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DECLARATION OF COVENANTS

FOR

THE PRESERVE AT NOTTINGHAM

THIS INSTRUMENT WAS PREPARED BY:
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**DECLARATION OF COVENANTS
FOR
THE PRESERVE AT NOTTINGHAM**

LUNDGREN BROS. CONSTRUCTION, INC. hereby declares that, as of May 31, 2000, the Active Development Area (and such portions of the Future Development Area as may be annexed into the Active Development Area) shall be subject to the following covenants, conditions, restrictions, reservations and easements, which are for the purpose of protecting the value and desirability of said land and which shall run with said land and be binding upon all parties having any right, title or interest in said land or any part thereof, and their respective heirs, successors and assigns, and shall inure to the benefit of each Owner thereof:

ARTICLE I

GENERAL DEFINITIONS

Section 1. Definitions of Land.

“Active Development Area” means the Lots and the Common Areas that are or become subject to this Declaration, namely Blocks 1 through 5 and Outlot B, THE PRESERVE AT NOTTINGHAM, and such additions thereto as may be annexed pursuant to Article XI, Section 7.

“Common Areas” means all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Areas to be owned by the Association at the time of the conveyance of the first Lot will be Outlot B, THE PRESERVE AT NOTTINGHAM. Additional Common Areas may be annexed into the Active Development Area pursuant to Article XI, Section 7.

“Future Development Area” means the lands which may be annexed into the Active Development Area pursuant to Article XI, Section 7, namely Outlot A, THE PRESERVE AT NOTTINGHAM.

“Lot” means each of the following platted lots:

Lots 1 through 13, Block 1;
Lot 1, Block 2;
Lots 1 through 3, Block 3;
Lots 1 through 11, Block 4; and
Lots 1 through 4, Block 5; all in
THE PRESERVE AT NOTTINGHAM, according to the plat thereof on file or of
record in the office of the County Recorder for Hennepin County, Minnesota;

and such additions thereto as may be annexed into the Active Development Area pursuant to Article XI, Section 7.

Section 2. Definitions of Persons.

"AAA" means the American Arbitration Committee as discussed in Article IX, Section 3.

"Association" means the Minnesota nonprofit corporation to be incorporated and activated pursuant to Article VII of this Declaration.

"Board" means the Board of Directors of the Association.

"Bound Party" is defined in Article IX, Section 1.

"City" means the City of Maple Grove, Minnesota, a Minnesota municipal corporation.

"Claimant" is defined in Article IX, Section 3.

"Committee" means the Architectural Control Committee defined in Article IV of this Declaration.

"Developer" means Lundgren Bros. Construction, Inc., a Minnesota corporation, or its successors and assigns, if such successors or assigns should acquire a majority of the Lots owned by the Developer at the time of the acquisition, whether the acquisition is by sale, foreclosure of a mortgage, deed in lieu of foreclosure or otherwise.

"Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot except that, where a Lot is being sold on a contract for deed and the contract vendee is in possession of the Lot, then the vendee and not the vendor shall be deemed to be the Owner. All Owners are responsible for causing members of the household, occupants, tenants, guests, or other persons under the Owner's control to comply with all provisions of this Declaration, and all references herein to Owners shall include all such persons under the control of the Owner.

"Party" is defined in Article IX, Section 3.

"Respondent" is defined in Article IX, Section 3.

Section 3. Other Definitions.

"Antennas" are defined in Article II, Section 7.

"Claims" are defined in Article IX, Section 1.

"Entrance Easement Areas" are defined in Article III, Section 1.

"Entrance Improvements" are defined in Article III, Section 1.

"Landscaping" is defined in Article III, Section 4.

"Landscaping Site" is defined in Article III, Section 4.

"Mitigation Areas" are defined in Article III, Section 7.

"Natural Vegetation Zones" are defined in Article V, Section 4.

"Notice" is defined in Article IX, Section 3.

"Pond Access Lanes" are defined in Article III, Section 3.

"Pond Equipment" is defined in Article III, Section 3.

"Pond Sites" are defined in Article III, Section 3.

"Tree Easement Areas" are defined in Article II, Section 14.

"Tree Protection Zone" is a zone designated by the City and discussed in Article III, Section 5.

"Termination of Mediation" is defined in Article IX, Section 3.

"Termination of Negotiations" is defined in Article IX, Section 3.

"Wetlands" are defined in Article III, Section 6.

"Wetland Buffer Areas" are defined in Article III, Section 6.

ARTICLE II

GENERAL COVENANTS AFFECTING ALL LOTS

Section 1. Residential Purposes. Each Lot shall be used only for one single family house and ancillary uses. No Lot may be used for any commercial purpose, except that Lots or portions of Lots may be used by Developer and other professional home builders pursuant to Article II, Section 11 of this Declaration and by Owners for home occupations that are permitted by the applicable zoning ordinances. However, no Lot may be used for licensed or unlicensed residential care facilities, licensed or unlicensed day care facilities, public or private schools, or commercial agriculture; even if such uses may be permitted by applicable zoning ordinances.

Section 2. Building Specifications.

(a) Height. No dwelling shall be erected, altered or placed on a Lot or permitted to remain there other than one single family house not to exceed two stories in height, as measured from grade. If the house includes a walk-out or look-out basement, the basement shall not be counted as a story.

(b) Garages. Each house shall have one or more attached fully-enclosed garages, but no carports or detached garages. There may be garage space for any number of cars, but from the street in front of the house it must appear that there is garage space for no more than three cars.

(c) Storage Structures. Attached or detached structures for storage purposes are permitted, but any storage structure large enough to hold an automobile shall be considered a garage, whether or not it is used as a garage. Each storage structure on a Lot shall be of the same color and design as the house on the Lot and shall be subject to Committee approval.

(d) Completion. Each house or other structure constructed or placed on a Lot shall be completely finished on the exterior thereof within nine months after commencement of construction.

Section 3. Setbacks. All buildings must be set back from all Lot lines in compliance with City ordinances, as may be modified by any applicable planned unit development or special use permit.

Section 4. Nuisance. No noxious or offensive trade or activity shall be conducted upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to any property within the Active Development Area or Future Development Area.

Section 5. Prohibited Dwellings. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any Lot at any time (either temporarily or permanently) as a dwelling.

Section 6. Lawn Ornaments. Lawn ornaments (such as statuettes, birdbaths, windmills and whirly-gigs) and lawn art (such as sculpture and statues) are prohibited in front yards and side yards.

Section 7. Antennas. Satellite dishes less than 24 inches in diameter are allowed on every Lot, but the locations must be approved by the Committee. No other exterior antenna, aerial, tower, wire, line, cable, dish or other device for transmitting or receiving radio, television, microwave, laser or other electro-magnetic signals ("antenna") shall be on any Lot without the written permission of the Committee. The Committee shall deny permission if it determines, in its sole discretion, that the antenna would be offensive to the sight (taking into account the visibility of the antenna during all seasons of the year) from present and future Lots nearby. Any structure intended to shield an exterior antenna from sight shall be subject to review by the Committee.

Section 8. Animals. No animal may be bred, kept, or maintained for business or commercial purposes anywhere on a Lot. The word "animal" shall be construed in its broadest sense and shall include all living creatures except humans. Owners may keep ordinary household pets, such as dogs and cats that do not pose an unreasonable threat to the safety of others. Uncommon or exotic animals may be kept only with the prior consent of the Board, which may be withheld by the Board in its sole discretion. In addition, the Board shall have the exclusive authority to prohibit, or to allow and regulate, by Rules and Regulations, the keeping of animals on any Lot. The Board shall have the right to order an Owner to immediately remove from the Owner's Lot any animal that it reasonably deems to be dangerous to others. In addition, the Board shall have the right to order an Owner to remove from the Owner's Lot any animal that continually barks in an uncontrolled manner, repeatedly wanders from the Lot where

it lives or otherwise repeatedly behaves in a manner that is reasonably offensive to surrounding Owners; provided however, that prior to ordering such removal, the Board shall give written notice to the owner of the offending animal of such offensive behavior and such owner shall have 30 days to correct such offensive behavior.

Owners with pets shall be responsible for caring for their pets in a way so as to keep the pets from becoming a nuisance to others. Under no circumstances may more than a total of three dogs and cats be kept on any Lot; provided, however, that for a reasonable period of time following the date a pet gives birth, the pet's offspring may be kept within the Lot. Owners shall be responsible for cleaning up after their pets. Failure to promptly clean up after a pet will subject the Lot of the pet's owner to a special assessment for the cost of such cleanup.

No Owner may erect a kennel, dog house or other similar building or construct an outside run for animals without first obtaining the written approval of the Committee.

Section 9. Driveways; Parking; Vehicles. All driveways and parking areas constructed on any Lot shall be paved with an asphalt, brick, concrete or bituminous surface. Operational automobiles may be kept, stored or parked only on paved driveways, on paved parking areas, or in enclosed garages; and all other vehicles shall be kept, stored or parked only in enclosed garages. "All other vehicles" includes, for example: automobiles that are not operational, trucks, buses, vans, recreational vehicles, all-terrain vehicles, ambulances, hearses, motorcycles, motorbikes, bicycles, snowmobiles, jet skis, canoes, boats, and other watercraft, aircraft, house trailers, camping trailers, other trailers, lawn mowers, lawn tractors, over-the-road tractors, and other tractors. Notwithstanding the foregoing prohibition, guests of the Owner of a Lot visiting for less than 15 days in any 30 day period may park their vehicles on unenclosed paved areas of the Lot.

Section 10. Signs. No sign of any kind shall be displayed to the public view on any Lot, except: (a) signs that comply with municipal ordinances advertising Lots and/or homes for sale; and (b) political signs for impending elections, referenda, etc.

Section 11. Rights of Developer and Home Builders. Until the last Lot is sold and conveyed to an Owner other than Developer or another professional home builder, the following actions by Developer and other professional home builders will not be deemed violations of the foregoing restrictions:

- (a) the use of a house as a model home or sales office;
- (b) the use of a trailer as a sales office, construction office or for storage of building materials; and
- (c) the storage of equipment, materials and earth during the construction of new houses.

Section 12. Leases. Any lease between an Owner and a tenant: (i) shall be in writing; (ii) shall provide that the terms of the lease are subject in all respects to the provisions of this Declaration and to the provisions of the Articles of Incorporation, By-Laws and Rules and

Regulations of the Association; and (iii) shall provide that failure by the tenant to comply with the terms of such documents shall be a default under the lease.

