

COMMON INTEREST COMMUNITY NO. XXX¹

PLANNED COMMUNITY

UNNAMED PLAT 7²

DECLARATION

DISCLAIMER: This document is a draft of the declaration for the lots in Unnamed Plat 7. It is provided for informational purposes only. The declarant reserves the right to modify this document prior to recording, as may be reasonable or necessary to comply with governmental and regulatory requirements and/or to complete the declarant's plans to sell its leased lots on Island Lake Reservoir.

This Declaration is made as of _____, 2021, by Minnesota Power, a division of ALLETE, Inc., a Minnesota corporation (the "Declarant"), for the purpose of creating UNNAMED PLAT 7, a planned community under the Minnesota Common Interest Ownership Act (as defined herein and referred to herein as the "Act").

WHEREAS, Declarant is the owner of real property located in St. Louis County, Minnesota, legally described on Exhibit A attached hereto (the "Property"); and

WHEREAS, Declarant desires to establish on the Property, a planned community to be owned, occupied and operated for the use, health, safety and welfare of its Owners and Occupants, for the purpose of preserving the value of the Property, and for the purpose of ensuring its proper subdivision and transfer; and

WHEREAS, Declarant has deemed it desirable for the preservation of the value of the Property to create a non-profit corporation for the purposes of administering and enforcing the covenants and restrictions, maintaining the private roads within the planned community, and collecting and disbursing the assessments and charges hereinafter created; and

¹ The CIC number will be assigned by the County Recorder's Office prior to recording.

² The name of the CIC will be changed prior to recording.

WHEREAS, Declarant has incorporated Unnamed Plat 7 Owners' Association³, a non-profit corporation under the provisions of Minnesota Statutes Chapter 317A, for the purpose of exercising such functions, and

NOW, THEREFORE, Declarant makes the Declaration and submits the Property to the Act as a planned community, declaring that this Declaration shall constitute covenants to run with the Property, and that the Property shall be owned, used, occupied and conveyed subject to the covenants, restrictions, easements, charges and liens set forth herein, all of which shall be binding upon all Persons owning or acquiring any right, title or interest therein, and their heirs, personal representatives, successors and assigns.

SECTION 1—DEFINITIONS

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

1.1 "Act" means Minnesota Statutes, Sections 515B.1-101 through 515B.4-118 and may be cited as the "Minnesota Common Interest Ownership Act."

1.2 "Association" means Unnamed Plat 7 Owners' Association, a non-profit corporation that has been created pursuant to Chapter 317A of the laws of the State of Minnesota, whose members consist of all Owners as defined herein.

1.3 "Board" means the Board of Directors of the Association.

1.4 "Bylaws" means the Bylaws governing the operation of the Association.

1.5 "Common Elements" means all portions of the common interest community other than the Lots. There are no Common Elements in UNNAMED PLAT 7.

1.6 "Common Expenses" means all expenditures made or liabilities incurred by or on behalf of the Association and incident to its operation, including without those items specifically identified as Common Expenses in the Declaration or Bylaws.

1.7 "Governing Documents" means this Declaration, the Articles of Incorporation and Bylaws of the Association, and any Rules and Regulations, as amended from time to time, all of which shall govern the use and operation of the Property.

1.8 "Lot" means a portion of the property contained in the plat of UNNAMED PLAT 7⁴, the boundaries of which are described in Section 2, and which is intended for separate ownership. The word "Lot" as used herein shall have the same meaning as the word "unit" set forth in the Act.

³ The name of the HOA will be changed prior to recording.

⁴ The name of the plat will be changed prior to recording the plat.

1.9 “Member” means all Persons who are members of the Association by virtue of being Owners as defined in this Declaration. The words “Owner” and “Member” may be used interchangeably in the Governing Documents.

1.10 “Occupant” means any Person in possession of or residing on a Lot.

