeping.** So long as it is the policy of the City to sweep the streets once per year, the Association shall sweep the streets once per year after the leaf fall, and the cost thereof shall be considered a Common Expense of the Association.

**Section 6. Sidewalks and Trails.** The Association shall maintain all trails, including the removal of snow. The Association shall also maintain all sidewalks, including snow removal, adjacent to Common Areas and sidewalks along Hunters Trail. Individual Owners shall be responsible for the maintenance including snow removal for sidewalks adjoining their property other than sidewalks to be maintained by the Association noted above.

## ARTICLE VI

### ASSOCIATION INSURANCE

**Section 1. Liability Insurance.**

The Association shall keep in force at all times a comprehensive policy of general liability insurance covering all real property and all personal property owned, maintained or managed by the Association. The policy must provide coverage of at least One Million Dollars (\$1,000,000) for bodily injury and property damage for any single occurrence. The policy must contain a severability of interest clause or an endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. The provisions of Section 515B.3-111, limiting the tort liability of Owners of Lots arising out of ownership, by virtue of membership in the Association, of the Common Areas, are hereby incorporated into this Declaration.

**Section 2. Hazard Insurance.**

The Association shall procure insurance for fire, extended coverage, vandalism and any other perils the Board may deem necessary on all insurable real property and personal property owned by the Association. The insurance shall be on a current replacement cost basis in such amounts and with such deductibles as the Board may determine. The proceeds of such hazard insurance shall be used solely for the repair, replacement or reconstruction of such insurable common property, including insured improvements. The Association shall maintain funds for all such deductibles in its reserves and shall designate such funds for that purpose only.

**Section 3. Effect of Acts Not Within Association's Control.** All policies of insurance maintained by the Association shall provide that the coverage shall not be voided by or conditioned upon (i) any act or omission of an Owner or Eligible Mortgagee, unless acting within the scope of authority on behalf of the Association, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

**Section 4. Cost of Insurance.**

The cost of such liability and hazard insurance shall be a Common Expense which shall be assessed against the Owners and their Lots as provided in Article VIII, below.

**Section 5. First Mortgagees.**

First mortgagees of Lots, jointly or singly, may pay overdue premiums on insurance policies, or may secure new insurance coverage upon the lapse of a policy, for the Common Areas. First mortgagees making such payments shall be owed immediate reimbursement from the Association. The Association is authorized to enter into an agreement in favor of all first mortgagees of Lots establishing entitlement to such reimbursement.

**Section 6. Additional Insurance.**

The Association shall at all times maintain any additional coverage commonly required by private mortgage investors for developments similar to the Active Development Area in terms of construction, location and use.

**Section 7. Owner's Personal Insurance.** Each Owner may obtain additional personal insurance coverage, at his or her own expense, covering fire and other casualty to the house and other improvements from time to time on his or her Lot, and the personal property associated therewith, as well as such liability insurance as each Owner may consider prudent. The Association shall have no obligation to provide such insurance in connection with the Lots, the improvements and personal property thereon, or against liability in connection with the use of Owner's Lots.

**ARTICLE VII**



## HOMEOWNERS ASSOCIATION

### Section 1. Membership.

Each and every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

### Section 2. Voting Rights.

The Association shall have two classes of voting membership:

a. **Class A.** Class A Members shall consist of all Owners (except Developer). Class A Members shall be entitled to one vote for each Lot owned. When more than one person owns any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. Upon becoming an Owner, each Owner shall register his or her address with the Secretary of the Association and, if a Lot is owned by multiple Owners, they shall at that time register with the Secretary their written agreement as to how they will share their votes among themselves and how they will resolve any voting conflicts among themselves. Such a voting agreement may be amended at any time by registering with the Secretary a written amendment executed by all Owners of the Lot.

b. **Class B.** Class B Members shall consist solely of the Developer. The Class B Member shall be entitled to four (4) votes for each Lot it owns. The Class B membership shall cease and be converted to Class A membership on the earlier to occur of either of the following events: (i) when the number of votes outstanding in the Class A Membership equals or exceeds the number of votes outstanding in the Class B Membership; or (ii) Ten (10) years following the conveyance of the first Lot in the Community to an Owner other than Developer.

