

PLAT MAP (SOLD LOTS)

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OFFICE OF THE COUNTY RECORDER
WRIGHT COUNTY, MINNESOTA

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Larry A. Unger, County Recorder

**DECLARATION
OF
COVENANTS, EASEMENTS AND RESTRICTIONS**

THIS DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS (the "Declaration") is made as of this 15th day of September, 2004, by INSIGNIA DEVELOPMENT LLC, a Minnesota limited liability company (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant, as the owner thereof, desires to provide for the preservation of the values and enhancement of certain property consisting of ninety-one (91) residential lots located in the City of Montrose, Minnesota (hereinafter referred to individually as a "Lot" and collectively as the "Premises"), through the recording of certain covenants, easements and restrictions thereon, which certain property is more particularly described as:

See Exhibit "A" attached hereto and incorporated herein.

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

1. Land Use and Building Type: No Lot shall be used except for residential purposes, except that a purchaser of a Lot from Declarant who erects a dwelling may use such dwelling as a model for a period not exceeding eighteen (18) months from the date of completion of such dwelling. Residential purposes shall include dwellings and attached garages, swimming pools, tennis courts, and attendant structures and cabanas. No dwelling shall be erected, other than one detached single-family dwelling, not to exceed two stories in height, as measured from grade at the front door. In the event the dwelling includes a walkout basement, the basement shall not be counted as a story. All structures constructed or placed on the property shall be totally completed on the exterior thereof, within nine (9) months after commencement of



construction. No composting site may be established within twenty (20) feet of any Lot line within the plat.

2. Minimum Size of Dwelling: No dwelling shall be erected, altered, placed, or permitted to remain on any Lot, unless such dwelling meets the following square-foot area requirements, exclusive of the area, if any, included within garages, decks, and open or unconditioned porches:

- (a) For all Lots:
 - (i) Two-story Dwelling - - Total of not less than 1,400 finished square feet, excluding any basement area;
 - (ii) One-story (Rambler) Dwelling - - Ground floor area of not less than 1,200 finished square feet; or
 - (iii) Other - - Discretion of Architectural Control Committee. Modifieds must be approved by the "Committee" (as defined in Section 4(a) hereof), and generally shall comply with the square footage requirements for two-story dwellings. For four level modifieds, three of the four levels shall be used in determining finished square footage, and for three level modifieds, two of the three levels shall be used.
- (b) The Architectural Control Committee may, in its sole discretion, provide area credit for two story space.

3. Minimum Size of Garages. Each Lot shall be improved with at least a two-car garage.

4. Architectural Control Committee:

- (a) There is hereby created an Architectural Control Committee ("Committee") which shall initially be composed of the following:

Name:

Paul D. Quarberg, Chairman and a representative of Declarant.

In addition to said initial member, the Declarant shall have the right to appoint additional members of the Committee; provided, the total number of members of the Committee shall not exceed nine (including the Chairman). Declarant shall also have sole discretion to allocate differing degrees of voting power upon matters decided by the Committee to any members designated by Declarant.

- (b) The Committee shall appoint one member of the Committee to be its Chairman. The Chairman shall call meetings of the Committee, from time to time at his or her discretion. During periods in which the Committee consists of only one individual, all acts of the Committee shall be determined, and memorialized, by that individual. During periods in which the Committee consists of two or more individuals, a quorum of the Committee shall consist of, and the Committee may act upon the vote or written consent of, any two of its members that, collectively, can exercise a majority of the voting power of all of the members. The Chairman of the Committee is authorized to execute certificates of approval, notices of disapproval, and similar instruments effectuating or memorializing decisions of the Committee.
- (c) In the event of death or resignation of any member of the Committee, the remaining member or members shall have full authority to designate a successor or successors, except that the Declarant shall have the sole right to designate a successor or successors to any member that had been designated by Declarant. Neither the members of the Committee nor any of its designated representatives shall be entitled to any compensation for services performed pursuant to this Declaration. Notwithstanding the foregoing, at any time after, and subject to the condition that, all of the Lots affected by this Declaration have been sold by the Declarant or its successors and assigns, to owners who reside in dwellings constructed on said Lots, and at such time as Declarant no longer owns or holds any right, title, lien or interest, whether legal or equitable, in any Lot, then such owners of a majority of all of the Lots affected by this Declaration shall have the power to change the membership of the Committee and the allocation of voting power among and between such members, eliminate the Committee, or modify its powers and duties. Such action shall be effective only when evidenced by an instrument which has been executed by such owners of a majority of the Lots (with one vote for each Lot), and recorded in the office of the County Recorder, Wright County, Minnesota;
- (d) No building, fence, wall, kennel, antenna or other improvement shall be erected, placed, or altered on any Lot until the plans and specifications, including exterior materials and exterior colors, and a plan showing the location of the structure, elevations, and finished grade-levels, along with name of the builder or contractor who will actually perform the work, have been approved as provided in subparagraph (f). The following is a non-exclusive list of items that may be considered by the Committee in reviewing all such plans, specifications and documentation:
- (1) Reputation and experience of builder or contractor;
 - (2) Quality and type of workmanship and materials;
 - (3) Nature of external design and colors and harmony with any

existing structures on the subject Lot and on other Lots;

