

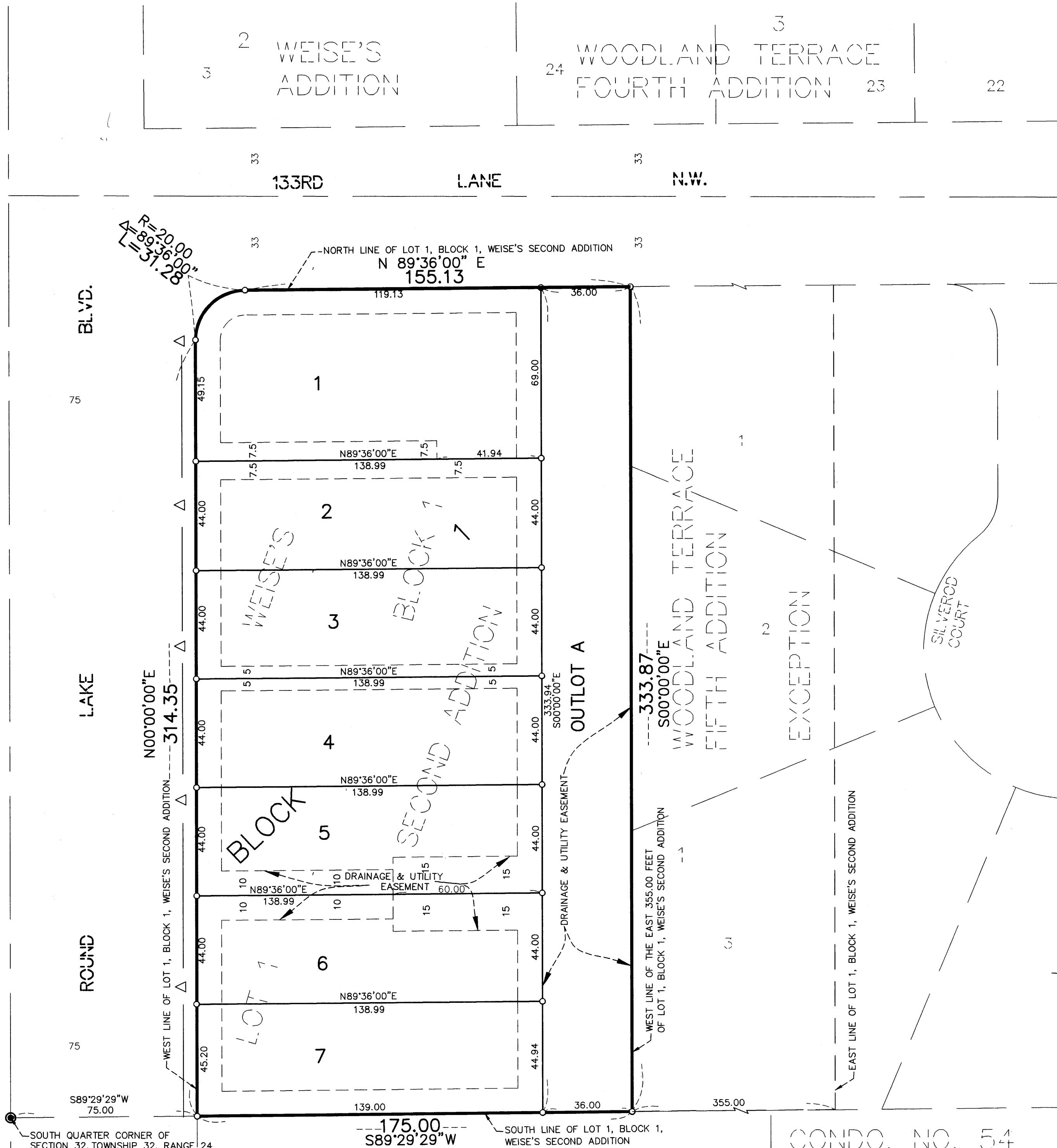
OFFICIAL PLAT

# CITY VIEW FARM

Book 66 Page 26

CITY OF ANDOVER  
COUNTY OF ANOKA  
SECTION 32, T. 32, R. 24

ANOKA COUNTY HIGHWAY RIGHT-OF-WAY PLAT NO. 47  
(COUNTY STATE AID HIGHWAY NO.9)



KNOW ALL PERSONS BY THESE PRESENTS: That MJB Custom Homes, Inc., a Minnesota Corporation, fee owner, of the following described property situated in the County of Anoka, State of Minnesota, to wit:

Lot 1, Block 1, WEISSE'S SECOND ADDITION, Anoka County, Minnesota, except the East 355.00 feet, as measured parallel with the South line of said Lot 1, Block 1, WEISSE'S SECOND ADDITION.

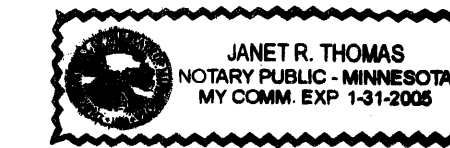
Has caused the same to be surveyed and platted as CITY VIEW FARM and does hereby donate and dedicate to the public for public use forever the drainage and utility easements as shown on this plat. Also dedicating to the County of Anoka the Right of Access onto County State Aid Highway No. 9, as shown on this plat. In witness whereof said MJB Custom Homes, Inc., a Minnesota Corporation, has caused these presents to be signed this 30 day of October, 2003.

MJB Custom Homes, Inc.

*Sean M. McDonald*  
Sean M. McDonald, as President

STATE OF MINNESOTA  
COUNTY OF Anoka

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of October, 2003 by Sean M. McDonald, as President of MJB Custom Homes, Inc., a Minnesota Corporation, on behalf of the corporation.



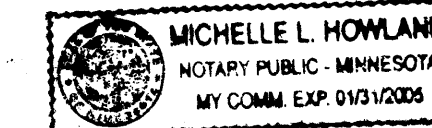
*Janet R. Thomas*  
Notary Public, Minnesota  
My Commission Expires 1-31-03

I hereby certify that I have surveyed and platted the property on this plat as CITY VIEW FARM; that this plat is a correct representation of said survey; that all distances are correctly shown on said plat in feet and hundredths of a foot; that all monuments have been correctly placed in the ground as shown on said plat or will be placed as required by the local governmental unit as designated on said plat; that the outside boundary lines are correctly designated on said plat; and that there are no wetlands as defined in MS 505.02, subd. 1, or public highways to be designated other than as shown.

STATE OF MINNESOTA  
COUNTY OF ANOKA

*Charles R. Christopherson*  
Charles R. Christopherson, Land Surveyor  
Minnesota License No. 18420

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of October, 2003 by Charles R. Christopherson, Land Surveyor.



*Michelle L. Howland*  
Notary Public, Minnesota  
My Commission Expires January 31, 2005.

ANDOVER, MINNESOTA

This plat of CITY VIEW FARM was approved and accepted by the City Council of Andover, Minnesota, at a regular meeting thereof held this 20<sup>th</sup> day of September, 2003. If applicable, the written comments and recommendations of the Commissioner of Transportation and the County Highway Engineer have been received by the City or the prescribed 30 day period has elapsed without receipt of such comments and recommendations, as provided by Minn. Statutes Section 505.03, Subd. 2.

CITY COUNCIL OF THE CITY OF ANDOVER, MINNESOTA

*Mayor*, Mayor *Victoria Ull*, Clerk

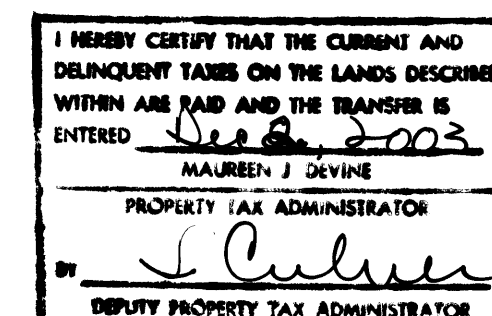
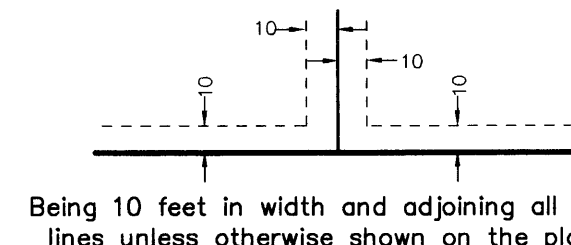
ANOKA COUNTY SURVEYOR

This plat was checked and approved on this 2<sup>nd</sup> day of DECEMBER, 2003.