Section 13. Restoration of Lots. Except in those portions of Lots that are Mitigation Areas, every area on each Lot where natural vegetation has been removed but not replaced with improvements or landscaping must be completely sodded. Seeding is not a permitted substitute for sodding. If a certificate of occupancy for a house is issued in November through April, the sod must be installed by the following July 15th. If a certificate of occupancy for a house is issued in May through October, the sod must be installed within 60 days after issuance of the certificate of occupancy.

Section 14. Trees. The Developer hereby reserves unto itself and grants unto the Association easements allowing the Developer or the Association to plant, maintain, and replace trees in the unpaved portion of every street right-of-way and in the front yard of each Lot (collectively, the "**Tree Easement Areas**"). Except as may be required by the City, neither the Developer nor the Association shall be obligated to plant any particular trees in the first instance, but if the Developer or the Association plants any tree within any Tree Easement Area, then:

(a) The Owner of the Lot upon which the tree was planted (or the Owner of the Lot closest to the tree if it was planted in a street right-of-way) shall maintain the tree for so long as it lives and shall replace the tree with another tree of the same species and size if it dies or becomes diseased; and

(b) If the Owner fails to maintain or replace the tree, then the Association and the Developer shall have the right but not the obligation to do so, shall charge the cost thereof against the Owner and shall have the right but not the obligation to file and enforce a lien against the Lot for the cost thereof.

Maintenance shall include watering, fertilizing, trimming and any other work required to keep the tree attractive and sound. The easements reserved in this Section 14 shall be nonexclusive, irrevocable, assignable commercial easements in gross for the benefit of the Developer, the Association, and their respective successors and assigns. The easement in favor of the Association shall be perpetual, but the easement in favor of the Developer shall expire automatically when the Developer no longer owns any lot.

Section 15. Weed Control. Notwithstanding the provisions of Article III, Sections 6 and 7, the Association shall have the obligation to keep Common Areas and the boulevard areas within or adjacent to Common Areas free of purple loosestrife and other noxious weeds and the Owner of each Lot shall have the obligation to keep their Lot and the boulevard areas adjacent to the Lot free of purple loosestrife and other noxious weeds, all in accordance with applicable state and local law. If an Owner fails to control noxious weeds, then the Association (or the Developer if the Association has not been activated) shall have the right and the obligation to do so, shall charge the cost thereof against the Owner and shall have the right to file and enforce a lien against the Lot for the cost thereof. The easements reserved in this Section shall be nonexclusive, irrevocable, assignable commercial easements in gross for the benefit of the Developer, the Association, and their respective successors and assigns. The easement in favor

of the Association shall be perpetual, but the easement in favor of the Developer shall expire automatically when the Developer no longer owns any lot.

Section 16. Boulevards. The Owner of each Lot shall maintain the boulevard area between the property line of the Lot and the curbs of the public streets adjacent to the Lot.

Section 17. Fire Hydrants. The Owner of any Lot containing a fire hydrant or adjacent to a fire hydrant shall keep the hydrant free of obstructions including, but not limited to, landscaping, ice, snow and debris.

ARTICLE III

SPECIAL COVENANTS AFFECTING CERTAIN LOTS AND OUTLOTS

Section 1. Entrance Improvements.

(a) Special Definitions. "Entrance Improvements" means monuments, signs, walls, fences, vegetation, landscaping structures, lighting, sprinkler systems, utility lines and related improvements at the major entrances to the Active Development Area. "Entrance Easement Areas" means the following areas:

- (1) that part of Outlot B, THE PRESERVE AT NOTTINGHAM lying within eighty (80) feet of the right of way of 73rd Place North;
- (2) that part of Outlot A, THE PRESERVE AT NOTTINGHAM that is (A) east of Lawndale Lane, (B) west of Lot 1, Block 2, THE PRESERVE AT NOTTINGHAM, and (C) within eighty (80) feet of the right of way of 73rd Place North;
- (3) the medians in the center of 73rd Place North at the entrance to the Active Development Area from Lawndale Lane North; and
- (4) additional areas designated by the Developer upon the annexation of land into the Active Development Land.

(b) Easement Rights and Obligations. The Developer hereby reserves to itself and grants to the Association easements to install, operate, maintain, repair and replace Entrance Improvements in the Entrance Easement Areas. The Developer shall have the right, but not the obligation, to do any such work. The Association shall have the right, but not the obligation, to install Entrance Improvements within each Entrance Easement Area. However, if the Developer or the Association installs any Entrance Improvements, then the Association shall have the right and the obligation to operate, maintain, repair and replace them. Maintenance of every Entrance Improvement shall include whatever is necessary to keep it in good operating order and good appearance. So long as the Developer owns any Lot, no Entrance Improvements shall be removed without being replaced. The easements described in this section shall be nonexclusive, perpetual, irrevocable, assignable, commercial easements in gross for the benefit of the Developer, the Association, and their respective successors and assigns.

(c) Removal of Improvements by City. In the event that any Entrance Improvements constructed within any public right of way fall into disrepair or are abandoned by the Association, the City may repair and/or remove such Entrance Improvements and restore the right of way. The City may assess the expenses of such repair, removal and restoration as a lien against the Lots.

Section 2. Cul-De-Sac Islands. The Developer shall have the right, but not the obligation, to install, repair, maintain and replace concrete curbs, vegetation, landscaping structures and utilities in circular islands in the middle of cul-de-sac turn-arounds. If the Developer constructs any cul-de-sac island, the Association (and, prior to the activation of the Association, the Developer) shall have the right and the obligation to repair, maintain and replace all concrete curbs, vegetation, landscaping structures and utilities that the Developer has installed in the island; provided, however that it shall be the joint obligation of all of the Owners of Lots adjacent to each cul-de-sac turn-around to water any landscaping and vegetation within such cul-de-sacs. In the event that any improvements constructed within any public right of way fall into disrepair or are abandoned by the Association, the City may repair and/or remove such improvements and restore the right of way. The City may assess the expenses of such repair, removal and restoration as a lien against the Lots.

Section 3. Pond Equipment.

- (a) Special Definitions. The following areas are deemed to be "Pond Sites":
- (1) **Pond Site No. 1:** the platted drainage and utility easement at the rear of Lots 1 and 2, Block 1, THE PRESERVE AT NOTTINGHAM;
 - (2) **Pond Site No. 2:** the platted drainage and utility easement on the easterly side of Lot 7, at the rear of Lots 8, 9 and 10, all in Block 1, THE PRESERVE AT NOTTINGHAM;
 - (3) **Pond Site No. 3:** the platted drainage and utility easement at the rear of Lot 1, Block 2, THE PRESERVE AT NOTTINGHAM;
 - (4) **Pond Site No. 4:** the platted drainage and utility easement at the rear of Lots 1, 2, 3, 4, 5, 6, and 7, Block 4, THE PRESERVE AT NOTTINGHAM; and
 - (5) **Pond Site No. 5:** the platted drainage and utility easement at the rear of Lots 1, 2, 3, and 4, Block 5, THE PRESERVE AT NOTTINGHAM;

Access to the Pond Sites shall be over the following "Pond Access Lanes":

- (1) the platted drainage and utility easement on the lot line between Lots 1 and 2, and on the lot line between Lots 7 and 8, all in Block 1, THE PRESERVE AT NOTTINGHAM;
- (2) the platted drainage and utility easement on the westerly lot line of Lot 1, Block 2, THE PRESERVE AT NOTTINGHAM;

- (3) the platted drainage and utility easement on the west lot line of Lot 1, Block 4, THE PRESERVE AT NOTTINGHAM;
- (4) the platted drainage and utility easement on the lot line between Lots 4 and 5, Block 4, THE PRESERVE AT NOTTINGHAM;
- (5) the platted drainage and utility easement on the lot line between Lots 1 and 2, Block 5, THE PRESERVE AT NOTTINGHAM; and
- (6) additional areas specified by the Developer in lands annexed into the Active Development Area.

“Pond Equipment” means aeration, fountain, and water quality equipment, including, but not limited to, air pumps, water pumps, air hoses, water hoses, air diffusers, water jets, and dispensers of chemical and biological agents to improve water quality or control aquatic vegetation.

(b) Easement Rights. The Developer hereby reserves easements for itself and grants easements to the Association as follows: (i) over the Pond Sites to remove sediment from the ponds and otherwise maintain the Pond Sites and to install, remove, replace, maintain, repair and operate Pond Equipment in and around the ponds; and (ii) over the Pond Access Lanes for access to remove sediment from the ponds and otherwise maintain the Pond Sites, Pond Equipment and underground utility lines serving Pond Equipment. These easements shall be nonexclusive, irrevocable, assignable, commercial easements in gross for the benefit of the Developer, the Association, and their respective successors and assigns. The Developer’s rights in the Pond Sites and Pond Access Lanes shall expire when the Developer no longer owns any Lot. The Association’s rights and obligations in the Pond Sites and Pond Access Lanes shall be perpetual. Neither the public nor the Owners of Lots shall have any rights in the Pond Sites or the Pond Access Lanes by virtue of the easements described in this section. Notwithstanding anything to the contrary, no person shall place Pond Equipment in Pond Sites 1, 2 or 5.

(c) Water Quality and Aquatic Vegetation. The rights of the Developer and the Association to maintain Pond Sites (as set forth in Section 3(b)(i) above shall be deemed to include treatments of Pond Sites to improve water quality or water clarity, or to control water-borne growth, all in compliance with applicable laws, ordinances and regulations. The Developer and the Association shall have the right, but not the obligation to provide such treatments and if the Developer or the Association provide such treatments, the Developer and the Association may discontinue such treatments at any time. Notwithstanding anything to the contrary, no person shall provide such treatments within a Wetland, a Wetland Buffer Zone or a Mitigation Area (all as defined below).

Section 4. Landscaping.

(a) Special Definitions. The following special definitions shall apply to this Article III, Section 4:

"Landscaping" means landscaping structures, landscaping vegetation, irrigation equipment and similar landscaping improvements.

"Landscaping Site" means sites designated by Developer within Lots for the development of Landscaping.

