

Cannery Estates Condominium;
Pt. SE NW, Pt. NE SW 23-28-13; Lots 1-6 Blk. 2 OSN Lumber Company's Add. Memo.

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DECLARATION OF COVENANTS
CONDITIONS EASEMENTS AND
RESTRICTIONS

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DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS
FOR
CANNERY ESTATES CONDOMINIUMS
TAINTER AVENUE
MENOMONIE, WISCONSIN

DECLARANT:

Tainter Avenue Menomonie, LLC
2265 EastRidge Center
Eau Claire, WI 54701

Return to: Atty Joseph R. Mirr
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**DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS**

Declaration made this 7th day of April, 1993, by Talinter Avenue Menomonie, LLC a Wisconsin limited liability company (hereinafter "Declarant").

WITNESSETH:

WHEREAS, Declarant is now the owner of the real property in Dunn County, Wisconsin, described in Exhibit A attached to this Declaration and desires to create thereon a residential condominium; and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the property values, amenities, environment, and opportunities in said condominium and for the maintenance of the properties and improvements thereon, and to this end and in order to insure its best use and most appropriate development and to prevent the erection of poorly designed or constructed improvements, desires to subject said property together with such additions as may hereafter be made thereto (as provided in Article II) to the Wisconsin Condominium Ownership Act and to these covenants, restrictions, easements, charges, and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said condominium, to create an entity to which should be delegated and assigned the powers of owning, maintaining and administering the condominium property and its facilities; administering and enforcing the covenants and restrictions; collecting and disbursing the assessments and charges hereinafter created; and promoting the recreation, health, safety, and welfare of residents of the condominium; and has incorporated Cannery Estates Condominium Association, Inc., under the laws of the State of Wisconsin as a nonstock corporation for the purpose of exercising such the functions.

NOW, THEREFORE, Declarant declares that the real property described in Exhibit A, and such additions thereto as may be made pursuant to Article II below, is and shall be held, transferred, sold, conveyed, and occupied subject to the Wisconsin Condominium Ownership Act and the covenants, restrictions, easements, charges, and liens (sometimes referred to as "Covenants and Restrictions") set forth below.

ARTICLE I
Definitions

The following definitions shall be applicable, unless otherwise specifically provided, to this Declaration, any supplementary declaration (a "Supplementary Declaration"), and any amendment hereto (an "Amendment") recorded pursuant to the provisions of this Declaration.

Section 1. **"Declaration"** shall mean the covenants, conditions, and restrictions and all other provisions herein set forth in this entire document, and as same may from time to time be amended.

Section 2. **"Association"** shall mean and refer to Cannery Estates Condominium Association, Inc., a Wisconsin corporation organized pursuant to Chapter 181 of the Wisconsin Statutes, its successors and assigns.

Section 3. **"Declarant"** shall mean and refer to the initial Declarant, Tainter Avenue Menomonie, LLC; all of its successors, agents, and assigns; and any successor-in-title to Tainter Avenue Menomonie, LLC's interest in the Property (other than a Unit Owner), including, without limitation, following a foreclosure or a deed in lieu of foreclosure, any mortgagee to whom Developer's rights and

interests hereunder have been pledged; provided, however, that such successor-in-title or such other assignee or successor, by instrument of assignment, acceptance, and assumption executed by Developer and recorded in the office of the Register of Deeds for Dunn County, Wisconsin (i) accepts the assignment therein made by Developer of those rights and powers of Developer contained in this Declaration, and (ii) assumes and agrees to be bound by and perform those obligations of Developer contained in this Declaration with respect to all or such of those Units as may be legally described in any such instrument of assignment, acceptance, and assumption; provided further, however, that the agreement by a Mortgagee to assume and be bound by the obligations of Developer may be prospective only and limited to the obligations of Developer arising on or after the date the Mortgagee records its assignment, acceptance, and assumption agreement.

Section 4. **"Property"** shall mean and refer to all real property which becomes subject to this Declaration; the initial real property subject to this Declaration is described on Exhibit A attached hereto.

Section 5. **"Common Area"** shall mean and refer to all of the Property except for the Units.

Section 6. **"Limited Common Area"** shall mean that part of the Common Area, as designated on the plat of survey attached as Exhibit B, immediately adjacent and abutting to each Unit and reserved for its exclusive use. Any such area used for driveway purposes shall be reserved for the exclusive use of the Unit it services.

Section 7. **"Unit"** shall mean and refer to any portion of a structure situated upon the Property described in Section 4 above and designed and intended for use and occupancy as a residence by a single family.

Section 8. **"Owner"** shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Unit, except that as to any Unit which is the subject of a land contract wherein the purchaser is in possession, the term "Owner" shall refer to such person instead of the vendor.

Section 9. **"Occupant"** shall mean and refer to the occupant of a Unit who shall be either the Owner or a lessee who holds a written lease having an initial term of at least thirty (30) days.

Section 10. **"Book of Resolutions"** shall mean and refer to the document containing rules and regulations and policies adopted by the board of directors of Cannery Estates Condominium Association, Inc. as same may be from time to time amended and recorded.

Section 11. **"Mortgage"** shall mean any mortgage or other security agreement by which a Unit or any part thereof is encumbered.

Section 12. **"Mortgagee"** shall mean any person or firm named as the Mortgagee under any Mortgage by which the interest of any Owner is encumbered, or any successor to the interest of such person or firm under such Mortgage.

Section 13. **"Act"** shall mean the Wisconsin Condominium Ownership Act, Chapter 703, Wisconsin Statutes, as amended.

Section 14. "Board" or "Board of Directors" shall mean the board of directors of the Association.

ARTICLE II

Property Subject to this Declaration

Section 1. **Existing Property.** The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to the Act and this Declaration is located in Dunn County, Wisconsin, and is more particularly described in Exhibit A. The term "existing property" is used in this Declaration to refer to all property which is then subject to these provisions.

Section 2. Additions to Existing Property.

(a) Additions by the Declarant.

(i) **Declarant's Right to Expand.** The Declarant, its successors, representatives and assigns, shall have the right, but not any obligation, to bring within the scheme of this Declaration additional properties in future stages of development, which land is described in Exhibit B appended hereto, by executing and recording with the Register of Deeds for Dunn County, Wisconsin, one (1) or more Supplementary Declarations with respect to the additional property. Under no circumstances shall this Declaration or any Supplemental Declaration or any general plan of development (except as specifically agreed therein) bind the Declarant, its successors, representatives and assigns, to make any additions. The Declarant's right to expand the Property exists, pursuant to Wisconsin Statute §703.26(2)(d), for a period of ten (10) years from the date this Declaration is recorded with the Register of Deeds for Dunn County, Wisconsin.

(ii) **Effect of Expansion.** The total number of Units which may be subject to this Declaration after all expansions of the Property is thirty five (35). Upon completion of any Unit (which shall be deemed to have occurred upon issuance of a certificate of occupancy), whether that Unit is completed under this Declaration or any Supplemental Declaration, each Unit will own a $1/n$ interest in all common areas (where n = the total number of completed Units) and will have a $1/p$ interest in liabilities for common expenses (where p = the number of completed Units at the time the expense is assessed) and $1/q$ interest in common surplus, if any, (where q = the number of completed Units at the end of the period during which the surplus was accumulated). Unit Owners shall have one (1) vote for each Unit owned, as provided in the Bylaws of the Cannery Estates Condominium Association, Inc., Article II, section 2.1(a).

(b) Mergers.

The Association may, at a future time, merger or consolidate with another association. If this occurs, the surviving or consolidated association shall acquire all rights, properties, and obligations of this Association. The Association identified in Article I, Section 2, above may acquire all the rights, properties, and obligations of another association. The surviving or consolidated association shall administer the covenants and restrictions established by this Declaration within the Property together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall affect any revocation, change, or addition to the covenants as hereinafter

provided. Members representing at least eighty percent (80%) of the votes in each pre-existing association must approve any such merger or consolidation.

Section 3. Description of Buildings. Three (3) buildings will initially be constructed upon the land with locations as shown on the plat of survey attached as Exhibit C. The condominium dwelling units in each building are hereinafter called "Units."

There will initially be eleven (11) Units, consisting of approximately 1,350 square feet each, with each Unit consisting of two levels, with basement, and either a double garage or a single garage each.

Custom options may be offered at the discretion of the Declarant. Examples of custom options that may be offered include choices of carpet, other floor coverings, fireplace, cabinets, counter tops, plumbing fixtures, and trim color. Owners may be given the choice of an unfinished or a finished basement (see floor plans on page D-21).

Section 4. Description of Units.