### Section 3. Obligations of Developer at Expiration of the Class B Membership.

When the Class B Membership is converted to Class A Membership in accordance with the provisions of Section 2 of this Article VII, the obligations of Developer, or its successor shall be limited to the following: (i) delivery of all funds belonging to the Association to the Board; (ii) delivery to the Board of all records and other personal property of the Association that is then in Developer's possession or control; (iii) assignment to the Association of all warranties on Association property to the extent not previously assigned to the Association; and (iv) delivery to the board of all plans, specifications and operating or warranty manuals for the improvements on or to the Common Areas, to the extent such plans and specifications are in Developer's possession or control. By delivering such material to: (i) any member of the Board of Directors; (ii) any professional property management company or other property manager then managing the Association and/or the Common Areas; or (iii) any other person designated by the Board of Directors as the party to whom such material is to be delivered; Developer shall be considered to have discharged its obligations under this Section.

## ARTICLE VIII

### COVENANT FOR GENERAL AND SPECIAL ASSESSMENTS

#### Section 1. General Assessments.

General Assessments for Common Area expenses shall be determined by the Board, in its discretion, subject to the provisions of this Article. General assessments shall be assessed against the Lots on a uniform basis; provided, however, that the Board shall have discretion: (i) to levy assessments for Common Expenses that benefit fewer than all of the Lots exclusively against the Lots benefited, on the basis of the actual cost incurred with respect to each Lot; (ii) to assess reasonable attorneys' fees and other costs incurred by the Association in connection with: [A] the collection of assessments; and [B] the enforcement of the Community Documents against an Owner, Occupant or their guests, against the Owner's Lot; (iii) to assess fees, charges, late charges, fines and interest as provided in Section 515B.3-116(a) of the Act; and (iv) to assess the costs of repairing damage to Common Areas or another Lot, including damage to the improvements thereon, caused by the act or omission of any Owner, Occupant or their guests against the Owner's Lot to the extent the damage is not covered by insurance. If any installment of an assessment becomes more than 30 days past due, the Association may, upon ten (10) days written notice to the Owner, declare the entire amount of the assessment immediately due and payable in full. General assessments shall provide, among other things, for contributions to a separate reserve fund deemed sufficient by the Board in the Board's sole and absolute discretion, to cover the periodic cost of maintenance, repair and replacement of the Common Areas and the improvements thereon. The determination of the Board as to the sufficiency of the amount to reserve for such purposes shall not be subject to challenge by the Owners unless notice of such challenge is filed with the Board not later than ninety (90) days of the date on which the Board adopts the annual Association budget providing for the reserves in question.

#### Section 2. Special Assessments.

In addition to general assessments, the Board may levy in any year a special assessment against all Lots for the purpose of defraying in whole or in part (i) the cost of any unforeseen or unbudgeted expense, (ii) general or specific reserves for maintenance, repair or replacement, and (iii) the maintenance, repair or replacement of any part of the Common Areas in the Community, and any improvements or other property of the Association related thereto. Special Assessments 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.

#### Section 3. Liability of Owners for General and Special Assessments.

The obligation of an Owner to pay assessments shall commence on the date on which a certificate of occupancy is actually issued for a house constructed on the Owner's Lot. The Owner at the time an assessment is payable shall be personally liable for the assessment against the Owner's Lot. Such liability shall be joint and several where there are multiple Owners of a Lot. The liability is absolute and unconditional. No Owner is exempt from liability for payment of his or her share of an assessment by right of set-off, by waiver of use or enjoyment of any part of the Common Areas, by absence from or abandonment of the Lot, by the waiver of any other rights, or by reason of any claim against the Developer, the Association or its officers, directors or agents, or

for their failure to fulfill any duties under the Community Documents. The Association may invoke the charges, sanctions and remedies set forth elsewhere in the Community Documents or provided for in the Act in connection with non-payment of assessments, for the purpose of enforcing its rights hereunder.