- (i) SIDING – Siding shall be wood, brick, stone, or stucco. Wood shall include natural wood or L/P Innerseal by Louisiana/Pacific. Masonite and other hardboard products will not be permitted. Aluminum and vinyl will be permitted. Any other siding materials will require the prior written approval of the Committee;
- (ii) COLORS – The homes constructed on the Premises should be distinguished by their architecture and landscaping, not by bold colors. The Committee may require that the homes be finished in tan, taupe, brown, gray, or other soft earth tones. Purple, pink, “lime” green and similar bold colors are, without limitation, specifically excluded.
- (iii) FRONT ELEVATIONS – The homes constructed on the Premises shall have some brick or stone on the front elevation. The Committee may, at its sole discretion and with prior written approval, permit colonial style home wainscot stucco front elevations in lieu of brick or stone.

(4) Location with respect to topography and finish-grade elevation.

(e) Plans, specifications, and all documentation shall be mailed to:

FOREST CREEK ARCHITECTURAL
CONTROL COMMITTEE
Attn: Paul Quarberg
6889 Rowland Road, Suite 100
Eden Prairie, MN 55344

and shall be deemed to have been received by the Committee upon personal delivery or three (3) days after the same is deposited in United States mail with postage paid, properly addressed to the Committee. All exterior elevations, materials and colors, including the manufacturer, type and color of all shingles, shall be specified in such plans, specifications, and documentation and the name and address of the party to whom approval or disapproval is to be mailed shall also be included. Approval or disapproval will be effective on the date of postmark when mailed by first class, mail, postage prepaid, and addressed to the named party.

(f) The Committee’s determinations concerning such plans, specifications and documentation shall be conclusive and shall be reached in the Committee’s sole discretion. If the Committee disapproves of the builder

or contractor, the plans and specifications or any other aspect of the documentation submitted to it, it shall state in writing the reason for such disapproval and, in the case of the plans and specifications, the deficiencies which must be cured to obtain approval. In the event the Committee fails to approve or disapprove the plans and specifications and site plans within thirty (30) days after the entirety of same have been submitted to it, no further approval will be required, and the restrictions, covenants, and conditions set forth in this document shall be deemed to have been complied with.

5. Structure Location: The Committee may require a structure to be located farther from the side lot lines and/or front lot lines than the minimum building setback of the Ordinances of the City of Montrose. No structure shall be located on any lot nearer to a front lot line, rear lot line, interior side lot line, or nearer a side street right-of-way, than the applicable Ordinances of the City of Montrose allow (subject to variances). For purposes of this Section 5, eaves, steps, fireplaces, and open porches shall not be considered as part of a building; provided, however, that this shall not be construed to permit any eaves, steps, fireplaces, or open porches on a Lot to encroach upon another Lot.

6. Driveways: All driveways shall be hard-surfaced, paved with brick, asphalt or concrete from the garage to the curb, and shall be installed within nine (9) months of occupancy.

7. Easements for Utilities, Drainage and Conservancy: Utility and drainage easements are reserved or dedicated as shown on the recorded plat of Forest Creek. Within such easements, no building, structure, planting, fill, or other material shall be placed or permitted to remain, which may damage or interfere with the installation and maintenance of utilities, or which may change the direction or impede the flow of water over the drainage easements. Such easements shall be maintained continuously by the owner of the Lot which is subject thereto.

8. Business Activities: No business may be continuously conducted or operated in or from a Lot which causes inconvenience, excessive traffic, excessive parking congestion or undue annoyance to occupants of other Lots in the Premises (e.g., high volume, public day care services); provided, those businesses which are in the business of first-time sales of Lots and homes in the Premises are exempt from the requirements of this Paragraph 8. Model homes are also exempt from the requirements of this Paragraph 8.

9. Nuisances: No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which is or may become an annoyance or nuisance to any owner of any Lot.

10. Signs: No sign of any kind shall be displayed to the public view on any Lot except one sign of not more than nine (9) square feet advertising a Lot or home for sale or rent (signs used by a builder to advertise the availability of Lots or dwellings upon the Premises during the construction and sales period are exempt). This restriction shall also not apply to any model home or any sign or logo for any model home.

11. Pets: No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that up to three (3) of any combination of dogs and cats, and other non-noxious household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purpose. The location, size, color and materials comprising any exterior kennels or fenced runs must be properly screened, and are subject to the prior written approval of the Committee.