(a) The boundaries of each Unit shall consist of that part of the cubic area of each building which is enclosed as follows:

(i) The vertical boundaries of the Unit shall be the plane of the outer surfaces of the predecorated drywall and the plane of the outside faces of doors and windows bounding a dwelling extended in each case to an intersection with the upper and lower boundaries; and

(ii) The upper and lower boundaries shall be (a) lower boundary - the plane of the underside of the floor of the lowest level of living space; and (b) upper boundary - the plane of the top surfaces of the predecorated drywall ceiling of the highest level of living space.

(b) The attic, patio, deck, sidewalk, mailboxes, storage areas, if any, and garage areas, if any, to which each Unit has direct access shall not be considered part of that Unit but shall be a Limited Common Area.

(c) If any portion of the Common Area or Limited Common Areas or facilities shall encroach upon any Unit, or upon any of the Common Area or Limited Common Areas or facilities as a result of the construction of the building or as a result of settling or shifting of the building, a valid easement for the encroachment and for its maintenance shall exist so long as the building stands. In the event the building, the Unit, any adjoining Unit, or any adjoining Common Area or Limited Common Areas or facility shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings and then rebuilt, any resulting encroachment of a part of the Common Area or Limited Common Areas or facilities upon any Unit or upon any part of the Common Area or Limited Common Areas or facilities shall be permitted, and a valid easement for such encroachment and for its maintenance shall exist so long as the building stands. In interpreting the attached exhibits, the existing physical boundaries of Unit or of a Unit which is reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the dimension expressed in the attached exhibits regardless of settling or lateral movement of the building and regardless of minor variances between boundaries shown on the attached plans and those of the building.

Section 5. Description of Common Areas and Facilities. The Common Area and facilities shall include those matters described in Section 703.02(2) of the Act and shall include all of the condominium except the Units. Parking facilities which are not specifically and permanently assigned to a Unit, as provided in Section 6 below shall be equally available to all Unit Owners; provided, however, that if the board of directors of the Association shall deem it to be in the best interest of the Association, said board of directors may rent all or any portion of such nonassigned parking facilities on whatever terms and conditions it chooses.

Section 6. Description of Limited Common Areas and Facilities. The following Common Areas and facilities are permanently assigned to and limited to the use of Units as follows (hereinafter called "Limited Common Areas"):

- (a) The driveway access to each Unit.
- (d) The sidewalk areas to which each Unit has direct access by a door from the Unit.
- (e) The mailbox or mailboxes assigned to each Unit.

Section 7. Percentage Interest in Common and Limited Common Areas. Prior to any expansion, upon completion of all of the Units, each unit owner shall own an undivided one-eleventh (1/11) interest in the Common Area and Limited Common Areas.

ARTICLE III

Membership and Voting Rights

Section 1. Members. Every person or entity who is an Owner shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation such as a land contract vendor whose purchaser is in possession. Such membership shall be appurtenant to and may not be separated from ownership of any Unit which is subject to assessment by the Association. Each such membership shall be appurtenant to the Unit upon which it is based and shall be transferred automatically by conveyance of that Unit.

Section 2. Voting Rights. The Association shall have two classes of voting membership:

(a) **Class A:** Class A members shall be all Owners of Units and shall be entitled to one (1) vote for each Unit owned.

(b) **Class B:** The Class B member shall be the Declarant, who shall have one vote. The Class B membership shall cease ("the end of Declarant control") on the earlier of ten (10) years from the date the first Unit is conveyed from the Declarant to a person other than the Declarant or thirty (30) days after the conveyance of seventy-five percent (75%) of the common elements to purchasers unless terminated sooner by written notice by the Declarant to the Association. Thereafter, there shall be only one membership class. Upon termination of the Class B membership, any provision in this Declaration requiring approval by the Class B member shall be ineffectual.

Section 3. Voting in Person or by Proxy. All voting may be done in person or by written proxy filed with the secretary of the Association prior to the appointed time of any meeting. Proxies shall be valid only for the particular meetings or for the period of time designated therein, not to exceed one hundred eighty (180) days, unless sooner revoked in writing.

ARTICLE IV

Common Area and Limited Common Areas

Section 1. Obligation of the Association. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and Limited Common Areas and all improvements thereon, and shall keep the same in good, clean, attractive, and sanitary condition, order, and repair.

Section 2. Owners' and Members' Easement Enjoyment. Subject to the provisions of this Declaration, every Owner shall have a right and easement of enjoyment in and to the Common Area, which right shall be appurtenant to and shall pass with the title to every Unit; and every member of the Association shall have a right of enjoyment in the Common Area.

Section 3. Extent of Owners' and Members' Easement. The Owners' and Association Members' easement of enjoyment created hereby shall be subject to the following:

(a) The right of the Association to establish reasonable rules for the use of the Common Area and Limited Common Areas.

(b) The right of the Association to mortgage any or all of the facilities constructed on the Common Area, if any, for the purposes of improvement or repair to Association land or facilities pursuant to approval of the Class B member and of two-thirds of the votes of the Class A members who are voting in person or by proxy at a regular meeting of the Association or at a meeting duly called for this purpose.

(c) The right of the Association to dedicate, grant easements to, or transfer all or any part of the Common Area and Limited Common Areas to any public agency, authority, or utility and subject to such conditions as may be agreed to by the members. No such dedication, easement, or transfer shall be effective unless an instrument signed by the Class B member and two-thirds of the Class A members agreeing to such dedication or transfer has been recorded.

Section 4. Delegation of Use. Any member of the Association may delegate the right of enjoyment to the Common Area, Limited Common Areas, and facilities to the members of the member's family and guests, and to occupants subject to such general regulations as may be established from time to time by the Association, and included within the Book of Resolutions.

Section 5. Damage or Destruction of Common Area or Limited Common Areas by Owner. In the event that any Common Area or Limited Common Areas is damaged or destroyed by an Owner or any of the Owner's guests, tenants, licensees, agents, or members of the Owner's family, such Owner does hereby authorize the Association to repair said damaged area; and the Association shall repair said damaged area in good workmanlike manner in conformance with the original plan and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association in the discretion of the Association. The amount necessary for such repairs shall become a Special Assessment upon the Living Unit of said Owner.

Section 6. Limited Common Areas. The Owner or Occupant shall have the exclusive right to the use and enjoyment of the Limited Common Areas contiguous to the Owner's Unit, except driveways which service other Units.

Section 7. Driveways Easement. Notwithstanding any other provisions in this Declaration, there is granted to each Owner and Occupant a perpetual easement for the right to ingress and egress over and across that part of any Common Area or Limited Common Areas used for driveway purposes, extending from all Units to the street serving the Property.

ARTICLE V
Covenant for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation. The Declarant hereby covenants, and each Owner of any Unit by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following: (i) annual general assessments or charges, and (ii) special assessments for capital improvements.

All such assessments, together with interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 2. General Assessment.

(a) **Purpose of Assessment.** The general assessment levied by the Association shall be used exclusively for the purposes of:

(i) Improvement and maintenance of property owned by the Association and principally by the residents of the Property.

(ii) Purchasing group services including but not limited to insurance, trash collection, and utilities. In no event shall the Association be obligated to purchase fire or casualty insurance insuring the personal property of Unit Owners.

(iii) Preservation of property values within the Property through exterior maintenance of Units, to include exterior painting, exterior repairs, replacement and care of roofs, gutters, down spouts, exterior building surfaces, walks, driveways, fences, and patios (except gardens and items placed in patios by persons other than the Association). Such exterior maintenance shall include lawn mowing and care, tree and shrub planting, maintenance and replacement. However, all insurance proceeds received by an Owner in payment of damage necessitating repair or replacement by the Association shall be paid to the Association and applied to payment for such repairs and replacement.

(iv) Repairs to sewer laterals and water lines outside Unit boundaries.

(v) Snow plowing and snow removal, where required, of all private driveways and walkways.

(b) **Basis for Assessment.**

(i) **Units.** Each basic Unit which is certified for occupancy shall be assessed at a uniform rate.

(ii) **Services During Interim Period.** The Declarant shall provide, at its expense, all the services which are contemplated to be within the scope of Unit assessments, until the earlier of December 31, 1999, or thirty (30) days after the closing of the sales of three (3) Units. However, the Owner of any Unit who acquires title during said interim period shall pay to the Declarant a monthly assessment as established in Exhibit A to the Bylaws of the Association, prorated in the month of title acquisition. Such monthly assessment shall terminate at the conclusion of such interim period.

Section 3. Annual Assessment. By a vote of not less than two-thirds of the directors, the board shall fix the annual general assessment to meet the obligations imposed by this Declaration. The board shall set the date(s) such assessment shall become due.