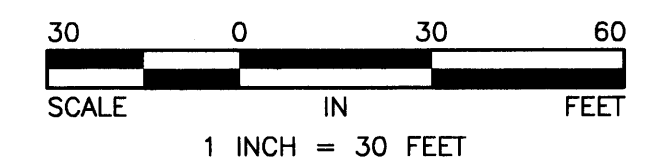
*Larry D. Holm*  
Larry Holm, Anoka County Surveyor

- △ Denotes Right-of-Access Dedicated to County of Anoka
  - Denotes found monument.
  - Denotes 1/2 inch by 14 inch iron monument set and marked with Minnesota License No. 18420.
- For the purposes of this plat, the North line of Lot 1, Block 1, WEISSE'S SECOND ADDITION, is assumed to bear N 89°36'00"E

DRAINAGE AND UTILITY EASEMENTS ARE SHOWN THUS:



*Maureen J. Devine*  
Maureen J. Devine  
PROPERTY TAX ADMINISTRATOR  
DEPUTY PROPERTY TAX ADMINISTRATOR



RECEIPT # 2003167628 / \$ 335.00



1878549

THIS DOCUMENT NUMBER REPRESENTS A PLAT

ALL PLATS ARE MAINTAINED ON A SEPARATE MICROFICHE IN A SEPARATE SECTION RESERVED FOR PLATS. FULL SIZE COPIES OF PLATS ARE STILL AVAILABLE FOR VIEWING.

MUNICIPALITY: Andover CERTIFIED BY: A ON 12/2/03

MAP # 3037 PLAT BOOK: 66 OF ABST PAGE 26

DOC. DATE: 10.30.03 NO. OF PAGES: 1 TRACT BOOK: \_\_\_\_\_ PAGE \_\_\_\_\_

PLAT SHORT NAME: City View FARM

LONG NAME: City View FARM

A/T	PARENT PINS	KEY	RES?	GRANTORS (Fees, C/Ps, Mortgagees)	Marital Status
A	32.32.24.43.0030	981753	N	MSB Custom Homes Inc	
				see filed 9-18?	

FILED BY: Reg Abst. PHONE: \_\_\_\_\_

TAXPAYER NAME: MSB

ADDRESS: 6438 Riverdale Dr.

CITY: Ramsey STATE Mn ZIP: 55303

NEW PARCELS

LOT	BLOCK	LOT	BLOCK	LOT	BLOCK
1-7	1				
A	0/2				(P)

DELT & CURRENT TAXES ARE PAID INITIALS: gmb DATE: 12/2/03

DIV. NO.: \_\_\_\_\_ DIV. FEE: \$ 280.

**ABSTRACT**

Receipt # <u>167628/335.00</u>	<input type="checkbox"/> Incorrect/No Reference #
Date/Time <u>12/2 11:30</u>	<input type="checkbox"/> Non-standard Document
Document Order <u>10 of 6</u>	<input type="checkbox"/> Certified Copy/
PINs <u>JW</u>	<input type="checkbox"/> Tax Lien/Release <input type="checkbox"/> Transfer <input checked="" type="checkbox"/> Division <input type="checkbox"/> Status <input type="checkbox"/> New legal Description <input type="checkbox"/> GAC <input type="checkbox"/> Deferred Specials <input type="checkbox"/> No Change
Recordability <u>JW</u>	
Filing Fees \$ <u>55.00</u>	
Copy/Additional Pg Fees \$ _____	
Well Cert Fees \$ <u>280.00</u>	
<u>Division Fee</u>	
<input type="checkbox"/> Incomplete Form	
<input type="checkbox"/> Missing Attachment	
<input type="checkbox"/> No Legal Description	
<input type="checkbox"/> Non-existent Legal Description	
<input type="checkbox"/> Part(s) Illegible	

**DOCUMENT NO. 1878549.0 ABSTRACT  
ANOKA COUNTY MINNESOTA**

I HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS FILED IN THIS OFFICE  
 FOR RECORD ON DEC 02 2003  
 AT 2:30 PM AND WAS DULY RECORDED  
 FEES AND TAXES IN THE AMOUNT OF \$335.00 PAID  
2003167628

RECEIPT NO  
MAUREEN J DEVINE  
 ANOKA COUNTY PROPERTY TAX ADMINISTRATOR/RECORDER/REGISTRAR OF TITLES  
 BY JMH  
 DEPUTY PROPERTY TAX ADMINISTRATOR/RECORDER/REGISTRAR OF TITLES

DECLARATION FOR NEW CIC

THIS PAGE IS NOT PART OF THE ORIGINAL DOCUMENT PRESENTED FOR RECORDING

Added by Anoka County Recorder for posting only.

MUNICIPALITY Andover CHECKED BY: [Signature] ON 3-16-04

MAP # 3098 PLAT BOOK TYPE. \_\_\_\_\_

DOC DATE. 2-12-04 NO OF PAGES \_\_\_\_\_ TRACT BOOK \_\_\_\_\_ PAGE \_\_\_\_\_

CIC SHORT NAME. CIC NO 169 City View Farm

LONG NAME BY DECLARATION

A/T	PARENT PINS	THRU
A	32.32.24.43.0090-	0097

A/T	PARENT PINS	THRU

DATE. \_\_\_\_\_

DIV NO \_\_\_\_\_

CIC NUMBER 169

City View Farm, a Planned Community

**DECLARATION**

THIS DECLARATION is made on this 12<sup>th</sup> day of February, 2004, by MJB Custom Homes, Inc. (hereinafter referred to as "Declarant").

**RECITALS:**

A. Declarant is the owner of certain real property described on Exhibit A attached hereto and by this reference incorporated herein, being located in the City of Andover, County of Anoka, State of Minnesota ("Property").

B. Declarant desires to create a common interest community on the Property in accordance with the provisions of Minnesota Statutes Chapter 515B (hereinafter "Act") and to subject the Property to the covenants, conditions, restrictions, and easements herein set forth.

C. Declarant has caused to be incorporated as a non-profit corporation under the laws of the State of Minnesota, the City View Farm Homeowners Association, Inc. (hereinafter "Association") for the purpose of exercising the powers and duties hereinafter set forth.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, built upon, sold, conveyed and occupied subject to the Act and to the following covenants, conditions, restrictions and easements which are for the purpose of protecting the value and desirability of, and the benefits and burdens of which shall run with, the Property and shall be binding on all parties having any right, title or interest in the Property or any part thereof, and their heirs, successors and assigns.

**ARTICLE I  
DEFINITIONS**

Section 1. Definitions Incorporated. Except as otherwise specified in this Declaration, the terms used in this Declaration which are defined in the Act shall have the same meaning as they have in the Act.

Section 2. Additional Definitions. Throughout this Declaration, the following terms shall have the meaning given to the below:

- (a) "Association" shall mean and refer to the City View Farm Homeowners Association, a Minnesota non-profit corporation, its successors and assigns.
- (b) "Common Elements" shall mean all real property and improvements thereon owned by the Association for the common use and enjoyment of the Owners and such other persons to whom the Owners may delegate this right pursuant to the Declaration. The Common Elements owned or to be owned by the Association at the time of the conveyance of the first Unit is legally described on Exhibit B attached hereto.
- (c) "Declarant" shall mean and refer to MJB Custom Homes, Inc., its successors and assigns, if (i) any such successor or assign should acquire more than one undeveloped Unit from the Declarant for the purpose of development and the instrument of conveyance recites that such successor or assign has acquired all of the rights and obligations of the Declarant, or (ii) such rights and obligations pass to such successor or assign by operation of law.
- (d) "Declaration" shall mean and refer to this Declaration as from time to time amended in accordance with the provisions hereof.
- (e) "Eligible Mortgagee" shall mean the holder of a mortgage, which is a first lien on any Unit.
- (f) "Limited Common Elements" shall mean and refer to that portion of the Common Elements allocated to specific Units in accordance with Article XII, Section 7 hereof.
- (g) "Property" shall mean and refer to that certain real property described on Exhibit A, and such additions thereto as may hereafter be brought within the jurisdiction of the Association in accordance with the provisions hereof.
- (h) "Unit" shall mean and refer to any plot of land shown upon any recorded plat of the Property that is intended to be sold to the ultimate buyer as separate property. The term "Unit" shall include any improvements on such plots. "Unit" shall not be construed to mean Common Area even though Common Area is identified as a lot on the plat.
- (i) "Unit Owner" shall mean and refer to (i) the record holder of the

fee simple title to a Unit, other than a contract for deed vendor, or (ii) a contract for deed vendee of a Unit, whether one or more persons or entities. A Unit Owner does not include persons who hold an interest in a Unit merely as security for the performance of an obligation (including contract for deed vendors).

