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DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE WOODLANDS OF LIVONIA  
A DEVELOPMENT OF SINGLE FAMILY HOMES  
IN LIVONIA and ORROCK, MINNESOTA

BY  
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SHERBURNE CO, MINN.  
'95 NOV 13 PM 4 58

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**DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS**

THIS DECLARATION made this 13<sup>th</sup> day of November, 1995, by Zimwood, LLC, a Minnesota Limited Liability Company, hereinafter referred to as "Declarant" and First National Bank of Elk River, a national banking association, hereinafter referred to as "Mortgagee".

**WITNESSETH:**

**WHEREAS**, Declarant Zimwood, LLC is the owner of certain real property located in the Townships of Livonia and Orrock, Sherburne County, Minnesota, all of said property platted or to be platted as The Woodlands of Livonia and more particularly described in Article II below and Exhibit "A" attached hereto, herein the "Property".

**WHEREAS**, Declarant desires to create a community of compatible and complimentary single family residential homes for the benefit of the residents of The Woodlands of Livonia and to protect the value and desirability of The Woodlands of Livonia; and

**WHEREAS**, Declarant has deemed it desirable for the preservation of The Woodlands of Livonia and for the assurance of consistent quality and architectural design to establish certain restrictions and covenants as to how The Woodlands of Livonia may be developed; and

**WHEREAS**, Declarant intends that certain of the following covenants and restrictions are to be administered and enforced by Declarant and The Woodlands of Livonia Homeowners Association established for The Woodlands of Livonia for the purposes expressed in the Articles of Incorporation for The Woodlands of Livonia Homeowners Association; and

**WHEREAS**, Mortgagee holds a first mortgage on all of the property described on Exhibit "A" and consents to these Declarations;

**NOW, THEREFORE**, Declarant hereby declares that all of the properties described above, known as The Woodlands of Livonia, and such additions thereto as may hereinafter be brought within the jurisdiction of the Association, shall be held,

sold, and conveyed subject to the following 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.

## **ARTICLE I DEFINITIONS**

### Section 1.1

The following words, when used in this Declaration (unless the context shall prohibit), shall have the following meanings:

- a. "ADDITIONAL PROPERTY" shall mean and refer collectively to all of the property which Declarant has the right to subject in the future to the covenants and restrictions of this Declaration and more particularly described in Exhibit "B" attached hereto and made a part hereof.
- b. "ASSOCIATION" shall mean and refer to The Woodlands of Livonia Homeowners Association, Inc., a nonprofit corporation created by Declarant under the laws of the State of Minnesota for the purpose of administering and enforcing on behalf of the Owners the Covenants and Restrictions contained in this Declaration.
- c. "COMMON EXPENSES" shall mean and include (i) all expenses approved or incurred by the Board of Directors by Officers of the Association, pursuant to authority granted by the Governing Documents or by law, in the performance of their powers and duties; (ii) those items identified as Common Expenses in this Declaration and in the Association's Bylaws.
- d. "COMMON PROPERTY" shall mean and refer to all real property improvements thereon and property rights and easements owned by the Association for the common use and enjoyment of the Owners. The Common Property to be owned by the Association at the time of conveyance of the first lots is legally described as Outlets A and B The Woodlands of Livonia, Sherburne County, Minnesota.
- e. "DECLARANT" shall mean and refer to Zimwood, LLC, a Minnesota limited liability company, its successors and assigns, if such successors and assigns should acquire any undeveloped portions of the property from the Declarant for the purpose of Development or by virtue of foreclosure of a mortgage or by any transfer in lieu thereof.

- f. "FIRST MORTGAGE" shall mean and refer to any person named as a mortgagee under any mortgage against a Lot, which mortgage is first in priority upon foreclosure to all other mortgages against said Lot, or any successors in interest to such person under said mortgage or any rights arising therefrom.
- g. "GOVERNING DOCUMENTS" shall mean and refer to this Declaration, and the Articles of Incorporation and Bylaws of the Association, as amended and supplemented from time to time, all of which shall govern the use and operation of the property.
- h. "LOT" shall mean and refer to any platted plot of land shown upon recorded plat of property, excluding the Common Property.
- i. "MEMBER" shall mean and refer to members of the Association as described in this Declaration and in the Bylaws of the Association.
- j. "OCCUPANT" shall mean and refer to each temporary or permanent resident of a dwelling constructed on a Lot, whether said resident is an Owner, tenant or other person.
- k. "OWNER" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot except that if (i) a Lot is being sold in a contract for deed, (ii) the contract, vendee is in possession of the Lot and (iii) the contract so provides, then the vendee and not the vendor shall be deemed the "Owner".
- l. "PROPERTY" shall mean and refer collectively to all of the real property now or hereafter submitted to the Covenants and Restrictions of this Declaration. Additional Lots and Common Property may be added to the property pursuant to Section 2.3 of this Declaration.
- m. "RULES AND REGULATIONS" shall mean and refer to the Rules and Regulations of the Association as approved from time to time by the Association pursuant to Section 5.3.
- n. "HOUSE" shall mean and refer to any building located on a Lot and designated and intended for use and occupancy as a residence by a single family and including any garage which may be adjacent to or within such building.
- o. "THE WOODLANDS OP LIVONIA" shall mean that part of the Property which is platted as The Woodlands of Livonia in one or more additions.

**ARTICLE II.**  
**PROPERTY SUBJECT TO THIS DECLARATION**

**Section 2.1 Property.**

The Property shall mean and refer to all Lots and Blocks in The Woodlands of Livonia, a plat duly recorded in Sherburne County, Minnesota, and such additional property which becomes platted as the subsequent additions to The Woodlands of Livonia as provided in this Article II.