Section 4. Special Assessment. In addition to the annual assessment authorized above, the Association may levy in any assessment year a special assessment applicable to that year and not more than the next two succeeding years for the purpose of defraying, in whole or in part, or to meet any deficiency over the annual assessment. The directors may approve and levy a special assessment or assessments, totaling no more than One Thousand Dollars (\$1,000) per calendar year per unit. Any greater assessment shall have the assent of the Class B Member and not less than two-thirds of the votes of the Owners who are voting in person or by proxy at a special meeting duly called for that purpose.

Section 5. Date of Commencement of Annual Assessments.

(a) Except as provided in Section 2(b)(ii) above relating to services during the interim period and in Section 5(b) below, the annual assessments provided for herein shall commence with respect to assessable Units on the date of conveyance to an Owner who is not the Declarant. The initial annual assessment on any assessable unit shall commence on, and be prorated to, the date of conveyance of the Unit to an Owner who is not the Declarant.

(b) In the event the Declarant leases a Unit pursuant to Article VII, Section 7, said lease shall include payment by either Lessor or Lessee of all applicable assessments, annual and special, in regard to the Leased Unit, including without limitation prorated payments for any partial months during the lease term.

Section 6. Effect of Nonpayment of Assessments and Remedies of the Association. Any assessment not paid within thirty days after the due date may, upon resolution of the Board, bear interest from the due date as a percentage rate to be set by the Board for each assessment period, which shall be no greater than the current statutory maximum annual interest rate. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property in like manner as a mortgage on real property. In any such foreclosure, the Owner shall be required to pay a reasonable rental for the permitted use of the Common Area and Limited Common Areas; and the

Association shall be entitled to the appointment of a receiver to collect the same. The Association may bid on the property at foreclosure sale and acquire and hold, lease, mortgage, and convey the same. If the Association has provided for collection of annual assessments in installments, upon default in the payment of any one or more installments, the Association may accelerate payment and declare the entire balance of said assessment due and payable in full. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area and Limited Common Areas or abandonment of his or her Unit.

Section 7. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof.

Section 8. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges, and liens created herein: (i) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use, (ii) the Common Area, (iii) all Limited Common Areas, and (iv) all properties exempted from taxation by state or local governments upon the terms and to the extent of such legal exemption. Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges, or liens.

Section 9. Annual Budget. By a two-thirds (2/3) vote of the directors, the board shall adopt an annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed by this Declaration will be met.

Section 10. Joint and Several Liability of Grantor and Grantee. Upon a voluntary conveyance, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor as provided in these Articles up to the time of conveyance, without prejudice to the grantee's right to recover from grantor the amount paid by the grantee therefore. However, any such grantee shall be entitled to a statement from the Association setting forth the amount of such unpaid assessments and any such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessment against the grantor pursuant to this Article in excess of the amount therein set forth.

ARTICLE VI Architectural Control

Section 1. The Architectural Review Committee. An Architectural Review Committee consisting of three or more persons shall be appointed by the Class B member. At such time as the Class B membership expires, this Committee shall be appointed by the board of directors from within its membership.

Section 2. Purpose. The Architectural Review Committee shall regulate the external design, appearance, use, location, and maintenance of the Property and of improvements thereon in such a manner

so as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.

Section 3. Conditions. No improvements, alterations, repairs, change of paint colors, excavations, changes in grade, or other work which in any way alters the exterior of any property or the improvements located therein from its natural or improved state existing on the date such property was first conveyed in fee by the Declarant to an Owner shall be made or done without the prior approval of the Architectural Review Committee, except as otherwise expressly provided in this Declaration. No building, fence, wall, residence, or other structure shall be commenced, erected, maintained, improved, altered, made, or done without the prior written approval of the Architectural Review Committee.

Section 4. Procedures. In the event the Architectural Review Committee fails to approve, modify, or disapprove in writing an application within thirty (30) days after the plans and specifications in writing have been submitted to it, in accordance with adopted procedures, approval will be deemed granted. The applicant may appeal an adverse Architectural Review Committee decision to the board of directors who may reverse or modify such decision by a two-thirds (2/3) vote of the directors.

ARTICLE VII Use of Property

Section 1. Protective Covenants.

(a) **Residential Use.** All property delegated for residential use shall be used, improved, and devoted exclusively to residential use with not more than one "family" (as such term is defined from time to time by the Dunn County Zoning Ordinances) occupying each Unit. Nothing herein shall be deemed to prevent the Owner from leasing a Unit for occupancy by not more than one "family" (as defined above) subject to all of the provisions of this Declaration. No Owner shall occupy or use the Owner's Unit or the Limited Common Area appurtenant thereto, or permit the same or any part thereof to be occupied or used, for any purpose other than as a private residence for the Owner, the Owner's family, or the Owner's Lessees or guests. The Declarant reserves the right to use one or more Units as an office and/or model.

(b) **Obstructions and Nuisances.** There shall be no obstruction of the Common or Limited Common Areas, and nothing shall be stored therein without the prior consent of the Association. No nuisance shall be permitted to exist or operate upon any property so as to be detrimental to any other property in the vicinity thereof or to its occupants.

(c) **Increase of Insurance Rates.** Nothing shall be done or kept in any Unit or in the Common or Limited Common Areas which will increase the rate of insurance on the Common or Limited Common Areas without the prior consent of the Association. No Unit Owner shall permit anything to be done or kept in the Owner's Unit or in the Common or Limited Common Areas which will result in the cancellation of insurance on any Unit or any part of the Common or Limited Common Areas, or which would be in violation of any law or ordinance. No waste will be permitted in the Common or Limited Common Areas.

(d) **Signs.** No sign of any kind shall be displayed to the public view on or from any Unit or the Common or Limited Common Areas without the prior written consent of the Association.

Without such consent, the Declarant may erect any sign advertising Units for sale, designating model living units, or direction signs to models.

(e) **Animals.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on the Property, except that each Unit may keep one (1) dog weighing twenty-five (25) pounds or less or one (1) cat and other small household pets (such as fish, canaries, or parakeets) provided that they are not kept, bred, or maintained for any commercial purposes. No pet which causes an unreasonable disturbance shall be permitted. Any pet excrement in Common Areas shall be removed immediately by the Occupant of the Unit in which the pet resides. Pets shall not be allowed unleashed outside of a Unit and Occupants with pets shall obey all applicable leash laws.

(f) **Motor Vehicle and Parking.** Unit Owners and their guests may have up to three (3) motor vehicles on the premises on a regular basis at any one time; and two (2) of such vehicles must be regularly parked in the garage appurtenant to each Owner's Unit. Boats, trailers, motor homes or any other unconventional motor vehicles of any description shall not be permitted except when parked or stored in a garage. Inoperable and junk motor vehicles and those without current license plates are prohibited unless stored in a garage. Repair and maintenance of motor vehicles, boats, motor homes or any other unconventional motor vehicles on the Common Areas is prohibited. No snowmobiles, all-terrain vehicles or other off-the-road vehicles may be operated in or about Common Areas or Limited Common Areas.

(g) **Noxious Activity.** No noxious or offensive activity shall be carried on in any Unit, Common Area, or Limited Common Area, nor shall anything be done there which may be or become an annoyance or nuisance to others.

(h) **Alteration, Construction, or Removal.** Nothing shall be altered or constructed in or removed from the Common Areas, except upon the written consent of the Association.

(i) **Antennas.** No exterior television or radio antennas or satellite dishes will be permitted.

(j) **Garbage.** Garbage shall be kept in designated storage areas unless local ordinances require placing of garbage and refuse at a different location for pickup.

(k) **Landscaping and Gardening.** No resident shall plant trees, landscape, or do any gardening on any Common Area or on any Limited Common Area of a Unit except with the prior written permission of the Board of Directors.

(l) **Other Restrictions.** Upon conveyance of the first Unit to an Owner, the Architectural Review Committee may adopt general rules to implement the purposes set forth in Article VI, Section 2, and interpret the covenants in this section, including but not limited to rules to regulate animals, antennas, signs, storage and use of recreational vehicles, storage and use of machinery, use of outdoor drying lines, trash containers, planting, maintenance and removal of vegetation on the Property. Such general rules may be amended by an affirmative vote of two-thirds (2/3) of the Board of Directors following a hearing of Association members of which due notice has been given in writing to such members. All such general rules and any subsequent amendments thereto shall be placed in the Book of Resolutions and may be recorded in the public land records.

(m) **Exceptions.** The Architectural Review Committee may issue temporary permits to except any prohibitions expressed or implied by this section, provided the Committee can show good cause and acts in accordance with adopted guidelines and procedures.

Section 2. Maintenance of Property. To the extent that maintenance is not provided for in this Declaration, each Owner shall keep all Units owned by such Owner, and all improvements therein or thereon, in good order and repair and free of debris, all in a manner as is consistent with good property management.

