

# DEVONSHIRE ESTATES

KNOW ALL MEN BY THESE PRESENTS: That Creekside Homes, LLC, a Minnesota Limited Liability Company, owner and proprietor of the following described property situated in the County of Anoka, State of Minnesota to wit:

All that part of the South Half of the Northeast Quarter of Section 33, Township 32, Range 24, Anoka County, Minnesota, described as follows:

Commencing at a point on the South line of said South Half of the Northeast Quarter distant 550.0 feet West from the Southeast corner of said South Half of the Northeast Quarter; thence North at right angles to said South line a distance of 360.00 feet; thence West and parallel with the South line of said South Half of the Northeast Quarter a distance of 506.20 feet; thence on a tangential curve concave to the Northeast having a radius of 445.51 feet and having a delta angle of 30 degrees 09 minutes for a distance of 234.46 feet; thence Northwesterly tangent to said curve a distance of 187.36 feet to the actual point of beginning of the tract of land to be described; thence continuing Northwesterly along last mentioned line a distance of 172.00 feet; thence Southwesterly at right angles a distance of 185.00 feet; thence Southeasterly at right angles a distance of 172.00 feet; thence Northeasterly at right angles a distance of 185.00 feet to the actual point of beginning.

TOGETHER WITH

All that part of said South Half of the Northeast Quarter described as follows:

Commencing at a point on the South line of said South Half of the Northeast Quarter distant 550.0 feet West from the Southeast corner of said South Half of the Northeast Quarter; thence North at right angles to said South line a distance of 360.00 feet; thence West and parallel with the South line of said South Half of the Northeast Quarter a distance of 506.20 feet; thence on a tangential curve concave to the Northeast having a radius of 445.51 feet and having a delta angle of 30 degrees 09 minutes for a distance of 234.46 feet; thence Northwesterly tangent to said curve a distance of 65.36 feet to the actual point of beginning of the tract of land to be described; thence continuing Northwesterly along last mentioned line a distance of 122.00 feet; thence Southwesterly at right angles a distance of 185.00 feet; thence Southeasterly at right angles a distance of 125.93 feet, more or less, to a point 291.15 feet North as measured at right angles to the South line of said South Half of the Northeast Quarter from a point 1426.0 feet West from the Southeast corner of said South Half of the Northeast Quarter; thence Northeasterly in a straight line to the actual point of beginning. Except the Southeasterly 10.00 feet thereof.

Has caused the same to be surveyed and platted as DEVONSHIRE ESTATES and does hereby donate and dedicate to the public for public use forever the Drive and also dedicate the easements as shown on this plat for drainage and utility purposes only. In witness whereof said Creekside Homes, LLC, a Minnesota Limited Liability Company has caused these presents to be signed by its proper officer this 28<sup>th</sup> day of August, 2001.

CREEKSIDE HOMES, LLC

*Randi Erickson*  
Chief Manager

STATE OF MINNESOTA  
COUNTY OF Anoka

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of August, 2001, by *Randi Erickson* as chief manager of Creekside Homes, LLC, a Minnesota Limited Liability Company on behalf of said company.



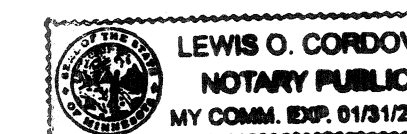
*Janet R. Thomas*  
Notary Public, Anoka County, Minnesota  
My Commission Expires 01-31-05

I hereby certify that I have surveyed and platted the property described on this plat as DEVONSHIRE ESTATES, that this plat is a correct representation of the survey, that all distances are correctly shown on the plat in feet and hundredths of a foot, that all monuments have been correctly placed in the ground as shown or will be correctly placed in the ground as designated; that the outside boundary lines are correctly designated on the 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.

*Terrence E. Rothenbacher*  
Terrence E. Rothenbacher, Land Surveyor  
Minnesota License No. 20595

STATE OF MINNESOTA  
COUNTY OF Dakota

The foregoing Surveyor's Certificate was acknowledged before me this 23<sup>rd</sup> day of August, 2001 by Terrence E. Rothenbacher, Minnesota License No. 20595.



*Lewis O. Cordova*  
Notary Public, Dakota County, Minnesota  
My Commission Expires 1/31/2005

CITY OF ANDOVER

We hereby certify that the City of Andover, Anoka County, Minnesota duly accepted and approved this plat of DEVONSHIRE ESTATES at a regular meeting held this 4<sup>th</sup> day of September, 2001. 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 Minnesota Statutes, Section 505.03, Subdivision 2.

By: *Bill Brundage* Mayor  
By: *Justin Hill* Clerk

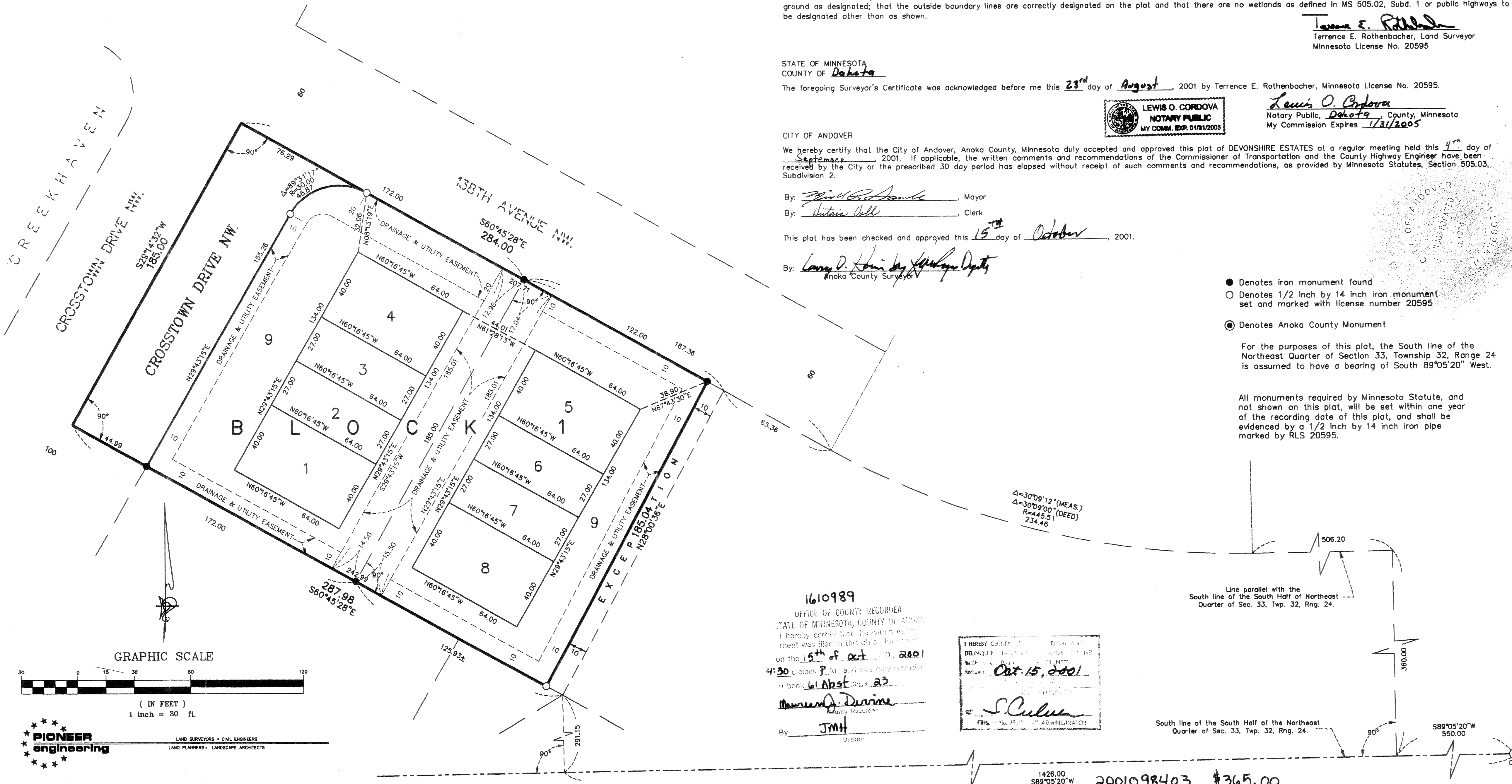
This plat has been checked and approved this 15<sup>th</sup> day of October, 2001.