12. Garbage and Refuse Disposal: Trash, garbage, or other wastes shall be kept in sanitary containers. All equipment for storage or disposal of such materials shall be kept in a clean and sanitary condition, and screened from public view. During construction upon any Lot, each builder must provide on-site sanitation (i.e., portable facility for all workmen at the Lot, adjacent to the site of construction). Additionally, no "hog fence" refuse is allowed during construction. All construction debris must be placed in a job-site construction dumpster or container of at least ten (10) cubic yards in size. The City of Montrose (the "City") has the right to charge the Declarant a fee (a "Street Cleaning Fee") for street cleaning services provided by the City and made necessary by the movement of construction equipment in and around a Lot upon which construction activities are being conducted. In the event that Declarant is charged a Street Cleaning Fee by the City in connection with dirt or other materials left in the street as a consequence of the movement of construction equipment during the course of construction activities upon a certain Lot (the "Subject Lot"), Declarant shall have the right to assess the Subject Lot in an amount equal to the amount of such Street Cleaning Fee charged to Declarant. Such assessment shall, together with interest, costs and attorneys' fees: (i) be the personal obligation of the owner of the Subject Lot as of the date such assessment is levied, and shall be binding upon such owner's successors, assigns, heirs, devisees and personal representatives; and (ii) a lien on the Subject Lot and any other Lot that may then be owned by the person or entity that was the owner of the Subject Lot as of the date the assessment was levied. If the payment of any such assessment becomes delinquent, then: (i) a money judgment may be obtained against the parties liable therefore; or (ii) the lien may be foreclosed and said Subject Lot (and/or any other Lot encumbered by such line) sold in accordance with the foreclosure procedures in that portion of Minnesota law relating to the foreclosure of mechanic's liens that is codified at Chapter 514 of Minnesota Statutes. The assessment shall be deemed levied upon the earlier of the delivery of written notice thereof to the owner of the Subject Lot or the recording of a written notice thereof against the title to the Subject Lot, and the priority of such lien vis-a-vis any other liens or encumbrances against a Lot shall be established as of the occurrence of the recording of written notice of the assessment thereof against such Lot.

13. Antennae: Except with the prior written approval of the Committee, no exterior television, radio, satellite, or microwave antenna of any sort shall be erected or maintained upon any Lot. The Committee may choose to prohibit all such antennae, or to prohibit only certain kinds and locations of antennae, and to change its regulations from time to time, all in its sole discretion. Without limiting the generality of the foregoing, it shall not be deemed arbitrary or an abuse of such discretion if the Committee were to:

- (a) Permit existing antennae to continue to be maintained while at the same time banning new antennae of the same type or location;

- (b) Prohibit antennae to be placed so as to be visible from the street side of a Lot, but permit the same antennae if not so visible; or
- (c) Place height or size restrictions on antennae.

14. Parking and Outside Storage: No recreational vehicles, trailers, boats, snowmobiles, and wheeled or tracked vehicles (not including passenger cars or any equipment used in construction or repair of the property) or unlicensed or inoperable vehicles shall at any time be stored or parked on any Lot outside of a garage for in excess of ten (10) consecutive hours and, at all times that they are not in use and it is otherwise reasonably practicable, garage doors shall remain closed. No firewood or construction equipment, (e.g., wheel barrows, sawhorses, ladders, etc.) shall be stored within the sight of any other Lot or the street.

15. Temporary Residences: No structure of a temporary character, recreational vehicle, trailer, tent, shack, garage, barn, playhouse, batting cage, or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

16. Landscaping Requirements:

- (a) All disturbed areas of any Lot upon which a home has been completed (Certificate of Occupancy granted) between September 1 and March 30 must be fully sodded and each such Lot shall, at a minimum, contain foundation landscaping by the first June 30 following the date the Certificate of Occupancy is granted. All disturbed areas of any Lot upon which a home has been completed (Certificate of Occupancy granted) between May 1 and August 31 must be sodded and each such Lot shall, at a minimum, contain foundation landscaping within ninety (90) days following the date the Certificate of Occupancy is granted. For purposes hereof, "foundation landscaping" shall refer to rock, mulch, bushes or other landscaping that shall be installed between the foundation of a home and the drip line of the roof for such home. Notwithstanding the foregoing provisions of this Section 16, landscaping requirements of model homes will be governed by the Committee. The Committee, at its sole discretion, must review and approve a landscape plan for each Lot prior to the start of any construction. All homes built on any Lot must have a minimum of \$1,000.00 of initial landscaping. No compost bins, piles or materials may be maintained or stored upon any drainage or utility easements reserved or dedicated on the recorded plat of Forest Creek. Any dead trees, bushes or shrubs shall be promptly removed by the owner of any Lot upon which they may be situated.
- (b) Where slopes lie in excess of ten (10) percent, sodding (staked) shall be required. Weather permitting, the trees, grass seed, and sod shall be planted within 30 days after a Certificate of Occupancy has been issued for a lot. All grass seed shall be maintained such that turf is established within one (1) year of planting. Before a building permit is issued, a cash escrow of \$1,500.00 per lot, or such other amount as may be determined