**Section 2.2 Transfer of Lots.**

The Lots shall be freely transferable in accordance with the applicable laws of the State of Minnesota and the provisions of the Governing Documents, provided, that the share of an Owner in the assets of the Association, and the Owner's rights and obligations as a member of the Association cannot be assigned, pledged, encumbered, conveyed or transferred in any manner, except as an appurtenance to his or her lot.

**Section 2.3 Additions to Property.**

Until December 31, 2003. the Declarant, its successors and assigns, shall have the right, without the consent of the Owners, to bring all or part of the Additional Property within the scheme of this Declaration and any Amended or Supplementary Declaration recorded in connection with such addition. Such addition may contain additional Lots and additional Common Property, shall be in accordance with the general plan of development, and the buildings and other improvements constructed thereon shall be compatible in terms of architecture and materials with those constructed on the property. Each addition authorized under this Section shall be made by filing of record with the Sherburne County Recorder a Supplementary Declaration of Covenants, Restrictions and Easements with respect to the additional property, which shall extend the scheme of covenants, conditions and restrictions contained in this Declaration to such additional property. Each Supplementary Declaration may contain such additions to this Declaration, but shall not materially alter the Covenants and Restrictions contained herein.

**ARTICLE III.**

**MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

**Section 3.1 Membership.**

The qualifications of members and the manner of their admission into the Association shall be as follows:

- a. Every Owner shall, solely by virtue of such ownership interest, be a member of the Association, and such membership shall automatically cease when the person is no longer an Owner. When one or more persons is an Owner, all such persons shall be Members.
- b. It shall be the duty of each Owner to register Owner's name, Lot address, the name and address of the Owner's First Mortgagee, and the nature of the Owner's interest with the Secretary of the Association. If the Owner does not so register, the Association shall be under no duty to recognize the Owner's ownership for purposes relating to the operation of the Association, including voting, but such failure to register shall not relieve the Owner of the Owner's obligations under the Governing Documents.
- c. Membership in the Association is appurtenant to ownership of a Lot, and transfers of any interest of any Owner in the Property may be made only in accordance with provisions of the Governing Documents.

### **Section 3.2 Voting Rights.**

The Association shall have two classes of voting membership.

- a. **Class a Members.** Class A members shall be all Owners, with exception of the Declarant. Class A members shall be entitled to one vote for each Lot of which they are the Owner. When more than one person is an Owner of any Lot, all such persons shall be members, but the Owners of such Lot shall be collectively entitled to only one vote for that Lot. When there is more than one Owner of a Lot, the vote shall be cast by one person designated in writing signed by all Owners of the Lot. Such voting authority shall be valid until revoked in writing by such Owners.
- b. **Class B Members.** The Class B Member shall be the Declarant who shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon the occurrence of the earlier of the following (hereinafter called the "Conversion Date"):
  - 1) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
  - 2) December 31, 2003

## **ARTICLE IV RIGHTS AND OBLIGATIONS OF OWNERS**

### **Section 4.1 Rights and Easements** in Common Property.

Subject to the provisions of Section 4.2, every Owner shall have the following non-exclusive, appurtenant rights and easements of enjoyment over, under and upon the Common Property:

- a. For access and use of utilities such as sewer, water, gas, power, telephone and cable, which may be installed by, for or with the permission of the Association.
- b. For enjoyment and use for recreational purposes, subject to reasonable regulation by the Association.
- c. For parking as located and constructed by the Declarant or the Association and as may be reasonably limited and regulated by the Association.

**Section 4.2 Limitations on Owners' Rights and Easements.**

Except as otherwise provided herein, the Owners' rights and easements created hereby, the right of the Association to govern the use and enjoyment of the Property, and the right and title of the Association to the Common Property, shall be subject to the following:

- a. The right of the Association, in accordance with the Governing Documents to maintain, repair and replace portions of the Common Property pursuant to Article IX; and
- b. The right of the Association, in accordance with the Governing Documents, to improve the Common Property, and in furtherance thereof to borrow money and to mortgage said Common Property; provided, however, that the rights of such mortgagee in said Common Property shall be subordinate to this Declaration and to the rights of the Owners and the First Mortgagees; and
- c. The right of the Association to suspend the right of any Owner to vote and the right of any Owner, Occupants of the Owner's Lot and their respective guests to use the Common Property for any period during which any assessment against the Owner's Lot remains unpaid and for an additional period of up to 30 days for each violation of the provisions of the Governing Documents and Rules and Regulations by the Owner, Occupants of the Owner's lot, their respective guests; and
- d. The right of the Association to charge reasonable admission and other fees for the use of recreational facilities, if any, on the Common Property; and
- e. The right of the Owners to use the common parking areas, if any, subject to reasonable regulation by the Association; and
- f. The right of the Association to dedicate or transfer all or any part of the Common Property to any public agency, authority, or utility for public or utility purposes subject to written approval by Members entitled to cast two-thirds

(2/3) of the votes of each class of membership and a like percentage of the First Mortgagees, or the right of the Declarant to effect such a dedication or transfer at its sole discretion prior to the Conversion Date.