**Section 4. Assessment Lien.**

The Association shall be deemed to have a lien on a Lot for any assessment levied against that Lot 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 of the assessment becomes due. Fees, charges, late charges, fines and interest charges may be 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 Article. Recording of this Declaration constitutes record notice and perfection of any lien under this Article, and no further recordation of any notice of or claim for the lien is required.

**Section 5. Foreclosure of Lien; Remedies.**

A lien for unpaid assessments may be foreclosed against a Lot under the laws of the State of Minnesota (i) by action, or (ii) by advertisement as a lien under a mortgage containing a power of sale. The Association, or its authorized representative, shall have the power to bid in at the foreclosure sale and to acquire, hold, lease, mortgage and convey any Lot so acquired. The Owner and any other person claiming an interest in the Lot, by the acceptance or assertion of any interest in the Lot, grants to the Association a power of sale and full authority to accomplish the foreclosure. The Association shall, in addition, have the right to pursue any other remedy at law or in equity against the Owner who fails to pay any assessment or charge against the Lot.

**Section 6. Lien Priority: Foreclosure.**

A lien under this Article is prior to all other liens and encumbrances on a Lot except (i) liens and encumbrances recorded before this Declaration, (ii) any first mortgage on the Lot, and (iii) liens for real estate taxes and other governmental assessments or charges against the Lot. Notwithstanding the foregoing, if a first mortgage on a Lot is foreclosed, and no Owner redeems during the Owner's period of redemption provided by Chapters 580, 581, or 582 of the Minnesota statutes, then the holder of the sheriff's certificate of sale from the foreclosure of the first mortgage shall take title to the Lot subject to a lien in favor of the Association for unpaid assessments for Common Expenses in the manner provided for in Sections 515B.3-115 (a), (e) (1) to (3), (f) and (i) of the Act which became due, without acceleration, during the six months immediately preceding the first day following the end of the Owner's period of redemption.

**Section 7. Statement of Assessments.**

If a Lot is sold to a third party, the buyer shall not be personally liable for any unpaid assessments and other charges assessed by the Association against the seller or the seller's Lot prior to the time of conveyance to the buyer, unless expressly assumed by the buyer. The lien of such assessments shall, however, remain against the Lot until satisfied. Any person shall be entitled to a written statement from the Association setting forth the amount of the unpaid assessments against the Lot. This statement shall be binding on the Association and the seller and buyer.

## ARTICLE IX

### ADDITIONAL RIGHTS OF MORTGAGEES

#### Section 1. Notice of Meetings.

The holder of any mortgage of record against any Lot, upon written notice to the Association advising it of such mortgage interest and its mailing address, shall be given written notice by the Association of all regular and special meetings of the members and of the Board of Directors of the Association; but failure to give such notice to any or all such mortgagees shall not invalidate or affect, in any way, such meeting, if otherwise duly called and held.

#### Section 2. No Suspension of Rights.

Any voting rights which are suspended as to any Owner and that Owner's employees, licensees, invitees, tenants and guests, pursuant to this Declaration, or pursuant to the Bylaws of the Association, shall not be suspended as to any mortgagee or other person who becomes an Owner by virtue of mortgage foreclosure or by any transfer of title in lieu of foreclosure, because of any default or failure of the prior Owner.

#### Section 3. Notice of Defaults.

The holder of any mortgage of record against any Lot, upon written request given by the holder of such mortgage to the Association advising the Association of such mortgage interest and its mailing address, shall be given written notice by the Association of all defaults of the Owner of the Lot upon which such mortgage is a lien, then or thereafter existing, in fulfilling his obligations under this Declaration or the Bylaws of the Association; but the defaults set out in such notice shall not be conclusive on the Association, and the Association shall have the right to enforce all claims against such Owner for all defaults of such Owner whether or not notice thereof is given to the holder of such mortgage.