Section 3. Utility Easements. There is hereby created a perpetual blanket easement upon, across, over, through, and under the Property A for ingress, egress, installation, replacement, repair, and maintenance of all utility and service lines and systems, including, but not limited to, water, sewers, gas, telephones, electricity, television, cable, or communication lines and systems, providing the Declarant (prior to the end of Declarant control) or the providing utility or service company restores disrupted areas to the condition in which they were found. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other service utility lines or facilities for such utilities may be installed or relocated on said premises except as programmed and approved by the Declarant (prior to the end of Declarant control) or by the Architectural Review Committee thereafter. By virtue of this easement, it shall be expressly permissible for the Declarant or the providing utility or service company to install and maintain facilities and equipment on said property and to excavate for such purposes. This easement shall in no way affect any other recorded easements on said premises.

Section 4. Declarant's Extended Easement. For a period of five (5) years from the date of conveyance of the first Unit, the Declarant reserves a blanket easement and right on, over, and under the ground within the Property to maintain reasonable standards of health, safety, and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to improve, repair, or preserve the Property or adjacent properties owned by Declarant, following which the Declarant shall restore the affected property to its original condition as nearly as practicable. The Declarant shall give reasonable notice of intent to take such action to all affected Owners, unless in the opinion of the Declarant an emergency exists which precludes such notice.

Section 5. Encroachment. If any portion of any structure shall encroach upon any Unit or upon any portion of the Common Area of Limited Common Areas as a result of settling or lateral movement or as a result of initial error in alignment or in construction between the surveyed Lot line and the physical structure, a valid easement for such encroachment shall exist so long as the structure stands.

Section 6. Damage or Destruction of the Property. With the exception of damage or destruction of a party wall or fence covered by Article IX, Section 3, and damage or destruction of Common Area and Limited Common Areas covered by Article IV, Section 5, the written consent of seventy-five percent (75%) of the members shall determine whether to rebuild, repair, restore, or sell the property in the event of damage or destruction of all or part of the Property. An Owner's consent is not effective unless it is approved by each Mortgagee, if any, of the Unit.

Section 7. Declarant's Right to Rent. Declarant reserves the right to rent completed Units prior to its sale of such Units. Declarant will continue to offer such Units for sale, subject to the legal rights of any tenant.

ARTICLE VIII
Insurance

Section 1. Fire or Casualty Insurance.

(a) The Association shall obtain insurance for the Property against loss or damage by fire and such other hazards for not less than full replacement value of the Property and a liability policy covering all claims commonly insured against. Insurance coverage shall be written on the Property in the name of the Association as trustee for each of the Unit Owners in the percentages established in this declaration. The premiums for the liability and the fire and other hazards policies shall be a common expense. Provisions for such insurance shall be without prejudice to the right of each Owner to insure his or her own Unit for personal benefit.

(b) Unless there occurs substantial damage to or destruction of all or a substantial part of the Property, and subject to the provisions hereinafter provided, the Association and the Owners shall repair, replace, and rebuild the damage caused by casualty loss, and pay the costs of the same in full. The Association shall levy assessments in the event insurance proceeds are insufficient for the purpose of repairing, replacing, and rebuilding the damage caused by casualty loss.

(c) (i) Immediately after a casualty causing damage to any part of the Property, the Board of Directors shall obtain reliable and detailed estimates of the cost necessary to repair and replace the damaged property to a condition as good as the condition that existed prior to the casualty loss; provided, however, that if a casualty causing damage is limited to a single Unit, then it shall be the responsibility of that Unit's Owner to obtain estimates of the cost of replacement as aforesaid. If the net proceeds of insurance are insufficient to pay the estimated cost of reconstruction and repair, the Board of Directors shall, promptly, upon determination of deficiency, levy a special assessment against all Owners for that portion of the deficiency related to common elements, in accordance with the percentages of ownership of the total project, and against the individual Owners for that portion of the deficiency related to individual damaged Units; provided, however, that if, in the opinion of the Board of Directors, it is impossible to accurately and adequately determine the portion of the deficiency relating to individual damaged Units, the Board of Directors shall levy the special assessment for the total deficiency against each of the Owners, according to the percentages of ownership of the Property.

(ii) Unless there occurs substantial damage to or destruction of all or a substantial portion of the Property, and the Owners elect not to rebuild and repair, as provided in paragraph (d) below, the trustees shall use the net proceeds and the funds collected by the board of directors from the assessments set forth above to repair and replace any damage or destruction of property, and shall pay any balance remaining to the Owners and their Mortgagees, as their interests may appear, and the proceeds of the insurance and the funds collected by the board of directors from the assessments as provided above shall be held by the trustees in trust for the use and purposes herein provided.

(d) As used in this Declaration, and in any other connection or context dealing with Property, the term "substantial damages to or destruction of all or a substantial portion of the Property" shall mean that three-fourths (3/4) or more of the Units are rendered untenantable by casualty loss or damage. Should there occur substantial damage to or destruction of all or a substantial part of the Property, the Condominium project shall not be reconstructed, unless three-fourths (3/4) or more of the Owners agree in writing within one hundred twenty (120) days of damage to reconstruct. It is understood

and agreed that in the event a Mortgagee of a Unit should require insurance proceeds be used for the payment of the mortgage of that Unit, the Owner shall then be obligated to deposit the funds in an amount equal to the such Unit's share of the rebuilding costs. In the event such reconstruction is not approved, the trustees are so authorized to pay proceeds of the insurance to the Owners and their Mortgagees, as their interest may appear and the Property shall be removed from the provisions of the Act with the results provided for by Wisconsin Statute § 703.28. The determination not to reconstruct after casualty shall be evidenced by a certificate, signed by one of the officers of the Association, stating that the said sixty-day period has elapsed and that the Association has not received the necessary writings from three-fourths of the Owners.

(e) The Association is hereby irrevocably appointed agent for each Owner to adjust all claims arising under insurance policies purchased by the Association.

Section 2. Additional Insurance Provisions. The Board of Directors shall provide public liability insurance covering the Common Area and Limited Common Areas and facilities in such amounts as may be determined at the discretion of the board of directors from time to time. The Board of Directors may also provide worker's compensation insurance and fidelity bonds on such officers and employees and in such amounts as is determined by the board of directors to be necessary from time to time. Owners may, at their option, proceed to obtain individual insurance policies providing coverage to them upon their individual contents, as well as improvements rendered within their individual Units; and the cost thereof shall be paid for by the individual Owner.

ARTICLE IX **Party Walls**

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Property and placed on the dividing line between the Units shall constitute a party wall; and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Rights of Owners. The Owners of contiguous Units who have a party wall or party fence shall both equally have the right to use such wall or fence, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

Section 3. Damage or Destruction. In the event that any party wall or party fence is damaged or destroyed (including deterioration from ordinary wear and tear and lapse of time).

(a) Through the act of an Owner or any of the Owner's agents or members of the Owner's family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the party wall or fence without cost to the other adjoining Owner or Owners.

(b) Other than by the act of an adjoining Owner, the Owner's agents, guests, or family, it shall be the obligation of all Owners whose Units adjoin such wall or fence to rebuild and repair such wall or fence at their joint and equal expense:

Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any party wall without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.

Section 4. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 5. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators, which decision shall be binding on all affected parties.

ARTICLE X General Provisions

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless prior to the expiration of the twenty-year term or of any ten-year extension period the covenants and restrictions are expressly terminated by an instrument signed by all of the Owners and by the Class B member (unless Class B membership has ceased). A termination must be recorded.

Section 2. Amendment. This Declaration may be amended at any time by an instrument signed by the Class B member (unless Class B membership has ceased) and by not less than two-thirds (2/3) of the Owners. An Owner's consent is not effective unless it is approved by the Mortgagee of the Unit, if any. Any amendment must be recorded.

Section 3. Enforcement. The Association, any Owner, or the Declarant shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or thereafter imposed by the provisions of this Declaration and of Supplementary Declarations. Failure to enforce any such restriction, condition, covenant, reservation, lien or charge as provided herein shall in no event be deemed a waiver of the right to do so thereafter. The Association shall be entitled to recover reasonable attorney fees and costs incurred by it in any successful action to enforce the terms of this Declaration, any supplemental, restated, or amended Declaration, its Bylaws, or any rules properly adopted by it, and may assess such amounts as a special assessment against the Owner or Owners opposing the Association in such action.

Section 4. Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 5. Limitations. As long as there is a Class B member, the Association may not use its resources or take a public position in opposition to any general plan of development or to changes thereto proposed by the Declarant. Nothing in this section shall be construed to limit the rights of the members acting as individuals or in affiliation with other members or groups.