By: *Larry D. Lewis* Anoka County Surveyor

- Denotes iron monument found
- Denotes 1/2 inch by 14 inch iron monument set and marked with license number 20595
- ⊙ Denotes Anoka County Monument

For the purposes of this plat, the South line of the Northeast Quarter of Section 33, Township 32, Range 24 is assumed to have a bearing of South 89°05'20" West.

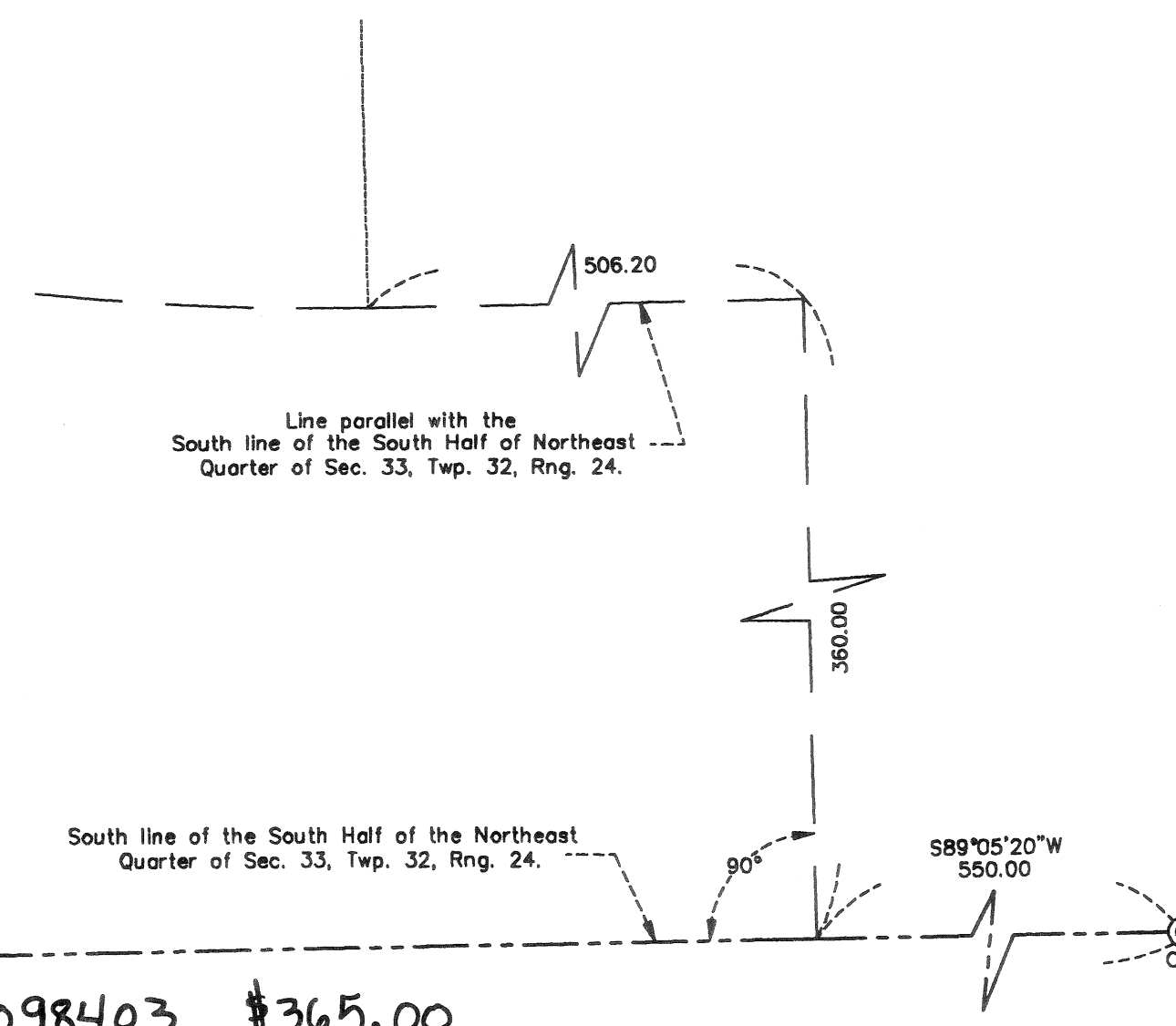
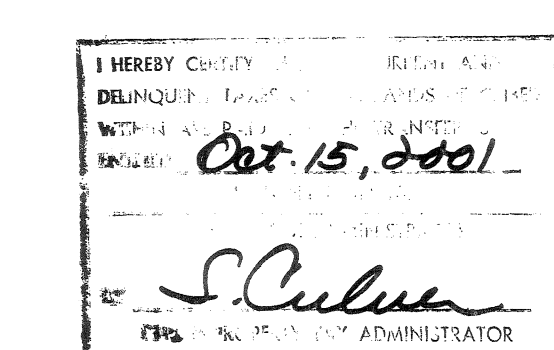
All monuments required by Minnesota Statute, and not shown on this plat, will be set within one year of the recording date of this plat, and shall be evidenced by a 1/2 inch by 14 inch iron pipe marked by RLS 20595.



GRAPHIC SCALE  
1 inch = 30 ft.

**PIONEER engineering**  
LAND SURVEYORS + CIVIL ENGINEERS  
LAND PLANNERS + LANDSCAPE ARCHITECTS

1610989  
OFFICE OF COUNTY RECORDER  
STATE OF MINNESOTA, COUNTY OF ANOKA  
I hereby certify that this within instrument was filed in this office for record on the 15<sup>th</sup> of Oct. 15, 2001 at 4:30 o'clock P.M. and was duly recorded in book 61 Abst. pgs. 23  
*Murray Dierme*  
County Recorder  
By: *JMH* Deputy



1426.00  
S89°05'20"W 2001098403 \$365.00

1610989

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 10-15-01

MAP # 2542 PLAT BOOK: 61 OF Abst PAGE 23

DOC. DATE: 8/28/01 NO. OF PAGES: 1 TRACT BOOK: \_\_\_\_\_ PAGE \_\_\_\_\_

PLAT SHORT NAME: Devonshire Est

LONG NAME: Devonshire Estates

A/T	PARENT PINS	KEY	RES?	GRANTORS (Fees, C/Ps, Mortgagees)	Marital Status
A	33.32.24.13.0014	560510	N	Creekside Homes LLC	fee
A	_____ 13-0049	1031190	N		
				(deeds filed same day)	

FILED BY: Randy Erickson PHONE: \_\_\_\_\_

TAXPAYER NAME: Creekside Homes

ADDRESS: 241 Jackson St

CITY: Andover STATE: NH ZIP: 55303

NEW PARCELS

LOT	BLOCK	LOT	BLOCK	LOT	BLOCK
1-9	1				
					(9)

DELO & CURRENT TAXES ARE PAID:

