

329790

## LAFAYETTE WOODS

## DECLARATION

THIS DECLARATION is made on this 26 day of July, 1996, by WINDSOR DEVELOPMENT, L.L.P., a Minnesota limited liability partnership, hereinafter referred to as "Declarant".

## WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the City of Elk River, County of Sherburne, State of Minnesota, which is more particularly described as:

See Exhibit A Attached hereto

(the "Property" or "Properties"), which Declarant intends to develop for residential uses; and

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

NOW, THEREFORE, Declarant hereby declares that all of the Properties described above shall be held, sold, and conveyed subject to 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 community consists solely of separate parcels of real estate designed or utilized for single family dwellings and the association has no obligation to maintain any building containing a dwelling and is not subject to the Minnesota Common Interest Ownership Act by virtue of Minn. Stat. Sec. 515B.1-102(e) (2).

ARTICLE I.

## DEFINITIONS

Section 1. "Association" shall mean and refer to Lafayette Woods Homeowners Association, Inc., a corporation formed under Chapter 317A, Minnesota Statutes, its successors and assigns.

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

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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 if: (1) the rights of the contract vendor hereunder are delegated to the vendee under such contract for deed; and (2) 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.

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 sold to the ultimate buyer as a separate property. Where appropriate, reference to "Lot" shall include all structures located upon a Lot.

Section 5. "Declarant" shall mean and refer to Windsor Development, L.L.P., a Minnesota limited liability partnership, its successors and assigns.

Section 6. "Common Elements" shall mean and refer to the entry monument signage, landscaping, and irrigation system located within the right-of-way of 195th Lane NW near its intersection with County Road No. 77, Anoka County, Minnesota, or any easement areas lying immediately contiguous thereto.

Section 7. "Eligible Mortgagee" shall mean any person owning a mortgage on any Lot, which mortgage is first in priority to any other mortgages 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 Mortgagees.

Section 8. "Dwelling" shall mean and refer to the construction of a housing unit in accordance with these Declarations on any Lot.

## 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.

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

Class A. Class A members shall be all Members with the exception of Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall the vote of any Owners be split as to any Lot. In the event that the Owners fail to determine how to cast any vote, no vote shall be cast.

Class B. The Class B members shall be Declarant and shall be entitled to 3 votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes of Members outstanding in the Class A membership equal the total votes outstanding in favor of Declarant in the Class B membership; or
- (b) on December 31, 1999.

#### ARTICLE III.

#### COVENANT FOR COMMON EXPENSE AND INSURANCE PREMIUM ASSESSMENTS; INITIATION FEE

Section 1. Creation of the Lien and Personal Obligation of Assessments. 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 therefor, whether or not it shall be so expressed in such deed or contract, is deemed to covenant and agree to pay to the Association:

- (1) general annual assessments or charges;
  - (a) a common expense or portion thereof benefiting fewer than all of the Lots may be assessed exclusively against the Lots benefitted, on basis of (i) equality, (ii) square footage of the area being maintained, repaired or replaced, or (iii) the actual cost incurred with respect to each Lot.
- (2) assessments for master insurance premiums, which may be assessed in proportion to value, risk or coverage;
- (3) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

- (4) assessments levied 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.
- (5) assessments for fees, charges, late charges, fines and interest.
- (6) If any damage to the Common Elements or another Lot is caused by the act or omission of any Owner, the guests of an Owner or 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 land and shall be a 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 fell due and if more than one person was an Owner then such obligation shall be joint and several. The personal obligation for delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments 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 \$100.00 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 10% 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 above 10% by a vote of 2/3 of each class of members 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 2/3 of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

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 Sections 3 and 4 shall be sent to all Owners not less than 21 days nor more than 30 days in advance of an annual meeting or not less than 7 days nor more than 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 50% of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be 1/2 of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment; Alternative Assessment Program. Both general annual and special assessments on all Lots must be fixed at a uniform rate, except vacant Lots which shall be assessed at 25% of the established assessment rate except:

- (a) no assessments shall be made against any Lot which is a parcel of real estate which is not intended for separate ownership or occupancy.
- (b) any Lot owned by Declarant and which is not exempt from assessment by Section 6(a) shall be assessed at 25% of the established assessment rate, until such time as a certificate of occupancy is issued by the City of Elk River, Minnesota.