Section 6. Non-Homestead of Declarant. None of the lands described in Exhibits A or B constitutes the homestead of the Declarant.

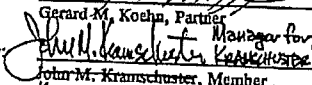
Section 7. Registered Agent. Gerard M. Koehn, 2265 EastRidge Center, Eau Claire, WI 54701, is the person designated to receive service of process for Cannery Estates Condominium Association, Inc. Seventy-five percent (75%) of the Owners may designate a successor to receive service of process.

IN WITNESS WHEREOF, this Declaration has been executed on the day, month, and year first above written.

Tainter Avenue Menomonie, LLC

By: Goldridge Group, a Wisconsin general partnership,
Member



Gerard M. Koehn, Partner

By:  Manager for
John M. Kramschuster, Member
~~Kramschuster, Incorporated~~ *JMK*

STATE OF WISCONSIN)
EAU CLAIRE COUNTY) ss:

Personally came before me this 7th day of April, 1999, Gerard M. Koehn, who to me represented that he was a partner of Goldridge Group, a Wisconsin general partnership, and to me known to be the person who executed the foregoing instrument and acknowledged the same on behalf of said partnership, by its authority.





Lori A. Kinderman, Notary Public
State of Wisconsin.
My Commission expires August 13, 2000.

STATE OF WISCONSIN)
EAU CLAIRE COUNTY) ss:

Personally came before me this 7th day of April, 1999, John M. Kramschuster, who to me represented that he was a member of Tainter Avenue Menomonie, LLC, a Wisconsin limited liability company, and to me known to be the person who executed the foregoing instrument and acknowledged the same on behalf of said company, by its authority.




Lori A. Kinderman, Notary Public
State of Wisconsin.
My Commission expires August 13, 2000.

This instrument was drafted by Attorney Joseph R. Mirr, of Garvey, Anderson, Johnson, Gabler & Gerdel, S.C., 402 Graham Avenue, P. O. Box 187, Eau Claire, Wisconsin 54702-0187.

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY SUBJECT TO DECLARATION

A parcel of land located in Dunn County, Wisconsin, described as follows:

Cannery Estates, located in the NE¼ of the SW¼ and the SE¼ of the NW¼ of Section 23, Township 28 North, Range 13 West, City of Menomonie, Dunn County, Wisconsin and including all of Lots 1, 2, 3, and part of Lot 4, Block 2, O & N Lumber Company's Addition being more particularly described as follows: Beginning at the intersection of the East line of Tainter Street and the South line of Lake Avenue, said point being the Northwest corner of said Lot 1; thence N. 90°00'00"E., along the South line of Lake Avenue, 248.30 feet to the West line of the Chicago, St. Paul, Minneapolis & Omaha Railway right-of-way; thence S.04°19'00" W. along said West line, 182.01 feet; thence S.05°21'30" W., along said West line, 110.94 feet; thence N.82°16'35" W. 266.21 feet to the Easterly line of Tainter Street; thence N.08°44'00" E., along said Easterly line, 259.18 feet to the point of beginning and being subject to existing easements.

SUBJECT to existing easements.

TAX NUMBERS: 251-1367-07; 251-1367-08; 251-1034-06.

EXHIBIT B

LEGAL DESCRIPTION OF POSSIBLE EXPANSION PROPERTY

PARCELA:

Units 101, 102, 103, 104, 201, 202, 203, 301, 302, 303, and 304, CONDOMINIUM PLAT OF CANNERY ESTATES, CITY OF MENOMONIE, Dunn County, Wisconsin:

LOCATED IN:

The Northeast Quarter (NE $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) and of the Southeast Quarter (SE $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) in Section Twenty-three (23), Township Twenty-eight (28) North, Range Thirteen (13) West, CITY OF MENOMONIE, Dunn County, Wisconsin and including all of Lots One (1), Two (2), Three (3) and part of Lot Four (4), Block Two (2), O & N Lumber Company's Addition being more particularly described as follows: Beginning at the intersection of the east line of Tainter Street and the South line of Lake Avenue, said point being the Northwest corner of said Lot 1; thence N. 90°00'00" E., along the South line of Lake Avenue, 248.30 feet to the West line of the Chicago, St. Paul, Minneapolis & Omaha Railway right-of-way; thence S 04°19'00" W., along said west line, 182.01 feet; thence S 05°21'30" W., along said west line, 110.94 feet; thence N 82°16'35" W., 266.21 feet to the Easterly line of Tainter Street; thence N 08°44'00" E., along said Easterly line, 259.18 feet to the Point of Beginning.

SUBJECT to existing easements.

TAX NUMBERS: 251-1367-07; 251-1367-08; 251-1034-06.

PARCELB:

Lots One (1), Two (2), Three (3), Four (4), Five (5) and Six (6), Block Two (2) O & N LUMBER COMPANY'S ADDITION to the CITY OF MENOMONIE, Dunn County, Wisconsin.

ALSO

That part of the Northeast Quarter (NE $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) and of the Southeast Quarter (SE $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) in Section Twenty-three (23), Township Twenty-eight (28) North, Range Thirteen (13) West, CITY OF MENOMONIE, Dunn County, Wisconsin, bounded as follows: On the North by Lake Avenue, on the South by the South line of Lot Six (6) in said Block Two (2) extended Easterly to intersect the West line of the Chicago, St. Paul, Minneapolis & Omaha Railway right-of-way, on the West by the said Block Two (2) and on the East by the West line of said Chicago, St. Paul, Minneapolis and Omaha Railway right-of-way.

ALSO

Part of the Northeast Quarter (NE $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section Twenty-three (23), Township Twenty-eight (28) North, Range Thirteen (13) West, CITY OF MENOMONIE, Dunn County, Wisconsin, described as follows:

Beginning at the Northwest corner of Lot Three (3) in Block Two (2) of said O & N Lumber Company's Addition; thence South 7 1/2° West along the East line of Tainter Street 683.1 feet; thence North 89° East

294 feet to the right-of-way of the Chicago, St. Paul, Minneapolis & Omaha Railway Company; thence North 5° East along said right-of-way 683.2 feet; thence South 89° West 256.5 feet to the place of beginning, which description includes Lots Three (3), Four (4), Five (5) and Six (6), Block Two (2) said O & N Lumber Company's Addition.

SUBJECT to flowage rights of record and subject to existing easements.

EXCEPT: Any part contained thereof in Condominium Plat of Cannery Estates.

TAX NUMBER: 251-1367-07; 251-1367-08; 251-1034-06.

EXCEPT: A parcel of land located in Dunn County, Wisconsin, described as follows.

Cannery Estates, located in the NE¼ of the SW¼ and the SE¼ of the NW¼ of Section 23, Township 28 North, Range 13 West, City of Menomonie, Dunn County, Wisconsin and including all of Lots 1, 2, 3, and part of Lot 4, Block 2, O & N Lumber Company's Addition being more particularly described as follows: Beginning at the intersection of the East line of Tainter Street and the South line of Lake Avenue, said point being the Northwest corner of said Lot 1; thence N. 90°00'00"E., along the South line of Lake Avenue, 248.30 feet to the West line of the Chicago, St. Paul, Minneapolis & Omaha Railway right-of-way; thence S.04°19'00" W, along said West line, 182.01 feet; thence S.05°21'30" W., along said West line, 110.94 feet; thence N.82°16'35" W. 266.21 feet to the Easterly line of Tainter Street; thence N.08°44'00" E., along said Easterly line, 259.18 feet to the point of beginning and being subject to existing easements.



IN PART OF THE NE1/4 OF THE SW1/4 AND SE1/4 OF THE NW1/4
SECTION 21 T6N, R10E,
AND INCLUDING ALL OF LOTS 1, 2, 3 AND PART OF LOT 4,
BLOCK 2, O & N LUMBER COMPANY'S ADDITION
CITY OF MENOMONEE, DUNN COUNTY, WISCONSIN

D-24

[illegible]

Cannery Estates Condominium;
Lots 1-6 Blk. 2 Oak Lumber Company's Add. Meno.;
Pt. SE NW, Pt. NE SW 23-28-13

VOL 859 records page 270

454712

RECEIVED FOR RECORD

**FIRST AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS**

**FOR
CANNERY ESTATES CONDOMINIUMS
TAINTER AVENUE
MENOMONIE, WISCONSIN**

DECLARANT:

Tainter Avenue Menomonie, LLC
2265 EastRidge Center
Eau Claire, WI 54701

VOL 859 PAGE(S) 270-275

OCT 12 1999

AT 11:20 O'CLOCK A.M.
JAMES M. MADUTT, REGISTER OF DEEDS
DUNN COUNTY
James M. Madutt
REGISTER OF DEEDS

pd-20.00

Return to: Amy Joseph R. Murr
P.O. Box 187
Eau Claire, WI 54702
DUNN COUNTY
The Title Company, Inc.
3408 Oakwood Mall Drive
P.O. Box 855
Eau Claire, WI 54702-0855

**FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS**

First Amendment to Declaration made this 10th day of September, 1999, by Tainter Avenue Menomonie, LLC a Wisconsin limited liability company (hereinafter "Declarant").