INITIALS: JMH DATE: 10/15/01

DIV. NO.: \_\_\_\_\_

DIV. FEE: \$ 310

ABSTRACT

Receipt # <u>98403/365.00</u>	<input type="checkbox"/> Certified Copy Date Mailed _____
Date/Time: <u>10/15 11:30</u>	<input type="checkbox"/> Tax Liens / Releases
Doc. Order <u>3</u> of <u>6</u>	<input type="checkbox"/> Multi-Co Doc Tax Pd
✓ by: Pins: <u>A</u>	<input type="checkbox"/> Transfer <input type="checkbox"/> New Desc.
Recordability / Delqs: <u>JH</u>	<input checked="" type="checkbox"/> Division <input type="checkbox"/> GAC
Filing Fees: <u>55.00</u> + <u>310.00</u>	<input type="checkbox"/> Status <input type="checkbox"/> Def. Spec
Well Certificate Received this Date: _____	<input type="checkbox"/> Other <input type="checkbox"/> No Change
Anoka County Recorder	
Notes:	

DOCUMENT NO. 1610989.0 ABSTRACT  
**ANOKA COUNTY MINNESOTA**

I HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS FILED IN THIS OFFICE  
 FOR RECORD ON **OCT 15 2001**  
 AT **4:30 PM** AND WAS DULY RECORDED.  
 FEES AND TAXES IN THE AMOUNT OF **\$365.00** PAID.

RECEIPT NO. 2001098403

~~XXXXXXXXXXXX~~ MAUREEN J. DEVINE  
 ANOKA COUNTY PROPERTY TAX ADMINISTRATOR/RECORDER/REGISTRAR OF TITLES  
 BY **JMH**  
 DEPUTY PROPERTY TAX ADMINISTRATOR/RECORDER/REGISTRAR OF TITLES

**PART OR PARTS OF  
THE FOLLOWING  
DOCUMENT CONTAIN  
ILLEGIBLE OR POOR  
QUALITY COPY AS A  
RESULT OF AN  
INFERIOR ORIGINAL!**

1610770

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: Be ON 10-15-01

MAP # 2543 PLAT BOOK TYPE: \_\_\_\_\_

DOC. DATE: 10/15/01 NO. OF PAGES: \_\_\_\_\_ TRACT BOOK: \_\_\_\_\_ PAGE \_\_\_\_\_

CIC SHORT NAME: CIC NO 92 Devonshire Est

LONG NAME: BY DECLARATION

AT	PARENT PINS	THRU
	<u>underlying Pins</u>	
	<u>33-32-24-13004</u>	
	<u>130049</u>	
	<u>(plat filed some day)</u>	

AT	PARENT PINS	THRU

DELINQUENT TAXES ARE PAID: INITIALS: gmit DATE: 10/15/01

DIV. NO.: \_\_\_\_\_

**COMMON INTEREST COMMUNITY NUMBER 92  
Planned Community**

**DEVONSHIRE TOWNHOME ASSOCIATION, INC.**

**DECLARATION**

This Declaration is made on this 15<sup>th</sup> day of October, 2001, by Creekside Homes, LLC, a Minnesota limited liability company, hereinafter referred to as "Declarant", pursuant to the provisions of the Minnesota Common Interest Ownership Act, a Minnesota Statutes Sections 515B.1-101 to 515B.4-118, "hereinafter referred to as the "Act"), as amended.

WHEREAS, Declarant, Creekside Homes, LLC is the owner of certain property in the City of Andover, County of Anoka and State of Minnesota, which is more particularly described as:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, Block 1; DEVONSHIRE ESTATES;

(hereinafter lots 1 thru 8, inclusive, in said block shall be referred to as the "Property" or "Properties", which Declarant intends to develop for residential uses; lot 9, in said block shall be referred to as the "Common Elements", which Declarant intends to develop for said owner(s) of lots 1-8, inclusive in said block, their successors and/or assigns, for the benefit of each owner(s), but deeded to the "Townhome Association" which Declarant herein creates as "Devonshire Townhome Association, Inc."

WHEREAS, Declarant desires that all of the Property shall be subject to certain uniform covenants, conditions and restrictions; and

WHEREAS, Declarant desires to establish on the Property, a plan for a permanent residential community to be owned, occupied and operated for the use, health, safety and welfare of its residential Owners and Occupants, and for the purpose of preserving the value, the structure quality and the original architectural and aesthetic character, and that all of the Property shall be subject to certain uniform covenants, conditions and restrictions; and

NOW, THEREFORE, Declarant hereby declares that all of the Properties described above shall be held, hold and conveyed subject to the Act and the following easements, restrictions covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title, or interest in the described Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

This common interest community is a planned community and is not subject to master association.

ARTICLE I.  
DEFINITIONS

Section 1. "Association" shall mean and refer to Devonshire Townhome Association, Inc., a non-profit corporation formed under Chapter 317A of the laws of the State of Minnesota and, Minnesota Statutes Section 515B.3-101, whose members consist of all Owners as defined herein.

Section 2. "Owner" shall mean and refer to the record owner whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. Where any such Lot is being sold by the fee owner to a contract vendee who is entitled to possession of the Lot, the contract vendee shall be considered to be the owner of the Lot of: (a) the rights of the contract vendor hereunder are delegated to the vendee under such contract for deed; and (b) the vendee shall furnish proof of such delegation to the Association.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association, including and not limited to the dwellings and all other structures and improvements located thereon now or in the future.

Section 4. "Lot" shall mean and refer to any separately identified plot of land shown upon any recorded subdivision map or plat of the Properties which is intended to be sold to the ultimate buyer a separate property. Where appropriate, reference to "Lot" shall include all structures located upon a Lot. The Boundaries of each Lot and the unit identifier of each Lot shall be as shown on the Plat.

Section 5. "Declarant" shall mean and refer to Creekside Homes, LLC, a Minnesota Limited Liability Company, its successors and assigns.

Section 7. "Eligible Mortgagee" shall mean any person owning a mortgage on any Lot, which mortgage is first in priority to any other mortgage that encumber such Lot, and which has requested the Association, in writing, to notify it regarding any proposed action which requires approval by a specified percentage of Eligible Mortgagee's.

Section 8. "Act" shall mean the Minnesota Common Interest Ownership Act, Minn Stat. Sec 515B. 1-101, et seq.

Section 9. "Plat" shall mean the plat of Devonshire Estates recorded in the office of the County Recorder, Anoka County, Minnesota.

Section 10. Definitions Incorporated. Except as otherwise specified in the 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 11. 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 Devonshire Townhome Association, Inc. The Association has been incorporated pursuant to the provision of Minnesota Statutes Chapter 317 A.
- (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 with the common interest community created hereby (including all appurtenant easements) is set forth on the front page of and throughout this declaration.
- (e) The description of the boundaries of each Lot created by this Declaration, including the unit identifier number for each Lot, is set forth on the Plat, which plat has been filed for record with the office of the Anoka County Recorder and is hereby incorporated herein by reference.
- (f) The allocated interests are assigned equally to each Lot, subject to the provision of this Declaration. Each Lot shall have one vote in the affairs of the Association. Except as provided in Article III, Section 6 (relating to the Alternative Assessment Program) or as permitted in the Act, each Lot shall share the Common Expenses equally.
- (g) The common interest community created hereby shall consist of eight (8) Lots, all of which shall be restricted to residential use.
- (h) No additional units may be created by the subdivision or conversion of Lots.
- (i) The use restrictions to which the Lots are subject are located in Articles VI and VII hereof. There is no restriction on the sale price of a unit. The amount to be received upon condemnation, casualty loss or termination of the common interest community is set forth in Article XIV, Section 10; Article X, Section 5; and Article XIV, Section 11, respectively.
- (j) Time-shares are not permitted.
- (k) Matters relating to Special Declarant Rights are contained in Article XII hereof. Matters relating to the use of the Common Elements are contained in Article VII hereof. Matters relating to the care and maintenance of the Common Elements are contained in Article IV hereof. Matters relating to assessments for Common Expenses are contained in Article III hereof. Matters relating to Limited Common Elements are contained in Article XIV, Section 9.

