REAL ESTATE PURCH OPTION#251952

easement #251954

251951

STATE OF MINNESOTA
County of Wabasha
Office of County Recorder
This is to certify that the within instrument was filed for record in this office at Wabasha, on the 25th day of October A.D. 2002 at 4:00 o'clock P. m. and that the same was duly recorded in Wabasha County Records.
JEFFERY R. AITKEN
County Recorder
By

PEPIN BLUFF PRESERVE

DECLARATION OF PROTECTIVE COVENANTS AND CONDITIONS RUNNING WITH THE LAND

H. Joseph Slater, as Trustee and sole beneficiary of the **Harry Slater Irrevocable Trust** (Slater/Trust) dated August 24, 1996, owner of Lots 1-6, Block 1 Pepin Bluff Preserve, Sec 13, T 111, R12W, Wabasha County, Minnesota, and **Pepin Bluff Trust, Inc.** (Land Trust), a 501(C)(3) Minnesota corporation, owner of adjacent Parcel B, (described in attached Exhibit B), Declarants and **Kimberly Devine Kelly** (Kelly), owner of Parcel A (described in attached Exhibit A) and **American Bank Lake City**, a Minnesota Corporation (Bank), mortgagee, make the following declarations as to limitations, restrictions and uses to which any land within the above described properties (subject property) may be put and specify that such declarations shall constitute covenants to run with these lands as provided by law and shall be binding on all parties and all persons claiming under them and for the benefit of and limitations upon all future owners of said properties. This declaration of conditions and restrictions is implemented for the purpose of assuring that all buildings, structures, natural resources and uses within the defined area are, and remain, compatible with the development's natural surroundings and environs, to maintain property values and to provide a secure and peaceful residential environment.

10/14/02
125881
20.00
Goodhue Co. Abstract Co.
Rec# 51863

ARTICLE I
Land Use and Building Type

1. **SINGLE FAMILY RESIDENTIAL LOTS:** Each residential lot/ parcel within the subject property shall consist of not less than 2.75 (two and three-quarter) acres and shall be used only for single family residential purposes. No buildings shall be erected, altered, placed or permitted on the property except for new construction and there shall be no more than one single-family residence and one guest cottage or similar structure which must be located within 200 (two hundred) feet of the primary residence and which does not exceed 1000 (one thousand) square feet in total area nor 20 (twenty) feet in height and shall comply with all other provisions of these covenants. Structures defined in Article II, paragraph #7 are also permitted.

2. **NO SUBDIVISION OF PROPERTY:** No lot or parcel of land on any property covered by these covenants, which is comprised of less than 10 (ten) acres shall be divided, subdivided, split or altered except in the case of adding or subtracting area from one lot or parcel and simultaneously adding or subtracting that same entire area to the immediately adjacent area of the adjoining lot or parcel and which does not create an additional parcel or lot, regardless of size.

ARTICLE II
Building Construction

1. **TIME OF CONSTRUCTION:** A lot owner is not required to construct a building on the subject property at any time. In the event that the owner elects to build, the exterior of any building must be finished within one year from the date of the commencement of construction. No trailer, tent, shack, garage, barn or similar structure shall be used at any time as a residence on any lot, except for a period of not more than 120 days after the date of issuance of building permit for construction of residence on the subject lot and only if legally adequate sanitary facilities are operational during entire 120 day period.

2. **CONSTRUCTION SITE:** Construction must be planned and conducted in a manner which will minimize the extent of disturbed area, runoff and/or potential erosion during and after construction. Care shall be taken to assure that any disturbed soil or ground cover is restored to it's natural state as soon as possible, excepting building footprint and the adjacent 5 (five) foot area surrounding same. Grading, landscaping and/or other methods shall be employed to retain all sediment on each parcel. A Stormwater Construction Permit has been issued by the Minnesota Pollution Control Agency which obligates Declarants and owners of each parcel of the subject property to practice effective runoff control measures during and after any construction activity.

Construction sites shall be kept litter free and in a neat, orderly and safe condition, including, but not limited to, the location and appearance of port-a-johns, trash dumpsters, construction sheds and trailers, vehicles of contractors and subcontractors and employees, storage of construction materials and equipment. No outdoor construction shall occur between the hours of 8 p.m. and 7 a.m. daily.

3. **EXTERIOR FINISH AND COLOR:** All exterior finish materials shall be of masonry, wood or other standard commercial exterior finishing materials and must be muted or dark shades of brown, green, blue and/or charcoal color.

4. **BUILDING HEIGHT:** The highest point of any building placed on any lot shall be not more than 27.5 (twenty-seven and one-half) vertical feet above grade, not including chimneys, at any point, to encourage, but not require, single level, stepped, walk out or other low visual impact construction.