WITNESSETH:

WHEREAS, Declarant executed a Declaration of Covenants, Conditions, Easements and Restrictions for Cannery Estates Condominiums on April 7, 1999 regarding lands in Dunn County, Wisconsin described on Exhibits A and B, attached hereto (the "Declaration"), which Declaration was recording in the office of the Register of Deeds for Dunn County, Wisconsin, on May 11, 1999, in Volumes 828 of Records, pages 11 to 35, as document number 450468; and

WHEREAS, Declarant now desires to amend the Declaration; and

WHEREAS, Article X, Section 2, of the Declaration provides that the Declaration may be amended at any time by an instrument signed by the Class B member and by not less than two-thirds (2/3) of the Owners; and

WHEREAS, Declarant is the Class B member and there are 0 Owners and the undersigned desire to amend the Declaration.

NOW, THEREFORE, Declarant hereby amends the Declaration as follows:

1. Article II, Section 4(b) of the Declaration is restated to read as follows:

"(b) The attic, deck, storage areas, if any, and garage areas, if any, to which a Unit has direct access shall be considered part of that Unit."

2. Article II, Section 6 of the Declaration is restated to read as follows:

"Section 6. **Description of Limited Common Areas and Facilities.** The following Common Areas and facilities are permanently assigned to and limited to the use of Units as follows (hereinafter called "Limited Common Areas"):

- (a) The decks, if any, to which each Unit has direct access by a door from the Unit;
- (b) The driveway access to each Unit;
- (c) The sidewalk areas to which each Unit has direct access by a door from the Unit; and
- (d) The mailbox or mailboxes assigned to each Unit.

3. **Ratification.** All other terms and conditions of the Declaration not in conflict with this First Amendment to Declaration of Covenants, Conditions, Easements and Restrictions for Cannery Estates Condominiums are hereby ratified and affirmed.

IN WITNESS WHEREOF, this instrument has been executed on the day, month, and year first above written.

Tainter Avenue Menomonie, LLC

By: _____

Gerard M. Koehn, Member

By: _____

John M. Kramschuster, Member

STATE OF WISCONSIN)
) ss:
EAU CLAIRE COUNTY)

Personally came before me this 10th day of September, 1999, Gerard M. Koehn and John M. Kramschuster, who to me represented that they were Members Tainter Avenue Menomonie, LLC, a

Wisconsin limited liability company, and to me known to be the persons who executed the foregoing instrument and acknowledged the same on behalf of said company, by its authority.



Lori A. Kinderman
Lori A. Kinderman, Notary Public
State of Wisconsin.
My Commission expires August 13, 2000

This instrument was drafted by Attorney Joseph R. Murr, of Garvey, Anderson, Johnson, Gabler & Geraci, S.C., 402 Graham Avenue, P. O. Box 187, Eau Claire, Wisconsin 54602-0187.

EXHIBIT A
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SUBJECT to existing easements.

TAX NUMBERS: 251-1367-07; 251-1367-08; 251-1034-06.

EXHIBIT B**LEGAL DESCRIPTION OF POSSIBLE EXPANSION PROPERTY****PARCEL A:**

Units 101, 102, 103, 104, 201, 202, 203, 301, 302, 303, and 304, CONDOMINIUM FLAT OF CANNERY ESTATES, CITY OF MENOMONIE, Dunn County, Wisconsin;

LOCATED IN:

The Northeast Quarter (NE $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) and of the Southeast Quarter (SE $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) in Section Twenty-three (23), Township Twenty-eight (28) North, Range Thirteen (13) West, CITY OF MENOMONIE, Dunn County, Wisconsin and including all of Lots One (1), Two (2), Three (3) and part of Lot Four (4), Block Two (2), O & N Lumber Company's Addition being more particularly described as follows: Beginning at the intersection of the east line of Tainter Street and the South line of Lake Avenue, said point being the Northwest corner of said Lot 1; thence N. 90°00'00" E., along the South line of Lake Avenue, 248.30 feet to the West line of the Chicago, St. Paul, Minneapolis & Omaha Railway right-of-way; thence S 04°19'00" W. along said west line, 182.01 feet; thence S 05°21'30" W., along said west line, 110.94 feet; thence N 82°16'35" W., 266.21 feet to the Easterly line of Tainter Street; thence N 08°44'00" E., along said Easterly line, 259.18 feet to the Point of Beginning.

SUBJECT to existing easements.

TAX NUMBERS: 251-1367-07; 251-1367-08; 251-1034-06.

PARCEL B:

Lots One (1), Two (2), Three (3), Four (4), Five (5) and Six (6), Block Two (2) O & N LUMBER COMPANY'S ADDITION to the CITY OF MENOMONIE, Dunn County, Wisconsin.

ALSO

That part of the Northeast Quarter (NE $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) and of the Southeast Quarter (SE $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) in Section Twenty-three (23), Township Twenty-eight (28) North, Range Thirteen (13) West, CITY OF MENOMONIE, Dunn County, Wisconsin, bounded as follows: On the North by Lake Avenue, on the South by the South line of Lot Six (6) in said Block Two (2) extended Easterly to intersect the West line of the Chicago, St. Paul, Minneapolis & Omaha Railway right-of-way, on the West by the said Block Two (2) and on the East by the West line of said Chicago, St. Paul, Minneapolis and Omaha Railway right-of-way.

ALSO

Part of the Northeast Quarter (NE $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section Twenty-three (23), Township Twenty-eight (28) North, Range Thirteen (13) West, CITY OF MENOMONIE, Dunn County, Wisconsin, described as follows:

Beginning at the Northwest corner of Lot Three (3) in Block Two (2) of said O & N Lumber Company's Addition; thence South 7 1/2° West along the East line of Tainter Street 683.1 feet; thence North 89° East

294 feet to the right-of-way of the Chicago, St. Paul, Minneapolis & Omaha Railway Company; thence North 5° East along said right-of-way 683.2 feet; thence South 89° West 256.5 feet to the place of beginning, which description includes Lots Three (3), Four (4), Five (5) and Six (6), Block Two (2) said O & N Lumber Company's Addition.

SUBJECT to flowage rights of record and subject to existing easements.

EXCEPT: Any part contained thereof in Condominium Plat of Cannery Estates.

TAX NUMBER: 251-1367-07; 251-1367-08; 251-1034-06.

EXCEPT: A parcel of land located in Dunn County, Wisconsin, described as follows.

Cannery Estates, located in the NE¼ of the SW¼ and the SE¼ of the NW¼ of Section 23, Township 28 North, Range 13 West, City of Menomonie, Dunn County, Wisconsin and including all of Lots 1, 2, 3, and part of Lot 4, Block 2, O & N Lumber Company's Addition being more particularly described as follows: Beginning at the intersection of the East line of Tainter Street and the South line of Lake Avenue, said point being the Northwest corner of said Lot 1; thence N. 90°00'00"E., along the South line of Lake Avenue, 248.30 feet to the West line of the Chicago, St. Paul, Minneapolis & Omaha Railway right-of-way; thence S.04°19'00" W. along said West line, 182.01 feet; thence S.05°21'30" W., along said West line, 110.94 feet; thence N.82°16'35" W. 266.21 feet to the Easterly line of Tainter Street; thence N.08°44'00" E., along said Easterly line, 259.18 feet to the point of beginning and being subject to existing easements.

514209

DUNN COUNTY, WI
REGISTER OF DEEDS
JAMES M. MRDUTT

RECORDED ON
07/20/2004 10:05AM

REC FEE: 19.00
TRANS FEE:
FEE EXEMPT #:

PAGES: 5

**FIRST SUPPLEMENTARY
DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS
FOR
CANNERY ESTATES CONDOMINIUMS
TAINTER AVENUE
MENOMONIE, WISCONSIN**

SUCCESSOR DECLARANT:

JDS of Menomonie, LLC
855 Industrial Boulevard
Mondovi, WI 54755

pd 19.00
Return to: Atty Joseph R. Mirr
P.O. Box 187
Eau Claire, WI 54702

**FIRST SUPPLEMENTARY DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS**

First Supplementary Declaration made this 16th day of June, 2004, by **JDS of Menomonie, LLC** a Wisconsin limited liability company (hereinafter "Declarant").