- (c) This alternative assessment program shall have no effect on the level of services for items set forth in the Association's budget.

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 Declarant of a Lot. Notwithstanding the foregoing to the contrary, any Lot owned by Declarant shall be assessed pursuant to the alternative assessment program set forth in 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 due dates shall be established by the Board of Directors of the Association. 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 a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is 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 30 days after the due date shall bear interest from the due date at a rate of 10% 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 1978, Chapters 580, 581 or 582, as amended, and the Association shall be entitled to recover interest at the rate of 10% per annum and its costs, expenses and disbursements, including reasonable attorney's fees, 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 pay any monthly installment within 30 days after the due date of a monthly installment.

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. 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.

Section 10. Initiation Fee. Each initial purchaser of a Lot from Declarant shall pay to the Association an initiation fee in an amount equal to two (2) times the then estimated monthly common expense assessment against the Lot. Said payment is not a deposit or advance payment of assessments which the purchaser is otherwise required in the Declarations to pay to the Association, but is rather a payment to a working capital fund established by the Association for the initial months of its operations.

#### ARTICLE IV.

##### DUTIES OF ASSOCIATION

The Association shall provide for maintenance upon the Common Elements of the following: monument entry signage and lighting, trees, shrubs, grass, walks, irrigation systems and other improvements located on the Common Elements, excluding any trees, shrubs or other plantings installed by any Owner.

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.

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. The Association may provide for trash removal services and a master or common policy of property insurance for all Lots within the Association.

The Association shall undertake, at its discretion, such further duties as determined by the Board of Directors.

#### ARTICLE V.

(Intentionally Omitted)

#### ARTICLE VI.

##### ARCHITECTURAL CONTROL

Section 1. Structures. No building, fence, wall 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 an architectural control committee ("ACC") composed of three (3) or more representatives appointed by Declarant, until Declarant no longer owns any Lots or December 31, 2000, whichever is earlier, and then after, such appointments shall be made by the Board of Directors of the Association.

Section 2. Original Construction. A site plan, landscaping plan and plans and specifications for the construction of a Dwelling unit on any Lot shall be submitted to the ACC for its written approval before any construction activity is begun.

Section 3. Review of Modifications. After the completion of an original Dwelling unit on a Lot, the construction or modification of any building or structure, including fences and mailboxes or the retaining walls or monuments constructed by Declarant, shall require prior written approval by the ACC of the plans and specifications for the construction, in accordance with the standards set forth in Section 4 hereof.

Section 4. Standard of Review. The ACC may promulgate detailed standards and procedures governing its areas of responsibility and practice. In addition, the following shall apply: the plans and specifications shall be reviewed as to quality of workmanship, design and harmony of external design with existing structures, topography, and finish grade elevation. No permission or approval shall be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of the owners' residence or to paint the interior of the owners' residence any color desired.

Section 5. Procedure. If the ACC fails to approve or disapprove plans and specifications within thirty (30) days after the submission of the same to it, approval will be deemed to have been granted. In the event of disapproval by the ACC, the requesting Owner may give written notice that the Owner wishes to appeal the ACC decision and request a hearing by the Association's Board of Directors. Such notice must be furnished to the ACC within ten (10) days of its decision. The hearing shall be at a special meeting of the Board of Directors to be held within thirty (30) days of the receipt of the Owner's notice of appeal.



Section 6. Removal and Abatement. The ACC or the Association shall have the right to order an Owner to remove or alter any structure on any Lot erected in violation of the terms of this Declaration, and to employ appropriate judicial proceedings to compel the alteration or demolition of any non-conforming construction or other violation. Any cost incurred by the ACC shall be levied as an Individual Lot Maintenance Assessment as provided in Article V.