#### Section 4. Copy of Budget.

The holder of any mortgage of record against any Lot, upon written request given by the holder of such mortgage to the Association advising the Association of such mortgage interest and its mailing address, shall be sent a copy of the proposed annual budget of the Association at least fifteen (15) days prior to the meeting at which such proposed annual budget is to be considered, and the holder of such mortgage shall be entitled to raise objections to and comments upon such proposed annual budget at such meeting or otherwise; but failure to send such copy to any or all such mortgagees shall not invalidate or affect, in any way, such proposed annual budget or any action taken with respect thereto, nor shall any objection or comments by any such mortgagees with respect to such proposed annual budget be binding upon the Association.

## ARTICLE X

### GENERAL PROVISIONS

#### Section 1. Enforcement.

Developer, the Association, any Owner or any mortgagee of record, shall have the right to enforce this Declaration and the other Community Documents by proceedings at law or in equity. Failure by Developer, the Association, any Owner or mortgagee, or any governmental authority to enforce any provision of this Declaration or the other Community Documents shall not be deemed a waiver of the right to do so thereafter.

#### Section 2. Severability.

Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

#### Section 3. Duration

This Declaration shall run with and bind the Lots and the Common Areas for a term of thirty (30) years from the date this Declaration is recorded, after which time this Declaration shall be automatically renewed for successive periods of ten (10) years each.

#### Section 4. Amendment.

Subject to the provisions of Section 5 of Article III, this Declaration may be amended by affirmative vote of the Members owning at least 60% of the Class A Membership in the Association; provided, however, that so long as Developer owns any Lot, any amendment shall also require Developer's consent as evidenced by the signature of Developer. The affirmative vote of the requisite number of Members may be evidenced by the certificate of an authorized officer of the Association, as provided for in the Act. Each amendment must be recorded with the County Recorder and/or Registrar of Titles, as appropriate. The consent of at least 60% of the holders of first mortgages on the Lots shall also be required in connection with any amendment to the Declaration that may impair a Mortgagee's security.

#### Section 5. Notices.

Any notice required to be sent to any Owner under the provision of this Declaration shall be deemed to have been properly sent when mailed postage prepaid to the last known address of the person who appears as Owner in the records of the Association at the time of such mailing and to the occupant of the address of the Owner's Lot, if it is a different address.

**Section 6. Captions.**

The title of this instrument and the captions of the articles, sections and subsections hereof are for convenience of reference only.

**Section 7. No Trust Created.**

No trust is created by this Declaration or by the conveyance of Common Areas from time to time existing in the Community to the Association. No charitable purpose is served by this Declaration. This Declaration is for the private use and benefit of the Owners and not for any public use, benefit or purpose.

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

**DEVELOPER:**

**SIENNA CORPORATION**

By: \_\_\_\_\_

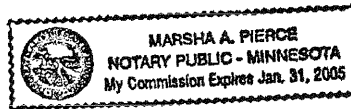
Its: \_\_\_\_\_

STATE OF MINNESOTA }  
                                  } ss  
COUNTY OF HENNEPIN }

The foregoing instrument was acknowledged before me this 15 day of January, 2008, by John Hankinson, the Vice President of Sienna Corporation, a Minnesota corporation, on behalf of the corporation.

Marsha A. Pierce  
Notary Public

This instrument was drafted by:  
Fredrikson & Byron, P. A. (LJB)  
1100 International Centre  
900 Second Avenue South  
Minneapolis, MN 55402



::ODMA\PCDOCS\FBDOCS\125328964

[Space Above this Line for Recording Office Use Only]

### AMENDMENT TO DECLARATION OF COVENANTS FOR HUNTERS CREST

This Amendment to Declaration for Hunters Crest is made effective as of October 16, 2006..