(b) Designation of Landscaping Sites. The following parts of the Active Development Area are designated as Landscaping Sites:

- (1) That part of Lot 3, Block 1, THE PRESERVE AT NOTTINGHAM within the triangular area formed by extending a line from the point on the northerly lot line of said Lot that is forty (40) feet from the northeasterly corner of said Lot to the point on the easterly lot line of said Lot that is forty (40) feet from said northeasterly corner.
- (2) That part of Lot 8, Block 1, THE PRESERVE AT NOTTINGHAM within the triangular area formed by extending a line from the point on the westerly lot line of said Lot that is forty (40) feet from the northwesterly corner of said Lot to the point on the northeasterly lot line of said Lot that is forty (40) feet from said northwesterly corner.

(c) Rights of the Developer. Developer does not commit to install and maintain any Landscaping. Developer hereby reserves rights and easements until December 31, 2008 to install utilities and Landscaping within any Landscaping Site. In addition, the Developer shall have the right to install Landscaping within the Future Development Area.

(d) Owner's Responsibilities. Developer reserves for itself and the Association an easement to enter the Landscaping Sites to maintain the Landscaping within each Landscaping Site. Maintenance of Landscaping Sites shall include repairing Landscaping and fertilizing, weeding, watering, mowing, raking, pruning, controlling erosion and any other work reasonably required to keep the Landscaping Site attractive and sound. The easements reserved in this Section shall be nonexclusive, irrevocable, assignable commercial easements in gross for the benefit of the Developer, the Association, and their respective successors and assigns. The easement in favor of the Association shall be perpetual, but the easement in favor of the Developer shall expire automatically when the Developer no longer owns any lot.

Section 5. Tree Protection Zones. Portions of Outlot B, and of Lots 1 and 2, Block 1, THE PRESERVE AT NOTTINGHAM are within a "Tree Protection Zone" (sometimes also called a "T-Zone") that has been designated by the City. The Association and the respective Owners of these Lots shall comply with all City ordinances and regulations regarding tree preservation within the Tree Protection Zone with regard to Outlot B and said Lots, respectively. No tree may be removed from Tree Protection Zones without the prior approval of the City and the Committee. Notwithstanding the last sentence, the Association (with respect to Outlot B) or the Owner of a Lot within the Tree Protection Zone may take down and remove diseased trees

and may also take down (but not remove from the Tree Protection Zone) storm-damaged trees or other trees in danger of falling and harming life and property.

Section 6. Protection of Natural Wetlands.

(a) Locations of Wetlands and Wetland Buffer Areas. There are various naturally-occurring wetlands in the Active Development Area. They have been delineated in the field according to applicable state and local laws; and they are shown and labeled as “Wetlands” in the recorded plat(s) of the Active Development Area. Each Wetland is surrounded by a “Wetland Buffer Area”, which is a strip of land immediately upland from the Wetlands as follows:

- (1) The Wetlands at the rear of Lots 1 through 11, Block 4, THE PRESERVE AT NOTTINGHAM have Wetland Buffer Areas that are at least 40 feet wide, the upland boundaries of which are the upland boundaries of the platted utility and drainage easements at the rear of said Lots.
- (2) The Wetlands in Outlot B and Lots 2 through 5, Block 1, THE PRESERVE AT NOTTINGHAM have Wetland Buffer Areas that are at least 10 feet wide, the upland boundaries of which are the upland boundaries of the platted utility and drainage easements at the rear of said Lots.
- (3) The Wetlands between Lot 3 and Lots 2 and 4, all in Block 1, THE PRESERVE AT NOTTINGHAM (which is marked by a symbol denoting wetlands, but which are unlabeled), have a Wetland Buffer Area that is at least 10 feet wide, the upland boundaries of which are the upland boundaries of the platted utility and drainage easements at the sides of said Lots.

The upland boundaries of the Wetland Buffer Areas are and will be delineated on the ground by permanent monuments consisting of green flexible posts with decals indicating “Wetland Buffer.”

As additional land is annexed into the Active Development Area, additional Wetlands will be shown on recorded final plats and additional Wetland Buffer Areas will be described by amendment to this Section. All Wetlands and Wetland Buffer Areas are and will be within the platted drainage and utility easements.

(b) Setbacks from Wetland Buffer Areas. Pursuant to the City’s zoning ordinance, no person may construct any improvement that would be considered an encroachment into a rear yard (as defined in the City’s zoning ordinance) within thirty (30) horizontal feet of a Wetland Buffer Area.

(c) Conservation Restrictions. To promote natural vegetation, maximize wildlife habitat, control erosion and improve water quality, for the benefit of all Lots in the Active Development Area, no person (except Developer or the Association in accordance with plans approved by the City) shall excavate, fill, install any structure,

landscape, mow or apply herbicides, pesticides or insecticides within the Wetlands or the Wetland Buffer Areas.

Section 7. Protection of Man-Made Wetlands.

(a) Man-Made Wetlands; Wetland Mitigation Areas. Some lots include man-made wetlands that were created to replace natural wetlands that were filled during construction of subdivision improvements. These man-made wetlands are called "Mitigation Areas" in this Declaration. There are Mitigation Areas in the following locations in the Active Development Area:

- (1) the drainage and utility easements at the side and/or rear of Lots 1 and 2, Block 1, THE PRESERVE AT NOTTINGHAM; and
- (2) the drainage and utility easements at the side and/or rear of Lots 7, 8, 9, and 10, Block 1, THE PRESERVE AT NOTTINGHAM; and
- (3) the drainage and utility easements at the rear of Lots 1, 2, 3 and 4, Block 5, THE PRESERVE AT NOTTINGHAM.

The upland boundaries of the Mitigation Areas are and will be delineated on the ground by permanent monuments consisting of green flexible posts with decals indicating "Mitigation Area".

As additional land is annexed into the Active Development Area, additional Mitigation Areas will be described by amending this Section. All Mitigation Areas are and will be within the platted drainage and utility easements.

(b) Conservation Restrictions. To promote natural vegetation, maximize wildlife habitat, control erosion and improve water quality, for the benefit of all Lots in the Active Development Area, no person (except Developer or the Association in accordance with plans approved by the City) shall excavate, fill, install any structure, landscape, mow or apply herbicides, pesticides or insecticides within any Mitigation Area.

Section 8. Berm Landscaping. Developer has constructed a berm on the southerly portion of Lots 6, 7, 10, 11, 12 and 13, Block 1, THE PRESERVE AT NOTTINGHAM. While Developer does not commit to install and maintain any particular landscaping on the berm; if Developer installs landscaping on the berm, the Owner of each Lot upon which the berm has been constructed shall maintain all berm landscaping within their Lot.

Section 9. Overflow Swales. Developer will construct emergency overflow swales in the rear of Lots 2, 11, 12, and 13, Block 1, on the westerly lot line of Lot 1, Block 2, on the westerly lot line of Lot 1, Block 4 and on the lot line between Lots 4 and 5, Block 4, all in THE PRESERVE AT NOTTINGHAM. No person may obstruct or change the grade of such swales without the approval of the Committee and the City.

Section 10. Sidewalks. Developer shall construct sidewalks in the Active Development Area in certain locations as required by the City. The sidewalks will be constructed either within the right-of-way of publicly dedicated streets or within easement areas granted to the City pursuant to separately recorded instruments. The Association shall repair and maintain all sidewalks constructed by Developer within or adjacent to Common Areas, shall keep those sidewalks free of snow, ice, leaves, grass clippings and other debris, and shall mow and maintain the area between those sidewalks and the street. The Owner of each Lot shall repair and maintain all sidewalks constructed by Developer within or adjacent to such Lot, shall keep such sidewalks free of snow, ice, leaves, grass clippings and other debris and shall mow and maintain the area between such sidewalks and the street. If the Association or the Owner fails to maintain or repair the sidewalk to the satisfaction of the City, the City has the right to maintain and repair the sidewalk and assess the cost to the Association or Lot Owner (as the case may be) as a special assessment under Chapter 429 of Minnesota Statutes.

Section 11. Disposition of Outlots.

Outlot A is the Future Development Area. It contains Wetlands and may contain Entrance Improvements and Landscaping.

Outlot B will be deeded to the Association as Common Area. It contains Wetlands, Wetland Buffer Areas, a Mitigation Area, a Natural Vegetation Zone and will contain Entrance Improvements. The Outlot is within the Tree Protection Zone.

ARTICLE IV

ARCHITECTURAL CONTROL COMMITTEE

Section 1. Committee Members. The Architectural Control Committee ("Committee") shall consist of three individuals appointed by the Developer until the date the Developer no longer owns any Lot. Thereafter the Committee shall consist of three individuals appointed by the Board.

Section 2. Work Requiring Committee Approval. Without any approvals from the Committee, the Developer may perform any work upon any Lot owned by the Developer or owned by a person who has hired the Developer to perform the work. Before anyone else performs any of the following work on any Lot, the plans and specifications for the work must be reviewed and approved in writing by the Committee:

- (a) clearing of one or more trees from the Lot;
- (b) grading the Lot or otherwise changing the topography of any Lot (including, but not limited to landscaping and construction of playground improvements);
- (c) constructing, erecting, installing, or relocating any structure on the Lot, including (without limitation) the following structures: any house, garage, shed or other building; any porch, deck or balcony; any fence, wall or gate; any mailbox, newspaper box, or light post; any exterior antenna (subject to Article II, Section 7); any retaining wall, terrace or other landscaping structure; any patio, driveway or parking area; any tennis court; and any swimming pool (whether above ground or below ground); or

- (d) changing the exterior color, style or materials of any structure on the Lot.

The following types of work do not require Committee approval: planting trees, shrubs and other plants; repair or replacement of mailboxes, provided that such repair or replacement results in a mailbox substantially the same as the mailbox being repaired or replaced; and changing the interior of any structure.

Owners of Lots may be required to obtain additional approval from the City or other governmental agencies for work that has been approved by the Committee. In addition, Owners of Lots are required to comply with all applicable laws, regulations and ordinances in connection with work performed on their Lots, even if such work does not require approval by the Committee.

Section 3. Modification of Grading. No Owner may modify the topography of any Lot without the express prior approval of both the Committee and the City.