1.11 “Owner” means a Person who owns a Lot, but excluding contract for deed vendors, mortgagees and other secured parties. The term “Owner” includes, without limitation, contract for deed vendees and holders of life estates.

1.12 “Person” means a natural individual, corporation, limited liability company, partnership, trustee, or other legal entity capable of holding title to real property.

1.13 “Rules and Regulations” means the Rules and Regulation of the Association as approved from time to time pursuant to this Declaration.

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

SECTION 2—LOTS; COMMON ELEMENTS

2.1 Lots. The Lots and their characteristics are as follows:

- a. There are thirty-three (33) Lots. Each Lot constitutes a separate parcel of real estate.
- b. The front, rear and side boundaries of each Lot shall be the boundary lines of the platted lot as shown on the Plat, excepting therefrom that part of each Lot between the shore of Island Lake Reservoir and XX feet *horizontal* from the Ordinary High Water Level of Island Lake Reservoir (“OHWL”)⁵. The Lots shall have no upper or lower boundaries.
- c. All Lots are restricted to residential use, as set forth in Section 6.1.
- d. No additional Lots may be created by the subdivision or conversion of Lots pursuant to Section 515B.2-112 of the Act.
- e. The “Unit identifier” for a Lot shall be its lot and block numbers and the subdivision name.

2.2 Common Elements. There are no Common Elements in UNNAMED PLAT 7.

⁵ The Property is subject to requirements of the Federal Energy Regulatory Commission (“FERC”) which currently requires Minnesota Power to own a strip of land along the shore of Island Lake Reservoir 25 feet *horizontal* from the Ordinary High Water Level. Minnesota Power has applied to FERC to reduce the required strip of land to 3 feet *horizontal* from the OHWL. The application is pending. If the application is denied, the strip of land that is required to be retained by Minnesota Power will be a maximum of 25 feet *horizontal* from the OHWL.

SECTION 3—ASSOCIATION MEMBERSHIP

3.1 **Membership.** Each Owner shall be a Member of the Association by virtue of Lot ownership, and the membership shall be transferred with the conveyance of the Owner's interest in the Lot. An Owner's membership shall terminate when the Owner's ownership terminates. When more than one Person is an Owner of a Lot, each such Person shall be a member of the Association, but multiple ownership of a Lot shall not increase the voting rights allocated to such Lot nor authorize the division of the voting rights.

3.2 **Voting and Common Expenses.** Voting rights and Common Expense obligations are allocated equally among the Lots, except that special allocations of Common Expenses shall be permitted as provided in Section 5.

3.3 **Appurtenant Rights and Obligations.** The ownership of a Lot shall include the voting rights and Common Expense obligations described in this Declaration. Said rights, obligations and interests, and the title to the Lots, shall not be separated or conveyed separately.

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

3.5 **Declarant Control.** Notwithstanding the voting provisions of this Section, Declarant may appoint all Board members and officers of the Association during the period of declarant control, subject to the qualifications described in Section 10.4.

3.6 **Master Association.** The common interest community is not subject to a "master association," as such term is defined under the Act.

SECTION 4—ADMINISTRATION

4.1 **General.** The Association shall, subject to the rights of the Owners set forth in the Governing Documents, be responsible for the operation, management and control of the Property. All power and authority of the Association shall be vested in the Board, unless action or approval by the Owners is specifically required by the Governing Documents.

4.2 **Rules and Regulations.** The Board shall have exclusive authority to approve and implement such reasonable Rules and Regulations as it deems necessary from time to time for the purpose of operating and administering the affairs of the Association and regulating the use of the Property; provided that the Rules and Regulations shall not be inconsistent with the Governing Documents.

SECTION 5—ASSESSMENTS FOR COMMON EXPENSES

5.1 General. The assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the residents in the Property and for the maintenance of the private roads within UNNAMED PLAT 7.

