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BECKER COUNTY RECORDER-STATE OF MN

Document No. 519068

Date DEC 23 2004 / O'c 2 M.

I hereby certify that the within Instrument was recorded in this office.

Charlene Mameval

County Recorder by lyn Deputy

AMENDED AND RESTATED

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

RED WILLOW HEIGHTS

This Declaration made this 22nd day of December, 2004 by Frazee Electric, a Minnesota General Partnership, hereinafter referred to as "Declarant".

RECITALS

Declarant was the owner of all of the real property described in the Plat of Red Willow Heights, Becker County, Minnesota, the "Property," and executed and recorded the original Declaration of Covenants, Conditions and Restrictions for said Lots on July 28, 2002 as Document No. 499453 in the office of the County Recorder in and for Becker County, Minnesota. As of the date hereof, the Declarant is the owner of more than seventy-five percent (75%) of all of the lots within said plat and does hereby desire to amend and restate, in its entirety, the original Declaration.

Declarant desires to provide for the preservation of the values and amenities of the Property and to this end desires to subject the Property to the easements, restrictions, covenants and conditions set forth in this Declaration, each and all of which is and are for the benefit of the Property and each Owner thereof.

NOW THEREFORE, Declarant declares that the Property described is, and shall be, held, transferred, sold, conveyed and occupied subject to the following covenants, conditions, restrictions and easements, (the "Covenants and Restrictions") which Covenants and Restrictions shall run with the Property and be binding on all parties having any right, title or interest in the Property described, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

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**ARTICLE I.
DEFINITIONS**

The following words, when used in this Declaration, shall have the following meanings.

- A. Builder. Means any purchaser of a Lot who intends to construct a Dwelling thereon for later sale to consumers in the ordinary course of its business.
- B. City. City of Frazee, Minnesota.
- C. Declarant. Frazee Electric, a Minnesota general partnership consisting of Paul Thon and Lowell Bradbury.
- D. Declaration. Means this instrument, as may be amended or supplemented from time to time.
- E. Dwelling. Means any structure on a Lot intended for use as a single-family dwelling or a twinhome.
- F. Lot(s). Any Lot located on the Property.
- G. Owner. Means the record owner or contract for deed purchaser of the fee simple title to any Lot, but excluding contract for deed sellers, mortgagees or any others having such interest merely as security for the performance of an obligation.
- H. Property. The Lots within the Plat of Red Willow Heights.

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

Property. The property subject to this Declaration is located in Becker County, Minnesota, and described as follows, to-wit:

All Lots within the Plat of Red Willow Heights, according to the certified plat thereof on file and of record in the office of the County Recorder in and for Becker County, Minnesota.

**ARTICLE III.
USES AND PROHIBITED USES**

Section 1. Use of Lots. Except for the Lots specifically designated in the second paragraph of this Section 1, such Lots, each and every one thereof, are for single-family or twin home residential purposes only. No building or structure intended for or adapted to business purposes, and no apartment house, double house, lodging house, or other multiple family dwelling shall be built, placed, permitted or maintained on such Property, or on any part thereof. No improvement or structure whatsoever, other than a first class private Dwelling, patio wall, swimming pool, gazebo, pool bathhouse, or garage may be built, placed or maintained on any Lot in such Property subject to the terms and conditions of these Restrictive Covenants and the approval of the Declarant. No mobile homes, doublewide mobile homes or the like are permitted. This provision shall not preclude Dynamic Homes type of modular homes upon these Lots provided, however, that any such modular home must be approved by the Declarant. This modular homes or prefabricated homes are allowed. No profession or home industry shall be conducted within any Dwelling or upon any Lot without the prior written approval of the Declarant. This provision shall not preclude a daycare business.

Lots 10, 11, and 13 of Block 1, Lot 8 of Block 2, and Lot 1 of Block 7 may be used for commercial purposes. Lot 9 of Block 4 shall be used for church purposes. Lots 1 and 4 of Block 3 may be used for multi-family residential purposes. Except for the specific uses permitted by the foregoing, all of said Lots shall nevertheless be subject to the covenants and conditions contained within this Declaration.

Section 2. Standards. All uses of the Lots shall, as a minimum, comply with the zoning and other applicable ordinances and regulations of the City. The standards herein contained shall be considered as requirements in addition to the zoning and other applicable ordinances and regulations.