Section 4. Review of Plans and Specifications. At least fourteen (14) days before work on a Lot is commenced, the Owner of the Lot shall submit to the Committee one complete set of plans and specifications (including, without limitation, full site plans, grading and drainage plans, building elevations, roof pitches, exterior colors and materials). Within fourteen (14) days after receipt of plans and specifications, the Committee shall approve or disapprove them in writing. The Committee's approval of plans and specifications shall not constitute any representation, warranty or assurance that they comply with applicable municipal codes and ordinances. The Committee may disapprove plans and specifications only for one or more of the following reasons:

- (a) Non-compliance with this Declaration, municipal ordinances or other governmental regulations;
- (b) Failure of the proposed work to be compatible with the Lot, in terms of topography, soils and existing vegetation;
- (c) Failure of the proposed work to be compatible with most of the houses (in the case of a house) or most of the comparable structures (in the case of structures other than houses) in that portion of the Active Development Area built or to be built by the Developer or already built by anyone, in terms of style, general size, height and width, quality of construction, price range and other characteristics; and/or
- (d) Failure of the plans and specifications to show all information necessary to evaluate the foregoing characteristics.

The Developer may market two or three different product lines of homes in the Active Development Area; and those product lines may differ from each other in terms of style, general size, height and width, quality of construction, price range and other characteristics. The Developer makes no guarantees, assurances or representations concerning the style, general size, height and width, quality of construction, price range or other characteristics of homes in different portions of the Active Development Area or on individual Lots. Also, the

Developer reserves the right to introduce new and different product lines in areas annexed into the Active Development Area.

The Committee's determinations concerning the plans and specifications shall be conclusive. If the Committee disapproves the plans and specifications, it shall state in writing the reason for such disapproval and the deficiencies which must be cured to obtain approval. The Committee shall retain, for a period of three (3) years, all plans and specifications submitted to it and a record of all actions taken with regard to them.

Section 5. Remedies Against Owners. If any work is commenced without the Committee's approval of the plans and specifications, or if any work is completed not in accordance with approved plans and specifications, the Association or any other Owner may bring an action to enjoin further work and to compel the Owner to conform the work with plans and specifications approved by the Committee. Any such action must be commenced and a notice of lis pendens must be filed within ninety (90) days after the date on which the certificate of occupancy is issued by the appropriate municipal authority, in the case of the initial construction of a house, or within ninety (90) days after the date of completion, in the case of any other work. Any such action shall not be subject to the dispute resolution provisions of Article IX of this Declaration.

Section 6. Remedies Against Committee. In the event that the Committee and/or the members of the Committee shall fail to discharge their respective obligations under this Article IV, then any Owner may bring an action to compel the discharge of said obligations. Notice of any such claim must be given in accordance with Article IX of this Declaration and within ninety (90) days after the date on which the certificate of occupancy is issued by the appropriate municipal authority, in the case of the initial construction of a house, or within ninety (90) days after the date of completion, in the case of any other work. Such an action shall be the exclusive remedy of any Owner for failure of the Committee and/or its members to discharge such obligations. Under no circumstances shall Developer, the Committee or members of the Committee be liable to any person for damages (direct, consequential or otherwise).

ARTICLE V

COMMON AREAS AND PUBLIC AREAS

Section 1. Right to Use Common Areas. Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Areas, including the right of access to and use of the Association's improvements thereon, but only while the Owner is current in paying annual and special assessments owed to the Association. Said right and easement shall be appurtenant to and shall pass with the title to each Lot, even if not mentioned in an instrument of conveyance. Each Owner's right to use the Common Areas shall be subject to uniform rules and regulations adopted by the Board. Usage of each Common Area shall be limited to those activities which, in the judgment of the Board, shall not be a nuisance or an annoyance to the neighboring Lots. Nevertheless, the Association may sponsor occasional special events (such as neighborhood picnics) upon any Common Area.

Section 2. Improvements in Common Areas. Only the Association shall have the right to install any improvements or plantings in the Common Areas. Upon the installation of any improvements and plantings in the Common Areas, the improvements and plantings shall become the property of the Association. The Association shall be responsible for the maintenance, repair and replacement of all improvements and plantings in the Common Areas. The Association may, in its discretion, choose to remove and not replace any improvements and plantings in the Common Areas. The Association shall not construct any improvement within Outlot B, THE PRESERVE AT NOTTINGHAM that would require the issuance by the City of a certificate of occupancy prior to the use of such improvement.

Section 3. Actions Affecting Common Areas. The Common Areas shall not be abandoned, partitioned, subdivided, encumbered, leased, sold, transferred or dedicated for public use, except by the recording of an instrument executed by the Association, by the Owners owning at least 60% of the Lots and (if the Developer owns any Lot) by the Developer.

Section 4. Natural Vegetation Zones. "Natural Vegetation Zones" are areas in which natural vegetation and trees will not be disturbed and will be allowed to decompose naturally. Notwithstanding the last sentence, noxious weeds and diseased trees may be removed from Natural Vegetation Zones and storm-damaged trees or other trees in danger of falling and harming life and property may be taken down (but not removed) from Natural Vegetation Zones. That part of Outlot B, THE PRESERVE AT NOTTINGHAM that is not part of the Entrance Easement Area is designated a Natural Vegetation Zone. As additional land is annexed into the Active Development Area, additional Natural Vegetation Zones may be described by amendment to this Section.

ARTICLE VI

ASSOCIATION INSURANCE

Section 1. Liability Insurance. The Association shall keep in force at all times a policy of comprehensive general liability insurance, with coverage of at least \$1,000,000 for bodily injury and property damage for any single occurrence and at least \$2,000,000 aggregate coverage. The policy must contain a severability of interest clause or an endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

Section 2. Hazard Insurance. The Association shall procure insurance for fire, extended coverage, vandalism and any other perils the Board may deem necessary on all insurable real property and personal property owned by the Association. The insurance shall be on a current replacement cost basis in such amounts and with such deductibles as the Board may determine. The proceeds of such hazard insurance shall be used solely for the repair, replacement or reconstruction of such insurable common property, including insured improvements. The Association shall maintain funds for all such deductibles in its reserves and shall designate such funds for that purpose only.

Section 3. Other Insurance. The Association shall also procure:

(a) Fidelity bonds or insurance coverage against dishonest acts on the part of directors, officers, managers, trustees, employees or persons responsible for handling funds belonging to or administered by the Association if deemed to be advisable by the Board;

(b) Worker's compensation insurance if required by law;

(c) Directors and officers liability insurance with such reasonable limits and coverages as the Board shall determine from time to time; and

(d) Such other insurance as the Board may determine from time to time to be in the best interest of the Association and the Owners.

Section 4. Cost of Insurance. The cost of such insurance shall be assessed against the Owners and their Lots as provided in Article VIII below.

Section 5. First Mortgagees. First mortgagees of Lots, jointly or singly, may pay overdue premiums on insurance policies, or may secure new insurance coverage upon the lapse of a policy, for the common property. First mortgagees making such payments shall be owed immediate reimbursement from the Association. The Association is authorized to enter into an agreement in favor of all first mortgagees of Lots establishing entitlement to such reimbursement.

ARTICLE VII

INCORPORATION AND ACTIVATION OF THE ASSOCIATION

Section 1. Incorporation. The Developer shall incorporate the Association as follows:

(a) The Association shall be incorporated as a Minnesota nonprofit corporation in full compliance with all applicable statutes and regulations.

(b) The name of the Association shall be "The Preserve at Nottingham Homeowners Association, Inc." if that name is available at the time of incorporation; otherwise the Developer may choose a name in its discretion.

(c) The articles, by-laws and other organizational documents of the Association shall comply with the prevailing standards for homeowners associations for single family subdivisions in the Minneapolis-St. Paul Standard Metropolitan Statistical Area as of the date of incorporation.

(d) Each and every Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

(e) The Association shall have only one class of membership. Members shall be entitled to one vote for each Lot owned, shall have the right to attend membership

meetings and Board meetings, and shall be subject to assessments and liens pursuant to this Declaration.

(f) When more than one person owns any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. Upon becoming an Owner, each Owner shall register his address with the Secretary of the Association and, if a Lot is owned by multiple Owners, they shall at that time register with the Secretary their written agreement as to how they will share their votes among themselves and how they shall resolve any voting conflicts among themselves. Such a voting agreement may be amended at any time by registering with the Secretary a written amendment thereto executed by all Owners of the Lot.

Section 2. Activation. At any time after the date hereof, the Developer may activate the Association. The Developer shall activate the Association no later than the earlier of (x) the date that is ninety (90) days after the date that the Developer owns less than 25% of the total number of Lots or (y) December 31, 2008. To activate the Association, the Developer shall do the following:

- (a) Incorporate the Association as provided in the preceding Section;
- (b) Execute and record a confirmation of the easements that Developer granted to the Association in Article III of this Declaration, and the Association shall accept such easements without the need for the Association to execute any instrument of acceptance;
- (c) Mail written notice to all Owners and occupants at the addresses of the Lots, announcing that the Association has been incorporated and calling an organizational meeting of the Association; and
- (d) Conduct an organizational meeting of the Association, at which the members shall elect a board of directors and the board of directors shall elect officers for the Association, adopt by-laws, and adopt a banking resolution. A quorum for the organizational meeting shall be members owning at least five (5) Lots.

Section 3. Default. If the Developer fails to incorporate and activate the Association as required by this Article within 30 days after written demand by any Owner or group of Owners, then any Owner or group of Owners may incorporate and activate the Association. If a quorum is present at the organizational meeting of the Association, but one or more of the organizational actions required by Section 2.d is not taken, the Association shall nevertheless be deemed activated.

Section 4. Expenses Before Activation. Until the Association is activated, the Developer shall bear all expenses that would otherwise be expenses of the Association, such as the expenses of maintaining Entrance Improvements and related landscaping. No Owner and no Lot shall be subject to assessment and lien for any such expenses incurred before the Association has been activated.

ARTICLE VIII
COVENANT FOR GENERAL AND SPECIAL ASSESSMENTS

Section 1. Lien. The Developer, for each Lot, hereby covenants, and each subsequent 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 to the Association: (a) general assessments or charges, and (b) 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 general and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge upon each Lot and shall be a continuing lien upon each Lot. General 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. General assessments and special assessments shall be due and payable in lump sums or in equal periodic installments as determined by the Board.

Section 2. Personal Obligation. Each installment of a general or special assessment together with interest, costs, and reasonable attorneys' fees, shall be the personal obligation of the person who was the Owner of such Lot at the time when the installment fell due. The personal obligation for delinquent installments shall not pass to the Owner's successors in title unless expressly assumed by them. Sale or transfer of any Lot shall not affect the assessment lien, except as provided in Section 10 of this Article.