by the City from time to time, shall be furnished to the City to guarantee compliance with the landscaping requirements. If the landscaping is not timely completed, the City may enter the Lot, perform the work, and apply the cash escrow toward the cost. Upon satisfactory completion of the landscaping, the escrow funds, without interest, less any draw made by the City, shall be returned to the person who deposited the funds with the City.

- (c) It shall be Owner's responsibility, at Owner's sole cost, to install 2 (two) 2 inch caliper trees on the Lot. The owner of such Lot shall plant suitable trees in the front yard of the Lot so that at least two trees are situated therein. Suitable trees shall be deemed to include:

Maples	Ash	Oak	Gingko (male)
Linden	Basswood	Honey locust	Kentucky Coffee
Green Ash	Birch	Hackberry	

Other species of trees may be approved by the building inspector. Trees which can cause a public nuisance, such as cotton producing trees, or can be a public hazard, such as those containing bug infestation or weak bark, are prohibited. The minimum tree size shall be two (2) inches caliper, either bare root in season, or balled and burlapped. Trees may not be planted in the boulevard (area between curb and property line). Each owner of a Lot shall sod the boulevard area and all drainage ways on each Lot utilizing a minimum of four (4) inches of topsoil as a base. Seed or sod shall also be placed on all disturbed areas of the Lot. If these improvements are not completed or installed at the time a certificate of occupancy is requested, a financial guarantee of \$750.00 in the form of cash or letter of credit shall be provided to the City by the owner of the Lot, to be held, applied, returned or otherwise disbursed in accordance with City policies or any applicable City development agreement.

17. Mailbox: Developer intends to collect a \$400.00 Fee at closing to be used to install one mailbox on the Lot that is uniform in size shape, design, and exterior color, to all mailboxes in the Premises. It shall be the Owner's responsibility to perform all necessary maintenance, repair and replacement of the mailbox after installation. If the Fee is not collected at closing, it is the Owner's responsibility, at Owner's sole expense, to provide a mailbox which is uniform in size, design, and exterior color, to all mailboxes in the Premises. The obligation for installation of the mailbox, including the cost of installation, if borne by the Owner shall not exceed \$400.00. The mailbox shall be installed within ten (10) working days after such builder receives a Certificate of Occupancy. The design, style, etc., shall be determined by the Committee.

18. Terms: These covenants, restrictions, and conditions are to run with the title to each Lot within the Premises and shall be binding on all parties and all persons owning any right, title or interest in any such Lot for a period of twenty-nine (29) years from the date these covenants, restrictions, and conditions are recorded, after which time the same shall be

automatically extended for successive periods of ten (10) years unless an instrument signed by the then owners of a majority of the Lots has been recorded, agreeing to change the same in whole or in part. These covenants and restrictions are intended to constitute real covenants and the benefits and burdens thereof shall "run" with title to each Lot. Declarant shall have the non-exclusive right, but not the obligation, to pursue available legal or equitable remedies in the event of any breach of the provisions hereof. The Owner shall be responsible for the Committee's reasonable legal fees and costs in the event the Committee prevails in any enforcement action brought hereunder.

19. Severability: Invalidation of any of these covenants, restrictions, or conditions by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

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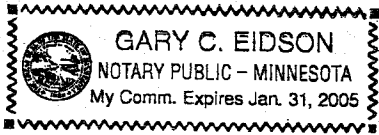
THIS DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS is executed and delivered as of the date first above written.

~~INSIGNIA DEVELOPMENT LLC, a~~
Minnesota limited liability company

By: David L. Sebold
David L. Sebold
Its: Vice President

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 15th day of September, 2004, by David L. Sebold, the Vice President of Insignia Development LLC, a Minnesota limited liability company, on behalf of the limited liability company.



G. Eidson
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

Fabyanske, Westra & Hart, P.A. (GCE)
800 LaSalle Avenue, Suite 1900
Minneapolis, MN 55402
612-359-7600

Exhibit "A"

Legal Description

Lots 40 through 48, Block 1, Lots 1 through 10, Block 2, Lots 1 through 2, Block 3 and Lots 1 through 2, Block 4, Lots 1 through 5, Block 5, Lots 1 through 23, Block 6, Lots 1 through 2, Block 7, and Lots 1 through 27 and Lots 45 through 55, Block 8, Forest Creek, according to the plat thereof, Wright County, Minnesota