5. **SETBACKS:** No building or structure shall be erected or placed or permitted to remain on any lot nearer than 30 (thirty) feet from any front or side property line, roadway or bluff top nor closer than 50 (fifty) feet to any rear property line.

6. **RESIDENCE SIZE:** No dwelling consisting of less than 600 (six hundred) square feet of livable area shall be constructed or placed on any lot or parcel. Livable area is defined as the total floor area of the structure less all garage, deck, and porch areas.

7. **GARAGE/ OUTBUILDING SIZE:** One garage of not more than 1500 (fifteen hundred) square feet is permitted on each parcel of the subject property. The garage shall be attached to the primary residence or detached, if located entirely within 100 (one hundred) feet of the primary residence. Additionally, one non-residential outbuilding of not more than 500 (five hundred) square feet may be constructed on each lot provided it is located within 200 (two hundred) feet of the primary residence and complies with all other requirements for buildings stated herein. No part of any garage or outbuilding may be used as a residence nor shall exceed 15 (fifteen) feet in height.

8. **OUTSIDE LIGHTING:** All outside lighting shall consist of encased downward directed lights. In no case shall any exterior lighting glare extend beyond the boundary of any individual parcel.

9. **REBUILDING:** If a building is damaged or destroyed, any rebuilding of the structure will be governed by the same rules and regulations as the original building.

ARTICLE III
General Use Restrictions

1. **TRADE AND BUSINESS:** No trade, solicitation, business, service or profession, which involves any product or merchandise of any kind and/or regular client, customer, or personnel presence on the subject property shall at any time be operated within the subject property nor shall any building erected thereon be used for such purposes excepting that however, that no owner shall be precluded from maintaining a home office, a personal or professional library, keeping business records or accounts, conducting business or professional telephone calls, correspondence or infrequent meetings with business or professional associates or clients on the property

2. **AUTO REPAIR WORK:** No repair work on automobiles or mechanical vehicles, or any similar work, shall be performed on any portion of the Premises, except in an enclosed garage.

3. **PARKING:** No trailer, utility trailer, camper, house trailer, boat, bus, disabled vehicle, or truck over one-ton capacity shall be parked within the subject property unless kept in a closed garage except during the 120-day construction period outlined in Article II (1) above.

4. **MOTORIZED VEHICLES:** Except to construct, or service permitted structures and uses on lots and the Preserve area, no motorized vehicles shall be operated on the subject property except for automobiles or trucks less than one (1) ton used for ingress and egress. For purposes of these covenants, prohibited motorized vehicles shall include, but not be limited to, snowmobiles, dirt bikes, and all-terrain vehicles.

5. **LITTER AND REFUSE:** No litter, trash, disabled vehicles, machinery, garbage or other refuse shall be placed or maintained on any area within the subject property so as to be exposed to view or to become a nuisance to either the public or other lot owners. Trash, garbage or other waste shall be kept in sanitary containers and for no more than two weeks duration. Equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition, either (a) within a garage or (b) enclosed structure above grade. There shall be no burning of any material except the burning of vegetation originating from the same lot shall be permitted and such permitted burning shall occur only under the terms and provisions of a valid burning permit issued by the Department of Natural Resources or other governmental agency so empowered. No fuel of any kind which results in black smoke and/or obnoxious odors shall be used. In no case shall any petroleum based or toxic material be disposed of on the subject property.

6. **HUNTING AND TRAPPING:** No hunting or trapping shall be allowed anywhere within the subject property or surrounding preserve except by periodic controlled hunts and trapping as determined and managed in cooperation with the Minnesota Department of Natural Resources.

7. **ANTENNAE, TOWERS, ETC.:** No outside antennas, towers or poles shall be placed or maintained on any parcel excepting a maximum of 6 (six) satellite receiver dishes, each not exceeding (thirty-six) 36 inches in diameter. Any satellite dish and mounting bracket located outdoors shall be affixed to the residence and shall be painted the same color as the surface to which it is attached. Care should be taken to ensure that nothing is placed on any lot which will detract from the properties and/or their environs.

8. **NOISE:** Owners shall exercise care about making noise including, but not limited to, the use of musical instruments, radios, television and amplifiers and shall not make or permit noise that will disturb or annoy the occupants of any dwelling or do or permit anything to be done which will infringe on the rights and comforts of other Owners. Continuously operating machinery, barking dogs or similar noises within audible range infringe on the peace and use of land and are prohibited.

9. **ANIMALS:** No animals, livestock or poultry of any kind shall be raised, bred or kept on the subject property except that dogs, cats and other household pets may be kept, provided they are not kept, bred or maintained for commercial purposes and further providing that they are properly restrained so as not to create a nuisance, annoyance or danger to persons, wildlife or property by sound or action.

10. **DISPLAY OF SIGNS:** No sign of any kind shall be displayed on any lot, except one residence identification sign or number measuring less than four (4) square feet may be located on each lot.