**ARTICLE II**  
**MEMBERSHIP AND VOTING RIGHTS**

**Section 1.** Every Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. When more than one person is any Owners of a Lot, all such person shall be members of the Association, but multiple



ownership of a Lot shall not increase the voting rights allocated to such Lot nor authorize the division of the voting rights.

Section 2. Voting rights and Common Expense obligations are allocated equally among the Lots; except that special allocations of Common Expenses shall be permitted as provided in this Declaration and except for the alternative assessment program as provided in this Declaration.

Section 3. The ownership of a Lot shall include the voting rights and Common Expense obligations described in Article II, Section 2. Said rights, obligations and interest, and the title to the Lots, shall not be separated or conveyed separately. The allocation of the rights, obligations and interests described in this Section may not be changed except in accordance with this Declaration, the Bylaws and the Act.

Section 4. The Owner, or some natural person designated as proxy on behalf of the Owner, and who need not be an owner, may cast the vote allocated to such Lot at meetings of the Association; provided, that if there are multiple Owners of a Lot, only the Owner or other person designated pursuant to the provisions of the Bylaws may cast such vote. The voting rights of Owners are more specifically described in the Bylaws.

ARTICLE III.  
COVENANT FOR COMMON EXPENSE  
AND INSURANCE PREMIUM ASSESSMENTS;

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot Owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed or contract for deed therefore, whether or not it shall be so expressed in such deed or contract, is deemed to covenants and agree to pay to the Association:

- (a) general annual assessments or charges;
  - (i) a common expense or portion thereof benefiting fewer than all of the Lots may be assessed exclusively against the Lots benefited, on basis of (A) equality, (B) square footage of the area being maintained, repaired or replaced, or (C) the actual cost incurred with respect to each Lot.
- (b) assessments for master insurance premiums, if any, which may be assessed in proportion to value, risk or coverage.
- (c) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.
- (d) assessments levied under Section 515B.3-116 of the Act to pay a judgment against the Association, which assessments may be levied only against the Lots existing at the time the judgment was entered, in proportion to their common Expense Liabilities.
- (e) assessments for fees, charges, late charges, fines and interest.
- (f) In any damage to the Common Elements or another Lot is caused by the act or omission of any Owner, the guests of an Owner of the occupant of any Lot, assessments for the costs of repairing the damage may be assessed exclusively against the Owner's Lot to the extent not covered by insurance.

The assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the Lot and shall be continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fee due and if more than one person was an delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

**Section 2. Purpose of Assessments.** The assessment levied by the Association shall be used exclusively to promote the purposes of the Association as set forth in Article IV.

**Section 3. Limitation on Assessments.** Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual general assessment to an Owner and the Owner's Lot shall be \$1360.00 per Lot.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual general assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership of the Association.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual general assessment may be increased by five percent (5%) or more by vote of Owners representing sixty-seven percent (67%) of the Lots who are voting in person or by proxy, at a meeting duly called for this purpose.
- (c) The Board of Directors of the Association may fix the annual general assessment at an amount not in excess of the maximum, and the Board of Directors of the Association may modify the annual assessment upward or downward from time to time, but in no event upward beyond the maximum permitted by this Section. Written notice of any modification of the annual general assessment shall be sent to every Owner subject hereto.

**Section 4. Special Assessment for Capital Improvements.** In addition to the annual general assessments, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of Owners representing sixty-seven (67%) of the Lots who are voting in person or by proxy at a meeting duly called for this purpose, other than the Declarant.

**Section 5. Notice and Quorum for any Action Authorized Under Sections 3 and 4.**

Written notice of any meeting called for the purpose of taking any action authorized under Section 3 and 4 shall be sent to all Owners not less than twenty-one (21) days nor more than thirty (30) days in advance of an annual meeting or not less than seven (7) days nor more than thirty (30) days in advance of a special meeting. At the first such meeting called, the presence of members or of proxies entitled to cast more than fifty percent (50%) of all the votes shall constitute a quorum. If the requirement, and the required quorum at the subsequent meeting

shall be ½ of the required of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 6. Uniform Rate of Assessment; Alternative Assessment Program.** The Declarant hereby established an alternative assessment program of the type described in Section 515B.3-115(a) (1) of the Act. Specifically, the Declarant covenants to pay during the Guaranty Period (defined below), in lieu of all common expense assessments otherwise payable on Declarant's units during such period, the excess, if any of (a) common expenses over (b) a monthly per unit assessment of \$10.00 multiplied by the number of units then owned by the owners other than Declarant, subject to the following conditions:

- a. The payments of excess expenses made by Declarant under this guaranty will not exceed \$10.00 per unit per month nor an aggregate of \$80.00 for any one unit per year.
- b. The Guaranty Period will commence at the time the first common expense assessment is levied, which shall be no later than 60 days after the first conveyance of a unit to an owner other than Declarant. Prior to that time, Declarant will pay all accrued common expenses.
- c. The Guaranty Period will extend from a minimum of twelve calendar months and a maximum of twenty-four calendar months.
- d. The Declarant may not commence or recommence this alternative assessment program at any time other than at the time the first common expense assessment is levied.
- e. This alternative assessment program will have no effect on the level of services for items set forth in the Association's budget.
- f. The Declarant shall give owners at least 60 days prior notice of the termination of the Guaranty Period, which, however, shall not end within its first twelve months.
- g. This alternative assessment plan will have no effect on Declarant's obligation to fund the reserves disclosed in the Association's budget included in the disclosure statement or otherwise approved by the Association.

Annual and/or special assessments may be collected on a monthly basis at the discretion of the Association.

**Section 7. Date of Commencement of Assessments; Due Dates.** The general annual assessment provided for herein shall commence as to all Lots on the first day of the month following the conveyance by the Declarant of a Lot. Notwithstanding the foregoing to the contrary, any Lot owned by Declarant shall be assess pursuant to the alternative assessment program set forth in Article III, Section 6.

The first general annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of such assessments against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of such assessments shall be sent to every Owner subject thereto. The Board of Directors of the Association shall establish the due dates. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an

authorized representative of the Association setting forth whether the assessments on specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot binding upon the Association as of the date of its issuance.

**Section 8. Effect of Nonpayment of Assessments; Remedies of the Association.** Any assessment to any Member not paid within 20 days after the due date shall bear interest from the due date at a rate of 8% per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the Lien against the Property. Such Lien may be foreclosed in the same manner as a mortgage pursuant to Minnesota Statutes, Chapters 580, 581, or 582, as amended, and the Association shall be entitled to recover interest at the rate of 8% per annum and its costs, expenses and disbursements, including reasonable attorney's fee's, incurred in such foreclosure. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements or abandonment of the Owner's Lot. If the Association has provided for monthly installment payments of assessments, the Association may accelerate and the Owner shall pay the unpaid balance of an annual installment if the Owner has failed to any monthly installment within thirty (30) days after the due date of a monthly installment. To the extent permissible, the Association may deny services to any Member who is more than thirty (30) days delinquent in the payment of any assessment or installment of an assessment.

**Section 9. Subordination of the Lien to Mortgage.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage, except as provided in Section 515B.3-116 of the Act. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

#### **ARTICLE IV.** **DUTIES OF ASSOCIATION**

**Section 1. General Duties.** In addition to maintenance upon the private streets and driveways, including the maintenance of the water and sewer services from any public mains, the Association shall provide for maintenance upon the Lots and Common Elements as follows: exterior maintenance upon each Lot which is subject to assessment hereunder, snow removal, fences, decks, rubbish, paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, irrigation systems, light fixtures or light standards along private roads and other exterior improvements. Exterior maintenance shall not include glass, windows or electricity for exterior garage lights.