Section 3. Purpose of General Assessments. General assessments shall be imposed for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Lots and for the improvement and maintenance of the Association's easement areas and/or Common Areas, and may include (but not be limited to) payment by the Association for the following items:

- (a) Utility services;
- (b) Taxes and special assessments against the Association's property, if any;
- (c) Income and other taxes levied or assessed against or charged to the Association, if any;
- (d) Premiums for insurance carried by the Association, the deductible amount not covered by such insurance and the additional amounts deposited by the Association or its Board to repair or restore improvements on the Common Areas;
- (e) Repair, replacement, construction, reconstruction, alterations, maintenance, snow removal, and additions to personal property and improvements owned by the Association;
- (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 Association's real and personal property.

Adequate reserve funds funded from general assessments and not from special assessments, shall be maintained for (i) maintenance, repair and replacement of Entrance Improvements, and all other structures and equipment which must be replaced by the Association on a periodic basis; and (ii) contingencies, emergencies and working capital needs.

Section 4. Maximum General Assessment. Each year after the first full fiscal year of the Association, the Board may increase the annual general assessment in an amount not to exceed the greater of: (a) five percent (5%) of the previous year's general assessment; or (b) the percentage increase in the most recently published U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, Urban Wage Earners and Clerical Workers, Minneapolis-Saint Paul Index, All Items, compared to the same index published twelve months earlier. Any increase in excess of this amount shall require the approval of a simple majority of the votes of all Owners who are voting in person or by proxy at a meeting called for this purpose.

Section 5. Special Assessments for Capital Improvements. In addition to the general assessments authorized above, the Association may levy special assessments, payable in installments extending up to five years, for the purpose of defraying, in whole or in part, the cost (not covered by reserves) of any construction, reconstruction, repair or replacement of the Entrance Improvements or any other structures or equipment to be owned or maintained by the Association, provided that any such assessment shall have the assent of a simple majority of the votes of all Owners who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Notice and Quorum for Certain Actions. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 or 5 of this Article shall be sent to all Owners not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of Owners or of proxies entitled to cast 60% of all the votes of all Owners shall constitute a quorum. If the required 60% quorum is not present at the first meeting, a second meeting may be called subject to the same notice requirement, and the required quorum at the second meeting shall be 30% of the votes of all Owners. If the required 30% quorum is not present at the second meeting, a third meeting may be called subject to the same notice requirement, and the required quorum at the third meeting shall be 15% of the votes of all Owners. No such subsequent meeting shall be held later than 60 days after the preceding meeting.

Section 7. Uniform Rate of Assessment. Both general and special assessments shall be fixed at a uniform rate for all Lots.

Section 8. Date of Commencement of General Assessments; Due Dates. The Board shall fix the amount of the general assessment provided for herein against each Lot at least fifteen (15) days in advance of each assessment. The initial general assessment period shall commence as to all Lots the first day of the month following the recording of this Declaration and run through and including the next succeeding December 31. Each succeeding general assessment period

shall be a calendar year. Written notice of the general assessment shall be sent to every Owner subject to assessment.

Section 9. Effect of Nonpayment of Assessments; Remedies of the Association. Any installment of an assessment not paid within fifteen (15) days after its due date shall bear interest from the due date at the rate of eight percent (8%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose by action the lien against the Lot in the same manner as a real estate mortgage may be foreclosed. Any such action shall not be subject to the dispute resolution provisions of Article IX. No Owner may waive or otherwise escape liability for assessments by non-use of the Common Area or abandonment of the Owner's Lot. In addition to the rights set forth above, the Board may adopt a policy for the collection of past-due assessments from Owners. Such policy may include fees for administration of the policy and for the costs of collection.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. While the transfer of any Lot generally does not affect the assessment lien, the foreclosure of any such mortgage or any proceeding in lieu thereof or deed in lieu of foreclosure, shall extinguish the lien of such assessments as to payments which became due prior to such foreclosure or proceeding in lieu thereof or which become due during any period of redemption and, if the assessments for which the liens were extinguished cannot be collected in an action against the person personally obligated to pay them, the Association shall bear such assessment as a common cost. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. 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.

ARTICLE IX DISPUTE RESOLUTION

Section 1. Alternative Method for Resolving Disputes. Developer and its officers, directors, employees and agents; the Association, its officers, directors and committee members; all Owners; any builder of a home on a Lot and its officers, directors, employees and agents; and any person or other entity not otherwise subject to this Declaration who agrees to submit to this Article IX (each such person or entity being referred to as a "**Bound Party**") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 2 (collectively, "**Claims**") to the procedures set forth in Section 3.

Section 2. Claims. Unless specifically exempted below, all Claims between any of the Bound Parties, whether in contract, tort or otherwise, and regardless of how the same might have arisen or on what they might be based including, but not limited to, Claims (i) arising out of or

relating to the interpretation, application or enforcement of this Declaration or the governing documents of the Association or the rights, obligations and duties of any Bound Party under this Declaration or the governing documents of the Association; (ii) relating to the design or construction of improvements; or (iii) based upon any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party, shall be subject to the provisions of this Article IX.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of this Article IX:

- a. Any suit by the Association against any Bound Party to enforce the provisions of Article VIII (Covenant for General and Special Assessments);
- b. Any suit by the Association, Committee or Developer to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to act under and enforce the provisions of this Declaration, including, but not limited to, Article II (General Covenants Affecting All Lots), Article III (Special Covenants Affecting Certain Lots), Article IV (Architectural Control Committee), and Article V (Common Areas and Public Areas);
- c. Any suit between or among Owners, which does not include Developer, a builder of a home on a Lot, or the Association as a party, if such suit asserts an allegation which would constitute a cause of action independent of this Declaration or the governing documents of the Association; and
- d. Any suit in which any indispensable party is not a Bound Party.

With the consent of all parties hereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 3.

Section 3. Mandatory Procedures.

a. Consensus for Association Action. Except as provided in this Section, the Association may not commence a legal proceeding under this Article without the approval of at least two-thirds of the eligible votes of the members of the Association. This Section shall not apply, however, to:

- (1) proceedings brought by the Association to enforce the provisions of this Declaration and the governing documents of the Association (including, but not limited to, the foreclosure of liens);
- (2) the imposition and collection of assessments;
- (3) proceedings involving challenges to property taxes and governmental special assessments;

- (4) counterclaims brought by the Association in proceedings instituted against it;
- (5) proceedings brought by the Association to compel the parties to follow the dispute resolution process required by this Article IX; or
- (6) proceedings brought by the Association to enforce awards granted pursuant to this Article IX.

b. Developer's Right to Notice and Opportunity to Cure. Prior to the Association or any Owner commencing any proceeding to which Developer is a party, including but not limited to an alleged defect of any improvement, Developer shall have the right to be heard by the Owner or the Association and to access, inspect, correct the condition of, or redesign any portion of any improvement as to which a defect is alleged or otherwise correct the alleged dispute.

c. Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and the Respondent referred to herein individually, as a "Party," or, collectively, as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

- (1) the nature of the Claim, including all entities involved and Respondent's role in the Claim;
- (2) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- (3) the proposed remedy;
- (4) the name and, if known, the address and telephone number of each individual likely to have information relevant to the Claim;
- (5) a copy of, or description by category and location of, any document in the Claimant's possession, custody or control, relevant to the Claim;
- (6) a computation by any category of damages claimed by Claimant, including a copy of all documents on which the damages are based; and
- (7) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

d. Negotiation and Mediation.

- (1) The Parties shall make every reasonable effort to meet in person within 30 days of the date of the Notice and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing by either Party, accompanied by a copy of the Notice, the Board may appoint a

representative to assist the Parties in negotiation, provided the Association is not a Party.

- (2) If the Parties do not resolve the Claim within 30 days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("**Termination of Negotiations**"), Claimant shall have 30 days to submit the Claim to mediation under the auspices of the American Arbitration Association ("**AAA**") in accordance with the AAA's Commercial or Construction Industry Mediation Rules, as appropriate.
- (3) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim, provided nothing herein shall release or discharge Respondent from any liability to any person other than the Claimant.
- (4) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 days after appointment of the mediator, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings ("**Termination of Mediation**"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 3 and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section 3. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party, or if more than one non-complying Party, from all such Parties pro rata, all costs incurred in enforcing such agreement, including, but not limited to, attorneys' fees and court costs.

e. Binding Arbitration.

- (1) Upon Termination of Mediation, Claimant shall thereafter be entitled to initiate final, binding arbitration of the Claim under the auspices of the AAA in accordance with the AAA's Commercial or Construction Industry Arbitration Rules, as appropriate. Such claims shall not be decided by or in a court of law. Any judgment based upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. If the claimed amount exceeds \$250,000, the dispute shall be heard and determined by three arbitrators. Otherwise, unless

mutually agreed to by the parties, there shall be one arbitrator. Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved.

- (2) Each Party shall bear its own costs and expenses, including, but not limited to, filing fees and an equal share of the arbitrator and administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the non-contesting party shall be awarded reasonable attorneys' fees and expenses incurred in defending such contest. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator(s).
- (3) The award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a Party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of all Parties.
- (4) The arbitrator(s) shall have no authority to award any damages, whether denominated special, consequential, exemplary or punitive, that are not measured by the Claimant's actual out-of-pocket loss.

Section 4. Amendment of Article IX. This Article IX may not be amended within the twenty-year period beginning on the effective date of this Declaration without the express written consent of Developer.

ARTICLE X

ADDITIONAL RIGHTS OF MORTGAGEES

Section 1. Notice of Meetings. The holder of any mortgage of record against any Lot, upon written notice to the Association advising it of such mortgage interest and its mailing address, shall be given written notice by the Association of all regular and special meetings of the Owners and of the Board; but failure to give such notice to any or all such mortgagees shall not invalidate or affect, in any way, such meeting, if otherwise duly called and held.

Section 2. No Suspension of Rights. Any voting rights which are suspended as to any Owner and that Owner's employees, licensees, invitees, tenants and guests, pursuant to this Declaration, or pursuant to the By-Laws of the Association, shall not be suspended as to any mortgagee or other person who becomes an Owner by virtue of mortgage foreclosure or by any transfer of title in lieu of foreclosure, because of any default or failure of the prior Owner.