11. **SECURITY ALARMS:** Any person utilizing an automatic security or similar system shall not enable or allow such device to be audible from outside the structure.

ARTICLE IV
Views, Visual Impact and Vegetation

The purpose and intent of this provision is to allow expansive views of Lake Pepin and the Wisconsin bluffs without creating unnatural visual impact caused by intensive cutting. This is best achieved by locating a home close to the bluff-top setback, determining window views and clearing vegetation in line with those views. Site planning and clearing is best accomplished when leaves are off trees. Partial screening of structures with trees, shrubs or vines located close to solid wall areas and/ or by planting/ maintaining tall trees 50 to 100 feet behind lake-facing structures can also contribute to blending with surrounding natural elements.

1. **TREES AND VEGETATION VISIBLE TO OR FROM LAKE PEPIN:** No property owner shall create or allow to be created, more than an aggregate of 100 (one hundred) feet of openings in trees or vegetation on their property, which are visible to or from Lake Pepin. No single such opening shall exceed 50 (fifty) feet in width.

There shall be at least 15 (fifteen) feet between any such openings. For this paragraph, "opening" is defined as space providing view of any portion of Lake Pepin as viewed from any point within 10 (ten) vertical feet of grade on the subject property or any point on the exterior wall of any structure, regardless of height.

2. **TREES OR VEGETATION NOT VISIBLE TO OR FROM LAKE PEPIN:** No property owner shall create or allow to be created, more than an aggregate of 40 (forty) feet of openings in trees or vegetation on their property which are NOT visible to or from Lake Pepin. Any such opening shall not be within 15 (fifteen) feet of any other opening and excepting provision of the previous sentence, property owner shall not cut more than 25% (twenty-five percent) of such standing live trees greater than 3 (three) inches in diameter on any 100 x 100 (one hundred by one hundred) square foot non-lake view area, provided however that no two trees of significant quality greater than 3 (three) inches in diameter within 15 (fifteen) feet of each other may be cut. Area(s) required for footprint/perimeter of permitted structures and within 75 (seventy-five) feet thereof, driveways and roadways and all areas within 20 (twenty) feet thereof, are exempt from this paragraph's provision.

3. **TRIMMING/ CUTTING/ MOWING EQUIPMENT AND TOOLS:** Except for initial clearing of building sites (including view openings), all power equipment used in the cutting and trimming of trees and vegetation (including, but not limited to, lawn mowers, power trimmers, saws, and blowers) shall be powered by electricity and not combustion engines, except where physically or mechanically prohibitive.

4. **SOIL CONSERVATION PRACTICE:** Each lot's complete vegetative ground cover shall be maintained except for areas specifically utilized for roadways and building(s). All areas of disturbed soil shall be replanted with temporary or permanent ground cover within 72 hours of initial disturbance. The property owner shall be responsible for proper soil conservation practices, which shall include but not limited to weed control, water run-off and erosion control as reasonably established by the Wabasha County Soil and Water Conservation District and the Minnesota Pollution Control Agency. The property owner shall be responsible for assuring that drainage and surface water is not changed so as to adversely affect other properties where possible.

5. **APPLICATION TO EASEMENT LANDS:** For purposes of determining permitted tree/vegetation removal and soil conservation practices defined herein, any exclusive easement area is considered to be part of the benefiting lot only.

ARTICLE V
Utilities, Easements and Road Right-of-Way

1. **UTILITIES:** All utilities, including propane gas tanks shall be underground. No outdoor oil or other fuel tanks are permitted on the subject property.

2. **SANITARY PROVISIONS:** Only one sanitary system is permitted on each parcel or lot. All private sewage disposal systems constructed on any property shall meet the minimum county and state health, sanitary and area requirements applicable at the time of construction of the same. No sewage disposal system shall permit any effluent or discharge to occur on any ground surface.

3. **ROAD MAINTENANCE:** Cost of maintenance and repair of any non-public roadway is defined in the recorded roadway easement agreement for the subject property.

4. **EASEMENTS AND ROAD RIGHT OF WAYS:** The property owner shall not grant or provide any public or private easement to or upon their property except for (i) underground gas, electric and telephone service and/or (ii) to an adjoining parcel or lot for use in compliance with these covenants. In no case shall any easement allow for above ground construction of any kind.

ARTICLE VI
Compliance with Statutes and Ordinances

1. **FEDERAL, STATE AND LOCAL LAWS:** This Agreement and the rights of the parties hereunder shall be governed by and interpreted in accordance with all applicable federal, state and local laws - particularly the Minnesota Shoreland Management Ordinance as adopted by the City of Lake City, Wabasha County or other applicable jurisdiction.