**Section 2. Other Duties.**

- (a) The Association shall enforce the covenants, conditions and restrictions set forth herein and any amendments hereto and any rules and regulations adopted by the Association.

- (b) The Association may provide for trash removal services in accordance with the provisions of Article IX hereof and shall provide a master or common policy of property insurance for all Lots within the Association.
- (c) The Association shall undertake, at its discretion, such further duties as determined by the Board of Directors.

**Section 3. Miscellaneous.** In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or guests, invitee, or lessees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject.

## ARTICLE V. 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 Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of the law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**Section 2. Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

**Section 3. Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to all from a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

**Section 4. Weatherproofing.** Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**Section 5. 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 Lot and shall pass to such Owner's successors in title.

**Section 6. 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.

ARTICLE VI.  
ARCHITECTURAL CONTROL

Section 1. Structures. No building, fence, wall or alteration to any deck or fence or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to, or change or alteration therein be made until the plans and specifications showing the nature, kind, shape height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board.

Section 2. Approval. In the event said Board of Directors, or its designated architectural committee, fails to approve or disapprove such design and location, or planting, within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VII.  
ADDITIONAL RESTRICTIONS; RULES AND REGULATIONS

Section 1. Additional restrictions.

- (a) No lot shall be used except for residential purposes, except that Declarant shall be entitled to maintain model homes and other sales facilities upon the Lots.
- (b) No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one (1) square foot and one sign of not more than five square feet advertising the property for sale, except that Declarant shall be permitted to erect and maintain upon the Property such signs as it deems appropriate to advertising the Property until the Declarant conveys the last lot.
- (c) The Association, through its Board of Directors, may in its discretion adopt rules and regulations prohibiting or permitting the keeping of animals on the Lots.
- (d) No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste, including pet or household waste. Garbage, rubbish and trash shall not be kept on said premises except in sanitary containers. All incinerators or other equipment used or kept for the storage or disposal of such material shall be kept in a clean and sanitary condition.
- (e) No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be or may become an annoyance of nuisance to the neighborhood.
- (f) No Structure of a temporary character, trailer, basement, tent, shack, garage, barn or other building shall be used on any lot at any time as a residence, either temporarily or permanently.
- (g) No trailers, boats, buses, motor homes, campers, snowmobiles, motorized bicycles or other types of recreational vehicles shall be parked on any Lot for more than forty-eight (48) consecutive hours unless such vehicle is parked within a garage; provided that the Board of Directors of the Association may grant permits to park such vehicles on Lots for limited periods of time not to exceed fourteen (14) days in any twelve-

month (12) period. No such vehicles shall be parked on any Common Element, except as designated by signage.

- (h) No aerial, antenna or satellite dish which is (i) over four feet in Height, as measured from the point on any structure to which the aerial, antenna or satellite dish is affixed; (ii) more than one meter in diameter; (iii) not attached to dwelling unit, or (iv) of a color not approved by the Association, shall be permitted on any Lot.
- (i) No abandoned motor vehicle as defined in Minnesota Statutes Section 168B.02, subdivision 2, as amended from time to time, shall be permitted to remain upon the streets or driveways or on any Lot or parking area. The Association shall have the right to remove any such vehicle at any time, and assess the cost of such removal against the Lot, which is owned or occupied by the person in control or possession of such vehicle.
- (j) No fences shall be erected on any Lot.
- (k) Except as herein permitted for Declarant, no business, trade, occupation or profession of any kind, whether carried on for profit or otherwise, shall be conducted, maintained or permitted on any Lot, except: (i) an Owner or occupant residing in a Lot may keep and maintain his or her business or professional records in such Lot and handle matters relating thereto by telephone or correspondence therefrom, provided that such uses are incidental to the residential use of the Lot; and (ii) the Association may maintain offices on the Property for management and related purposes.
- (l) No Lot may be leased for transient or hotel purposes. Any lease of any lot shall be in writing which shall be expressly subject to the Act, this Declaration and any Rules and Regulations adopted by the Association and which provide that any violation of the Act, this Declaration and any Rules and Regulations shall be a default under the lease. No time-shares shall be created with respect to any Lot.
- (m) No parking shall be permitted on private streets located within the Property in accordance with any "No Parking" or "Fire Lane" signs posted by the Association as requested by the Fire Department of the City of Andover.

**Section 2. Rules and Regulations.** The Association may adopt, amend and revoke rules and regulations not inconsistent with the Articles of Incorporation, this Declaration or the Bylaws of the Association, as follows:

- (a) regulating the use of the Common Elements;
- (b) regulating the use of Lots and the conduct of living unit occupants, which may jeopardize the health, safety, and welfare of other occupants, which involves noise or other disturbing activity, or which may damage the Common Elements or other living units;
- (c) regulating or prohibiting animals;
- (d) regulating changes in the appearance of the Common Elements and conduct, which may damage the common interest community;
- (e) regulating the exterior appearance of the common interest community, including, by way of illustration and not limitation, balconies and patios, window treatments, and signs and other displays, regardless of whether inside a living unit;
- (f) implementing the Articles of Incorporation, this Declaration or the Bylaws of the Association; and

(g) other rules facilitating the operation of the common interest community.

After notice and an opportunity to be heard, the Association may impose reasonable sanctions, including the levying of reasonable fines and reasonable restrictions on services and use of Common Elements, for violations of this Declaration, the Bylaws and the Rules and Regulations of the Association.

## ARTICLE VII EASEMENTS

Section 1. General. In addition to the easements, covenants, restrictions and conditions herein, all Lots shall be subject to easements and covenants hereinafter specifically described for the benefit of the Properties or for the limited benefit of specified adjoining Lots, all as more fully set forth hereinafter in this Article. Within such easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of any utilities or sidewalk which may change the flow or drainage channels within the easements or which may obstruct, retard or change the flow of water through drainage easements. The easement area of each Lot and all improvements therein shall be maintained continuously by the Owner of the Lot, except for improvements, which are the responsibility of the Association, a public authority or utility company.

Section 2. Utility Easements. All Lots and Common Elements are hereby subjected to easements in favor of the Association and the Owners of the Lots for the installation and maintenance of utilities, including gas, telephone, electric and cable TV. The Association or its proper representatives shall have the right of free access to any Lot or living unit for the purpose of maintaining any utility service to any Lot on the properties. In addition, each Lot over which a utility is in fact installed or constructed as part of the original utility system shall be subject to an easement for utility purposes over the portion of the Lot upon which such utility services is constructed.

Section 3. Easements for Encroachment. In the event that any buildings or other structures originally constructed by the Declarant or constructed or erected thereafter on any Lot in accordance with the Rules and, or approved by the Association, which encroaches upon any other Lot, 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 Lot for such encroachment and the maintenance thereof shall exist.

3A. Each Unit and the Common Elements and the rights of the Owners and Occupants therein, shall be subject to an exclusive easement for encroachments in favor of the adjoining Units for fireplaces, walls, roof overhangs, air conditioning systems, decks, balconies, porches, patios, utility installations and other appurtenances. Such easements shall continue for as long as the encroachment exists and or is repaired or is replaced, and shall not affect the marketability of title.



**Section 4. Easement for Maintenance.** Declarant hereby grants an easement in favor of the Association over and across each Lot for the purposes of the Association performing its duties.