Section 3. Signage. No sign shall be placed on any Lot or within the Property except one sign of not more than one square foot showing the name and address of the Owner of the Lot and one "For Sale" sign of not more than six square feet may be placed on a Lot by an Owner or Builder. Entrance and advertising signs may be installed by the Declarant and maintained until the Declarant no longer owns a Lot. During the construction and sales period of the Property, the Declarant and a Builder may place such directional and advertising signs as they deem necessary or desirable for the sale of the Lots. This Section shall not be applicable to any Lots that are designated as commercial Lots.

Section 4. Tanks, Garbage Cans, Wood Burning Stoves. Except for those Lots designated for commercial use in the second paragraph of Section 1 of this Article III, no above ground tanks of any kind shall be erected, placed or permitted on any part of the

Property. Only a service pipe connected to the tank may be above ground. All garbage cans or storage piles shall be walled in to conceal them from the view of neighboring Lots, roads, or streets. Plans for all enclosures of this nature must be approved by the Declarant prior to construction. No outdoor wood burning stoves of any kind are permitted.

Section 5. Animals and Kennels. No animals, other than customary household pets, shall be kept and/or allowed on said Property. No pet control lines are permitted. Underground invisible pet fencing is preferred. The construction of any kennels or dog runs on a Lot shall not be permitted unless approved by the Declarant and construction shall not commence until the plans, along with a plat of the same, are submitted to the Declarant for approval. All kennels shall be constructed out of well made materials harmonious and consistent with the contour of the land and buildings located on the Lots and shall be thereafter maintained in an aesthetically appealing condition. On public areas, animal waste must immediately be collected and disposed of by the owner of the animal.

Section 6. Utility Lines, Telecommunication Towers, Antennas, Satellite Dishes. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead. There shall be no microwave or TV towers or antennas. Telecommunication or TV satellite dishes are permitted provided the diameter thereof shall not exceed 24”.

Section 7. Nuisances. No weeds or other unsightly growths shall be permitted to be grown or remain upon a Lot. No refuse pile or unsightly objects shall be allowed to be placed or remain anywhere thereon. In the event that an Owner of any Lot shall fail or refuse to keep such premises free from weeds or refuse or other unsightly growths or objects, then the Declarant may enter upon such Lot and remove the same at the expense of the Owner and such entry shall not be deemed as a trespass. No Lot shall be used in whole or in part for the storage of rubbish of any character whatsoever, nor for the storage of any property or thing that will cause such Lot to appear in an unclean or untidy condition, or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace, quiet, comfort or serenity of the occupants of surrounding property.

Section 8. Garages and Outbuildings. Detached garages may be approved by the Declarant providing they are constructed as part of the design style, and constructed with the same materials as the Dwelling. No lean-to, carport, vehicle storage buildings or any other buildings or structures detached from the residence shall be permitted, except as outlined in Section 1 of this Article III.

Section 9. Occupancy. No Dwelling erected upon any Lot shall be occupied in any manner while in the course of construction, nor at any time prior to it being fully completed, as herein required. In the event that the plan for the Dwelling also includes a deck, the deck shall also be fully constructed in addition to the Dwelling prior to being occupied. Nor shall any Dwelling, when completed, be occupied in any manner until made to comply with the approved plans, the requirements and all other covenants, conditions, reservations and restrictions herein set forth. No temporary house, temporary dwelling, temporary garage, temporary outbuilding, trailer home, or other temporary structure shall be placed or erected upon any Lot unless approved by the Declaration.

Section 10. Architectural Guidelines. All construction of any private Dwelling or other structure on the Property shall conform with the following architectural guidelines.