ARTICLE VII
Application, Enforcement, Modification

1. **BENEFIT:** The covenants and restrictions contained in this declaration shall run with the property and shall inure to the benefit of and be binding upon all Declarants, all subject property owners and upon the representatives, successors and assigns thereof.

2. **ENFORCEMENT/ REMEDY:** If any party shall violate or attempt to violate any of the covenants or restrictions set forth herein, Declarants and/ or any subject property owner shall have the lawful right to prosecute any proceedings at law or in equity against such party to either prevent or recover damages for such attempted or actual violation. In such event, each party to this agreement and their successors in

interest, heirs, executors, administrators or assigns, shall be deemed parties to this agreement to the same extent as the original signers, and may institute and prosecute any proceeding at law or in equity to abate, prevent or enjoin any such violation or to specifically enforce such covenants or restrictions and to recover monetary damages caused by such violation or attempted violation. The defaulting or losing party to any above described action shall pay the prevailing party's legal expenses in addition to any other sums due hereunder. No delay in enforcing any breach or violation of these covenants and restrictions shall impair or waive the right to enforce same or to obtain relief or recovery for continued, repeated or later violation(s).

3. **NO IMPLIED WAIVER:** Failure of Declarants, their successors, representatives or assigns or any subject property owner to insist upon the complete total observance or performance of any restriction or covenant set forth herein in any one or more instances shall in no event be deemed a waiver to exercise such right, privilege or remedy thereafter, nor shall such delay or failure be construed as an act of acquiescence or approval.

4. **AMENDMENT/ MODIFICATION:** Provisions of this Declaration may be amended or modified only by unanimous approval of (i) the Declarants or their successors or assigns AND (ii) all other persons or entities holding fee title interest in the subject property.

5. **VALIDITY:** If any term or provision of this declaration is finally judged by any court to be invalid, the remaining terms and provisions of this declaration shall remain in full force and effect and they shall be interpreted, performed and enforced as if said invalid provision did not appear herein

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the date indicated below.

Dated 9/26-02

H. Joseph Slater as Trustee and Sole Beneficiary
of the **Harry Slater Irrevocable Trust**
dated August 24, 1996, Declarant

STATE OF MINNESOTA
SS.
COUNTY OF WABASHA

The foregoing instrument was acknowledged before me this 26th day of September, 2002, by H. Joseph Slater, as Trustee and as sole beneficiary of the Harry Slater Irrevocable Trust dated April 24, 1996

Notary Public Lynn L Person *My commission expires* January 31, 2006

LYNN L. PERSON
NOTARY PUBLIC - MINNESOTA
MY COMMISSION
EXPIRES JAN. 31, 2006

EXHIBIT A

That part of Government Lot 3 of Section 13, Township 111 North, Range 12 West, Wabasha County, Minnesota, according to the original Government Survey thereof, described as follows:

Commencing at the southeast corner of the Southwest Quarter of said Section 13; thence North 89 degrees 32 minutes 09 seconds West, bearings are based on the Wabasha County Coordinate System NAD 1983 adjustment, along the south line of said Southwest Quarter of Section 13, a distance of 705.00 feet; thence North 00 degrees 27 minutes 51 seconds East, a distance of 1340.00 feet to the point of beginning of the land to be described; thence continue North 00 degrees 27 minutes 51 seconds East, a distance of 496.74 feet; thence South 89 degrees 32 minutes 09 seconds East, a distance of 675.00 feet; thence South 00 degrees 27 minutes 51 seconds West, a distance of 496.74 feet; thence North 89 degrees 32 minutes 09 seconds West, a distance of 675.00 feet to the point of beginning. Containing 7.70 acres, more or less.

Subject to all easements and restrictions of record, if any.

Descriptions\Slater – Pepin Bluff Preserve-Exhibit C

EXHIBIT B

That part of Government Lot 3 of Section 13, Township 111 North, Range 12 West, Wabasha County, Minnesota, according to the original Government Survey thereof, described as follows:

Commencing at the southeast corner of the Southwest Quarter of said Section 13; thence North 89 degrees 32 minutes 09 seconds West, bearings are based on the Wabasha County Coordinate System NAD 1983 adjustment, along the south line of said Southwest Quarter of Section 13, a distance of 705.00 feet; thence North 00 degrees 27 minutes 51 seconds East, a distance of 1340.00 feet to the point of beginning of the land to be described; thence continue North 00 degrees 27 minutes 51 seconds East, a distance of 496.74 feet; thence North 89 degrees 32 minutes 09 seconds West, a distance of 454.00 feet; thence South 00 degrees 27 minutes 51 seconds West, a distance of 496.74 feet; thence South 89 degrees 32 minutes 09 seconds East, a distance of 454.00 feet to the point of beginning. Containing 5.18 acres, more or less.

Subject to all easements and restrictions of record, if any.

Descriptions\Slater – Pepin Bluff Preserve-Exhibit B