**Section 5. Emergency Vehicles.** Declarant hereby grants a perpetual, non-exclusive easement in favor of the City of Andover, a municipal corporation under the laws of the State of Minnesota, on, over and across the Common Elements for the purpose of ingress and egress, for police, fire, rescue and other emergency calls, animal control, health and prospective inspection and to provide to the owners other public services deemed necessary by the City of Andover and for the purposes set forth herein.

#### **ARTICLE IX.** **TRASH REMOVAL**

**Section 1. Master Contract.** The Association shall contract with a single provider for the removal and disposal of garbage, trash and other solid waste from all Lots in accordance with this Declaration. Each Owner shall be assessed monthly for such services from the provider designated by the Association upon the terms, conditions and rates negotiated by the Association.

**Section 2. Charges.** All charges imposed by the provider designated by the Association shall be paid by the Association and shall be included in the general assessments to Owners. In the event that any Owner requests any services not included within the basic/general charges of the provider, the Owner, upon written demand by 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 the Lot. Any charge, lien or claim pursuant to this Article shall not be subject to any maximum increase in general assessments.

#### **ARTICLE X.** **INSURANCE AND RECONSTRUCTION**

**Section 1. Liability Insurance: Fidelity Bonds.** The Board of Directors of the Association, or its duly authorized agent, shall obtain a broad form of public liability insurance insuring the Association, with such limits of liabilities as the Association shall determine to be necessary, against all acts, omissions to act and negligence of the Association, its employees and agents.

**Section 2. Property Insurance.** Each Owner, by acceptance of a deed or contract for deed on a Lot, covenants to cooperate with the Association to maintain and timely pay the Owner's share of premiums on a master insurance policy, including fire, extended coverage, vandalism and malicious mischief, with all risk endorsements insurance, and such additional insurance as may be required by the Federal National Mortgage Association and the Federal Home Loan Mortgage

Corporation, if applicable. The Association, through its Board of Directors, may obtain and continue in effect master property insurance in form and amounts satisfactory to cover a minimum of the entire replacement cost for all of the living units located on each Lot of the Properties, but without prejudice to the right of the Owner of said Lot to obtain additional individual living unit insurance. Each Owner shall join in said master policy and pay a share of the premiums thereon in such manner as determined by the Association. Any such master policies and coverage shall be purchased and carried by the Association on the Properties, and the proceeds thereof shall be used exclusively for the repairs, replacement and reconstruction of the Properties. Any insurance shall cover a minimum of the entire replacement cost of any improvements located on the Property. Said master policy shall be issued in the name of the Association as insurance trustee for the Owners, and shall provide that losses shall be payable to the trustee and first mortgagee of record, if any. Any such master insurance shall cover loss by damage and fire such hazards as are covered under standard extended coverage provisions and may include such other and additional coverage's as the Association, through its Board of Directors, deems necessary or desirable.

All policies, whether obtained by an Owner or the Association, shall prohibit cancellation or substantial modification without at least thirty (30) days prior written notice to all insured's, the Association, all first mortgagees of record and the FHA and FNMA, if applicable. All said insurance policies shall contain a cost of replacement endorsement.

**Section 3. Insurance Premiums.** If so determined by the Board of Directors, insurance premiums for any master insurance coverage and other insurance coverage's shall be a common expense paid by monthly assessments levied by the association; such payments shall be held in a separate escrow account of the Association and used solely for the payment of master property insurance premiums and other insurance premiums as such premiums become due. An Owner by acceptance of a deed or contract for deed thereof, conveys, covenants, constitutes and appoints the Association or its Board of Directors as the Owner's true and lawful Attorney-In-Fact to act in connection with all matters concerning the purchase and maintenance of all types of property and liability insurance pertaining to the properties, the ownership of any respective Lot and living unit thereto with any insurance company or group of insurance companies. Without limitation on the generality of the foregoing, the Association, as insurance trustee, has full power and authority to purchase and maintain such insurance, to collect proceeds and to distribute the same.

**Section 4. Lien for Premiums.** The Association may, but shall not be required to, make payment of insurance premiums on behalf of any Owner who becomes delinquent in such payment or the first mortgagee of any lot may, but shall not be required to, make such payments. In the event that the Association or the first mortgagee does make such payment, then such payment and the cost hereof shall be treated as if it is part of the common expense assessment and shall be a charge and a continuing lien on the Lot for whose benefit such premium payment is made, and the personal obligation of the Owner of such Lot, from the time when such premium payment is made.

**Section 5. Use of Proceeds.** In the event of destruction or damage by causes covered by insurance referred to in the Article X, all proceeds of said insurance coverage shall be payable to the Association as insurance trustee for the Owner or Owners of the damaged Lots. Said insurance proceeds shall be applied and administered as follows:

- (a) In the event of an insured loss to a Lot, all insurance proceeds paid to the trustee and the first mortgagee of record if the damaged Lot shall be deposited in a title insurance company acceptable to them to be held in escrow for restoration.
- (b) In the event of an insured loss to a Lot, the Owner of such Lot with respect to which the insurance loss occurs shall, with thirty (30) days after the insurance proceeds are deposited with a title insurance company in accordance with paragraph (a) above, enter into a firm contract with a qualified builder providing for the reconstruction of the improvement, in substantially the same condition as existed immediately prior to the insured loss; provided, however, that no contract shall be entered into by such Owner for an amount in excess of the insurance proceeds then held by the title insurance company until additional funds are deposited in escrow as above provided by such Owner sufficient to cover all construction as determined by the title insurance company. Said reconstruction shall be commenced and completed with due diligence and in no event shall said work be completed later than one-hundred-eighty (180) days after said insurance proceeds are deposited in escrow as aforesaid. The Association and first mortgagee of record of the Lot affected shall have the right, but not the obligation, to deposit said additional funds in excess of the insurance proceeds as may be required to permit construction as herein provided; provided that if such additional funds are deposited by the Association, the Association shall reimburse itself by a special general assessment against all Lot owners in such annual installments as the Association may determine.
- (c) In the event such Owner fails to enter into a contract as provided in paragraph (b) above for the reconstruction of the improvement as provided above or, in the event that reconstruction is not commenced or completed as provided above, then the Association as trustee, with the consent of the first mortgagee of record, or the first mortgagee of record with the consent of the trustee, shall have the right, but not the obligation to enter into those contracts which it deems necessary to complete said reconstruction of the improvement on the Lot; and the Association as trustee or first mortgagee shall have the right to have said insurance proceeds applied in satisfaction of any obligations incurred pursuant to said contract, without liability of any kind to the Owner. The Association or the first mortgagee may employ any bonded party or parties as its agent exercising those functions given to it in this Article. The Association or the first mortgagee shall be empowered to pay said agent a reasonable fee for the services rendered by said agent and collect said charge from the Owner, and in the manner as that which is provided in Article X, Section 3, for the collection of an insurance premium paid by the Association.
- (d) Disbursement of funds on deposit pursuant to Article X, section 5 (b) and (c) shall be made by the title insurance company selected as hereinabove provided, subject to the following:

- (i) Receipt by the title insurance company of a written consent of any party holding a lien or encumbrance on said Lot.
  - (ii) Receipt by the title insurance company of such construction statements, lists of subcontractors, lien waivers and receipts, as it shall determine to be appropriate. Disbursements may be periodic or progress payments, and the title insurance company may make such inspections and withhold such payments, as it deems necessary to insure completion with the plans and specifications. The title insurance company shall be entitled to charge and the trustee shall be empowered to pay a reasonable fee for the services rendered by the title insurance company, and the Association as trustee may collect such charge from the Owner, and in the same manner as that which is provided for in Article X, Section 3 for the collection of insurance premiums paid by the Association.
  - (iii) In the event a contract is entered into pursuant to Article X, Section 5 (b), the written consent of such Owner to said payment must be obtained.
- (e) Nothing contained in this Article shall be construed to make the Association or the first mortgagee of record responsible for collection or non-collection of any insurance proceeds; said Association or first mortgagee being responsible solely for the insurance proceeds, which come into their hands. Such Owner of a Lot damaged or destroyed by causes referred to above shall collect or cause to be collected from the insurance carrier involved the proceeds of the policy covering his Lot for the use of the trustee and the first mortgagee as herein provided.
- (f) In the event that a reconstruction contract is for any reason not entered into pursuant to the provisions of Article X, section 5 (b) and (c) within one hundred-eighty (180) days after the deposit of insurance proceeds with the title company as herein provided, said title insurance company shall disburse said proceeds to all mortgages of record of the affected Lots as its interest appears to retire the indebtedness secured under said mortgage, and disburse the remaining deposits, if any, to such lot Owner, as the interests may appear.