Section 3. Notice of Defaults. The holder of any mortgage of record against any Lot, upon written request given by the holder of such mortgage to the Association advising the Association of such mortgage interest and its mailing address, shall be given written notice by the Association of all defaults of the Owner of the Lot upon which such mortgage is a lien, then or thereafter existing, in fulfilling his obligations under this Declaration or the By-Laws of the

Association; but the defaults set out in such notice shall not be conclusive on the Association, and the Association shall have the right to enforce all claims against such Owner for all defaults of such Owner whether or not notice thereof is given to the holder of such mortgage.

Section 4. Copy of Budget. The holder of any mortgage of record against any Lot, upon written request given by the holder of such mortgage to the Association advising the Association of such mortgage interest and its mailing address, shall be sent a copy of the proposed annual budget of the Association at least fifteen (15) days prior to the meeting at which such proposed annual budget is to be considered, and the holder of such mortgage shall be entitled to raise objections to and comments upon such proposed annual budget at such meeting or otherwise; but failure to send such copy to any or all such mortgagees shall not invalidate or affect, in any way, such proposed annual budget or any action taken with respect thereto, nor shall any objection or comments by any such mortgagees with respect to such proposed annual budget be binding upon the Association.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Enforcement. The Developer, the Association, or any Owner or any mortgagee of record, shall have the right to enforce this Declaration by proceedings at law or in equity. Failure by any person or governmental authority to enforce any provision of this Declaration shall not be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 3. Duration. This Declaration shall run with and bind the Lots and the Common Areas for a term of thirty (30) years from the date this Declaration is recorded, after which time this Declaration shall be automatically renewed for successive periods of ten (10) years each.

Section 4. Amendment. Subject to Article IX, Section 4, this Declaration may be amended by an instrument signed by the Owners owning at least 60% of the Lots and by the holders of first mortgages on at least 60% of the Lots. Each amendment must be recorded with the County Recorder and/or Registrar of Titles, as appropriate.

Section 5. Notices. Any notice required to be sent to any Owner under the provision of this Declaration shall be deemed to have been properly sent when mailed postage prepaid to the last known address of the person who appears as Owner in the records of the Association at the time of such mailing and to the occupant of the address of the Owner's Lot, if it is a different address.

Section 6. Captions. The title of this instrument and the captions of the articles, sections and subsections hereof are for convenience of reference only.

Section 7. Annexation. Additional Lots and Outlots within the Future Development Area may be (but need not be) annexed into the Active Development Area by the Developer,

without the consent of any other Owners, at any time and from time to time before the tenth anniversary of the date this Declaration is recorded. Such annexations shall be accomplished by means of one or more supplemental declarations (which may be entitled amendments to declaration) executed by the Developer and recorded with the County Recorder and/or Registrar of Titles, as appropriate.

Section 8. No Trust Created. No trust is created by this Declaration or by the conveyance of Common Areas to the Association. No charitable purpose is served by this Declaration. This Declaration is for the private use and benefit of the Owners and not for any public use, benefit or purpose.

IN WITNESS WHEREOF, the Developer has executed this Declaration as of the day and year first above written.

DEVELOPER:

LUNDGREN BROS. CONSTRUCTION, INC.

By
Its

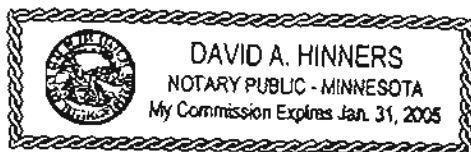
Marc S. Anderson
Vice President

STATE OF MINNESOTA


COUNTY OF HENNEPIN

} ss.

The foregoing instrument was acknowledged before me this 31 day of MAY, 2000, by MARC S. ANDERSON, the VICE-PRESIDENT of Lundgren Bros. Construction, Inc., a Minnesota corporation, on behalf of the corporation.



D. A. Hinnert
Notary Public

DOCUMENT # 7580550
CO. REC.
BY  DEPUTY

Additional Lots and Outlots within the Future Development Area may be (but need not be) annexed into the Active Development Area by the Developer, without the consent of any other Owners, at any time and from time to time before the tenth anniversary of the date this Declaration is recorded. Such annexations shall be accomplished by means of one or more supplemental declarations (which may be entitled amendments to declaration) executed by the Developer and recorded with the County Recorder and/or Registrar of Titles, as appropriate.

D. The Developer owns at least 60% of the Lots free and clear of any mortgage. The Developer desires to amend certain terms and conditions of the Declaration as set forth below.

E. Outlot A, THE PRESERVE AT NOTTINGHAM is the Future Development Area under the Declaration. The Developer has replatted said Outlot A into THE PRESERVE AT NOTTINGHAM SECOND ADDITION and desires to annex a portion of said Outlot A into the Active Development Area and subject it to the Declaration, as set forth below.

NOW, THEREFORE, the Developer amends and supplements the Declaration as follows:

1. Annexation into Active Development Area. Blocks 1 through 6, THE PRESERVE AT NOTTINGHAM SECOND ADDITION are hereby annexed into the Active Development Area and the definition of "Active Development Area" in Article I, Section 1 of the Declaration is hereby amended by adding the descriptions of the foregoing described land to such definition.

2. Future Development Area. The definition of "Future Development Area" in Article I, Section 1 of the Declaration is hereby amended and restated as follows:

"Future Development Area" means the lands which may be annexed into the Active Development Area pursuant to Article XI, Section 7, namely Outlots A and B, THE PRESERVE AT NOTTINGHAM SECOND ADDITION.

3. Addition of Lots. The definition of "Lots" in Article I, Section 1 of the Declaration is hereby amended by adding the following described lots (the "Added Lots") to the list of Lots described in the Declaration:

Lots 1 and 2, Block 1;
Lots 1 through 9, Block 2;
Lots 1 through 5, Block 3;
Lots 1 through 3, Block 4;
Lots 1 through 6, Block 5; and
Lots 1 through 10, Block 6; all in
THE PRESERVE AT NOTTINGHAM SECOND ADDITION, according to
the plat thereof on file and of record in the office of the County Recorder for
Hennepin County, Minnesota.

The Added Lots are hereby subjected to the Declaration. The Added Lots shall be transferred, held, sold, conveyed and developed always subject to all the easements, covenants, restrictions, conditions and other terms and provisions of the Declaration to the same extent as though the Added Lots had been designated as Lots subject to the Declaration as originally executed.

4. Trees. Article II, Section 14, clause (b) is hereby amended and restated as follows:

(b) If the Owner fails to maintain or replace the tree, then the Association (or if the Association has not yet been activated, the Developer) shall have the right and the obligation to do so, shall charge the cost thereof against the Owner and shall have the right but not the obligation to file and enforce a lien against the Lot for the cost thereof.

5. Pond Sites and Pond Access Lanes. Article III, Section 3 of the Declaration is hereby amended by defining the following additional Pond Sites:

Pond Site No. 3A: the platted drainage and utility easement at the rear of Lots 1 through 4, Block 6, THE PRESERVE AT NOTTINGHAM SECOND ADDITION; and

Pond Site No. 4A: the platted drainage and utility easement at the rear of Lots 7, 8, Block 2, and the northeasterly corner of Lot 9, Block 2, THE PRESERVE AT NOTTINGHAM SECOND ADDITION.

Article III, Section 3 of the Declaration is hereby amended by defining the following additional Pond Access Lanes:

- (7) the platted drainage and utility easement along the boundary between Lots 7 and 8, Block 2, THE PRESERVE AT NOTTINGHAM SECOND ADDITION; and
- (8) the platted drainage and utility easement along the northeasterly boundary of Lot 9, Block 2, THE PRESERVE AT NOTTINGHAM SECOND ADDITION;

6. Landscaping Sites. Article III, Section 4(b) of the Declaration is hereby amended by adding the following Landscaping Sites:

- (3) That part of Lot 9, Block 2, THE PRESERVE AT NOTTINGHAM SECOND ADDITION within the triangular area formed by extending a line from a point on the southerly line of said Lot that is forty (40) feet from the southwesterly corner of said Lot to a point on the westerly lot line of said Lot that is forty (40) feet from said southwesterly corner.
- (4) That part of Lot 1, Block 3, THE PRESERVE AT NOTTINGHAM SECOND ADDITION within the triangular area formed by extending a line from a point on the northerly line of said Lot that is forty (40) feet from the northwesterly corner of said Lot to a point on the westerly lot line of said Lot that is forty (40) feet from said northwesterly corner.

- (5) That part of Lot 3, Block 4, THE PRESERVE AT NOTTINGHAM SECOND ADDITION within the triangular area formed by extending a line from a point on the easterly line of said Lot that is forty (40) feet from the northeasterly corner of said Lot to a point on the northerly lot line of said Lot that is forty (40) feet from said northeasterly corner.
- (6) That part of Lot 1, Block 5, THE PRESERVE AT NOTTINGHAM SECOND ADDITION within the triangular area formed by extending a line from a point on the easterly line of said Lot that is forty (40) feet from the southeasterly corner of said Lot to a point on the southerly lot line of said Lot that is forty (40) feet from said southeasterly corner.
- (7) That part of Lot 3, Block 5, THE PRESERVE AT NOTTINGHAM SECOND ADDITION within the triangular area formed by extending a line from a point on the easterly line of said Lot that is forty (40) feet from the northeasterly corner of said Lot to a point on the northerly lot line of said Lot that is forty (40) feet from said northeasterly corner.
- (8) That part of Lot 6, Block 5, THE PRESERVE AT NOTTINGHAM SECOND ADDITION within the triangular area formed by extending a line from a point on the northwesterly line of said Lot that is forty (40) feet from the most westerly corner of said Lot to a point on the southwesterly lot line of said Lot that is forty (40) feet from said most westerly corner.
- (9) That part of Lot 1, Block 6, THE PRESERVE AT NOTTINGHAM SECOND ADDITION within the triangular area formed by extending a line from a point on the southeasterly line of said Lot that is forty (40) feet from the most southerly corner of said Lot to a point on the southeasterly lot line of said Lot that is forty (40) feet from said most southerly corner.
- (10) That part of Lot 5, Block 6, THE PRESERVE AT NOTTINGHAM SECOND ADDITION within the triangular area formed by extending a line from a point on the easterly line of said Lot that is forty (40) feet from the southeasterly corner of said Lot to a point on the southerly lot line of said Lot that is forty (40) feet from said southeasterly corner.
- (11) That part of Lots 8 and 9, Block 6, THE PRESERVE AT NOTTINGHAM SECOND ADDITION within the triangular area formed by extending a line from a point on the northerly line of said Lot 9 that is forty (40) feet from the northeasterly corner of said Lot 9 to a point on the easterly lot line of said Lot 8 that is forty (40) feet from said northeasterly corner of said Lot 9.