Section 7. Variances. Reasonable variances to the covenants, conditions and restrictions may be granted by the ACC after review, in order to overcome practical difficulties or to prevent unnecessary hardship. A variance may only be granted if it is not detrimental to other property and shall not defeat the purpose of this Declaration.

Section 8. New Construction Covenants, Conditions and Restrictions. Without limiting the broad discretion granted to the ACC by this article, the following additional covenants, conditions and restrictions shall apply to new construction, or reconstruction after demolition or casualty loss, of a Dwelling on the Lots:

A. The ACC shall be entitled to review and approve all exterior siding and roofing materials to be used in the construction.

B. The ACC shall require that all exterior siding and roofs be finished in tan, taupe, brown, gray or other soft earth-tone color.

C. The ACC shall require that the minimum roof pitch on each Dwelling be seven-twelfths (7/12) with a rise of seven (7) feet in elevation for each twelve (12) feet of surface.

D. Promptly upon completion of construction, but in no event later than six (6) months after commencement of construction, a hard-surface driveway and landscaping, including sodding of the Lot, shall have been installed.

E. All utility meters located on the exterior of a Dwelling shall be concealed from view by landscaping or architecturally-treated to blend in with the Dwelling.

F. During construction, all trash or debris shall be contained in approved containers to be located on each Lot during the period of construction. Soil fences shall be installed on each building site, and the front of each building site is to be swept or kept clean at the expense of the Lot owner on an as-needed basis.

G. Each Dwelling constructed on a Lot shall meet the following minimum square-footage requirements:

- Single-story structures shall contain at least 1,500 square feet of finished and heating main floor living area, exclusive of areas included within open porches, garages and basements.
- Dwellings of two stories or more shall be constructed to contain at least 1,800 square feet of finished and heated living space, exclusive of areas included within open porches, garages and basements.

H. Each Dwelling constructed on a Lot, together with Lot costs and costs of all improvements and appurtenances, shall have an appraised market value of not less than \$150,000.00.

I. The construction of all exterior components of any Dwelling must be completed within nine (9) months of commencement of construction.

#### ARTICLE VII.

#### ADDITIONAL RESTRICTIONS; RULES AND REGULATIONS

##### Section 1. Additional Restrictions

A. No Lot shall be used except for residential purposes, with improvements consisting of one (1) detached single-family Dwelling with one (1) attached private garage sufficient to store a minimum of two (2) motor vehicles, 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, one sign of not more than five (5) 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 Declarant conveys the last Lot.

C. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats or other household pets may be kept, provided they are not kept, bred or maintained for any commercial purposes. No fenced dog runs or dog houses shall be allowed on any Lot.

D. No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other 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 or 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 or other types of recreational vehicles shall be parked on any Lot for more than 48 consecutive hours unless such vehicle is parked within a garage or storage shed located on such Lot; provided that the Board of Directors of the Association grant permits to park such vehicles on Lots for limited periods of time not to exceed fourteen (14) days in any twelve (12) - month period. No such vehicles shall be parked on any Common Element.

H. No aerial, antenna or satellite dish over four feet in height, as measured from the point on the ground or on any structure to which the aerial, antenna or satellite dish is affixed, 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 herein. The Association shall have the right to remove any such vehicle at any time, and assess the costs of such removal against the Lot which is owned or occupied by the person in control or possession of such vehicle.

K. Neither the Association nor any Owner shall permit any truck with a gross weight in excess of 3/4 ton to operate or travel on a regular periodic basis upon any driveway or street which is not dedicated as a public street.

L. 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.

M. 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 these Declarations and any Rules and Regulations adopted by the Association and which provide that any violation of these Declarations and any Rules and Regulations shall be a default under the lease. No time shares shall be created with respect to any Lot.

Section 2. Rules and Regulations. The Association may adopt, amend and revoke rules and regulations not inconsistent with the Articles of Incorporation, Bylaws or these Declarations 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 involve 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 community; (e) regulating the exterior appearance of the 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, Bylaws or Declarations of the Association; and (g) other rules facilitating the operation of the community. After notice and an opportunity to be heard, the Association may impose reasonable sanctions, including the levying of reasonable fines, for violations of the Declaration, Bylaws and Rules and Regulations of the Association.