Section 3. Interpretation. In the event of any conflict among the provisions of the Act, the Declaration, the Articles of Incorporation of the Association, the By-laws of the Association or any Rules and Regulations adopted by the Association, the documents shall control in the following order of priority: (i) the Act; (ii) the Declaration, (iii) the Articles of Incorporation, (iv) the By-laws and (v) the Rules and Regulations. As appropriate, each reference to a masculine pronoun shall include the feminine and neutral pronoun and each reference to a singular pronoun shall include the multiple pronoun.

## ARTICLE II STATUTORY REQUIREMENTS

In accordance with the requirements of Section 515B.2-105 of the Act, the Declarant hereby states the following:

- (a) The number of the Common Interest Community created hereby is the number set forth on the first page of this Declaration
- (b) The name of the Association is the City View Farm Homeowners Association, Inc. The Association has been incorporated pursuant to the provisions of Minnesota Statutes Chapter 317A.
- (c) The common interest community created hereby is a planned community. It is not subject to a master association.
- (d) The legal description of the Property included within the common interest community created hereby (including all appurtenant easements) is set forth on the attached Exhibit A.
- (e) The description of the boundaries of each unit created by this declaration, including the unit identifier number for each Unit, is set forth on the plat of City View Farm, which plat has been filed for recording with the office of the Anoka County Recorder and is hereby incorporated herein by reference.
- (f) The allocated interests are assigned equally to each Unit. Each Unit shall one vote in the affairs of the Association. Except as provided in Article V, Section 3 (relating to the Alternative Assessment Program), each Unit shall share the Common

Expenses equally.

(g) The common interest community created hereby shall consist of 7 units, all of which shall be restricted to residential use.

(h) No additional units may be created by the subdivision or conversion of Units.

(i) The use restrictions to which the Units are subject are located in Article IV hereof. There is no restriction on the sale price of a unit. The amount to be received upon the condemnation, casualty loss or termination of the common interest community are set forth in Articles XII, Section 8; IX; and XI, respectively.

(j) Time shares are not permitted.

(k) Matters relating to Special Declarant Rights are contained in Article III hereof. Matters relating to the use of the Common Elements are contained in Article V, Section I hereof. Matter relating to the care and maintenance of the Common Elements are contained in Article VII, Section 1, hereof. Matters relating to assessments for Common Expenses are contained in Article V hereof. Matters relating to Limited Common Elements are contained in Article XII, Section 7.

### ARTICLE III SPECIAL DECLARANT RIGHTS

Section 1. Period of Declarant Control. Notwithstanding anything in this Declaration or the Association By-laws to the contrary, the Declarant shall have the right to control the management and affairs of the Association until the earlier of the following events:

(a) 60 days after the conveyance of seventy five percent of the Units to Unit Owners other than the Declarant; or

(b) three years from the date of the first transfer of a Unit to an Owner other than the Declarant. During this period of Declarant Control, the Declarant, subject to Article V, Section 2 (b) of the By-Laws, shall have the sole right to appoint, remove and replace the officers and directors of the Association.

Section 2. Maintenance of Sales Offices. Notwithstanding anything herein to the contrary, so long as the Declarant owns an interest in a Unit, the Declarant may maintain advertising signs on any part of the Common Elements and sales offices, management offices and model units in any Units or in or on any part of the Common Elements and such sales offices and model Units may be relocated by Declarant from



time to time. There shall be no limit on the number or location of such offices or model units.

Section 3. Easements in Favor of Declarant. Notwithstanding any provisions contained herein to the contrary, so long as construction and initial sale of Units shall continue, Declarant shall have any easement over and across the Common Elements for the purpose of carrying out its sales activities and for the purpose of completing the construction of any Units, including without limitation the right of vehicular ingress and egress, vehicular parking, material storage, and the maintenance of business offices, signs, model units, and sales offices, and Declarant shall have an easement for access to such facilities; provided, however, that Declarant shall promptly restore any damage to the Common Elements by reason of any construction incident to the foregoing. This Section may not be amended without the express written consent of the Declarant.

#### ARTICLE IV USE RESTRICTIONS

Section 1. Residential Use Only. The Units shall be used for residential purposes only. No use may be made of any Unit except that of a residence for the Unit Owner thereof, their families, tenants and social guests. No business or commercial use shall be permitted on the Property except as specifically provided in this Declaration and except that the Association may maintain an office on or in any part of the Property for management purposes.

Section 2. Rental of Units. With the exception of a secured party in possession of a Unit following a default in a first mortgage, a foreclosure proceeding, or any deed or other arrangement in lieu of foreclosure, no Unit Owner shall be permitted to lease his Unit for transient or hotel purposes. For the purposes of this Section, "transient or hotel purposes" shall be defined as:

- (a) rental for any period less than 30 days; or
- (b) any rental if the occupants of the Unit are provided customary hotel services, such as room service for food and beverage, maid service, furnishing laundry and linen and bellboy service. The Unit Owners of the respective Units shall not lease less than the entire Unit. Any lease arrangement shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the By-laws and Articles of Incorporation of the Association and to any rules and regulations established by the Board of Directors, shall contain the agreement of the lessee to be bound by the terms of such documents and shall provide that any failure by the lessee to comply with the terms

of such documents or rules shall be a default under the lease or rental agreement. All leases shall be required to be in writing and any Unit Owner leasing or renting a Unit shall, prior to the commencement of the lease or rental term, deliver to the Secretary of the Association a complete copy of the lease or rental agreement. Other than the foregoing, the Unit Owners of the respective Units shall have the absolute right to lease the same.

Section 3. Prohibited Activities. No Unlawful, noxious or offensive activities shall be carried on in any Unit or elsewhere on the Property, nor shall anything be done therein or thereon which shall constitute a nuisance or which shall in the judgment of the Board of Directors cause unreasonable noise or disturbance to others. No residents or visitors may park in areas not specifically designated for parking by the Association.

Section 4. Unit Exterior. No Owner shall repair or redecorate the exterior of a Unit except according to plans and specifications approved in writing by the Board of Directors of the Association, so that the exterior of all buildings on the Property shall always be maintained according to a harmonious plan. In addition, no clothing, sheets, blankets, laundry or other articles shall be hung, displayed or stored outside the Units (except within the garages which are allocated to the Units), or which may be visible from the outside of the Units (other than draperies, curtains, or shades of a customary nature and appearance and in any event subject to the rules and regulations of the Board of Directors). No Owner shall paint or decorate or adorn the outside of his Unit, or install outside his Unit any canopy or awning, or outside radio or television antenna, or other equipment, fixtures or items of any kind, without the prior written permission of the Board of Directors in its discretion. No Owner of a Unit shall display, hang, store (except within the garage which is allocated to his Unit) or use any sign outside his Unit, or which may be visible from the outside of his Unit without the prior written permission of the Board of Directors. The foregoing notwithstanding, an Owner shall be permitted to display a sign of not more than three square feet in area advertising such Owner's Unit for sale or lease. Such sign shall be located in the yard area between such Owner's Unit and the road in front of such Unit.

Section 5. Pets. Except for up to two dogs or up to two cats, neither of which may weigh more than fifty (50) pounds, no animal of any type shall be kept in any Unit or in the Common Elements. When deemed appropriate by the Board of Directors, it may, but shall not be required to, enact rules and regulations permitting the keeping of a specific type of animal in one or more, but not all, Units when special circumstances are present. An example of the special circumstances contemplated hereby is the need for a seeing eye dog. The Board of Directors shall also have complete discretion as to the substance of any administrative rules and regulation enacted by it regarding the manner in which any permitted animal shall be kept,

provided that the Board of Directors may not, in any case, permit the keeping of any animal for any commercial purpose. The Board of Directors shall have the right at any time, to change its rules and regulations relating to animals. Such right shall include the right to prohibit the keeping of any animal of a type permitted to be kept by previously enacted rules and regulations. Any animal permitted to be kept shall be kept in strict accordance with the administrative rules and regulations relating to such animals from time to time approved by the Board of Directors and in any event shall be kept in a manner so as not to constitute a nuisance to others.

Section 6. Trash. Trash, garbage and other waste shall be kept only in sanitary containers, and shall be disposed of in a clean and sanitary manner. The Association may contract with a single provider for the removal and disposal of garbage, trash and other solid waste from all Units in accordance with this Declaration. Each Unit Owner shall be obligated to purchase such services from the provider designated by the Association upon the terms, conditions and rates negotiated by the Association. In the event that any Unit Owner requests any services not included within the basic/general charges of the provider, such Unit Owner, upon written request of the Association, shall reimburse the Association for any charges for such services, plus all related costs, including interest, attorney fees and administrative charges of the Association, and if not paid by Owner, such charges shall be a lien against such Unit Owner's Unit.