7. Tree Protection Zones. Article III, Section 5 of the Declaration is hereby amended by adding the following Lots to the list of parcels that have been designated as within a Tree Protection Zone by the City of Maple Grove: Lots 1 and 2, Block 1; Lots 1 through 5, Block 2; and Lots 6 through 10, Block 6; all in THE PRESERVE AT NOTTINGHAM SECOND ADDITION.

8. Wetland Buffers. Article III, Section 6(a) of the Declaration is hereby amended by adding the following descriptions of Wetland Buffer Areas:

- (4) The Wetlands at the rear of Lots 4, 5, 6 and 7, Block 2, THE PRESERVE AT NOTTINGHAM SECOND ADDITION have Wetland Buffer Areas that are at least 25 feet wide, the upland boundaries of which are identified by permanent wetland monuments toward the rear of said Lots.
- (5) The Wetlands in Lots 4 through 10, Block 6, THE PRESERVE AT NOTTINGHAM SECOND ADDITION have Wetland Buffer Areas that are at least 10 feet wide, the upland boundaries of which are identified by permanent wetland monuments toward the rear of said Lots.

9. Wetland Buffer Monuments. The following text is added to the end of Article III, Section 6(a):

No person shall disturb a monument that indicates the boundary of a Wetland Buffer Area. In the event that such a monument is damaged, destroyed, or moved, or removed, Owner of the Lot upon which such a monument is located shall repair or replace the monument as necessary. If the Owner fails to maintain or replace monument, the Association (or if the Association has not yet been activated, the Developer) shall have the right and the obligation to repair or replace the monument as necessary and shall charge the cost thereof against the Owner and shall have the right but not the obligation to file and enforce a lien against the Lot for the cost thereof. The Developer reserves for itself and the Association an easement to enter into any Lot with a Wetland Buffer Area monument for the purposes of repairing or replacing such monument.

10. Mitigation Area Monuments. The following text is added to the end of Article III, Section 7(a):

No person shall disturb a monument that indicates the boundary of a Mitigation Area. In the event that such a monument is damaged, destroyed, or moved, or removed, Owner of the Lot upon which such a monument is located shall repair or replace the monument as necessary. If the Owner fails to maintain or replace monument, the Association (or if the Association has not yet been activated, the Developer) shall have the right and the obligation to repair or replace the monument as necessary and shall charge the cost thereof against the Owner and shall have the right but not the obligation to file and enforce a lien against the Lot for the cost thereof. The Developer reserves for itself and the Association an easement to enter into any Lot with a Wetland Buffer Area monument for the purposes of repairing or replacing such monument.

11. Overflow Swales. Article III, Section 9 of the Declaration is hereby amended by adding the following locations where emergency overflow swales will be constructed: in the platted drainage and utility easements along the boundary between Lots 4 and 5, Block 2; in the platted drainage and utility easements along the boundary between Lots 1 and 2, Block 3; in the platted drainage and utility easements along the boundary between Lots 6 and 7, Block 6; and

within all present and future drainage and utility easements of Lot 3, Block 4; all in THE PRESERVE AT NOTTINGHAM SECOND ADDITION.

12. Disposition of Outlots. Article III, Section 11 of the Declaration is hereby amended to read as follows:

Outlot A, THE PRESERVE AT NOTTINGHAM has been replatted as THE PRESERVE AT NOTTINGHAM SECOND ADDITION.

Outlot B, THE PRESERVE AT NOTTINGHAM will be deeded to the Association as Common Area. It contains Wetlands, Wetland Buffer Areas, a Mitigation Area, a Natural Vegetation Zone and will contain Entrance Improvements. The Outlot is within the Tree Protection Zone.

Outlot A, THE PRESERVE AT NOTTINGHAM SECOND ADDITION is part of the Future Development Area. It contains land that may be platted into additional Lots, Association open space, or used for Entrance Improvements and Landscaping.

Outlot B, THE PRESERVE AT NOTTINGHAM SECOND ADDITION is part of the Future Development Area. It contains Wetlands and may be platted into additional Lots, Association open space, or other Common Areas.

13. Minimum Elevations. Article III is amended by adding the following Section 12:

Section 12. Minimum Elevations of Improvements. Each home constructed on Lots 4 through 10, Block 6, THE PRESERVE AT NOTTINGHAM SECOND ADDITION shall have a lowest allowable floor elevation of at least 920.5 feet above mean sea level and a lowest allowable opening (i.e., window, door or other similar opening) of 923.0 feet above mean sea level. Mean sea level shall be measured with reference to the National Geodetic Vertical Datum of 1929.

14. Declaration Continues. Except as specifically amended by this First Amendment, the Declaration continues unmodified, in full force and effect. In the event of any conflict between the terms of the Declaration and the terms of this First Amendment, the terms of this First Amendment shall control.

IN WITNESS WHEREOF, Developer has executed this instrument as of the day and year first above written.

DEVELOPER:

LUNDGREN BROS. CONSTRUCTION,
INC.

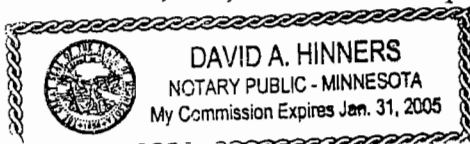
By Marc Anderson
Its Vice President

STATE OF MINNESOTA

COUNTY OF HENNEPIN

} ss.

The foregoing instrument was acknowledged before me this 31ST day of October, 2001 by MARC S. ANDERSON, the VICE PRESIDENT of Lundgren Bros. Construction, Inc., a Minnesota corporation, on behalf of the corporation.



David A. Hanners
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

LEONARD, STREET AND DEINARD P.A. (RLS/HMM)
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402

2002 AND PRIOR TAXES PAID
TAXPAYER SERVICES
TRANSFER ENTERED

8138183

OFFICE OF COUNTY RECORDER
HENNEPIN COUNTY, MINNESOTA

CERTIFIED FILED AND OR
RECORDED ON

AUG 19 2003

100

2003 AUG 19 PM 4:08

AS DOCUMENT 8138183

HENNEPIN COUNTY MINN.
DEPUTY

REC FEE 15-
COPY FEE 1-

Michael McCune
CO. REC.
DEPUTY

(Space Above for Recorder/Registrar Use)

**SECOND AMENDMENT TO
DECLARATION OF COVENANTS
FOR
THE PRESERVE AT NOTTINGHAM**

(Annexing The Preserve At Nottingham Third Addition)

THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS (this "Second Amendment") is made as of this 11th day of August, 2003, by LUNDGREN BROS. CONSTRUCTION, INC., a Minnesota corporation ("Developer").

RECITALS

A. The following described property in Hennepin County, Minnesota is subject to that certain Declaration of Covenants for The Preserve at Nottingham, dated May 31, 2000 and recorded August 29, 2000 as Hennepin County Recorder Document No. 7346376, as amended by that certain First Amendment to Declaration of Covenants for The Preserve at Nottingham dated October 31, 2001 and recorded November 13, 2001 as Hennepin County Recorder Document No. 7580550 (as previously amended, the "Declaration"):

Lots 1 through 13, Block 1;
Lot 1, Block 2;
Lots 1 through 3, Block 3;
Lots 1 through 11, Block 4;
Lots 1 through 4, Block 5; and
Outlot B; all in

THE PRESERVE AT NOTTINGHAM, according to the plat thereof on file or of record in the office of the County Recorder for Hennepin County, Minnesota; and

Lots 1 and 2, Block 1;
Lots 1 through 9, Block 2;
Lots 1 through 5, Block 3;
Lots 1 through 3, Block 4;
Lots 1 through 6, Block 5;
Lots 1 through 10, Block 6; all in

THE PRESERVE AT NOTTINGHAM SECOND ADDITION, according to the plat thereof on file and of record in the office of the County Recorder for Hennepin County, Minnesota.

B. Article XI, Section 4 of the Declaration reads as follows:

Subject to Article IX, Section 4, this Declaration may be amended by an instrument signed by the Owners owning at least 60% of the Lots and by the holders of first mortgages on at least 60% of the Lots. Each amendment must be recorded with the County Recorder and/or Registrar of Titles, as appropriate.

C. Article XI, Section 7 of the Declaration reads as follows:

Additional Lots and Outlots within the Future Development Area may be (but need not be) annexed into the Active Development Area by the Developer, without the consent of any other Owners, at any time and from time to time before the tenth anniversary of the date this Declaration is recorded. Such annexations shall be accomplished by means of one or more supplemental declarations (which may be entitled amendments to declaration) executed by the Developer and recorded with the County Recorder and/or Registrar of Titles, as appropriate.

D. The Developer owns at least 60% of the Lots free and clear of any mortgage. The Developer desires to amend certain terms and conditions of the Declaration as set forth below.

E. Outlots A and B, THE PRESERVE AT NOTTINGHAM SECOND ADDITION are a part of the Future Development Area under the Declaration. The Developer has replatted such Outlots into THE PRESERVE AT NOTTINGHAM THIRD ADDITION and desires to annex a portion of such Outlots into the Active Development Area and subject it to the Declaration, as set forth below.

NOW, THEREFORE, the Developer amends and supplements the Declaration as follows:

1. Annexation into Active Development Area. Blocks 1 through 3, and Outlots A and B, THE PRESERVE AT NOTTINGHAM THIRD ADDITION are hereby annexed into the Active Development Area and the definition of "Active Development Area" in Article I, Section 1 of the Declaration is hereby amended by adding the descriptions of the foregoing described land to such definition.

2. Future Development Area. The definition of "Future Development Area" in Article I, Section 1 of the Declaration is hereby amended and restated as follows:

"Future Development Area" means the lands which may be annexed into the Active Development Area pursuant to Article XI, Section 7, namely Outlot C, THE PRESERVE AT NOTTINGHAM THIRD ADDITION.