5.2 Amounts and Types. Assessments for Common Expenses shall be determined and assessed against the Lots by the Board, in its discretion, subject to the limitations set forth in this Section, and the requirements of the Bylaws. Assessments for Common Expenses shall include annual assessments and may include special assessments. Assessments shall be allocated equally among the Lots, subject to the following qualifications:

- a. Any Common Expense benefiting only the Lots situated on Van Road West or utilizing Van Road West for access to Rice Lake Road (CSAH No. 4) as a class, shall be assessed exclusively against such Lots on the basis of equality. Any Common Expense benefiting only the Lots situated on Van Road East or utilizing Van Road East for access to for access to Rice Lake Road (CSAH No. 4) as a class, shall be assessed exclusively against such Lots on the basis of equality. Any Common Expense or portion thereof benefiting fewer than all of the Lots but not falling within the foregoing provisions of this subsection may be assessed exclusively against the Lots benefited, on the basis of (i) equality, (ii) square footage of the area being maintained, repaired or replaced, or (iii) the actual cost incurred with respect to each Lot.⁶
- b. Reasonable attorneys' fees and other costs incurred by the Association in connection with (i) the collection of assessments and (ii) the enforcement of the Governing Documents against an Owner or Occupant or their guests, may be assessed against the Owner's Lot.
- c. If any damage to the private roads within UNNAMED PLAT 7 is caused by the act or omission of any Owner or Occupant, or their guests, the Association may assess the costs of repairing the damage exclusively against the Owner's Lot.
- d. If any installment of an assessment becomes more than 30 days past due, then the Association may, upon 10 days written notice to the Owner, declare the entire amount of the assessment immediately due and payable in full.

5.3 Special Assessments. In addition to annual assessments, and subject to the limitations set forth hereafter, the Board may levy special assessments against all Lots for the purpose of defraying in whole or in part (i) the cost of any unforeseen or unbudgeted Common Expense, (ii) general or specific reserves for maintenance, repair or replacement, and (iii) the maintenance, repair or replacement of any part of the Property, and any fixtures or other property related thereto. Notwithstanding the foregoing, any special assessment shall be subject to approval by the vote of a majority of those Owners voting at a meeting called for that purpose.

⁶ Only Lots 1 – 24, Block 1 will be accessed for the maintenance of Van Road West. Only Lots 1 – 9, Block 2 will be accessed for the maintenance of Van Road East.

5.4 Working Capital Fund. Declarant shall establish a working capital fund to meet unforeseen expenditures or to purchase additional equipment or services. There shall be contributed to the working capital fund on a one-time basis for each Lot sold by Declarant the sum of \$100.00⁷. The contribution to the working capital fund shall be paid at the time of closing of the sale of the Lot. The amounts paid into this fund are in addition to the regular annual assessments. The funds shall be deposited into the Association's account.

5.5 Liability of Owners for Assessments. The Owner at the time an assessment is payable with respect to the Lot shall be personally liable for the share of the Common Expenses assessed against such Lot. The Association may invoke the charges, sanctions and remedies set forth in the Governing Documents or by law, for the purpose of enforcing its rights hereunder.

5.6 Declarant's Alternative Assessment Program. The Property shall not be subject to an alternate common expense plan under Section 515B.3-1151(a)(2)(i) of the Act.

5.7 Assessment Lien. The Association has a lien on a Lot for any assessment levied against that Lot from the time the first installment of the assessment becomes due. Fees, charges, late charges, fines and interest charges imposed by the Association are also liens, and are enforceable as assessments under this Section. Recording of the Declaration constitutes record notice and perfection of any lien under this Section, and no further recordation of any notice of the lien is required.