Section 7. Storage of Personal Property. Except as provided in this Declaration or as permitted by the rules and regulation adopted from time to time by the Board of Directors in its sole discretion, no personal property of any kind whatsoever belonging to any Owner or to any tenant, guest or invitee of such Owner shall be stored, placed or kept, temporarily or permanently, outside of a Unit or on the Common Elements. Without limiting the generality of the foregoing, no motorized or non- motorized vehicles, boats, campers, cabs, trailers, recreational vehicles, snowmobiles, bicycles, tricycles, motorcycles or other types of recreational equipment, shall be stored except inside a garage. The foregoing notwithstanding an Owner may:

- (a) keep personal property in his garage;
- (b) park operational automobiles on the driveway allocated to his Unit;  
and
- (c) keep normal and customary lawn and patio furniture and potted plants on any lawn and/or patio allocated to such Owner's Unit.

Section 8. Machines. No Unit Owner shall overload the electrical wiring in a Unit or operate any machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Board of Directors, an unreasonable disturbance to others.

Section 9. Rules and Regulations A Unit Owner's use of his Unit and the Common Elements will be subject to any rules and regulations enacted by the Association pursuant to Article VII hereof.

Section 10. Gardens and Shrubs. Excepts as permitted by the Board of Directors in its sole discretion, no gardens, shrubs, flowers or other plants shall be planted by any Owner on any part of the Common Elements.

Section 11. Blocking of Driveways. Under no circumstances shall any Unit Owner block access to any garage or driveway other than the garage or driveway serving such Owner's Unit.

## ARTICLE V EASEMENTS

### Section 1. Unit Owners Easements of Common Elements.

(a) Subject to the provisions hereinafter contained, there shall exist the following easements in favor of each Unit Owner and appurtenant to such Unit Owner's Unit over, across and upon the Common Elements:

(i) A non-exclusive easement to construct, maintain, install, repair, and replace sanitary and storm sewer, water, gas, electric, telephone, cable television and other utility lines which may or may hereafter serve a Unit. Such utility lines shall be initially constructed or installed in locations designated by Declarant. New or replacement utility lines shall only be constructed at such locations as may be approved by the Board of Directors of the Association;

(ii) In the event that any building or other structures originally constructed by the Declarant or constructed or erected thereafter as part of any Unit in accordance with this document encroaches upon any other Unit, or, if any such encroachment shall hereafter arise because of settling or shifting of the building or other cause, an exclusive easement appurtenant to said encroaching Unit for such encroachment and the maintenance thereof shall exist.

(iii) A non-exclusive easement for the use and enjoyment of those portions of the Common Area developed for open space and recreational uses.

(b) The rights and easements in favor of the Units and the Unit Owners created hereby shall be subject to the following:

(i) The right of the Association, as provided in its Articles and By-laws, to borrow monies for the purpose or improving, repairing, and maintaining the Common Elements, or any improvements thereon, and in aid thereof to mortgage said properties, provided that any such mortgage shall be approved at a meeting of the Unit Owners or in writing by the holders of at least 67 percent of the total votes in the Association (including 67 percent of the votes allocated to Units not owned by the Declarant).

(ii) The right of the Association to take such steps as are reasonably necessary to protect the Common Elements against foreclosure;

(iii) The right of the Association to suspend the voting and enjoyment rights of any Member for any period during which any assessment remains unpaid; provided, however, that nothing contained in this subparagraph (iii) shall be deemed to deny an owner access to and from his or her Unit;

(iv) The right of the Association to dedicate or transfer all or any part of the Common Elements to any public agency, authority or utility (including, without limitation, utilities furnishing gas, electricity, water, telephone or cable television) or to grant permits, licenses and easements over such Common Elements for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Property, provided that, except as otherwise provided herein, no dedication or transfer of an portion of the Common Elements, nor any easements, license, or permit over or with respect to any portion thereof shall be effective unless approved at a meeting of the members of the Association, which approval shall be evidenced by a written resolution duly attested to by the Secretary of the Association. All other requirements set forth in the Declaration or the Act must also be satisfied with respect to any transaction of the nature therein described.

(c) Any Owner may delegate such Owner's property rights in the Common Elements to his or her family and his or her tenants who reside on the Property, subject to all the provisions herein contained.

(d) Nothing contained in this Declaration or in the Articles of Incorporation or By-Laws of the Association shall be construed as a dedication of any part of the Common Elements to the public or to public use.

Section 2. Association's Easement. The Association shall have an easement over each Unit, including the right of access and entry into any building constructed as part of a Unit, for maintenance of the exterior of all improvements, for the maintenance, repair and replacement of water, sewer and other utility pipes, ducts, and wires and for the purpose of performing any emergency repairs or other duty of the Association. The Association's use of this easement is subject to reasonable notice to affected Unit Owners and performance of work at reasonable hours. Notice from the Association is hereby waived in the event emergency repairs are required. If work performed by the Association shall damage real or personal property of any Owner, such loss or damage shall be repaired or replaced by the Association as a common expense.

Section 3. Limited Common Elements/Utility Easements.

(a) Except as otherwise provided herein, each Owner shall be entitled to the exclusive use and occupancy of his or her Unit and any Limited Common Elements allocated thereto in accordance with Article XII, Section 7 of this Declaration, to the exclusion of all others; provided, however, the Property generally and all other Unit Owners shall be entitled to a visual easement over all such areas, subject to and limited by the original structures erected thereon by the Declarant. No Owner shall erect or cause to be erected any structure of any sort upon his or her Lot, or plant any trees or shrubs prior to obtaining the written approval of the Association.

(b) Each Unit over which a public utility easement has been dedicated, as shown on the recorded plat of the Property, shall be subject to a right and easement for underground general utility purposes over that portion of such Unit which is burdened with such dedicated public utility easement. Such utility purposes shall include, but not be limited to, sewer, water, gas, electrical, telephone and cable television purposes, including the right to build, construct, reconstruct, rebuild, repair, maintain and operate underground sewer, water, electrical mains and telephone or television cables, and any surface connections to such

underground mains, along with the right to enter upon, and open the ground for such purposes providing that all such openings shall be filled and the surface restored to its former condition.

(c) The utility easements described in subsection (b) of this Section 3, are and shall continue to be superior to the Limited Common Elements describes in subsection (a) of this Section 3; provided, however, in the event that it shall be necessary to install, repair or maintain any utility facilities crossing an such private yard area, such repairs and maintenance shall be undertaken so as to cause, to the extent practicable, minimal interference with the use of such areas, and any and all damage to driveway, driveway apron surfaces, walkway or yard areas shall be repaired and the surface fully restored.

Section 4. Easements Perpetual and Appurtenant. The easements described in this Article V shall be perpetual in duration and shall be appurtenant to the Units which are burdened and benefited by such easements.

Section 5. Easements Rights of Association. All the easements created herein which run in favor of the Association may only be used by the Association in connection with the exercise of those rights and obligation of the Association which are more fully described elsewhere in this Declaration.

## ARTICLE VI COVENANT FOR COMMON EXPENSE ASSESSMENTS

Section 1. Budget: Levy. The Board of Directors shall from time to time, and at least annually in advance of the beginning of the Association's fiscal year, prepare a budget of Common Expenses for the Association and shall allocate, assess and levy such Common Expenses against Units equally. The assessment for Common Expenses shall include all costs incurred by the Association in carrying out the rights and duties granted to it by this Declaration, the By-laws and Articles of the Association, and the Act, including, but not limited to the following: property damage and liability insurance; fidelity bonds; professional fees; maintenance, repair, and replacement expenses; utilities used in the Common Elements; snow removal; and lawn care. Each assessment shall be the personal obligation of the Unit Owners. If a Unit has more than one Unit Owner, each Unit Owner shall be jointly and severally liable for the assessment. Upon the vote of the Board of Directors adopting a resolution which sets forth the budget of Common Expenses and the allocation thereof to the Unit Owners, the amount so allocated to the Unit Owners of each Unit shall, without further resolution by the Board of Directors, be levied as the annual assessment against such Unit, payable in equal monthly installments due on the first day of each month during the period covered by the Budget. Declarant shall be

responsible for all Common Expenses set forth in this Declaration and the By-Laws of the Association until such a date that the Board of Directors has adopted a resolution which sets forth the first budget of Common Expenses and the allocation thereof to the Unit Owners. The Common Expenses shall include those Common Expenses set forth in this Declaration and the By-Laws of the Association and may include such other amounts as the Board of Directors may deem proper for the operation and maintenance of the Property and as permitted by the Act and all laws amendatory thereof and supplementary thereto. The Board of Directors shall advise all Unit Owners in writing prior to the beginning of the period covered by the budget as to the amount of the monthly assessments payable by each of them, and shall, upon request by the Unit Owner, furnish copies of each budget on which such Common Expenses and the assessment are based to such Unit Owner and to his First Mortgagee. The total of any budget shall be in the amount of the estimated Common Expenses for the period covered thereby, including a reasonable allowance for contingencies and reserves (see Section 2 of this Article VI), less the amounts of any unneeded Common Expense account balances existing from the previous period's budget, and less any estimated payments to be received by the Association from rental, licensing or other payments for the purpose of defraying the costs of the use of the Common Elements.