WITNESSETH:

WHEREAS, Tainter Avenue Menomonie, LLC, as Declarant, executed a Declaration of Covenants, Conditions, Easements and Restrictions for Cannery Estates Condominiums on April 7, 1999 regarding lands in Dunn County, Wisconsin described on Exhibits A and B, attached hereto (the "Declaration"), which Declaration was recorded in the office of the Register of Deeds for Dunn County, Wisconsin, on May 11, 1999, in Volume 828 of Records of Dunn County, Wisconsin, on pages 11-35, as document number 450468 (hereinafter the "Condominium Declaration"); and

WHEREAS, on July 21, 2003 Tainter Avenue Menomonie, LLC executed and delivered to JDS of Menomonie, LLC a warranty deed and assignment of interest, which deed and assignment was recorded in the office of the Register of Deeds for Dunn County, Wisconsin, on July 31, 2003, in Volume 1230 of Records of Dunn County, Wisconsin, on page 126, as document number 501239, which deed was corrected by a warranty deed from Tainter Avenue Menomonie, LLC to JDS of Menomonie, LLC dated December 1, 2003, and which was recorded in the office of the Register of Deeds for Dunn County, Wisconsin, on January 6, 2004, in the Records of Dunn County, Wisconsin, as document number 507430, and pursuant to said deed and assignment and correction deed JDS of Menomonie, LLC, among other things, succeeded to all right, title, and interest of Tainter Avenue Menomonie, LLC as Declarant pursuant to the Condominium Declaration and JDS of Menomonie, LLC is now the Successor Declarant; and

D-1

WHEREAS, Article X, Section 2, subsection a. of the Condominium Declaration provides that the Declarant or its successor have the right to bring within the scheme of the Condominium Declaration additional lands as described on Exhibit B attached hereto, by executing and recording with the Register of Deeds for Dunn County, Wisconsin one or more supplementary declarations with respect to the additional property; and

WHEREAS, JDS of Menomonie, LLC, as Successor Declarant does now desire to so bring within the scheme of the Condominium Declaration said additional lands.

NOW, THEREFORE, JDS of Menomonie, LLC hereby executes this Supplemental Declaration as follows:


1. **Additional Lands.** Pursuant to Article X, Section 2, subsection a. of the Condominium Declaration, the lands described on Exhibit B attached hereto are by this Supplementary Declaration brought within the scheme of the Condominium Declaration.

2. **First Addendum to Condominium Plat.** Submitted for recording herewith is a First Addendum to Condominium Plat prepared by TEC Design, Inc., dated July 1, 2004, which amends the Condominium Plat for Cannery Estates Condominiums dated Dec. 14, 1998 to include the lands described on Exhibit B within the plat of Cannery Estates Condominium.

3. **Ratification.** All other terms and conditions of the Condominium Declaration, as previously amended, not in conflict with this First Supplementary Declaration for Cannery Estates Condominiums are hereby ratified and affirmed.

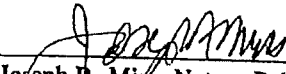
IN WITNESS WHEREOF, this instrument has been executed on the day, month, and year first above written.

JDS of Menomonie, LLC

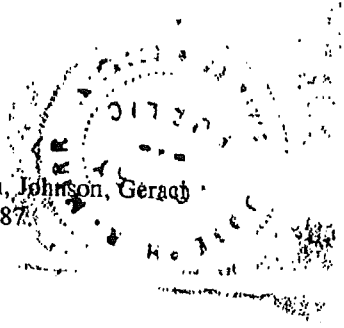
By: 
Joseph J. Becker, Member

STATE OF WISCONSIN)
) ss:
EAU CLAIRE COUNTY)

Personally came before me this 16th day of June, 2004, the above named Joseph J. Becker, who to me represented that he is a members JDS of Menomonie, LLC, a Wisconsin limited liability company, and to me known to be the person who executed the foregoing instrument and acknowledged the same on behalf of said company, by its authority.


Joseph R. Mirr, Notary Public
State of Wisconsin.
My Commission is permanent.

This instrument was drafted by Attorney Joseph R. Mirr, of Garvey, Anderson, Johnson, Geraghty & Mirr, S.C., 402 Graham Avenue, P. O. Box 187, Eau Claire, Wisconsin 54702-0187.



D-3

EXHIBIT B
ADDITIONAL LANDS

Lots One (1), Two (2), Three (3), Four (4), Five (5) and Six (6), Block Two (2) O & N LUMBER COMPANY'S ADDITION to the CITY OF MENOMONIE, Dunn County, Wisconsin.

ALSO

That part of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) and of the Southeast Quarter (SE ¼) of the Northwest Quarter (NW ¼) in Section Twenty-three (23), Township Twenty-eight (28) North, Range Thirteen (13) West, CITY OF MENOMONIE, Dunn County, Wisconsin, bounded as follows: On the North by Lake Avenue, on the South by the South line of Lot Six (6) in said Block Two (2) extended Easterly to intersect the West line of the Chicago, St. Paul, Minneapolis & Omaha Railway right-of-way, on the West by the said Block Two (2) and on the East by the West line of said Chicago, St. Paul, Minneapolis and Omaha Railway right-of-way.

ALSO

Part of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) of Section Twenty-three (23), Township Twenty-eight (28) North, Range Thirteen (13) West, CITY OF MENOMONIE, Dunn County, Wisconsin, described as follows:

Beginning at the Northwest corner of Lot Three (3) in Block Two (2) of said O & N Lumber Company's Addition; thence South 7 1/2° West along the East line of Tainter Street 683.1 feet; thence North 89° East 294 feet to the right-of-way of the Chicago, St. Paul, Minneapolis & Omaha Railway Company; thence North 5° East along said right-of-way 683.2 feet; thence South 89° West 256.5 feet to the place of beginning, which description includes Lots Three (3), Four (4), Five (5) and Six (6), Block Two (2) said O & N Lumber Company's Addition.

SUBJECT to flowage rights of record and subject to existing easements.

EXCEPT: Any part contained thereof in Condominium Plat of Cannery Estates.

TAX NUMBER: 251-1367-07; 251-1367-08; 251-1034-06.

EXCEPT: A parcel of land located in Dunn County, Wisconsin, described as follows.

Cannery Estates, located in the NE ¼ of the SW ¼ and the SE ¼ of the NW ¼ of Section 23, Township 28 North, Range 13 West, City of Menomonie, Dunn County, Wisconsin and including all of Lots 1, 2, 3, and part of Lot 4, Block 2, O & N Lumber Company's Addition being more particularly described as follows: Beginning at the intersection of the East line of Tainter Street and the South line of Lake Avenue, said point being the Northwest corner of said Lot 1; thence N. 90°00'00"E., along the South line of Lake Avenue, 248.30 feet to the West line of the Chicago, St. Paul, Minneapolis & Omaha Railway right-of-way; thence S.04°19'00" W. along said West line, 182.01 feet; thence S.05°21'30" W., along said West line, 110.94 feet; thence N.82°16'35" W. 266.21 feet to the Easterly line of Tainter Street; thence

N.08°44'00" E., along said Easterly line, 259.18 feet to the point of beginning and being subject to existing easements.

D-5

Document Number	Title of Document
	SECOND AMENDMENT TO DECLARATION OF CONDO. FOR CANNERY ESTATES CONDO.

583017

DUNN COUNTY, WI
REGISTER OF DEEDS
JAMES M. MRDUTT

RECORDED ON
10/28/2011 10:15AM

REC FEE: 30.00
FEE EXEMPT #:

PAGES: 15

Record this document with the Register of Deeds

Name and Return Address:

Skinner Law Firm, LLC *ENV*
406 Technology Drive E.
Menomonie, WI 54751

SEE ATTACHED.

(Parcel Identification Number)

SEE ATTACHED FOR LEGAL DESCRIPTION.

This instrument drafted by:

Brent D. Skinner
WI Bar ID No. 1016077
406 Technology Drive E.
Menomonie, WI 54751

*Pages 4 - 12
Consent(s) of
Mortgagees*

**SECOND AMENDMENT
TO DECLARATION OF CONDOMINIUM
FOR CANNERY ESTATES,
A CONDOMINIUM**

THIS SECOND AMENDMENT (this "Amendment") is executed as of this 5th day of October, 2011, by CANNERY ESTATES CONDOMINIUM ASSOCIATION, INC. (the "Declarant").