5.8 Foreclosure of Lien: Remedies. A lien for Common Expenses may be foreclosed against a Lot (i) by action, or (ii) by advertisement as a lien under a mortgage containing a power of sale. 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—RESTRICTIONS ON USE OF PROPERTY

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

6.1 Residential Use. The Lots shall be used by Occupants and their guests exclusively for single-family residential uses (whether primary, vacation, or recreational). The use of a dwelling or any other improvement upon the Lot by an Owner or Occupant for home office or studio uses, which are incidental to the principal residential use of the Lot, which comply with applicable zoning ordinances, and which do not invite or generate regular or frequent visits by clients, customers, employees, coworkers, or the public shall not be considered a violation of this restriction.

⁷ The amount required to be contributed to the working capital fund is subject to change prior to recording. The amount will not exceed the greater of \$100 or an amount equal to two (2) months installments of the annual assessments.

6.2 Leasing. Leasing of Lots shall be allowed, subject to applicable laws, ordinances, and regulations. All leases shall provide that they are subordinate and subject to the provisions of the Governing Documents and any applicable laws, ordinances, and regulations.

6.3 Roads. No use of the roads within the Property shall be made so as to cause a nuisance or to block any driveways within the Plat.

6.4 No Time Shares. No time shares are permitted.

6.5 Shoreland. The common interest community includes shoreland, as defined in Minnesota Statutes, Section 103F.205, and may be subject to county, township, or municipal ordinances or rules affecting the development and use of the shoreland area.

SECTION 7—MAINTENANCE

7.1 Maintenance by Association. The Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for, and be vested with, the exclusive management, control and maintenance of the private roads within UNNAMED PLAT 7, including without limitation the cul-de-sacs and turnarounds.

7.2 Maintenance by Owner. Except for the road maintenance required to be provided by the Association under this Section 7, all maintenance of the Lots, including any improvements thereon, shall be the sole responsibility and expense of the Owners thereof. Each Owner shall be responsible for maintaining the driveway that provides access from such Owner's Lot to the roads within UNNAMED PLAT 7. Each Owner shall be responsible for maintaining that portion of the riparian easement area described in Section 8.6 of this Declaration and located adjacent to such Owner's Lot.

SECTION 8—EASEMENTS

8.1 Easement for Maintenance, Repair, Replacement and Reconstruction. Each Lot, and the rights of the Owners and Occupants thereof, shall be subject to the rights of the Association to an exclusive, appurtenant easement on and over the Lots to the extent necessary to fulfill the Association's obligations under the Governing Documents.

8.2 Access Easements. The Property is subject to and the beneficiary of the following easements necessary for access to Rice Lake Road (CSAH No. 4):

a. Lots 1 – 24, Block 1, UNNAMED PLAT 7 shall be subject to and the beneficiary of an appurtenant easement for access to Rice Lake Road (CSAH No. 4) on or across Van Road West as depicted on UNNAMED PLAT 7 and created by separate and duly recorded instruments, subject to any restrictions set forth therein and in this Declaration⁸.

b. Lots 1 – 9, Block 2, UNNAMED PLAT 7 shall be subject to and the beneficiary of an appurtenant easement for access to Rice Lake Road (CSAH No. 4) on

⁸ The access easements for Van Road West are depicted on the survey maps prepared by SEH and will be recorded prior to recording the plat.

or across Van Road East as depicted on UNNAMED PLAT 7 and created by separate written and duly recorded instruments, subject to any restrictions set forth therein and in this Declaration⁹.

8.3 Utilities Easements. The Property shall be subject to non-exclusive, appurtenant easements for all utilities, water and sewer, and similar services, which exist from time to time, as constructed or referred to in the plat of the Property, or as otherwise described in this Declaration or any other duly recorded instrument. Each Lot, and the rights of the Owners and Occupants thereof, shall be subject to a non-exclusive easement in favor of the other Lots for all such services, including without limitation any sewer or water lines servicing other Lots. Each Lot shall also be subject to an exclusive easement in favor of the Association and all utilities companies providing service to the Lots for the installation and maintenance of utilities metering devices.