#### **Section 4.3 Use of Lots.**

In addition to any other restrictions that may be imposed by the Governing Documents or by law, the use and conveyance of Lots shall be governed by the following provisions:

- a. Each House shall be used as a private residential dwelling only, which shall include parking and recreation, as described in and authorized by the Governing Documents and the Rules and Regulations.
- b. Any lease between an Owner and a lessee shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of the Governing Documents and the Rules and Regulations, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be required to be in writing and a copy of such lease shall be provided to the Association by the Owner at such time as its terms are agreed upon but no later than the commencement of the lease and tenancy of the House. The Association may approve and enforce such other reasonable rules and regulations governing leasing as it deems necessary from time to time.
- c. Each owner shall provide and use adequate garages and/or parking spaces on the Owner's own Lot for the permanent parking or storage of all motor vehicles owned by the Owner and the Occupants of the Lot. The Association may maintain upon the Common Property vehicle parking spaces for the common occasional use of the Owners, the Occupants and their guests in accordance with applicable municipal requirements and any parking regulations established by the Association.
- d. Each Lot shall be held, conveyed, encumbered, leased, used and occupied subject to all covenants, conditions, restrictions, uses, limitations and obligations expressed in the Governing Documents and the Rules and Regulations. All such covenants and obligations are in furtherance of a plan for the preservation and enjoyment of the Property, and shall be deemed to run with the land and be a burden and benefit to any person acquiring or owning an interest in the Property, their heirs, personal representatives, grantees, successors and assigns. Each Owner, Occupant and their guests shall use his Lot in such a manner as will not unduly restrict, interfere with or impede the

use by other Owners and occupants of their Lots.

- e. The keeping of any pet on the Property shall be restricted according to provisions of the Association's Rules and Regulations as amended by the Board of Directors from time to time; provided, however, that in no case may any type of fish, fowl or animal be bred, kept or maintained for commercial purposes on the Property, and no horses or farm animals may be kept or maintained on the Property.
- f. No use shall be made of the property which would violate the then existing municipal ordinances or state or federal laws, nor shall any act or use be permitted which would cause an increase in insurance rates on the Property or otherwise tend to cause liability or unwarranted expense for the Association or any Owner.
- g. 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. This restriction, however, shall not be deemed to prohibit an Owner or Occupant from maintaining his personal business or professional records or accounts therein, or handling his personal business or profession by telephone or correspondence therefrom.
- h. No alteration or improvement, of any type, temporary or permanent shall be made or caused or suffered to be made by an Owner or Occupant on the exterior of any House without the prior written authorization of the Board of Directors, or a Architectural Control Committee appointed by it, pursuant to Article XIII of this Declaration.
- i. In the event of damage to the Common Property caused by the willful or negligent act of any Owner or Occupant, or their guests, the Association shall have the right to restore the Common Property to its prior condition and assess the cost thereof against the Owner who violates, or whose Occupants or guests violate, such provisions, and such cost shall become a lien upon the Owner's Lot and shall be due and payable upon demand.

#### **Section 4.4 Delegation of Use.**

Any owner may delegate, in accordance with the Governing Documents, his right of enjoyment to the Common Property to his or her lessees who reside in the House and to members of his or her family and their respective guests; but the Owner shall remain responsible for any damages caused by the willful or negligent acts of such persons, and such persons shall be subject to the provisions of the Governing Documents.

#### **Section 4.5 Taxes and Special Assessments on Common Property.**

Any taxes or special assessments levied separately against the Common Property by a governmental authority shall be divided and levied against the Lots as the Association shall direct, which levies shall be a lien against said Lots and shall be collectible by the Association as part of the annual assessment, if the same are not required to be paid directly to the governmental authority.

#### **Section 4.6 Rights of Declarant.**

Notwithstanding any provisions of the Governing Documents, the Declarant may maintain a business and sales office, model houses and other development and sales facilities within one or more Houses or on the Common Property and any Additional Property, and it shall have temporary easements for itself and prospective purchasers for ingress, egress, parking and enjoyment in connection therewith, until the earlier of the date upon which all of the Lots are sold or December 31, 2003, and may display the signs offering the same for sale. The Declarant may also lease or rent Houses owned by it without restriction within the time period specified above.

#### **Section 4.7 Private Sewer and Water systems.**

No municipal sewage system or municipal water system serves any lot or outlet in The Woodlands of Livonia. All sewage disposal systems and water supply systems for lots and outlets within The Woodlands of Livonia and replats thereof shall be "on-site" systems (i.e. systems not connected to a municipal system). All on-site sewage disposal systems shall be located and constructed in accordance with the standards and specifications of the Townships of Livonia and Orrock and the County of Sherburne and appropriate state agencies. Such standards and specifications may include percolation tests and soil borings, if determined necessary by the Township or County of an appropriate state agency. If any individual on-site sewage disposal system fails, the then Owner of the property benefited by the system shall be responsible for the reconstruction of the system. If several individual on-site systems fail, the then Owners of the properties benefited by the systems shall be responsible for the construction of a community on-site system, if directed by the city or an appropriate state agency. The local townships do not intend to extend any municipal sewer or water system to serve The Woodlands of Livonia or replats thereof. The Metropolitan Waste Control Commission has provided no sewage capacity for this area of the Township of Livonia or Orrock. The provisions of this section 4.7 are for the benefit of the

Township, County, the Owners and the Association.

ARTICLE V.  
RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

**Section 5.1 General.**

The Association shall be responsible for the management and control of the Common Property and all Improvements thereon (including furnishings and equipment related thereto) and shall keep the same in good, clean, attractive and sanitary condition, order and repair. The Association may at all times maintain an office on the Common Property for management purposes.