The total of the budget shall not be increased more than five percent (5%) annually without a general meeting of the members of the Association resulting in a majority vote to increase said budget more than five percent (5%). If a budget is not made by the Board of Directors as required, a monthly assessment in the amount required by the last prior budget shall be due upon each monthly assessment payment date until changed by a new budget. In the event an annual or other budget proves to be insufficient, or in the event of extraordinary or unforeseen Common Expenses, the budget and monthly assessments based thereon may be amended, or a special assessment levied, at any time by the Board of Directors. Any special assessment shall be assessed against each Unit equally, shall be lien on the Units and shall be enforceable in the same manner as the monthly assessments. Special assessments shall be payable in installments or lump sum, all as designated by the Board of Directors. During any period of the Declarant control, the budget shall not be increased by more than five percent (5%) over the previous year's budget, nor shall any special assessments be imposed without the affirmative vote of 67% of Unit Owners (other than Declarant) at a meeting called for that purpose.

Section 2. Reserve Funds. The assessment for Common Expenses shall include an adequate reserve fund for maintenance, repair and replacement of any and all improvements which the Association has the obligation to maintain under and pursuant to this Declaration. Contributions to any reserve funds established by the Association may not be withdrawn by any Unit Owner.

Section 3. Alternative Assessment Program.



(a) Notwithstanding any provision in this Declaration to the contrary, when spreading the assessments against the Units, the amount of the Assessment levied against those Units owned by the Declarant shall be limited to twenty-five percent (25%) of the amount assessed against those Units owned by Unit Owners other than the Declarant; provided, however, that at such time as a certificate of occupancy is issued for any Unit owned by the Declarant, the assessment for such unit shall be increased to the amount originally assessed against those Units not owned by the Declarant.

(b) The alternative assessment program shall commence with the adoption of the first assessment roll by the Association and shall continue until the Declarant has transferred all of the Units to Unit Owners other than the Declarant.

(c) The Declarant makes no representations regarding the effect of the alternative assessment program on the level of services for items set forth in the Association's budget.

Section 4. Payment of Common Expenses. All Unit Owners shall be obligated to pay the Common Expenses assessed and levied by the Board of Directors pursuant to Section 1 of this Article VI. An Owner may not avoid assessment for Common Expense by failing or waiving the right to use or enjoyment of the Common Elements. Monthly assessments shall be due as provided in Section 1 of this Article VI and special assessments shall be due when designated by the Board of Directors. Any mortgagee acquiring a first mortgage interest from any Owner of a Unit may, as a condition of the loan, include in the mortgage note or deed a requirement that the mortgagor, upon execution of the mortgage deed, make a monthly deposit with the mortgagee of an amount each month sufficient to pay when due and payable all Common Expenses attributable to that Unit. The mortgage note or deed may further provide that a default in making such deposit shall be a default under the terms of the mortgage deed. In the event that mortgagee collects the monthly installments, such mortgagee shall remit the installments monthly on a current basis to the Association.

Section 5. Assessment Roll. The assessments against all Owners shall be set forth upon a roll of the Units which shall be available in the office of the Association or of any managing agent retained by the Association for inspection at all reasonable times by Unit Owners or their duly authorized representatives. Such roll shall indicate for each Unit the name and address of the Unit Owners, the assessments for all purposes, and the amounts of all assessments paid and unpaid.

Section 6. Default in Payment and Collection of Common Expenses. In the event any Owner does not make payment of a Common Expense assessment on or

before the date when due, such Owner shall be obligated to pay interest on such assessment from the date due at the rate specified from time to time by the Board of Directors which shall not exceed the highest rate of interest which may be charged thereon pursuant to either the Act or the laws of the State of Minnesota. In addition, such Owner shall be obligated to pay all expenses, including reasonable attorneys' fees incurred by the Board in any proceeding brought to collect any such unpaid assessment, whether or not an action has been commenced with respect thereto. The right of a Unit Owner to pay the annual assessment in monthly installments is hereby made conditional on the prompt payment when due of such monthly installments. In the event of a default in the prompt payment of the monthly installments, the Board of Directors may, by written notice given to the defaulting Owner, accelerate the entire unpaid portion of the annual assessment, whereupon the same shall become immediately due and payable. Additionally, the Board of Directors shall have the right to withhold services from any defaulting Owner. The Board of Directors shall have the right and duty to attempt to recover all assessments for Common Expenses, together with interest thereon and the expenses of the proceeding, including reasonable attorneys' fees, in an action to recover the same brought against an Owner, by foreclosure of the lien on a Unit pursuant to the Act, any statute amendatory thereof or supplementary thereto, or by another remedy available under the Act or hereunder.

Section 7. Initiation Fee. Each initial purchaser of a Unit from the Declarant shall pay to the Association an initiation fee in the amount of \$200.00. Said payment is not a deposit or advance payment of assessments which the purchaser is otherwise required in this Declaration to pay to the Association, but rather is a payment to a working capital fund established by the Association for the initial months of operations. In the event the total initiation fees (when combined with the collected assessments) exceed the amount necessary to fund the operation of the association, then said excess shall be contributed to the reserve funds to be maintained by the Association.

Section 8. Cost of Damage Caused by Unit Owner.

(a) If any item of maintenance or repair to be performed by the Association is required because of the willful or negligent act or omission of any Unit Owner, his family, guests or tenants, the cost of such maintenance or repair, in excess of net insurance proceeds received by the Association in connection therewith, shall be added to and become a part of the next monthly assessment to which the Unit of such Owner is subject.

(b) In the event an Owner's actions causes any sod or plantings to die, the Association shall have the right to replace any sod or plantings that have died, and the cost thereof shall be added to and become part

of the Owner's assessment.

Section 9. Exceptions for Unequal Assessments.

(a) Any common expenses associated with the maintenance, repair or replacement of a Limited Common Element undertaken by the Association may be assessed exclusively against the Unit or Units to which that Limited Common Element is assigned, on the basis of:

- (i) equality;
- (ii) square footage of the area being maintained, repaired or replaced; or
- (iii) the actual cost incurred with respect to each Unit.

(b) Any common expense or portion thereof benefiting fewer than all of the Units may be assessed exclusively against the Units benefited on the basis of:

- (i) equality;
- (ii) square footage of the area being maintained, repaired or replaced; or
- (iii) the actual cost incurred with respect to each Unit.

(c) The costs of insurance may be assessed in proportion to value, risk of coverage, and the costs of utilities may be assessed in proportion to usage.

(d) Reasonable attorney fees and other costs incurred by the Association in connection with the collection of assessments and the enforcement of the Declaration, By-laws, Act or Rules and Regulations against an Owner or occupant or their guests may be assessed against the Owner's Unit.

(e) Fees, charges, late charges, fines and interest may be assessed as provided in Section 515B.3-116(a) of the Act.

(f) Assessments levied under Section 515B.3-116 of the Act to pay a judgment against the Association may be levied only against the units existing at the time the judgment was entered in proportion to their

## Common Expense liabilities.

(g) If any damage to the Common Elements or another Unit is caused by the action or omission of any Owner or occupant or their guests, the Association may assess the costs of repairing the damage against the Owner's Unit to the extent not covered by insurance.

(h) If Common Expense liabilities are reallocated for any purpose authorized by the Act, common expense assessments and installments thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

(i) Assessments described in Sections 9 (a) through 9 (g) shall not be considered as being special assessments.

Section 10. User Fees. The Association may set various fees, charges, security deposits and other requirements. Such fees, charges, deposits and other requirements shall be applied on a uniform basis and shall not constitute assessments.

## ARTICLE VII RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. Rights and Obligations of the Association. The Association shall have the right and obligation to carry out the following activities:

(a) Maintain and repair the roofs and exterior surfaces of all buildings on the Property, including, without limitation, any improvements constructed as part of the Units, including without limitation, the painting of the same as often as necessary, the replacement of trim and caulking, and the maintenance and repair of roofs, overhangs, gutters and downspouts, storm windows, screens, doors, decks and garage doors constituting part of a Unit. Notwithstanding the foregoing, the Association shall have no responsibility for the repair or replacement of broken glass which forms the exterior boundary of a Unit. The Association shall also maintain and repair of any portion of any Unit damaged as a result of the roof or exterior surfaces thereof being in a state of disrepair.

(b) Maintain and repair the driveways and walkways, including any portion thereof located on any Unit. The Association shall be responsible for the maintenance and repair of the water supply system up to the inlet side of the water meter in each Unit, the underground sprinkler lines (if

any) and the sanitary sewer system up to the foundation wall of each Unit.