8.4 Driveway Easements. Each Lot currently served by an existing driveway that is laid out on or across another Lot, shall be the beneficiary of a non-exclusive easement for access to and from the nearest road within UNNAMED PLAT 7 on or across that part of the Lot upon which the driveway is currently located, subject to any restrictions set forth in this Declaration or any other duly recorded instrument¹⁰. Each Lot upon which a driveway servicing another Lot is currently located, and the rights of the Owners and Occupants thereof, shall be subject to a non-exclusive easement in favor of the Lot currently served by the driveway, for access to and from the nearest road within UNNAMED PLAT 7.

8.5 Appurtenant Easements. All easements and similar rights burdening or benefiting a Lot or any other part of the Property shall run with the land, and shall be permanent, subject only to termination in accordance with the Act or the terms of the easement. Any recorded easement benefiting or burdening the Property shall be construed in a manner consistent with, and not in conflict with, the easements created by this Declaration.

8.6 Riparian Easements. Each Lot shall be the beneficiary of a permanent, non-exclusive easement for access to and riparian rights over and across the parcel of land adjacent to each Lot and located between the shore of Island Lake Reservoir and XX feet *horizontal* from the OHWL. The riparian rights shall include, but not be limited to fishing, boating, hunting, swimming, docking, and other normal riparian uses, provided that no permanent structures may be erected within the easement area. The riparian rights granted herein are subject to the provisions of this Declaration and such other terms and conditions as may be set forth in any separate grant of such easement rights.

8.7 Riparian Access Easements. Each Lot shall be subject to an access easement benefitting the Declarant, and its successors and assigns, over and across the Lots for access to the strip of land retained by the Declarant pursuant to Federal Energy Regulatory Commission regulatory requirements, which strip of land is located between the shore of Island Lake Reservoir and XX feet *horizontal* of the Ordinary High Water Level of Island Lake Reservoir, St. Louis County, Minnesota.

⁹ The access easements for Van Road East, across lands owned by the County and Minnesota Power, are depicted on the survey maps prepared by SEH and will be recorded prior to recording the plat.

¹⁰ The driveway easements for the benefit of Lots 22, 23 and 24, Block 1 and Lots 4 and 5, Block 2 are depicted on survey maps provided by SEH and will be recorded by separate instrument prior to recording the plat.

SECTION 9—COMPLIANCE AND REMEDIES

9.1 Entitlement to Relief. The Association may commence legal action to recover sums due, for damages, for injunctive relief or to foreclose a lien owned by it, or any combination thereof, or an action for any other relief authorized by the Governing Documents or available at law or in equity. Legal relief may be sought by the Association against any Owner, or by an Owner against the Association or another Owner, to enforce compliance with the Governing Documents.

9.2 Sanctions and Remedies. In addition to any other remedies, the Association shall have the right, but not the obligation, to implement any one or more of the following actions against Owners and Occupants and/or their guests, who violate the provisions of the Governing Documents:

- a. Commence legal action for damages or equitable relief.
- b. Impose late charges of up to fifteen percent (15%) of each late payment of an assessment or installment thereof.
- c. In the event of default of more than sixty (60) days in the payment of any assessment or installment thereof, all remaining installments of assessments assessed against the Lot owned by the defaulting Owner may be accelerated and shall then be payable in full if all delinquent assessments, together with all costs of collection and late charges, are not paid in full prior to the effective date of the acceleration.
- d. Impose reasonable fines, penalties or charges for each violation of the Governing Documents.
- e. Foreclose any lien arising under the provisions of the Governing Documents or under law, in the manner provided for the foreclosure of mortgages by action or under a power of sale in the state where the Property is located.

9.3 Lien for Charges, Penalties, Etc. Any assessments, charges, fines, penalties or interest imposed under this Section shall be a lien against the Lot of the Owner or Occupant against whom the same are imposed and the personal obligation of such Owner in the same manner and with the same priority and effect as assessments. All remedies shall be cumulative, and the exercise of, or failure to exercise, any remedy shall not be deemed a waiver of the right to pursue any others.