**Section 5.2 Services.**

The Association may contract and pay for the services of any person or entity who or which is a professional property manager to manage the Association's affairs, or any part thereof, to the extent it deems advisable. Such manager may employ such personnel as the manager shall determine to be necessary or desirable for the proper operation of the Association's affairs, whether such personnel are furnished by the manager or by third parties hired by the manager. However, any such contract for professional management shall provide for termination by either party, with cause upon thirty (30) days prior written notice, and without cause and without payment of a termination fee or penalty upon ninety (90) days or less prior written notice. In addition, when professional management of the Property has been required by any First Mortgagee and in fact utilized by the Association, any decision to discontinue professional management and establish self-management by the Association shall require the prior consent of: (i) Owners of Lots to which at least sixty-seven percent (67%) of the vote in the Association are allocated; and (ii) the approval of First Mortgagee's holding mortgages on Lots to which are allocated at least fifty-one percent (51%) of the votes in the Association.

**Section 5.3 Rules and Regulations.**

The Association may make such reasonable Rules and Regulations governing the use, maintenance and enjoyment of the Common Property, as it deems reasonably necessary, which Rules and Regulations shall not be inconsistent with the rights and duties established by the Governing Documents.

#### **Section 5.4 Board of Directors.**

The power and authority of the Association in the Governing Documents and Rules and Regulations shall be vested in a Board of Directors elected by the Owners in accordance with the Bylaws of the Association. The Association shall act through the Board of Directors, unless specifically provided otherwise in the Governing Documents. Accordingly, all references to the Association shall mean the Association acting through its Board of Directors.

### **ARTICLE VI. COVENANTS AND ASSESSMENTS**

#### **Section 6.1 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 therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements or capital equipment to be owned by the Association; such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on each Lot and shall be a continuing lien upon each Lot. Annual assessments shall become a lien upon each Lot on the first day of January of the year in which such assessment is due and payable. Special assessments shall become a lien on the earliest date any part of the same is due and payable. 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 the assessment fell due. The personal obligation for delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

#### **Section 6.2 Purposes of Assessments.**

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Property and for the improvement and the maintenance of the Common Property and common personal property thereon, including but not limited to:

- a. Payment by the Association of charges for utility services to the Common Property;
- b. Taxes and special assessments against the Common Property, if any, and

income and other taxes levied or assessed against or charged to the Association, if any;

- c. Premiums for liability and other insurance carried upon the Common Property by the Association, including hazard insurance maintained on the Common Property pursuant to Article VII hereof, the deductible amount not covered by such insurance and the additional amounts deposited by the Association or its Board of Directors to repair or restore improvements on the Common Property;
- d. Repair, replacement, construction, reconstruction, alterations, maintenance, snow removal and additions undertaken by the Association pursuant hereto;
- e. Creation of reasonable contingency, emergency, and working capital reserves (an adequate reserve fund funded from annual assessments and not from special assessments, shall be maintained for maintenance, repair and replacement of those elements of the Common Property which must be replaced on a periodic basis, including but not limited to replacement of mail boxes);
- f. The cost of labor, equipment, and materials for all work done by or for the Association; and
- g. Reasonable fees for management and supervision of the Common Property pursuant to this declaration during the time the Common Property is owned by the Association.
- h. Payment for garbage and trash removal for homes within the Woodlands of Livonia.

### **Section 6.3 Maximum Annual Assessments.**

A proposed current annual assessment is \$48.00 per month (\$576.00 annually). The Board of Directors may increase the maximum annual Association assessment in an amount not to exceed the greater of (i) twenty percent (20%) of the previous year's Association assessment or (ii) the percentage increase in the most recently published US Department of Labor, Bureau of Labor Statistics, Consumer Price Index (Urban Wage Earners and Clerical Workers, Minneapolis-St. Paul Index, All Items), compared to the same index published 12 months earlier. Any increase in excess of this amount shall require the approval of sixty-seven (67%) of the Members of a class who are voting in person or by proxy.

### **Section 6.4 Special Assessments for Capital Improvements.**

In addition to annual assessments authorized above, the Association may levy, in any calendar year, one or more special assessments applicable to that year only

for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement (i) of capital improvements upon the Common Property, including fixtures and personal property related thereto or, (ii) capital equipment to be owned by the Association; provided that each such assessments shall have the assent of two-third (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. Special assessments shall be due and payable as determined by the board.

**Section 6.5 Notice of Quorum for Any Action Authorized under Sections 6.3 or 6.4.**

Written notice for any meetings called for the purpose of taking any action authorized under Section 6.3 or 6.4 shall be sent to all Members not less than 30 days nor more than 60 in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty (60%) 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 one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

**Section 6.6 Uniform Rate of Assessment.**

Both annual and special assessments shall be fixed at a uniform rate for all Lots; provided, however, that any Lot owned by Declarant shall be assessed at one-fourth the rate assessed against Lots owned by others until the earlier of: (i) the issuance of an occupancy permit for the House located on the Lot owned by Declarant as a model or as a residence; or (ii) the inspection and approval for occupancy of the House on such Lot by the local government body housing authority to approve said occupancy.

**Section 6.7 Data of Commencement of Annual Assessments; Due Dates.**

The Board shall fix the amount of the annual assessment provided for herein with occupancy against each Lot at least fifteen (15) days in advance of each annual assessment period. The initial annual assessment period shall commence as to all Lots on the first day of the month following the conveyance of the Common Property to the Association and shall run through and including the next succeeding December 31. Each succeeding annual assessment period shall be a

calendar year. Written notice of the annual assessment shall be sent to every Owner. Initially, annual assessments shall be due and payable in four equal quarterly installments on the first day of each quarter, beginning on the first day of January and the 1st day of each April, July, October and January thereafter.

**Section 6.8 Certificate of Payment.**

The Association shall, upon demand and free of charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid in full and, if not paid in full, stating which assessments are unpaid. A properly executed certificate of the Association as to the status of assessments on a Lot shall be binding upon the Association as of the date of its issuance.