(c) Snow removal from driveways and parking areas located on the Units. The Association, however, shall not be responsible for the removal of snow from walkways, Unit steps or patios located on the Unit.

(d) Maintain and repair the emergency vehicle access and turnaround located on Outlot A. In the event the emergency vehicle access and turnaround is not maintained, the City of Andover reserves the right to require paving the access and turnaround. Parking shall not be permitted in the emergency vehicle turnaround at any time. No parking signs shall be placed and maintained by the Association.

(e) Maintain the Common Elements and all lawns and exterior areas of the Units, all to the extent the Board of Directors of the Association deems necessary or desirable.

(f) Maintain and manage any other amenities constructed for use by Unit Owners.

(g) Adopt and publish administrative rules and regulations governing the operation and the use of the Common Elements, the use and occupancy of the Units and the personal conduct of the members and their tenants and guests thereon and therein, parking, matters of aesthetics affecting the Community or any part thereof and such other matters as are necessary or desirable to the harmonious use and enjoyment of the Property by the Unit Owners, copies of all of which rules and regulations shall be made available to all Unit Owners.

(h) Exercise all powers, duties and authority vested in or delegated to the Association and not reserved to the Unit Owners by law or by other provisions of this Declaration or the Articles of Incorporation or By-Laws of the Association.

(i) The Association may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Property whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting

services necessary or desirable in connection with the operation of the Property or the enforcement of this Declaration. The Association may arrange with others to furnish water, trash collection, snow removal, sewer service and other common services to each Lot. Any agreement entered into by the Association for the management of all or a portion of the affairs of the Association or any other agreement providing for service by the Declarant or an affiliate of the Declarant shall be of a duration which does not exceed one year, shall be terminable by the Association or the other party thereto without cause and without payment of a termination fee upon not more than 90 days' written notice and shall be terminable by the Association for cause upon not more than 30 days' written notice.

(j) Lease or purchase and mortgage a Unit, Units or other residential quarters for management and maintenance personnel. All rental or debt service paid by the Association pursuant to such lease agreement or mortgage shall be a general Common Expense;

(k) Determine what shall constitute Common Expenses required for the affairs of the Association and levy and collect such Common Expenses from the Unit Owners, all in accordance with Article VI hereof.

(l) Open bank accounts on behalf of the Association and designate signatories required therefore.

(m) Obtain insurance for the Association or the Community pursuant to the provisions of this Declaration.

(n) Dedicate or transfer easements for public utilities or other public purposes consistent with the intended use of the Common Elements over any part of the Common Elements to any governmental subdivision or public agency or public utility.

(o) Keep at the registered office of the Association or at such other place as the Board of Directors may determine, records of the actions of the Board of Directors, minutes of the meetings of the Board of Directors, minutes of the meetings of the Members of the Association, names of the Unit Owners and names of any secured parties who have requested the notice of default as described in Article X of this Declaration and the Unit on which such First Mortgagee holds a mortgage, and detailed and accurate records, in chronological order, of the receipts and expenditures affecting the Common Elements. Separate accounts shall be maintained for each Unit setting forth the amount of

the assessments against the Unit, the date when due, the amount paid thereon and the balance remaining unpaid.

(p) Prepare or cause to be prepared the annual report referenced in Article IV, Section (b) of the By-Laws of the Association.

(q) Furnish or cause to be furnished a certificate in accordance with Section 515B.4-107 (b) of the Act. The Association shall have the power to establish and collect a fee for such certificates, which fee shall be in an amount reasonably related to the costs incurred by the Association in furnishing such certificate.

(r) Obtain the review of the Association's financial statements required by Section 515B.3-121 of the Act, unless waived by the Unit Owners in accordance with the provisions of such section.

(s) Maintain, repair or replace (in the event of destruction) any party wall which constitutes a dividing line between any two Units (provided that the obligation to repair or replace shall not include any improvements or furnishings installed by a Unit Owner on a party wall.

(t) Except to the extent such exercise is inconsistent with the specific provisions of this Declaration or the Act, exercise all other powers lawfully available to a corporation organized under and pursuant to Minnesota Statutes Chapter 317A.

Section 2. Limitation of Authority. Anything herein or in the Declaration to the contrary notwithstanding, unless specifically authorized herein or in the Declaration, the Board of Directors shall have no authority, except as may specifically be granted by the majority (or such higher number as may otherwise be required hereunder, by the Act or by the Declaration) of the members present in person or by proxy at a meeting thereof, to do any of the following:

(a) Purchase any Unit except that the Board of Directors may accept any Unit surrendered to it for unpaid assessments and may purchase a Unit at any sale held pursuant to foreclosure for unpaid assessments provided that the Board of Directors shall not, unless authorized by the members, bid, at any such foreclosure sale, any amount in excess of the total of the delinquent assessment on account of which the foreclosure sale is being held, any interest thereon and other costs related thereto which are, pursuant to the Declaration, the Act and hereunder, collectible from the Unit Owner of such Unit.

(b) Levy or assess as a Common Expense the cost of any capital improvement or acquisition, other than the repair or replacement of an existing portion of the Property, unless specifically authorized by not less than 90 % of the total voting power of the Association.

## ARTICLE VIII ARCHITECTURAL CONTROL

From and after the completion of construction on and sale of any Unit, no building, fence, wall or other structure shall be commenced, erected or maintained upon any Unit, nor shall any exterior addition or change or alteration be made to any Unit until plans and specifications showing the nature, kind, shape, heights, materials, and location of the same shall have been submitted to an approved in writing as to quality of workmanship and materials, harmony of external design and location in relation to surrounding structures, finish grade elevation, and topography by the Board of Directors of the Association, or by an architectural control committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, such approval will not be required and this Article will be deemed to have been fully complied with. The prevailing party in an action brought by the Association to enforce this Article shall be entitled to recover from the other reasonable attorney's fees together with all necessary costs and disbursements incurred in connection therewith.

## ARTICLE IX INSURANCE AND RECONSTRUCTION

Section 1. Liability Insurance. The Board of Directors of the Association, or its duly authorized agent, shall obtain a commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Property with such coverages and limits of liability as the Association shall determine to be necessary, but in no event shall the limits of the policy be less than \$1,000,000.00 covering all claims for personal injury and/or property damage arising out of a single occurrence. Said policy shall insure the Board of Directors, the Association, any management agent, and their respective employees, agents and all persons acting as agents. Said policy shall also insure Unit Owners (including the Declarant), but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. Said policy shall also cover claims of one or more insured parties against other insured parties.

Section 2. Casualty Insurance on the Living Units and the Insurable Common Area. Except as such requirements shall be modified by Federal National Mortgage Association ("F.N.M.A."), or Federal Home Loan Mortgage Corporation ("F.H.L.M.C."),



the Association shall keep all Units and all insurable improvements and fixtures of the Common Elements, if any, insured against loss or damage by fire and other hazards covered by the standard extended coverage endorsement and by sprinkler leakage (if applicable), debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage, as well as other risks customarily covered in similar projects for an amount equal to the full insurable replacement cost (i.e., 100% of current "replacement cost") excluding land, foundation, excavation, and other items normally excluded from coverage. Such insurance to cover all of the Units and all of the Common Elements owned by the Association (including all fixtures and building service equipment to the extent they are a part of the Common Elements, as well as common personal property and supplies), together with such endorsements as may be required by F.N.M.A., or F.H.L.M.C. Any insurance maintained by the Association and covering the Units shall not cover betterments or improvements to the Units installed by the Owners.

Section 3. Terms of Insurance Policies. All insurance policies carried pursuant to Sections 1 and 2 of this Article X shall provide as follows:

- (a) Each Unit Owner and Secured Party is an insured person under the policy with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association;
- (b) The insurer waives its right to subrogation under the policy against any Unit Owner or member of the Owner's household and against the Association and the members of the Association's Board of Directors;
- (c) No act or omission by any Unit Owner or Secured Party shall void the policy or be a condition to recovery under the policy; and
- (d) If at the time of a loss under the policy there is other insurance in the name of a Unit Owner covering the same property covered by the policy, the Association's policy is the primary insurance.
- (e) The insurer agrees to issue certificates or memorandum of insurance, upon request, to any Owner or Secured Party, and the insurer agrees that the insurance may not be canceled until 30 days after notice of the proposed cancellation has been mailed to the Association and to each Unit Owner and each Secured Party to whom certificates of insurance have been issued.

Section 4. Maintenance of Insurance By Owners of Living Units. In the event the insurance described in Sections 1 and 2 of this Article X is not reasonably available, the Association shall give reasonable notice of that fact to the Unit Owners.