#### ARTICLE VIII.

##### EASEMENTS

Section 1. 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 trails or 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 a public authority or utility company.

Section 2. Utility Easements. Declarant has, or will by separate declaration, provide easements for utility purposes to and from all Lots in the Properties. 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.

Section 3. Easements for Encroachment. In the event that any buildings or other structures originally constructed by Declarant or constructed or erected thereafter on any Lot in accordance with the this document 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.

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 hereunder.

#### ARTICLE IX.

##### TRASH REMOVAL

Section 1. Master Contract. The Association may 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 obligated to purchase such services from the provider designated by the Association upon the terms, conditions and rates negotiated by the Association.

Section 2. Charges. Any 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. Insurance. The Association shall procure and maintain the following 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 one and one-half times (1-1/2) the Association's estimated annual operating expenses and reserves. 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 Property in an amount not less than one million dollars. Such insurance shall contain a "severability 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 coverages, 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 coverages 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.

Section 2. Deductibles. As to any deductibles under any insurance coverages obtained by the Association, the Board of Directors may:

- (a) pay the deductible as a general common expense;

- (b) 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, invitee, 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 (51.0%) percent 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 the 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 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) reallocation of interests in the Common Elements or right to their use; (f) redefinition of any Lot boundaries; (g) convertability 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 or fidelity insurance requirements; (j) leasing of Lots; (k) imposition of any restrictions on the leasing of Lots; (l) restoration or repair of the Property, (after a hazard damages or partial condemnation) in a manner other than that specified in the Declaration; (m) any action to terminate the legal status of the 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 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 (67.0%) percent of the Lots that are subject to first mortgages, (based upon one vote per first mortgage) shall be required to abandon or terminate the community.

Section 3. Consent to Subdivision. No Lot may be partitioned or subdivided without 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 or her 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 claims 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; except that any unpaid assessments or charges with respect to the Lot may be reallocated among all Lots in accordance with their interests in Common Elements.

Section 6. Priority of Taxes and Other Charges. All taxes, assessments and charges which may become liens prior to the first mortgage under state law shall relate only to the individual Lots and not the Property as a whole.

Section 7. Priority for Condemnation Awards. No provisions of the Declaration or the Articles of Incorporation or Bylaws of the Association shall give an owner, or any other party, priority over any rights of the Eligible Mortgagee of the Lot pursuant to its mortgage in the case of a distribution to such Owner of condemnation awards for losses to or a taking of the Lot and/or the Common Elements. The Association shall give written notice to all Eligible Mortgagees of any condemnation or eminent domain proceeding affecting the Property promptly upon receipt of notice from the condemning authority.

Section 8. Management Agreements. The term of any agreement for professional management of the Property may not exceed two (2) years. Any such agreement must provide at a minimum for termination without penalty or termination fee by either party (i) with cause upon thirty (30) days prior written notice; and (ii) without cause, upon ninety (90) days prior written notice.

Section 9. Access to Books and Records. Eligible Mortgagees shall have the right to examine the books and records of the Association upon reasonable notice during normal business hours, and to receive free of charge, upon written request, copies of the Association's annual reports and other financial statements. Financial statements, included those which are audited, shall be available within one hundred twenty (120) days of the end of the Association's fiscal year. If a request is made by FNMA or any institutional guarantor or insurer of a mortgage loan against a Lot for an audit of the Association's financial statements, the Association shall cause an audit to be made and a deliver a copy to the requesting party.

Section 10. Notice Requirements. Upon written request to the Association, identifying the names and address of the holder, insurer or guarantor of a mortgage on a Lot, and the Lot number or address, the holder, insurer or guarantor shall be entitled to timely written notice of:

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

## ARTICLE XII.

### GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner shall have the right to enforce, by any proceeding by 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. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no wise 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. This Declaration may be amended by an instrument signed by the Owners representing Lots to which not less than 67% of votes have been allocated. Any amendment must be recorded.