**Section 6.9 Remedies for Non-payment of Assessments.**

- a. If any assessment is not paid on or before its due date, the Association may impose interest from the due date at the rate of eight percent (8%) per annum, and/or bring an action at law against the Owner personally obligated to pay the same or foreclose the lien by action in the manner provided for foreclosure of mortgage liens. Each Owner, by acceptance of any conveyance of any interest in the Property, grants to the Association a power of sale to accomplish the foreclosure and sale of each Owner's lot. In a foreclosure action, the Association shall be entitled to recover, in addition to the principal amount of assessments, all costs of collection, including interest, attorneys' fees and the cost of prosecuting such action and filing any liens. In addition, the Association may impose an administrative charge of up to 25% of the delinquent installments for each delinquent installment of assessments/and/or involve any other remedies or sanction set forth in Article XIII. All remedies shall be cumulative, and the exercise of one remedy shall not constitute a waiver of any other.
- b. No Owner may waive or otherwise escape liability for any assessments or other obligations imposed under the Governing Documents or Rules and Regulations by non-use or waiver of any rights in the Common Property or abandonment of his or her Lot.

**Section 6.10 subordination of Lien to Mortgages.**

The lien of the assessments provided for herein shall be subordinate to the lien of any First Mortgage now or hereafter placed upon a Lot; provided, however, that

such subordination shall apply only to the assessments which have become due and payable prior to the date of expiration of the period of redemption following a mortgage foreclosure sale, or the date of any sale or transfer in lieu of foreclosure. Upon the expiration of the period of redemption of a mortgage foreclosure sale, or the delivery of a deed or other transfer in lieu of foreclosure, the interest of the holder of the Sheriff's Certificate or other instrument of transfer shall be prior and superior to the lien of any assessments then against the Lot, and such assessments shall, at the option of the Association become a lien against all of the Lots in equal shares. Any sale or transfer shall not release a Lot from liability for any assessment thereafter becoming due, nor from a lien of any subsequent assessment.

**Section 6-11 Assessments by Municipal Government.**

It is expressly declared that the foregoing Sections of this Article shall not in any way interfere with abrogate, or affect the power of any local governmental authority to levy and collect taxes and special assessments.

**ARTICLE VII.**

**INSURANCE AND RECONSTRUCTION**

**7.1 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 liability as the Association shall determine to be necessary, against all acts, omissions to act and negligence of the Association, its employees and agents. The Association's Board of Directors shall also provide fidelity bonds providing protection to the Association against loss by reason of acts of fraud or dishonesty on the part of the Association's Directors, managers, officers, employees or volunteers who are responsible for the handling of funds of the Association in an amount sufficient to provide no less protection than one and one-half (1 1/2) times the estimated annual operating expenses and reserves of the Association.

**ARTICLE VIII ARCHITECTURAL CONTROL**

**Section 8.1 Review by Declarant.**

No building, structure, fence, wall, patio, swimming pool, tennis court or other

structure shall be commenced, constructed, altered or maintained upon any Lot, or portion thereof, nor shall any exterior addition to or change or alteration therein be made, unless and until the plans and specifications, proposals, site plans, and certificate of survey showing the nature, kind, shape, height, materials, color, surrounding landscaping, and location of the same (hereinafter collectively referred to as "plans") shall have been filed in writing with and have been approved in writing by Declarant. These submitted plans shall contain details of design, elevation, site grade, fencing and location and dimensions of structures, walks and driveways and shall also state the type of construction and materials to be used in construction. Declarant shall not unreasonably withhold approval of any plan submitted pursuant hereto; provided, however, that failure to meet the covenants and restrictions, and conditions contained herein shall be grounds for Declarant's reasonable disapproval of such plans.

Plans approved by Declarant shall permit the Owner of a Lot to construct in accordance with said plans and in conformity with the applicable codes of the Township of Livonia or Orrock, Minnesota, as the case may be. Tree or dirt removal, excavation or construction shall not be commenced until approval therefore has been received from Declarant in writing, or in the form of an approved signature upon said plans. All buildings, structures, or improvements must be completed within six (6) months of the approval of commencement of construction by Declarant; otherwise, all approvals become null and void. Any deviation in construction on any Lot from approved plans, which in the judgment of Declarant is of substantial detriment to the appearance of the structure or the surrounding area, shall be corrected to conform to the approved plans at the expense of the Owner of that Lot.

The Declarant must approve any and all privacy fences prior to their construction. Declarant may, at its sole option, transfer its approval authority under this Article to an Architectural Control Committee at any time. Said committee shall consist of three parties and shall be appointed by Declarant. Upon appointments said committee shall exercise all approval authority granted under this Article, and shall also fill any vacancies which may from time to time occur in the Committee.

### **Section 8.2 Structural and Other Specifications.**

a. Quality. All structures shall be of new construction and comply with the

applicable ordinances, statutes and regulations and these Declarations.