Thereafter, each Unit Owner, by his or her acceptance of a deed therefore, whether or not it shall be expressed in any such deed or other conveyance, covenant to carry, maintain and timely pay the premium or premiums on the policy of fire and extended coverage insurance, with the coverages included in the standard "all risk" endorsement. Such insurance shall cover, at a minimum, the full insurable replacement cost of the Unit owned by such Unit Owner, shall be in a form satisfactory to the Association and, as applicable, F.N.M.A., F.H.L.M.C., or any governmental or private purchase, insurer or guarantor of any mortgage on a Unit, shall provide that such policy may not be canceled or substantially modified by any party without at least thirty (30) days prior written notice to the Association. Each Unit Owner shall furnish the Association satisfactory evidence of the maintenance of such insurance. The association may, but shall not be required to, make payments of casualty insurance premiums on behalf of any Unit Owner; provided, however, that if the Association does pay such premiums, the amount so paid by the Association shall be immediately due and payable by such Unit Owner to the Association and may be included in the Common Expense assessment against such Owner's Unit.

Section 5. Replacement or Repair of Common Elements. All insurance coverage with respect to the Common Elements shall be written in the name of, adjusted by, and the proceeds thereof shall be payable to, the Association. Said insurance proceeds shall be applied and administered by the Association in accordance with the terms of the Act, and all amendments thereto.

Section 6. Repair or Replacement of Unit: Association as Insurance Trustee.

(a) In the event that any Unit or Units are destroyed or damaged by causes covered by the insurance referred to in Section 2 or 4 above, all proceeds of such insurance coverage shall be payable to the Association as insurance trustee for the Owner (s) of said Unit (s) and the Secured Parties of record of said Unit (s). Said insurance proceeds shall be applied and administered by the Association in accordance with the terms of the Act, and all amendments thereto.

(b) In the event of damage to a Unit, the Association may (i) pay the deductible as a common expense, (ii) assess the deductible amount against the Units affected in any reasonable manner, or (iii) require the Unit Owners of the Units affected to pay the deductible directly.

Section 7. Waiver of Subrogation. To the extent permitted by the standard Minnesota form of fire and extended coverage insurance with all risk endorsements and to the extent benefits are paid under such policy, each owner of a Living Unit and the Association do hereby mutually release each other, and their respective officers, agents, employees and invitees, from all claims for damage or destruction of their

respective physical properties if such damage or destruction results from one or more of the perils covered by the standard Minnesota form of fire and extended coverage.

Section 8. Fidelity Bonds. The Board of Directors shall, to the extent such coverage is available and affordable at what the Board of Directors determines to be reasonable rates, also provide fidelity bonds providing protection to the Association against loss by reason of acts of fraud or dishonesty on the part of the Association's directors, managers, officers, employees or volunteers who are responsible for handling funds of the Association in an amount sufficient to provide no less protection than one and one-half (1-1/2) times the estimated annual operating expenses of the Association, including reserves. Any policy or bond obtained hereunder shall provide that it may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days' prior written notice to the Association.

Section 9. Other Insurance.

(a) The Association may maintain such other insurance as the Board of Directors deems appropriate.

(b) The Owners may maintain insurance for personal benefit in addition to the insurance carried by the Association.

Section 10. Assessments for Insurance Premiums and Repair Costs in excess of Insurance Proceeds.

(a) The expense of the insurance and fidelity bonds, if any, maintained by the Association under this Article IX shall be borne by all members through the assessments.

(b) The cost of repair or replacement of the Common Area fixtures or improvements in excess of insurance proceeds and reserves shall be assessed and paid as provided in Section 6 of this Article X. The cost of repair by the respective Owner of the Living Unit.

ARTICLE X  
RIGHTS OF ELIGIBLE MORTGAGEES

Section 1. Conflicting Provisions. The following provisions shall take precedence over all provisions of this Declaration, and in the event of any inconsistency or contradiction, the following provisions of this Article X shall control.

Section 2. Notice of Actions. An Eligible Mortgagee, or its assigns, upon

request, will be entitled to written notification from the Association of:

- (a) any default in the performance by the Unit Owner of any obligation under this Declaration of the By-laws of the Association which is not cured within sixty (60) days;
- (b) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; or
- (c) any proposed action which, pursuant to this Declaration or the Act, requires the consent of a specified percentage of the Eligible Mortgagees.

Section 3. Certain Amendments. In addition to statutory requirements for amendment of this Declaration and By-laws of the Association, unless at least sixty-seven percent (67%) (or such higher percentage as is required by law or this Declaration) of the Eligible Mortgagees, or their assigns (based upon one vote for each first mortgage owned), and of the Unit Owners (other than any sponsor, developer, or builder including the Declarant) of the Units have given their prior written approval, the Association shall not be entitled to:

- (a) By act or omission, seek to abandon, encumber, sell or transfer the Common elements (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed such a transfer.
- (b) Use hazard insurance proceeds for losses to any Units or to the Common Elements for other than the repair, replacement or reconstruction of such property, except as provided by the Act.
- (c) Partition or subdivide any Unit or the Common Elements.
- (d) Add or amend any material provision of this Declaration or the Articles or By-laws of the Association which establishes, provides for, governs or regulates any of the following:
  - (i) Voting;
  - (ii) Assessments for Common Expenses, assessment liens or subordination of such liens;
  - (iii) Reserves for maintenance, repair and replacement of the Common Elements;

- (iv) Insurance or Fidelity Bonds;
- (v) Rights to use of the Common Elements;
- (vi) Responsibility for maintenance and repair of the several portions of the property;
- (vii) Expansion or contraction of the planned community minimum or the addition, annexation or withdrawal of property to or from the planned community;
- (viii) Boundaries of any Unit;
- (ix) The interest in the Common Elements;
- (x) Convertibility of Units into Common Elements or of Common Elements into Units;
- (xi) Leasing of Units;
- (xii) Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit;
- (xiii) Any provisions which are for the express benefit of the holders of first mortgages on the Units.

Any such addition or amendment shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only.

Section 4. Additional Rights of Eligible Mortgagees. Any Eligible Mortgagee, or its assigns, upon request, be entitled to:

- (a) inspect the books, records and financial statements of the Association and current copies of this Declaration, the By-laws of the Association and the rules and regulations of the Association, as the same may, from time to time, be amended or promulgated, during normal business hours;
- (b) receive an annual reviewed financial statement of the Association within 90 days following the end of any fiscal year of the Association; and

(c) written notice of all meeting of the Association and be permitted to designate a representative to attend all such meetings.

Section 5. Priority: Notice of Certain Events. No provisions of this Declaration or of the By-laws shall be deemed to give a Unit Owner, or any other party, priority over any rights of an Eligible Mortgagee, or their Successors in interest, pursuant to their mortgages in the ease of a distribution to the Unit Owners of insurance proceeds or condemnation awards or settlements for losses to or a taking of Units and/or Common Elements. In the event of substantial damage to or destruction of any Unit or any part of the Common Elements, the holder of any first mortgage on a Unit will be entitled to timely written notice of any such damage or destruction. If any Unit or portion thereof or the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then an Eligible Mortgagee with a mortgage on such Unit or Common Element will be entitled to timely written notice of any such proceeding or proposed acquisition. Upon the request of Eligible Mortgagee, the Association shall agree in writing to notify such holder, any entity servicing such mortgage, and/or any other entity having an interest in such mortgage whenever damage to the Unit covered by such mortgage exceeds \$ 1,000.00 and whenever damage to the Common Elements exceeds \$ 10,000.00.

Section 6. No Right of First Refusal. The right of a Unit Owner to sell, transfer, or otherwise convey the Owner's Unit will not be subject to any right of first refusal or any similar restriction in favor of the Association.

Section 7. Liability for Association Assessments. Except as specifically provided in section 515B.3-116 (b) of the Act, if an Eligible Mortgagee or a purchaser at a mortgage foreclosure sale obtains title to, or comes into possession of, a Unit pursuant to the remedies provided in the mortgage or by foreclosure of the first mortgage or by deed or assignment in lieu thereof, such acquirer of title or possession, his successors and assigns, shall acquire such title or possession free of any claims, and shall not be liable, for the share of the unpaid Common Expenses or assessments chargeable to such Unit which accrued prior to the acquisition of title or possession to such Unit by such acquirer, except as provided or permitted in the Act. Any unpaid share of the Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Unit Owners, including such acquirer, his successors and assigns.

## ARTICLE XI DISSOLUTION

The common interest community created by this Declaration may only be terminated with the assent given in writing and signed by not less than the Unit

Owners holding eighty percent (80%) of the votes of the Association and eighty percent (80%) of the Eligible Mortgagees (each mortgagee having one vote for each Unit financed).