Section 4. Annexation. Additional residential or commercial property and Common Elements may be annexed to the property with the consent of Declarant or 3/4 of each class of members.

Section 5. Tender of Claims. In the event that any incident occurs which could reasonably give rise to a demand by the Association against Declarant for indemnification, 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 6. Conflicts Among Documents. In the event of any conflict among the provisions of the Declaration, the Bylaws of the Association or any Rules and Regulations adopted by the Association, the documents shall control in the following order of priority: (i) the Declaration, (ii) the Bylaws and (iii) the Rules and Regulations.

WINDSOR DEVELOPMENT, L.L.P.,  
a Minnesota limited liability  
partnership

By Ronald L. Bastyr  
Ronald L. Bastyr  
Its Partner

STATE OF MINNESOTA)  
                                  ) ss.  
COUNTY OF Hennepin

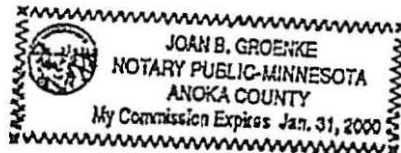
The foregoing instrument was acknowledged before me this 26 day of July, 1996, by Ronald L. Bastyr, a Partner of Windsor Development, L.L.P., a Minnesota limited liability partnership, on behalf of said partnership.

Joan B. Groenke  
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

Barna, Guzy & Steffen, Ltd.  
400 Northtown Financial Plaza  
200 Coon Rapids Boulevard  
Minneapolis, MN 55433 (JSJ)

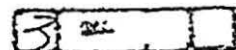
jsj\allen\windsor.dec



329790

COUNTY RECORDER  
CHERBURNE CO., MINN.  
PAT RASMUSSEN  
BY D. Bruluck DEPUTY

'96 JUL 31 AM 11 38





329790

EXHIBIT A TO DECLARATION

LAFAYETTE WOODS

Legal Description

Lots 1 through 13, Block 1;  
Lots 1 through 12, Block 2;  
Lots 1 through 4, Block 3;  
Lots 1 through 14, Block 4;  
Lots 1 through 9, Block 5;  
Lots 1 through 11, Block 6;  
Lots 1 through 4, Block 7;  
Lots 1 through 6, Block 8;  
Lots 1 and 2, Block 9;

all in Lafayette Woods, Sherburne County, Minnesota.

State of Minnesota  
County of Sherburne  
Certified to be a true and  
correct copy of Instrument

# 329790

consisting of 20 pages.  
MICHELLE ASHE COUNTY RECORDER

Deputy  
Deputy

## CONSENT TO DECLARATION

The undersigned, Norwest Bank Minnesota, National Association, holder of a Revolving Credit Mortgage, and Assignment of Leases and Rents, and Security Agreement, and Fixture Financing Statement, and holder of a Letter Mortgage, each executed by Windsor Development, L.L.P., as Mortgagor, to Norwest Bank Minnesota, National Association, as Mortgagee, each dated July 2, 1996, and filed on July 3, 1996, in the office of the County Recorder in and for Sherburne County, Minnesota, as Document Nos. 328308 and 328309, respectively, hereby consents to the filing of the Declaration to which this Consent is attached.

IN WITNESS WHEREOF, Norwest Bank Minnesota, National Association, has executed this Consent this 26 day of July, 1996.

NORWEST BANK MINNESOTA,  
NATIONAL ASSOCIATION

By [Signature]  
Its Vice President

By [Signature]  
Its Vice President

STATE OF MINNESOTA )  
                                  ) ss.  
COUNTY OF Hennepin

The foregoing instrument was acknowledged before me this 26 day of July, 1996, by G.A. Sansbury and Edward S. Schonecker the Vice President and Vice President respectively, of Norwest Bank Minnesota, National Association, on behalf of the Bank.

[Signature]  
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:  
BARNA, GUZY & STEFFEN, LTD.  
400 Northtown Financial Plaza  
200 Coon Rapids Boulevard  
Minneapolis, MN 55433  
(612) 780-8500 (JSJ)

\\jsj\\allen\\lafayett.con