- a. Chimneys. Permitted materials for exterior chimney construction include clay, brick, siding, stucco or stone to match Dwelling materials. Stainless steel/metal chimneys are not permitted. Metal chimney accessories (rainhats, spark arrestor screens, etc.) should be either painted or screened by approved chimney materials. Exposed metal-insulated chimneys are not permitted.
- b. Siding. Siding shall be of appropriate material for the Dwelling style and preferably made of maintenance-free material. Wood (cedar) is not prohibited but, if used, must be properly maintained. In the event that vinyl siding is used, it shall be of a minimum of a .44 thickness. Color schemes and exterior elevations must be submitted for approval to the Declarant. Builders shall select colors that are in harmony with the colors of the nature upon or surrounding the Lot such as those commonly referred to as earth tones. Siding lap shall not exceed 6 inches. Log homes are prohibited.
- c. Roofs. All roof structures are encouraged to utilize slopes of not less than 6:12. Flat roofs are permitted only after specific review of overall design by the Declarant. Builders are encouraged to submit designs which make use of dormer windows and attic window solutions where appropriate to detail large unbroken extents of roof.
- d. Fences. The construction of fences or any fencing on the Lot shall not be permitted unless approved by the Declarant and construction shall not commence until the plans, along with a plat of the same, are submitted to the Declarant for approval. Said approval may not unnecessarily be withheld. No fence may be constructed within thirty (30) feet of the front Lot line (that side of the Lot facing the street) on any Lot on the Property. Fence height shall not exceed 8 feet. All fences and fencing shall be constructed of

well-made materials, harmonious and consistent with the contour of the land and buildings located on the Lots, and shall be thereafter maintained in an aesthetically appealing condition.

- e. Mailboxes. Mailboxes or structures surrounding them shall be approved by the Declarant.

Section 11. Dirt Removal. Where there occurs an excess of soil on a Lot as a result of excavation or grading, permission to remove that soil will be given in writing by the Declarant which will direct the disposition of the soil.

Section 12. Plans and Specifications. The plans and specifications of each Dwelling must be approved by the Declarant. Exceptions may be granted by the Declarant in writing. In the event the Declarant fails to approve or disprove the plans within ten (10) working days from date of receipt of said plans, the plans shall be deemed approved. No construction shall be permitted or take place during the ten (10) day review period. This requirement shall become null and void when every Lot has been built on. Plans and specifications submitted for approval shall include the following:

- a. A complete set of Dwelling plans and elevations to a scale of $\frac{1}{4}'' = 1'$ with proposed finishes and including building elevations and construction material.
- b. Plot plans will be to a scale of $1'' = 10'$, clearly indicating the basement outline and any projections by a dotted outline.
- c. A complete set of accessory structure plans and elevations for any patio walls, swimming pools, gazebos, pool bathhouses, or garages, to a scale of $\frac{1}{4}'' = 1'$ with proposed finishes and including building elevations and construction materials.

Section 13. Minimum Size or Cost and Architectural Control. Each Dwelling to be built upon a Lot must have the following:

- a. Garage. The garage must have at least two stalls. Three or more stalls must be approved by the Declarant.
- b. Lawns. All yards are to be sodded or seeded prior to occupancy of the Dwelling and kept watered thereafter.
- c. Walkways. Walkways shall be constructed of concrete, brick or other hard surface materials approved by the Developer.

- d. Exterior Lighting. All exterior lighting plans shall be shown on submitted plans and specifications and shall comply with the overall lighting plan of the Declarant.
- e. Floor Area. The following minimum square foot requirements of the ground floor space, not including basements, open porches or garages apply: 1,050 sq. ft. for standard one story.

Section 14. Completion. Dwelling construction must be commenced within six (6) months of the initial purchase of a Lot and must be completed within nine (9) months from the foundation being poured or any extension thereof granted by the Declarant. Any extension of time must be approved by Declarant. The Declarant may take such steps as may be necessary to make the Property harmonious with other properties, such steps including completion of the exterior of the structure, screening or covering the structure, or any combination thereof or similar operations. The amount of the expenditure made in so doing shall be the personal, joint and several obligation of the Owner.

Section 15. Exterior Ornaments. Exterior ornaments made of plastic or wood, wishing wells and windmills, are prohibited. Precast concrete ornaments permitted with the prior written consent of the Declarant or the Master Association.

Section 16. Vehicles. No commercial vehicles, construction or like equipment, shall be stored on any Lot except while in transit or loading or unloading on a Lot (this provision shall not preclude the parking of an automobile, van or pickup used by an owner or a guest of the owner in the ordinary course of their business). The parking of large trucks or semi-tractors with or without trailers on a Lot is prohibited. All motor vehicles kept on or about a Lot shall be currently licensed and maintained in an operable condition at all times. Parking of snowmobiles, boats, trailers, campers and other seasonal items frequently used will be allowed during the applicable season as long as they are kept in a neat and clean condition and provided they are not kept closer than 35 feet from the right-of-way of any public road and 10 feet from any Lot line. Storage of snowmobiles, boats, trailers, campers and other seasonal items within garages is acceptable. Temporary mechanical difficulties and breakdowns excepted.