2A

#### RECITALS

A. A document entitled *Declaration of Covenants for Hunters Crest* dated January 15, 2002 was filed in the office of the Hennepin County Recorder on February 8, 2002 as Document Number 7648222, and in the office of the Hennepin County Registrar of Titles on October 21, 2005, as Document Number 4177442, (the "Initial Declaration"). The Initial Declaration, in Article 1, Section 1, designates certain parcels as the "Active Development Area."

B. The Members of the Association have determined that it is in the best interest of the Members to amend the Initial Declaration and all recorded amendments thereto (collectively, the "Declaration") to define the Active Development Area in a way that does not include Lots 1 through 4, Block 9, and Lots 1 through 4, Block 10, all in Hunters Crest 4<sup>th</sup> Addition (the "Excluded Lots").

#### PROVISIONS

1. Effective as of the date this amendment is recorded, the Declaration shall be modified as follows:

- a. The Active Development Area shall be re-defined so as not to include the Excluded Lots.
- b. The Excluded Lots shall no longer be considered to be subject to the Declaration.
- c. Where the Declaration refers to the "Community" or to the "Lots," those references shall be deemed not to include or refer to the Excluded Lots.

NCS-229664-MPLS (BD)

2. The Bylaws of the Association shall be deemed to be modified so as to be consistent with the Declaration, as modified by this Amendment.
3. Except to the extent modified by this Amendment, the provisions of the Declaration shall remain in full force and effect.
4. The undersigned Secretary of the Hunters Crest Homeowners Association, by signing this Amendment, is evidencing (in the manner provided for in the Declaration and Bylaws) that the consent of the requisite percentage of Members of the Association was obtained to adopt this Amendment.

Hunters Crest Homeowners Association, Inc.

By: *[Signature]*

Its President

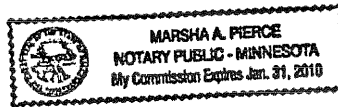
STATE OF MINNESOTA )  
  ) ss.  
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this 16 day of October, 2006, by Bruce G. Nimmer, the President of Hunters Crest Homeowners Association, Inc., a Minnesota non-profit corporation, on behalf of the corporation.

*Marsha A. Pierce*  
Notary Public

This instrument was drafted by:  
Fredrikson & Byron, P.A. (LJB)  
200 South Sixth Street  
Suite 4000  
Minneapolis, MN 55402

#3146156V





**CONSENT OF MORTGAGEE**

Commerce Bank, a Minnesota state banking corporation, as mortgagee of the Active Development Area, hereby consents to the foregoing Amendment to Declaration of Covenants for Hunters Crest and agrees to be bound by it.

IN WITNESS WHEREOF, this Consent has been executed this 24<sup>th</sup> day of October, 2006.

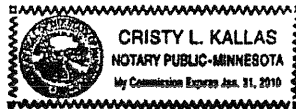
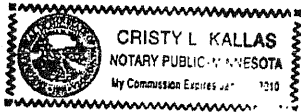
Commerce Bank  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF MINNESOTA     )  
  ) ss  
COUNTY OF Hennepin     )

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of October, 2006, by Cliff Jacobson, the Vice President of Commerce Bank, a Minnesota state banking corporation on behalf of the corporation.

\_\_\_\_\_  
Notary Public

This document was drafted by:  
Sienna Corporation  
Suite 608  
4940 Viking Drive  
Edina, Minnesota 55435





**Doc No 8889529** 11/06/2006 04:30 PM  
Certified filed and or recorded on above date:  
Office of the County Recorder  
Hennepin County, Minnesota  
Michael H. Cunniff, County Recorder  
TransID 268115

Deputy 55  
Fees  
\$35.50 DOC  
\$10.50 SUR  
\$2.00 COPY  
\$48.00 Total