RECITALS:

- A. A prior Declarant executed a Declaration of Condominium for CANNERY ESTATES CONDOMINIUM recorded on May 11, 1999, with the Dunn County Register of Deeds as Document No. 450468, said declaration hereinafter being called "Declaration" and said condominium hereinafter being called "Condominium."
- B. A prior Declarant recorded a FIRST AMENDMENT TO COVENANTS, CONDITIONS, EASEMENT AND RESTRICTIONS FOR CANNERY ESTATES CONDOMINIUM on October 12, 1999, as Document No. 454712.
- C. A prior Declarant recorded a FIRST SUPPLEMENTARY DECLARATION OF COVENANTS, CONDITIONS, EASEMENT AND RESTRICTIONS FOR CANNERY ESTATES CONDOMINIUM on July 20, 2001, as Document No. 514209.
- D. The Declaration, and amended and supplemented, and pursuant to a FIRST ADDENDUM OF CONDOMINIUM PLAT OF CANNERY ESTATES, the following units were created within the Condominium:

<u>Unit No.</u>	<u>Tax Parcel No.</u>
101	251-1497-02-000
102	251-1497-03-000
103	251-1497-04-000
104	251-1497-05-000
201	251-1497-06-000
202	251-1497-07-000
203	251-1497-08-000
301	251-1497-09-000
302	251-1497-10-000
303	251-1498-01-000
304	251-1498-10-000
401	251-1498-10-900
402	251-1498-10-905
403	251-1498-10-910
404	251-1498-10-915
501	251-1498-10-920
502	251-1498-10-925

503	251-1498-10-930
504	251-1498-10-935
601	251-1498-10-940
602	251-1498-10-945
603	251-1498-10-950
604	251-1498-10-955

E. The legal description of the property subject to the above described covenants and plat is attached hereto and made a part hereof.

F. Declarant desires to record further amendments to the terms of the Declaration, as previously amended and supplemented, as set forth herein.

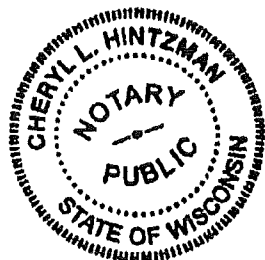
NOW, THEREFORE, Declarant does hereby declare as follows:

1. AMENDMENT: The Declarations are hereby further amended as set forth on Attachment A which is attached hereto and made a part hereof.
2. CONSENTS TO AMENDMENT: More than two-thirds of the aggregate of the votes needed for the amendment of the Declarations were received by the Declarant on September 7, 2011.
3. RATIFICATION: All of the terms and conditions of the Declaration, as previously amended and supplemented, not in conflict with the Second Amendment, are hereby ratified and affirmed.

IN WITNESS WHEREOF, the undersigned has executed this Amendment as of the date first written above.

Lucinda Ughetti
Declarant
Cannery Estates Condominium Association, Inc.
By: Lucinda Ughetti
President

Personally came before me this 5th day of October, 2011, the above named LUCINDA UGHETTI to me known to be the person who executed the foregoing instrument and acknowledged the same.



Cheryl L. Hintzman
Name: Cheryl L. Hintzman
Notary Public, State of Wisconsin
My commission expires 4-22-2012

LEGAL DESCRIPTION

PARCEL A:

Cannery Estates Condominium, located in the Northeast Quarter (NE $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) and of the Southeast Quarter (SE $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) in Section Twenty-three (23), Township Twenty-eight (28) North, Range Thirteen (13) West, City of Menomonie, Dunn County, Wisconsin and including all of Lots One (1), Two (2), Three (3) and part of Lot Four (4), Block Two (2), O & N Lumber Company's Addition being more particularly described as follows: Beginning at the intersection of the east line of Tainter Street and the South line of Lake Avenue, said point being the Northwest corner of said Lot 1; thence N. 90°00'00" E., along the South line of Lake Avenue, 248.30 feet to the West line of the Chicago, St. Paul, Minneapolis & Omaha Railway right-of-way; thence S 04°19'00" W. along said west line, 182.01 feet; thence S 05°21'30" W., along said west line, 110.94 feet; thence N 82°16'35" W., 266.21 feet to the Easterly line of Tainter Street; thence N 08°44'00" E., along said Easterly line, 259.18 feet to the Point of Beginning.

PARCEL B:

Lots One (1), Two (2), Three (3), Four (4), Five (5) and Six (6), Block Two (2) O & N Lumber Company's Addition to the City of Menomonie, Dunn County, Wisconsin.

ALSO

That part of the Northeast Quarter (NE $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) and of the Southeast Quarter (SE $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) in Section Twenty-three (23), Township Twenty-eight (28) North, Range Thirteen (13) West, City of Menomonie, Dunn County, Wisconsin, bounded as follows: On the North by Lake Avenue, on the South by the South line of Lot Six (6) in said Block Two (2) extended Easterly to intersect the West line of the Chicago, St. Paul, Minneapolis & Omaha Railway right-of-way, on the West by the said Block Two (2) and on the East by the West line of said Chicago, St. Paul, Minneapolis and Omaha Railway right-of-way.

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SUBJECT to flowage rights of record and subject to existing easements.

Article II

Section 4 Description of Units.

- (a) The description of the Units that follows will supersede all other descriptions or definitions that may be contained within the Cannery Estates Condominium Property Disclosure materials.
- (b) The Condominium Association unit area that is covered consists of the studs out – the shell or exterior.
- (b) The unit area not covered by the Condominium Association includes:
 - (1) floor coverings of any kind within a unit – above the upper surface of the sub flooring, such as carpeting, vinyl goods or hard wood;
 - (2) wall coverings or any kind of wall treatment such as paint, texture, wall paper, covering or permanently mounted mirrors;
 - (3) appliances within a unit, such as those used for refrigerating, ventilating, cooking, dishwashing, laundering, security, computer, fax, cable television, Internet, stereo or other sound systems, hardware and other appurtenances serving them or housekeeping appliances;
 - (4) any improvements and alterations within a unit that are now part of the building or structure but which were not part of the original condominium plans or specifications;
 - (5) any other building material within a unit inside of the inner edge of the vertical studs or furring strips and below the lowest edge of the ceiling joists, rafters or support members, including but not limited to:
 - a. All interior drywall or plastered surfaces;
 - b. Cabinetry, and
 - c. Plumbing fixtures, hot water heaters, fire sprinklers, if any, water softeners, if any, and the piping, valves and other connecting and controlling mechanisms and devices lying between the fixture and water or sewage lines serving more than one unit.
 - d. The heating, ventilating and air conditioning system, including the furnaces, air conditioning equipment, the control mechanisms, all vents from the unit to the exterior of the condominium, including vents for furnaces, clothes dryer, range hood, all other exhaust fans and such other vents appurtenant to each unit, condensers and all connections thereto serving each unit.

To replace Article II Section 6

Section 6 of the Declaration is restated to read as follows:

Section 6. Description of Limited Common Areas and Facilities. The following Common Areas and Facilities are permanently assigned to and limited to the use of Units as follows (hereinafter called "Limited Common Areas"):

- (a) the patio, if any, to which each Unit has direct access by a door from the Unit;
- (b) the driveway access to each Unit;
- (c) the sidewalk areas to which each Unit has direct access by a door from the Unit; and
- (d) the mailbox or mailboxes assigned to each Unit.

To replace Article V Section 2 (iii)

Section 2. General Assessment

(a) Purpose of Assessment

- (i)
- (ii)

(ii) Preservation of property values within the Property through exterior maintenance of Units is to include clothes drying vents (where a fire hazard is possible), exterior painting, exterior repairs, replacements and care of roofs, gutters, down spouts, exterior building surfaces, walks, driveways, fences, and patios (except gardens and items placed in patios by persons other than the Association). Replacement of windows, doors, garage doors must comply with the appearance of the Unit and is the Unit owner's responsibility, but the maintenance is to be done by the Association. Such exterior maintenance shall include lawn mowing, and care, tree and shrub planting, maintenance and replacement. However, all insurance proceeds received by an Owner in payment of damage necessitating repair or replacement by the Association shall be paid to the Association and applied to payment for such repairs and replacements.

To replace Article VIII

Section I (a) (b)

Section 2

Section I Fire and Casualty Insurance

- (a) The Association shall obtain for the property against loss or damage by fire or such hazards for not less than the replacement cost covering the studs out (exterior shell) of each building. Any damage to a unit that is within the exterior structure as described in Article II Section 4 is the responsibility of the unit owner.

This insurance description supersedes all articles, sections, or divisions of the Cannery Estates Condominium Property Disclosure materials.

Article VIII

Section 1.

- (b) The Association shall levy assessments in the event insurance proceeds are insufficient for the purpose of repairing, replacing, and rebuilding the damage caused by casualty loss on the exterior of the unit as describe in Article II Section 4 of the Cannery Estates Condominium Property Disclosure materials.

Section 2

Owners may, at their option, proceed to obtain individual insurance policies providing coverage to them upon their individual contents and the interior structure as described in Article II Section 4 of the Cannery Estates Condominium Property Disclosure materials.