- b. Cost. All houses must have a minimum cost including lot and landscaping as follows:
  - The greater of \$175,000.00 or 5 times the sale price of the Lot by Declarant.
- c. Garages. All garages shall have a minimum size so as to accommodate three automobiles and shall be attached to the house.
- d. Accessory Buildings. No accessory buildings shall be permitted on any Lot except with the permission of the architectural control committee.
- e. Driveways. All driveways shall be designed and laid out by the architectural control committee with regard to location, width and type of surface. All driveways shall have a hard type of surface as approved by the architectural control committee.
- f. Antennas. No satellite dish or antennae shall be erected in any yard or attached to any structure without the prior approval of the architectural control committee and in any event no satellite dish shall exceed three (3) feet in diameter.
- g. Mail Boxes. Initially, uniform mail boxes will be furnished by the Declarant to all Owners. Thereafter, mail boxes shall be maintained by the Association. All mail boxes shall conform to uniform standards to be established by the architectural control committee.
- h. Motorized Vehicles. No motorized vehicle of any nature which is not in any sound and legal operating condition for use on Minnesota state highways, and with a current license, shall be stored either permanently or temporarily for any period of time on any Lot unless it is stored within the confines of a garage or accessory structure approved by the Architectural Control Committee. The Association may establish regulations and guidelines for issuing permits to allow visitors invited by Lot Owner temporary standing rights for vehicles or motor homes.
- i. Garbage. The Association may contract for garbage and trash pickup in which case the cost of said garbage or trash pickup shall be included in the Association dues. Owners may contract for other extraordinary trash or garbage pickup in accordance with rules established by the Association.
- j. Tree Removal. No trees, except diseased or dead trees may be removed within seventy-five (75) feet of the lot lines of any Lot without the prior approval of the Architectural Control Committee.
- .k,. Masonry Front. All structures are required to have a masonry material

covering at least forty (40%) percent of the front wall of the house such as brick, stone, cultured stone or as otherwise approved by the Architectural Control Committee.

### **Section 8.3 Architectural Liability.**

Neither Declarant or the Architectural Control Committee shall be liable to anyone in damages who has submitted plans for approval, or to any Owner by reason of mistake in judgment, negligence, or nonfeasance or themselves, their agents or employees arising out of or in connection with the approval or disapproval of any such plans. Declarant and the Architectural Control Committee shall be concerned about aesthetic characteristics and compliance with these Declarations and does not assert architectural expertise. It is the sole duty and responsibility of the applicant to employ an architect or other person to design the requested modifications in a safe and architecturally sound manner. Each Owner of any interest in The Woodlands of Livonia, their heirs, successors and assigns, as a condition of their ownership, waives any right to damages which result from architectural designs requested by Declarant or the Architectural Control Committee. Declarant and the Architectural Control Committee shall exercise their best judgment as to aesthetic characteristics of architectural design and their judgment shall be final.

### **Section 8.4 Restrictions and Alterations.**

From and after the sale of the first Lot, no structure or building of any kind shall be commenced, erected or maintained upon any Lot, unless and until the plans and specifications showing the nature, kind, shape, height, color, materials and locations of the same shall have been approved in writing as to harmony of external design, color, size and location in relation to surrounding structures and topography by the Architectural Control Committee.

### **Section 8.5 Review of Proposed Alteration: Remedies for Violations.**

Detailed plans and specifications of any proposed alteration, in form acceptable to the Architectural Control Committee, shall be submitted to the Architectural Control committee for approval prior to the projected date of commencement of construction. No alteration or construction shall be commenced prior to the projected date of commencement of construction, and no alteration or construction shall be commenced prior to such approval. In the event the Architectural Control Committee fails to approve or disapprove such design and

location within forty-five (45) days after said plans and specifications have been submitted, then approval will not be required, and this Article shall be deemed to have been fully complied with, so long as the alterations or improvements are done in accordance with the plans and specifications submitted. Notwithstanding the foregoing, the Board of Directors retains the right to submit any request for approval to the Members of the Association at a special meeting called pursuant to the Bylaws. Such a meeting shall be called within forty-five (45) days after receiving the request in accordance with this article, in which case the forty-five (45) day review period shall be extended until three (3) days following such meeting. In addition, Declarant reserves the right to veto any proposed construction or alterations until such time as all Lots have been conveyed to Owners other than the Declarant.

#### **Section 8.6 Relief Against Owners.**

- a. If construction of or exterior changes to a dwelling or other improvement are commenced without approval of the plans and specifications, or if construction of or exterior changes to a dwelling or other improvements are completed not in accordance with approved plans and specifications, the Association or any owner of a Lot in the Properties, may bring an action to enjoin further construction and compel the offending Owner to conform the dwelling or other improvement with plans and specifications approved by the Architectural Control Committee, provided that such action shall be commenced and a notice of lis pendens shall be filed no later than ninety (90) days after the date on which the certificate of occupancy is issued by the appropriate municipal authority, in the case of a dwelling, or the date of completion, in the case of any other improvement.
- b. If the Association or complaining Owner prevails as to any relief sought in any action brought to enforce compliance with this Article, it shall be entitled to recover from the offending Owner reasonable attorney's fees and costs shall be a lien against the offending Owner's Lot and a personal obligation of the offending Owner. In addition, the Association shall have the right to restore any Lot to its prior condition, if any alteration was made in violation of this Article, and the cost of such restoration shall be a personal obligation of the offending Owner and a lien against such Owner's Lot.

#### **Section 8.7 Relief Against Architectural Control Committee.**

In the event that the Architectural Control Committee and/or the members of

the Architectural Control Committee shall fail to discharge their respective obligations under this Article, then any Owner of a Lot in the Properties may bring an action to compel the discharge of said obligations. Such an action shall be the exclusive remedy of any Owner of a Lot in the Properties for failure of the Architectural Control Committee and/or its member to discharge such obligations. Under no circumstances shall the Architectural Control Committee and/or its members be liable to any person for damages (direct, consequential or otherwise).

**Section 8.8 Retention of Records.**

The Board of Directors shall retain for a period of ten (10) years all plans and specifications submitted to the Architectural Control Committee and a record of all actions taken with regard to them.

**ARTICLE IX  
MAINTENANCE OF COMMON PROPERTY**

**Section 9.1. Maintenance and Repair.**

The Association shall provide for the maintenance and repair of the Common Property. Maintenance and repair shall be determined and implemented from time to time by the Board of Directors at its sole discretion and assessed against all the Owners pursuant to Article VI of this Declaration.