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

SECTION 10—SPECIAL DECLARANT RIGHTS

Declarant hereby reserves exclusive and unconditional authority to exercise the following rights defined as “special declarant rights” in the Act, for as long as it owns a Lot or for such shorter period as may be specifically indicated:

10.1 **Signs.** To erect and maintain signs offering the Lots for sale, on any Lot owned by Declarant .

10.2 **Control of Association.** To control the operation and administration of the Association, including without limitation the power to appoint and remove officers and directors of the Board, during the “period of declarant control.” The period of declarant control begins on the date of recording of this Declaration and terminates upon the earliest of the following events: three (3) years after the date of the first conveyance of a Lot to a Lot Owner other than the Declarant; the Declarant’s voluntary surrender of control¹¹ by giving written notice to the Lot Owners pursuant to Section 515B.1-115 of the Act; or the conveyance of 75 percent of the Lots to Lot Owners other than the Declarant. Notwithstanding the foregoing, the Owners (other than the Declarant) shall have the right to nominate and elect not less than thirty-three and one-third percent (33 1/3%) of the directors at a meeting of the Owners which shall be held within sixty (60) days following the conveyance by the Declarant of fifty percent (50%) of the number of Lots included in the Property.

10.3 **Consent to Amendments.** To consent to amendments to the Declaration, Articles of Incorporation, Bylaws and Rules and Regulations for so long as the Declarant owns any portion of the Property.

SECTION 11—AMENDMENTS

This Declaration may be amended by the consent of Owners of Lots to which are allocated at least 75 percent of the votes in the Association and the consent of Declarant for so long as Declarant owns any portion of the Property, subject to the qualifications set forth in Section 515B.2-118 of the Act. Consent of the Owners may be obtained in writing or at a meeting of the Association duly held in accordance with the Bylaws. Consents of the Declarant shall be in writing. An affidavit by the President or Secretary of the Association as to the outcome of the vote, or the execution of the foregoing agreements or consents, shall be adequate evidence thereof for all purposes, including without limitation, the recording of the amendment.

SECTION 12--INSURANCE

The Association shall obtain and maintain, at a minimum, a master policy or policies of insurance in accordance with the insurance requirements set forth in the Act and, to the extent reasonably available, the additional requirements set forth herein, issued by a reputable insurance company or companies authorized to do business in the state of Minnesota, as follows:

¹¹ The Declarant intends to turn over control of the Association to the Lot Owners as soon as there have been sales to other Owners who are willing to serve as Directors.

- a. Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the private roads within UNNAMED PLAT 7 in an amount, if any, specified by the Governing Documents or otherwise deemed sufficient in the judgment of the Board, insuring the Board and the Association.
- b. Director's and officer's insurance in an amount deemed sufficient in the judgment of the Board.
- c. Such other insurance as the Board may determine from time to time to be in the best interests of the Association and the Owners.

SECTION 13—MISCELLANEOUS

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

13.2 Conflicts Among Documents. In the event of any conflict among the provisions of the Act, the Declaration, Bylaws and Rules and Regulations, the Declaration shall control, and as between the Bylaws and the Rules and Regulations, the Bylaws shall control.

13.3 Duration of Covenants. The covenants, conditions, restrictions, easements, liens and charges contained in this Declaration shall be perpetual, subject only to termination as provided in this Declaration and the Act.

[Remainder of page intentionally left blank; signature page to follow.]

Exhibit A

Legal Description of the Property

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24, Block 1, and Lots 1, 2, 3, 4, 5, 6, 7, 8 and 9, Block 2, UNNAMED PLAT 7, St. Louis County, Minnesota, EXCEPT those parts of said Lots located between the shore of Island Lake Reservoir and XX feet *horizontal* of the Ordinary High Water Level of Island Lake Reservoir, St. Louis County, Minnesota.