Upon termination of the common interest community, after payment of all the debts and obligations of the Association, all Units, Common Elements, and Association property shall be administered in accordance with the provisions of the Act.

## ARTICLE XII GENERAL PROVISIONS

Section 1. Enforcement / Legal Proceedings. If any Unit Owner or his or her family, tenants or guests shall not comply with the provisions of this Declaration, or with rules and regulations adopted by the Association, such person(s) shall be subject to legal action for damages, for injunctive relief, foreclosure of liens, or any combination thereof, without limitation or election of remedies, which relief may be sought by the Association or by one or more aggrieved Unit Owners, or both. In any proceeding arising from an alleged failure to comply with this Declaration, or rules and regulations of the Association, the prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorneys' fees as may be determined by the court. Failure by the Association or by any Unit Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver to the right to do so thereafter.

Section 2. Severability. Invalidation of any one of the covenants or restrictions contained in this Declaration by judgment or court order shall in no way affect any of the other provisions of this Declaration.

Section 3. Amendment. The covenants and restrictions of the Declaration shall run with and bind the land. Except as provided herein to the contrary, this Declaration may be amended by an instrument signed by not less than sixty-seven percent (67%) of the Unit Owners. Any amendment shall also require the consent of the holders of fifty-one percent (51%) of the Eligible Mortgagees (based on one vote for each Lot mortgaged), except to the extent a higher percentage of Eligible Mortgagees is required by Article X hereof. Any amendment must be recorded.

Section 4. FHA/VA Approval. If all or a portion of the Property involves financing through the Federal Housing Administration or the Department of Veterans Affairs, the following actions will require the prior approval of the Federal Housing Administration or the Department of Veterans Affairs until the termination of the period of Declarant Control: Annexation of additional properties, dedication of Common Elements and amendment of this Declaration.

**Section 5. Maintenance of Unit Interiors / Improvements.**

(a) Maintenance and repair of the interior of any Unit and all other portions thereof, structural or non-structural, not required hereunder to be maintained and repaired by the Association, shall be performed by each Unit Owner and such interior or other portions shall be maintained in good, clean, attractive and sanitary condition, order and repair commensurate with first class, residential property.

(b) A Unit Owner may only seek to make internal improvements to his or her Unit in accordance with the provisions of Section 515B.2-113.

**Section 6. Availability of Records.** Such records shall be available for examination by the Owners or Eligible Mortgagees at convenient hours of weekdays. Any member of the Association shall have the right, upon reasonable notice to the Treasurer, to review the accounts and financial records of the Association.

**Section 7. Limited Common Elements.** All portions of the Property other than the Units are Common Elements. Certain portions of the Common Elements designed to service a single Unit are, by operation of Section 515B.2-102 (d) and (f) of the Act, Limited Common Elements allocated for the exclusive use by the respective Units serviced thereby to the exclusion of other Units. In addition, the driveways or the half of the driveways adjacent to and serving each Unit are Limited Common Elements allocated for the exclusive use of the respective Units to the exclusion of the Other Units. Additionally, the entry area and air conditioning equipment serving each Unit and the fenced yard and/or the patio/deck area, if any, which are accessible from each Unit are Limited Common Elements allocated for the exclusive use of such Unit to the exclusion of the other Units. The air conditioning equipment which is a Limited Common Element allocated to each Unit shall be maintained, repaired and replaced by the Owner of each such Unit such Owner's sole cost and expense. All other portions of the Limited Common Elements shall be maintained as Common Elements under the provisions of Article VII hereof. The expense of any such maintenance and repair shall be charged to the Unit as a Common Expense under and pursuant to the provisions of Article VI hereof.

**Section 8. Condemnation.** In the event of the taking of any of the Common Elements by eminent domain or any action or proceeding in lieu of eminent domain (hereinafter, "condemnation"), the Association shall represent the Unit Owners in any such condemnation, or in negotiations, settlements and agreements with the condemning authority, and each Unit Owner hereby appoints the Association as his or her attorney-in-fact, irrevocably, for such purposes. If deemed necessary by the Association, it may obtain the services of a trustee to act on behalf of the Unit Owners in carrying out any functions under this Section. In the event of a



condemnation of part or all of the Common Elements, the award of proceeds of settlement shall be payable to the Association. All proceeds payable with respect to any condemnation of Common Elements shall be applied to the restoration or repair of such Common Elements remaining after such condemnation or to such other purposes as may be in accordance with the functions and powers of the Association and the welfare of the Unit Owners.

If all of a Unit is taken through condemnation, or if so much of a Unit is taken that the remaining property cannot reasonably be used for a purpose allowed by this Declaration, then the entire Unit shall be considered condemned and the Unit Owner's interest in the Common Elements and Association shall be deemed to cease on the date such condemnation is completed.

If part of a Unit is taken through condemnation, but the Unit can still be used for a purpose allowed by this Declaration, then there shall be no effect on the Unit Owner's interest in the Common Elements or the Association.

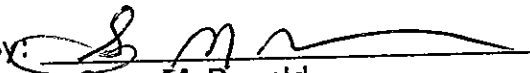
Any proceeds of any condemnation with respect to a Unit shall belong and be paid to the Owner thereof and his or her mortgagee, as their interests may appear.

#### ARTICLE XIV RIGHTS GRANTED TO THE CITY OF ANDOVER

Section 1. City Easement. The Common Elements shall be subject to a non-exclusive easement in favor of the City of Andover or the purpose of ingress and egress for police, fire, rescue and other emergency calls, animal control, health and protective inspections, and to provide to the Owners other public services deemed necessary by the City of Andover for the purposes set forth in this Section 1. No part of the Common Elements may be released from the terms of the easements described in Section 1 as herein declared without the prior written consent of the City of Andover, which consent shall be evidenced by a Resolution adopted by a majority vote of the City Council. A certified copy of said Resolution shall be recorded in the office of the County Recorder of Anoka County, Minnesota.

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

MJB Custom Homes, Inc.  
a Minnesota corporation

By:   
Sean McDonald  
Its: President

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF SHERBURNE) ANOKA

The foregoing instrument was acknowledged before me this 12<sup>TH</sup> day of February, 2004, by Sean McDonald the President of MJB Custom Homes, Inc., a Minnesota corporation, on behalf of the corporation.

*Britt L. Sullivan*  
\_\_\_\_\_  
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

TERPSTRA, BLACK & MOORE, LTD.  
Attorneys at Law  
First National Financial Center, Suite 102  
812 Main Street  
Elk River, MN 55330  
763/441-7040



REGISTERED ABSTRACTERS, INC.  
2115 NORTH 3RD AVENUE  
ANOKA, MN 55303

*T03-09022*

## **EXHIBIT A**

### **Legal Description**

Lots One (1) through Seven (7), Block One (1) and Outlot A, City View Farm, Anoka County, Minnesota

**EXHIBIT B**

**Common Elements Description**

Outlot A, City View Farm, Anoka County, Minnesota

**ABSTRACT**

Receipt # <u>43526 / 37.00</u>	<input type="checkbox"/> Incorrect/No Reference #
Date/Time <u>3/16 11:14</u>	<input type="checkbox"/> Non-standard Document
Document Order <u>1</u> of <u>1</u>	<input type="checkbox"/> Certified Copy/
PINs <u>JH</u>	
Recordability <u>JH</u>	
Filing Fees \$ <u>20.00</u>	<input type="checkbox"/> Tax Lien/Release
<u>32 pages</u> Copy/Additional Pg Fees \$ <u>17.00</u>	<input type="checkbox"/> Transfer
Well Cert Fees \$ _____	<input checked="" type="checkbox"/> Division
<input type="checkbox"/> Incomplete Form	<input type="checkbox"/> Status
<input type="checkbox"/> Missing Attachment	<input type="checkbox"/> New legal Description
<input type="checkbox"/> No Legal Description	<input type="checkbox"/> GAC
<input type="checkbox"/> Non-existent Legal Description	<input type="checkbox"/> Deferred Specials
<input type="checkbox"/> Part(s) Illegible	<input checked="" type="checkbox"/> No change

**DOCUMENT NO 1905528.0 ABSTRACT**  
**ANOKA COUNTY MINNESOTA**

I HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS FILED IN THIS OFFICE  
FOR RECORD ON **MAR 16 2004** AND WAS DULY RECORDED  
AT **11:14 AM**  
FEES AND TAXES IN THE AMOUNT OF **\$37.00** PAID

RECEIPT NO **2004043526**

**MAUREEN J DEVINE**

**ANOKA COUNTY PROPERTY TAX ADMINISTRATOR/RECORDER/REGISTRAR OF TITLES**

BY **JMH**  
**DEPUTY PROPERTY TAX ADMINISTRATOR/RECORDER/REGISTRAR OF TITLES**