**Section 6. Waiver of Subrogation.** All policies of physical damage insurance shall contain waivers of subrogation and waivers of any defense based on coinsurance or of the invalidity arising from acts of the insured and it shall provide that such policies may not be cancelled or substantially modified with at least thirty (30) days prior written notice to all insured's, the Association, and all of the mortgages of record of the Lots, and to the FHA or FNMA, if applicable.

**Section 7. Insufficient Proceeds.** If the proceeds of the insurance are not sufficient to defray the estimated cost of reconstruction or repair of damaged properties and/or the Common Elements by the Association or if at any time during the reconstruction or repair or upon completion of such reconstruction or repairs, the funds for the payment of costs thereof are insufficient, assessments shall be made against the Owners who own the damaged properties or who have assigned their rights in repairs. The Association shall have a lien on any funds advanced on behalf of such Owners.

**Section 8. Other Insurance.** The Association shall procure and maintain the following additional insurance coverage:

- (a) Fidelity coverage against dishonest acts on the part of Directors, Managers, trustees, employees or volunteers responsible for handling funds collected and held for the benefit of the Owners. The fidelity bond or insurance shall name the Association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than the amount required by the Act or the estimated maximum amount of funds, (including reserves), in the custody of the Association or management agent at any given time. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if said policy would not otherwise cover volunteers.
- (b) A comprehensive policy of public liability insurance covering the Common Elements in an amount not less than three hundred thousand dollars. Such insurance shall contain a "sever ability of insurance: endorsement which shall preclude the insurer from denying the claim of the Owner because of negligent acts of the Association or other owners. The policy shall include such additional coverage's, endorsements or limits as may be required by regulations of the Federal Housing Administration, ("FHA"), or the Federal National Mortgage Association ("FNMA"), as a precondition to their insuring, purchasing or financing a mortgage on a Lot.
- (c) Workers Compensation insurance as required by law.
- (d) Directors and officers liability insurance with such reasonable limits and overages as the Board of Directors may determine from time to time.
- (e) Such other insurance as the Board of Directors may determine from time to time to be in the best interests of the Association and the Owners or as may be required by the Act.

**Section 9. Deductibles.** As to any deductibles under any insurance overages obtained by the Association, the Board of Directors may:

- (a) pay the deductible as a general common expense;
- (b) assess the deductible amount against any Lots affected in a reasonable manner; or
- (c) assess the deductible against any Owner and the Owner's Lot if the loss was caused by the act or omission of the Owner, or the Owner's agents, employees, invitees, guests or any one occupying the Lot with the expressed or implied permission of the Owner.

## ARTICLE XI RIGHTS OF ELIGIBLE MORTGAGEES

**Section 1. Consent to Certain Amendments.** The written consent of eligible mortgages representing at least fifty-one percent (51%) of the Lots that are subject to first mortgages held by Eligible Mortgagees, (based upon one vote per first mortgage owned), shall be required for any amendment to this Declaration, Articles of Incorporation or Bylaws of the Association which causes any change in the following:

- (a) voting rights;

- (b) increases in assessments that raise the previously assessed amount by more than twenty-five (25%), assessment liens or priority of assessment liens;
- (c) reductions in reserves for maintenance, repair and replacement of Common Elements;
- (d) responsibility for maintenance and repairs;
- (e) relocation of interests in the Common Elements or right to their use;
- (f) redefinition's of any Lot boundaries;
- (g) convertibility of Lots into Common Elements or vice versa;
- (h) expansion of the Property or the addition or withdrawal of property to or from the Property;
- (i) hazard of fidelity insurance requirements;
- (j) leasing of Lots;
- (k) imposition of any restrictions of the leasing of Lots;
- (l) restoration or repair of the Property, (after hazard damages or partial condemnation) in a manner other than that specified in this Declaration;
- (m) any action to terminate the legal status of the common interest community after substantial destruction or condemnation occurs; or
- (n) any provisions that expressly benefit mortgage holders; or insurers or guarantors of mortgages.

Notwithstanding the foregoing, implied approval of a proposed amendment shall be assumed when an Eligible Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided that the notice was delivered by certified mail with a return receipt.

Section 2. Consent to Certain Actions. The written consent of Eligible Mortgagees representing at least sixty-seven percent (67%) of the Lots that are subject to first mortgages, (based upon one vote per first mortgage owned) shall be required to abandon or terminate the common interest community, subject to any greater requirements contained in the Act.

Section 3. Consent to Subdivision. No Lot may be partitioned or subdivided with the prior written approval of the Owner, Eligible Mortgagee thereof, and the Association.

Section 4. No Right of First Refusal. The right of an Owner to sell, transfer or otherwise convey his Lot shall not be subject to any right of first refusal or similar restrictions.

Section 5. Priority of Lien. Any holder of a first mortgage on a Lot or any purchaser of a first mortgage at a foreclosure sale, that comes into possession of a Lot by foreclosure of the first mortgage or by deed or assignment in lieu of foreclosure, takes the Lot free of any claim for unpaid assessments or other charges or liens imposed against the Lot by the Association which have accrued against such Lot prior to acquisition of possession of the Lot by said first mortgage holder or purchaser;

- (a) except as provided in Article III, Section 9 and the Section 515B.3-116 of the Act;
- and
- (b) recorded doc.

- (c) a condemnation loss or any casualty loss which affects a material portion of the Lot securing the mortgage.
- (d) a sixty (60) day delinquency in payment of assessments or charges owed by the Owner of a Lot on which it holds a mortgage.
- (e) a lapse, cancellation or material modification of any insurance policy maintained the Association.
- (f) a proposed action, which requires the consent of a specified percentage of Eligible Mortgagees.

ARTICLE XII.  
SPECIAL DECLARANT RIGHTS

**Section 1. Period of Declarant Control.** Notwithstanding anything in this Declaration or the Association Bylaws 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) sixty (60) days after the conveyance of seventy-five (75%) of the Lots to Lot Owners other than the Declarant, or
- (b) five years from the date of the recording of this Declaration.

During this period of Declarant Control, the Declarant, subject to the Bylaws, shall have the sole right to appoint, revoke and replace the officers and directors of the Association. Notwithstanding the foregoing, the Owners other than the Declarant shall have the right to nominate and elect not less than thirty-three and one-third percent (33 1/3%) of the directors at a meeting of the Owners which shall be held with sixty (60) days following the conveyance by Declarant of fifty percent (50%) of the Lots authorized to be included in the Common Interest Community.

**Section 2. Maintenance of Sales Offices.** Notwithstanding anything herein to the contrary, so long as the Declarant owns an interest in a Lot, the Declarant may maintain advertising signs on any part of the Common Elements and sales offices, management offices and model units in any Lots or in 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 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 Lots shall continue, Declarant shall have an easement over and across the Common Elements for the purpose of carrying out its sales activities and for the purpose of completing the construction on any Lots, 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 no be amended without the express written consent of the Declarant.