Section 17. Division of Lot. No Lot shall be subdivided except as approved by the Declarant.

Section 18. Driveways. Driveways and parking areas shall be constructed of concrete, bituminous surface or paver stones unless otherwise approved by the Declarant.

Section 19. Building Setback Lines. All structures upon a Lot, including the Dwelling thereon, shall be setback a minimum of 30 feet from the front yard of the Lot.

**ARTICLE IV.
OWNER'S DUTIES**

Section 1. Maintenance and Repair. In order to preserve the uniform and high-standard appearance of the Property, each Owner undertakes responsibility for maintenance and repair of the exterior of his Dwelling, yard area and driveway on the Lot. Such responsibility for maintaining the Lot and improvements thereon shall include but not be limited to the following: The maintenance and repair of exterior surfaces of all buildings on the Lot, including without limitation, the painting of the same as often as necessary, the replacement of trim and caulking, the maintenance or repair of roofs, gutters, downspouts, and doors, necessary painting, staining and repair of patio structures. An Owner shall be required to mow, trim, water or otherwise care for grass, trees or other plants located on a Lot and shall be required to remove snow from the private driveways, parking areas and walkways to the Dwelling.

**ARTICLE V.
EASEMENTS**

Utility easement are reserved and reservations made in, on, and through the Lots as shown on the recorded Plat of Red Willow Heights for the construction, placing, repair and maintenance of all necessary underground and surface utilities, public or private, including the right to conduct drainage and to trim plants on and over the areas of the easements. Drainage easements are also reserved as shown on the plat.

**ARTICLE VI.
GENERAL PROVISIONS**

Section 1. Duration of Declaration. The Covenants and Restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Owner of any Lot subsequent to this Declaration, or their respective legal representatives, heirs, successors and assigns. The easements set forth herein shall be perpetual. The Covenants and Restrictions herein set forth shall have a term of thirty (30) years from the date this Declaration is recorded and shall automatically renew for ten (10) year periods thereafter unless otherwise terminated or revoked by not less than 75% of the owners of all Lots within said plat. The Covenants and Restrictions of this Declaration may be amended by an instrument signed by not less than seventy-five percent (75%) of the Owners of all Lots. Any amendments must be properly recorded.

Section 2. Enforcement. The covenants, conditions, and restrictions herein set forth shall run with the land and bind a Builder and the present Owner, their heirs, executors, administrators and assigns, and all parties claiming by, through or under them, shall be taken to hold, agree and also covenant with the Owner of said Lots, their heirs, executors, administrators and assigns, and with each of them to conform to and observe

said restrictions. No restriction, however, shall be personally binding on any person except in respect to breaches committed during his or their ownership of the particular land upon which such violations occurred. For any violation of the restrictions set forth, the Owner or Owners of any of the above Lots shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach or to enforce legal action for damages against the offender only. Failure of the Owner of any Lot or Lots to enforce any of the restrictions herein set forth at the time of the violation shall in no event be deemed to be a waiver of the right to do so thereafter.

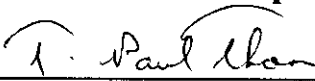
Section 3. Severability. Invalidation of any one of these Covenants and Restrictions by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

Section 4. Rights of Declarant. Until the last Lot located on the Property is sold and conveyed to an Owner other than a Declarant or a Builder, the following activities by Declarant, or with the written consent of Declarant, will not be deemed violations of restrictions contained in this Declaration.

- a. the use of a Lot or Lots for model and sales office purposes.
- b. the storage of a construction trailer, equipment, materials, and earth during the construction of a new Dwelling.
- c. the display of signs advertising the Property or new Dwellings and the maintenance of temporary fencing, walkways, landscaping and berming in the vicinity of the model and sales units.
- d. the construction and maintenance of a permanent entrance sign for the Property.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration of Covenants and Restrictions this 22nd day of December, 2004.

**Frazee Electric, a Minnesota
General Partnership**



By: Paul Thon, Partner



By: Lowell Bradbury, Partner