**Section 9.2 Damage by Owner.**

If, in the judgment of the Board of Directors, the need for maintenance, repair or replacement, by the Association of any part of the Common Property is caused by willful or negligent act of an Owner or Occupant or their guests, the cost of such maintenance or repair may be added to become part of the assessment to which such Owner and his or her Lot are subject, rather than assessed against all Owners.

**ARTICLE X. EASEMENTS**

**Section 10.1 Platted Easements.**

All Lots shall be subject to the utility, drainage and street easements dedicated in the plat of The Woodlands of Livonia.

**Section 10.2 Other Easements.**

Certain Lots shall be subject to easements in favor of the Association for the

construction, maintenance, use and repair of walking paths and entry monuments. The walking paths shall be located within fifty (50) feet of the street curb. Deeds to those certain Lots, shall reserve an easement in favor of the Association or reserve the right of the Declarant to convey an easement in favor of the Association for purposes of the walking paths.

**ARTICLE XI.  
RIGHTS OF FIRST MORTGAGEES**

**Section 11.1 Changes in Rights**

Any amendment to this Declaration which either restricts the rights granted by this Declaration to any one or more First Mortgagees or which deals with the subject matter as an amendment as hereinafter described must be approved by the vote of seventy-five (75%) percent of the votes of all Owners (other than the sponsor, builder or Declarants) entitled to vote, in person or by proxy, at a meeting duly called for such purpose, and by the written consent of seventy-five (75%) percent of the First Mortgagees (based upon one vote for each Lot subject to a First Mortgage); to wit:

- a. Any amendment which authorizes or allows the Association to abandon, partition, subdivide, encumber, mortgage, sell or transfer the Common Property; provided, however, that to the extent that the Association is requested to do so (and has a legal interest therefor) the granting of easements for public utilities consistent with the intended use of the Property shall not be deemed a transfer within the meaning of the foregoing prohibition; and
- b. Any amendment which changes the method of determining the obligations, assessments/dues or other charges which may be levied against an Owner, including specifically the ratio of assessments against an Owner, or which otherwise changes the pro rata interest or obligations of any individual Lot for the purpose of allocating distributions of hazard insurance proceeds or condemnation awards or determining the share of the Owner of such Lot in the Common Property; and
- c. Any amendment which shall operate to waive or abandon the scheme of regulation or enforcement pertaining to architectural design or exterior maintenance and appearance of the homes or garages or the maintenance of the Common Property; and
- d. Any amendment which shall have as its effect the release of the Association

from its duty to maintain insurance coverage as provided in Article VII; and  
e. Any amendment which would permit the partition or subdivision of any Lot.

### **Section 11.2 Notice of Defaults**

In the event of a default in the keeping of the terms of the Governing Documents by an Owner or any person violating or attempting to violate the same, and provided such default has not been cured within sixty (60) days from the date of the default, the Association agrees to give notice of such default in such specificity as fully informs the recipient, such notice to be given to the First Mortgagee of the Owner who has committed or permitted the default. Each First Mortgagee shall register with the Secretary of the Association its name, address, the Lot against which its mortgage lies and the name of the mortgagor, and shall further notify the Association upon the satisfaction of such mortgage. Notice shall be given to the First Mortgagee by mailing the same postage prepaid to the address of the First Mortgagee stated on the books of the Association.

### **Section. 11.3 Right to cure Certain Defaults**

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Property and may pay overdue premiums on insurance policies, or secure new insurance coverage on the lapse of a policy, for such Common Property. First Mortgagees making such payments shall be entitled to immediate reimbursement therefore from the Association.

### **Section 11.4 Right to Examine Records**

First Mortgagees shall have the right to examine the books and records of the Association during the regular business hours upon reasonable notice, which shall not be less than three (3) business days.

### **Section 11.5 Inapplicability of Refusal Rights**

The Purchaser at a foreclosure sale, in addition to taking the Lot free and clear of the lien of all assessments of the Association arising subsequent to the recordation of the lien of the mortgage deed foreclosed, shall take the Lot free and clear, and shall have the right to sell the same free from any "rights of first refusal" which may in any way relate to it.

**ARTICLE III.  
AMENDMENTS**

This Declaration may be amended by the Association with approval of the Owners of not less than seventy-five (75%) of the Lots, in writing or at a duly constituted meeting of the Association held for such purposes, subject to the rights of First Mortgages as set forth in Article XI. In the case of approval of an amendment at a special or annual meeting of Association members, a copy of the proposed amendment shall be delivered to the Owners by the same means and at the same time as the notice of the meeting. Whenever such as an amendment has been so approved, it shall be recorded in the form substantially similar to this Declaration with the Sherburne County Registrar of Titles and shall not be effective until so recorded. The Association shall have the power and authority to certify such approval, and such certification shall be sufficient evidence of approval for all purposes including recording.

**ARTICLE XIII.  
COMPLIANCE; SANCTIONS AND REMEDIES**

Each Owner and Occupant shall be governed by and shall comply with the provisions of the Governing Documents, and such amendments thereto as may be made from time to time. A failure to comply shall entitle the Association (and/or Owners in certain stated instances) to the following relief:

**Section 13.1 Entitlement to Relief.**

An Owner or the Association may commence legal action to recover sums due, for damages, injunction relief, foreclosure of lien or any combination thereof, or any action for any other relief authorized by the Governing Documents as available at law or in equity. Relief may be sought by the Association or, if appropriate, by an aggrieved Owner, but in no case may any Owner or Occupant withhold any assessments due and payable to the Association, or take (or omit) other action in violation of the Governing Documents, as a measure to enforce such Owners or Occupant's position, or for any other reason.