ARTICLE XIII.

## FLEXIBLE ASSOCIATION

(Intentionally left blank)

**Section 1. Enforcement.** The Association, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 2. Severability.** Invalidation 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 3. Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land and shall be perpetual.

**Section 4. Annexation.** Additional residential or commercial property and Common Elements may be annexed to the act/declaration/bylaws/rules & regulations by the Declarant, their successors and assigns, for a period not to exceed a 10 years. This right shall pass to their assignees and successors of the declarant, if any.

**Section 5. FHA/VA.** If the Common Interest Community has received approval from the Federal Housing Administration or the Department of Veterans Affairs, the following actions with require the prior approval of the Federal Housing Administration or the Department of Veterans Affairs, during any period of Declarant control: annexation of additional properties, dedication of Common Elements and amendment of this Declaration, the Articles of Incorporation of the Association or the Bylaws of the Association.

**Section 6. Tender of Claims.** In the event that any incident occurs which could reasonably give rise to a demand by the Association against the Declarant for indemnification pursuant to the Act, the Association shall promptly tender the defense of the action to its insurance carrier, and give Declarant written notice of such tender, the specific nature of the action and an opportunity to defend against the action.

**Section 7. Conflicts Among Documents.** In the event of any conflict among the provisions of the Act, this Declaration, the Bylaws of the Association or any Rules and Regulations adopted by the Association, the documents shall control in the following order:

- (a) The Act;
- (b) this Declaration;
- (c) the Bylaws; and
- (d) the Rules and Regulations.



**Section 8. Interpretation.** 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 pronouns and vice versa.

**Section 9. Limited Common Elements.** All portions of the Property other than the Lots are Common Elements. Certain portions of the Common Elements designed to serve a single Lot 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 Lots served thereby to the exclusion of other Lots. In addition, the driveways adjacent to and serving each Lot are Limited Common Elements allocated for the exclusive use of the respective Lots to the exclusion of other Lots. In addition, the driveways adjacent to and serving each Lot are Limited Common Elements allocated for the Exclusive use of the respective Lots to the exclusion of the other Lots. Additionally, the entry area and air conditioning equipment serving each Lot and the stairs and/or the patio/deck area, if any, which are accessible from each Lot are Limited Common Elements allocated for the exclusive use of such Lot to the exclusion of the other Lots. The air conditioning equipment which is a Limited Common Element, allocated to each Lot shall be maintained, repaired and replaced by the Owner of each such Lot at such Owner's sole cost and expense. All other portions of the Limited Common Elements shall be maintained as Common Elements under and pursuant to the provision of Article IV hereof. The expense of any such maintenance and repair shall be charged to the Lot as Common Expense under and pursuant to the provisions of Article III hereof.

**Section 10. 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 (hereafter, "condemnation"), the Association shall represent the Owners in any such condemnation, or in negotiations, settlements and agreements with the condemning authority, and each Owner hereby appoints the Association as his 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 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 purposes as may be in accordance with the function and powers of the Association and the welfare of the Owners.

If all of a Lot is taken through condemnation, or if so much of a Lot is taken that the remaining property cannot reasonably be used for a purposes allowed by this Declaration, then the entire Lot shall be considered condemned and the 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 Lot is taken through condemnation, but the Lot can still be used for a purpose allowed by this Declaration, then there shall be no effect on the Lot Owner's interest in the Common Elements or the Association.

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

**Section 11. 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 Owners holding eighty percent (80%) of the vote of the Association and eighty percent (80%) of the eligible Mortgagees (each mortgagee having one vote for each Lot financed.) Together with the consent of the Declarant(s) and successors & assigns rights of the Owners of the Lots as described in Article XIII, Section 4.

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

**Section 12. SPECIAL RIGHTS GRANTED TO THE CITY OF ANDOVER.** The City of Andover, has executed various agreements with and secured certain covenants from the Declarant and has a continuing interest in the performance of those agreements and covenants. Further, the City of Andover is concerned that all conditions requested by the City of Andover are complied with and that the Property is developed and maintained in accordance with the plan contemplated by this Declaration.

The Declarant, for itself, its successors and assigns and, by accepting a conveyance of a Unit, and Owner, for the Owner, the Owner's family and guests, release and shall hold harmless the City of Andover (including its elected and appointed officials, employees, servants and agents) from all liability for enforcement or for nonenforcement of this Declaration, and further expressly acknowledge that the City of Andover is not obligated to perform or to enforce performance by the Declarant, the Association or others of any obligations contained in this Declaration.

The City of Andover, at its option, and in its discretion, together with the consent of the Declarant, may enforce for the benefit of itself or the owners, the specific provisions allowed and or created in this Declaration.

The rights granted by this Section are exclusive to the City of Andover and may be exercised only by the City. No other person or entity, including the Association or Unit Owners, whether or not a resident of Andover, shall be entitled to request or require the City to act pursuant to this Section. The right of the City of Andover under this Section cannot be rescinded, canceled or amended by the Declarant or the Unit Owners without the written consent of the City. In the event the Association fails to maintain the private streets, common areas or other properties for which it is responsible in accordance with the applicable Rules and Regulations, and said expenses are not immediately reimbursed by the Association, then the City of Andover shall have the right to assess each property that is subject to the Declarations its pro-rata share of said expenses. Said assessments together with interest thereon and costs of collection shall be a lien on each property against which each such assessment is made.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed the date and year first above written.

CREEKSIDE HOMES, LLC, declarant  
BY: *Randi Erickson*  
Randi Erickson, chief manager

State of Minnesota  
County of Anoka

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of October, 2001, by Randi Erickson, chief manager of the declarant, CREEKSIDE HOMES, LLC, a Minnesota Limited Liability Company on behalf of the Limited Liability Company

*Lisa Quigley*  
Notary Public

DRAFTED BY:  
CREEKSIDE HOMES, LLC  
c/o TOWN CENTRE REAL ESTATE SERVICES  
241 JACKSON ST.  
ANOKA MN 55303  
763-427-4878



1-30-05

T01-08154

ABSTRACT

Receipt # <u>98406/37.00</u>	<input type="checkbox"/> Certified Copy Date Mailed _____
Date/Time: <u>10/15 / 16:30</u>	<input type="checkbox"/> Tax Liens / Releases
Doc. Order <u>4</u> of <u>6</u>	<input type="checkbox"/> Multi-Co Doc Tax Pd
✓ by: Pins: <u>JH</u>	<input type="checkbox"/> Transfer <input type="checkbox"/> New Desc
Recordability / Delqs: <u>JH</u>	<input checked="" type="checkbox"/> Division <input type="checkbox"/> GAC
Filing Fees: <u>37.00 NS</u>	<input type="checkbox"/> Status <input type="checkbox"/> Def. Spec
Well Certificate Received this Date: _____ Anoka County Recorder	<input type="checkbox"/> Other <input type="checkbox"/> No Change
Notes: <u>22 pages</u> <u>margin</u>	

DOCUMENT NO. 1610990.0 ABSTRACT  
**ANOKA COUNTY MINNESOTA**

I HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS FILED IN THIS OFFICE  
 FOR RECORD ON **OCT 15 2001**  
 AT **4:30 PM** AND WAS DULY RECORDED.  
 FEES AND TAXES IN THE AMOUNT OF **\$37.00** PAID.

RECEIPT NO. 2001098406

~~MAUREEN J. DEVINE~~ MAUREEN J. DEVINE  
 ANOKA COUNTY PROPERTY TAX ADMINISTRATOR/RECORDER/REGISTRAR OF TITLES  
 JMH  
 BY \_\_\_\_\_  
 DEPUTY PROPERTY TAX ADMINISTRATOR/RECORDER/REGISTRAR OF TITLES