**Section 13.2 Sanctions and Remedies.**

In addition to any other remedies or sanctions, express or implied,

administrative or legal, the Association shall have the right, but not the obligation, to implement any one or more of the following actions against Owners and Occupant's who violate (or whose guests violate) the provisions of the Governing Documents:

- a. Impose interest charges at the highest rate allowed by law for any delinquent assessment payments.
- b. Impose administrative charges (in addition to interest), in amounts up to 25% of each delinquent installment for each such delinquent assessment payment.
- c. In the event of default of more than thirty (30) days in the payment of any assessments or installment thereof, all remaining installment of assessments assessed against the defaulting Owner or Occupant may be accelerated and then shall be payable in full, forthwith at the call of the Board of Directors. Prior written notices of such acceleration shall be given to the defaulting Owner or Occupant.
- d. Impose reasonable monetary penalties for each violation of the Governing Documents, and the Rules and Regulations and for the continuing violation thereof, other than delinquent assessment payments.
- e. Foreclose any lien arising under the provisions of the Governing Documents or under law, in the manner provided for in foreclosure of mortgages in the state where the property is located.

Any assessment, charges, penalties, or interest imposed under this Article XIII shall be a lien against the Lot of the Owner or Occupant against whom the same are imposed in the same manner as a lien for Common Expenses, and shall also be a personal obligation of such Owner or Occupant. The lien shall attach as of the date of imposition of the Remedy, but shall not be final as to violations appealed under Section 13.3 until affirmed in writing following the hearing provided for in Section 13.3.

**Section. 13.3 Right to a Hearing.**

In the case of imposition of any of the remedies authorized by Section 13.2, Paragraph d, the Board of Directors shall cause to be mailed or delivered to the Owner or Occupant against whom the remedy is sought to be imposed written notice specifying the general nature of the violation, the remedy to be imposed written notice specifying the general nature of the violation, the remedy to be imposed and the effective date of such imposition, which notice must be delivered at least ten (10) days prior to such effective date. Said Owner or Occupant shall

have the right, upon written request delivered to the Board of Directors, to a hearing before the Board of Directors or a committee of no fewer than three disinterested persons appointed by the Board to hear such matters. The hearing shall be set by the Board at a reasonable time and place, with reasonable notice to the parties involved, but in no case later than 30 days after the request for a hearing.

The Board of Directors shall establish, and make known to all parties involved, uniform and fair rules for the conduct of such hearing, including without limitation the right of interest parties to appear and be heard. If a hearing is requested, the remedy imposed shall not take effect until the hearing is completed or the matter is otherwise resolved by mutual agreement of the Board of Directors and the person against whom the remedy is sought, whichever event occurs first, provided, however, that if the person or persons against whom the remedy is sought do not appear at their duly noticed hearing, the remedy imposed may be enforced forthwith. The decision of the Board, or the hearing committee, and the rules for the conduct of hearings established by the Board, shall be final and binding on all parties. The rights bestowed upon Owners and Occupants by this paragraph 13.3 shall be the sole and exclusive remedy of such Owners and Occupants with respect to the matters covered by this Article, except as may be specifically authorized by statute or by the Governing Documents.

#### **Section 13.4 Costs of Proceeding and Attorney fees.**

In any legal or arbitration proceeding (exclusive of any proceeding authorized under this Article XIII) arising between the Association and an Owner or Occupant, or between owners or Occupants, because of an alleged default or violation by any Owner or Occupant, the Association shall, if it prevails as to any material part of the relief sought, be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be determined by the court or arbitration Board. In any situation in which the Association has incurred costs and expenses, including attorney's fees, in order to collect unpaid monthly assessments or to correct any other default or violation by an Owner or Occupant of the provisions of the Governing Document, the Owner or Document who has caused the Association to incur such costs and expenses shall be responsible therefore/ and such costs and expenses shall become an assessment against such Owner's or Occupant's Lot.

**Section 13.5 Liability for Owner's and Occupants' Acts.**

All Owners and Occupants shall be liable for the expense of any maintenance, repair or replacement rendered necessary by their willful acts or negligence, or by that of their guests, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association or such owner or Occupant.

**ARTICLE XIV.  
GENERAL PROVISIONS**

**Section 14.1 Duration.**

The covenants, restrictions, conditions and reservations imposed and created by this Declaration shall bind the property for a period of thirty (30) years from the date of recordation of this Declaration. After the expiration of said thirty (30) year period, all of such covenants, restrictions, conditions and reservations shall continue to run with and bind the Property for successive periods of ten (10) years unless revoked by Members entitled to cast at least ninety (90%) of each class of votes and evidenced by a recorded instrument executed by a duly authorized officer of the Association and such percentage of First Mortgagees as may be required by Article XI.

**Section 14.2 Notices.**

Any notice required to be sent to any person or an entity under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage paid, to the last known address of the person on the records of the Association at the time of such mailing, except for registrations pursuant to Section 3.1 (b) which shall be effective upon receipt by the Association.

**Section 14.3 Construction.**

This Declaration shall be construed under the laws, of the State of Minnesota. The singular shall be deemed to include the plural wherever appropriate and unless the context clearly indicates to the contrary, any obligations and duties as of the owners shall be joint and several. Invalidation of any one of these covenants or restriction by judgment or court order, or otherwise, shall in no way effect the validity of any other provision.

*NOTE: This document is a re-creation. For the actual document with signatures, etc., please contact the Woodlands of Livonia Treasurer.*