3. Addition of Lots. The definition of "Lots" in Article I, Section 1 of the Declaration is hereby amended by adding the following described lots (the "Added Lots") to the list of Lots described in the Declaration:

Lots 1 through 11, Block 1;
Lots 1 through 8, Block 2; and
Lots 1 through 10, Block 3; all in
THE PRESERVE AT NOTTINGHAM THIRD ADDITION, according to
the plat thereof on file and of record in the office of the County Recorder for
Hennepin County, Minnesota.

The Added Lots are hereby subjected to the Declaration. The Added Lots shall be transferred, held, sold, conveyed and developed always subject to all the easements, covenants, restrictions, conditions and other terms and provisions of the Declaration to the same extent as though the Added Lots had been designated as Lots subject to the Declaration as originally executed.

4. Erosion Control. Article II of the Declaration is hereby amended by adding the following Section 18:

Section 18. Erosion Control. The Owner of each Lot shall control soil erosion within the Lot in compliance with all applicable federal, state and local laws. If an Owner fails to control erosion in compliance with any law, then the Association shall have the right to do so and shall charge the cost thereof against the Owner and shall have the right to file and enforce a lien against the Lot for the cost thereof. The Association and its employees and contractors shall have a license to enter any Lot in connection with the exercise of its rights under this Section.

5. Entrance Improvement Areas. Article III, Section 1(a) of the Declaration is hereby amended by adding the following additional Easement Improvement Area:

- (5) The southerly 40.00 feet of Outlot A, THE PRESERVE AT NOTTINGHAM THIRD ADDITION, together the south 30.00 feet of the west 5.00 feet of Lot 1, Block 1, THE PRESERVE AT NOTTINGHAM THIRD ADDITION, and southwesterly 10.00 feet of said Lot 1, Block 1, THE PRESERVE AT NOTTINGHAM THIRD ADDITION.

6. Pond Sites and Pond Access Lanes. Article III, Section 3 of the Declaration is hereby amended by defining the following additional Pond Site:

Pond Site No. 3B: the platted drainage and utility easement at the rear of Lots 2 through 7, Block 2, THE PRESERVE AT NOTTINGHAM THIRD ADDITION.

Article III, Section 3 of the Declaration is hereby amended by defining the following additional Pond Access Lanes:

- (9) the platted drainage and utility easement along the rear property line of Lots 7 and 8, Block 2, THE PRESERVE AT NOTTINGHAM THIRD ADDITION.

7. Landscaping Sites. Article III, Section 4(b) of the Declaration is hereby amended by adding the following Landscaping Sites:

- (12) That part of Lot 8, Block 2, THE PRESERVE AT NOTTINGHAM THIRD ADDITION within the triangular area formed by extending a line from a point on the southerly line of said Lot that is forty (40) feet from the southwesterly corner of said Lot to a point on the westerly lot line of said Lot that is forty (40) feet from said southwesterly corner.
- (13) That part of Lot 1, Block 3, THE PRESERVE AT NOTTINGHAM THIRD ADDITION within the triangular area formed by extending a line from a point on the northwesterly line of said Lot that is forty (40) feet from the northwesterly corner of said Lot to a point on the southwesterly lot line of said Lot that is forty (40) feet from said northwesterly corner.
- (14) That part of Lot 10, Block 3, THE PRESERVE AT NOTTINGHAM THIRD ADDITION within the triangular area formed by extending a line from a point on the northeasterly line of said Lot that is forty (40) feet from the northerly corner of said Lot to a point on the northwesterly lot line of said Lot that is forty (40) feet from said northerly corner.

8. Tree Protection Zones. Article III, Section 5 of the Declaration is hereby amended by adding the following Lots to the list of parcels that have been designated as within a Tree Protection Zone by the City of Maple Grove: Lots 1 through 11, Block 1 and Lots 1-8, Block 2; all in THE PRESERVE AT NOTTINGHAM THIRD ADDITION.

9. Wetland Buffers. Article III, Section 6(a) of the Declaration is hereby amended by adding the following descriptions of Wetland Buffer Areas:

- (6) The Wetlands at the rear of Lots 1 and 2, Block 2, THE PRESERVE AT NOTTINGHAM THIRD ADDITION have Wetland Buffer Areas that are at least 10 feet wide, the upland boundaries of which are identified by permanent wetland monuments toward the rear of said Lots.
- (7) The Wetlands at the rear of Lots 1, 2, 4, and 5, Block 3, THE PRESERVE AT NOTTINGHAM THIRD ADDITION have Wetland Buffer Areas that are at least 10 feet wide, the upland boundaries of which are identified by permanent wetland monuments toward the rear of said Lots.

10. Overflow Swales. Article III, Section 9 of the Declaration is hereby amended by adding the following location where an emergency overflow swale will be constructed: in the platted drainage and utility easements along the boundary between Lots 6 and 7, Block 2, THE PRESERVE AT NOTTINGHAM THIRD ADDITION.

11. Disposition of Outlots. Article III, Section 11 of the Declaration is hereby amended to read as follows:

Outlot A, THE PRESERVE AT NOTTINGHAM has been replatted as THE PRESERVE AT NOTTINGHAM SECOND ADDITION.

Outlot B, THE PRESERVE AT NOTTINGHAM will be deeded to the Association as Common Area. It contains Wetlands, Wetland Buffer Areas, a Mitigation Area, a Natural Vegetation Zone and will contain Entrance Improvements. The Outlot is within the Tree Protection Zone.

Outlot A, THE PRESERVE AT NOTTINGHAM SECOND ADDITION has been replatted as part of THE PRESERVE AT NOTTINGHAM THIRD ADDITION.

Outlot B, THE PRESERVE AT NOTTINGHAM SECOND ADDITION has been replatted as part of THE PRESERVE AT NOTTINGHAM THIRD ADDITION.

Outlot A, THE PRESERVE AT NOTTINGHAM THIRD ADDITION will be deeded to the Association as Common Area. It will contain open space, a Natural Vegetation Zone and Entrance Improvements. The Outlot is within the Tree Protection Zone.

Outlot B, THE PRESERVE AT NOTTINGHAM THIRD ADDITION will be deeded to the Association as Common Area. It will contain open space and a Natural Vegetation Zone. The Outlot is within the Tree Protection Zone.

Outlot C, THE PRESERVE AT NOTTINGHAM THIRD ADDITION is part of the Future Development Area. It contains land that may be platted into additional Lots, Association open space, or used for Entrance Improvements and Landscaping.

12. Natural Vegetation Zones. Article V, Section 4 of the Declaration is amended to add the following additional Natural Vegetation Zones: That part of Outlot A, THE PRESERVE AT NOTTINGHAM THIRD ADDITION that is not part of and Entrance Easement Area; and Outlot B, THE PRESERVE AT NOTTINGHAM THIRD ADDITION.

13. Declaration Continues. Except as specifically amended by this Second Amendment, the Declaration continues unmodified, in full force and effect. In the event of any conflict between the terms of the Declaration and the terms of this Second Amendment, the terms of this Second Amendment shall control.

IN WITNESS WHEREOF, Developer has executed this instrument as of the day and year first above written.

DEVELOPER:

LUNDGREN BROS. CONSTRUCTION,
INC.

By *D. A. Hinners*
Its VICE-PRESIDENT

STATE OF MINNESOTA

COUNTY OF HENNEPIN

} ss.

The foregoing instrument was acknowledged before me this 11th day of August, 2003 by David A. Hinners, the Vice President of Lundgren Bros. Construction, Inc., a Minnesota corporation, on behalf of the corporation.



Carole L. Rehm
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

LEONARD, STREET AND DEINARD P.A. (RLS)
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402



Doc No 8360514 05/25/2004 03:28 PM

Certified filed and or recorded on above date:

Office of the County Recorder

Hennepin County, Minnesota

Michael H. Cuniff, County Recorder

Deputy 5

TransID 33106

Fees

\$15.00 DOC

\$5.00 SUR

\$1.00 COPY

\$21.00 Total

(Space Above for Recorder/Registrar Use)

**THIRD AMENDMENT TO
DECLARATION OF COVENANTS
FOR
THE PRESERVE AT NOTTINGHAM
(Annexing The Preserve At Nottingham Fourth Addition)**

THIS THIRD AMENDMENT TO DECLARATION OF COVENANTS (this "**Third Amendment**") is made as of this 17th day of May, 2004, by LUNDGREN BROS. CONSTRUCTION, INC., a Minnesota corporation ("**Developer**").

RECITALS

A. The following described property in Hennepin County, Minnesota is subject to that certain Declaration of Covenants for The Preserve at Nottingham, dated May 31, 2000 and recorded August 29, 2000 as Hennepin County Recorder Document No. 7346376, as amended by that certain First Amendment to Declaration of Covenants for The Preserve at Nottingham dated October 31, 2001 and recorded November 13, 2001 as Hennepin County Recorder Document No. 7580550 and by that certain Second Amendment to Declaration of Covenants for The Preserve at Nottingham dated August 11, 2003 and recorded August 19, 2003 as Hennepin County Recorder Document No. 8138183 (as previously amended, the "**Declaration**");

Lots 1 through 13, Block 1;
Lot 1, Block 2;
Lots 1 through 3, Block 3;
Lots 1 through 11, Block 4;
Lots 1 through 4, Block 5; and
Outlot B; all in

THE PRESERVE AT NOTTINGHAM, according to the plat thereof on file or of record in the office of the County Recorder for Hennepin County, Minnesota; and

Lots 1 and 2, Block 1;
Lots 1 through 9, Block 2;
Lots 1 through 5, Block 3;
Lots 1 through 3, Block 4;

Lots 1 through 6, Block 5;
Lots 1 through 10, Block 6; all in
THE PRESERVE AT NOTTINGHAM SECOND ADDITION, according to
the plat thereof on file and of record in the office of the County Recorder for
Hennepin County, Minnesota; and

Lots 1 through 11, Block 1;
Lots 1 through 8, Block 2;
Lots 1 through 10, Block 3; and
Outlots A and B; all in
THE PRESERVE AT NOTTINGHAM THIRD ADDITION, according to
the plat thereof on file and of record in the office of the County Recorder for
Hennepin County, Minnesota.

B. Article XI, Section 7 of the Declaration reads as follows:

Additional Lots and Outlots within the Future Development Area may be (but need not be) annexed into the Active Development Area by the Developer, without the consent of any other Owners, at any time and from time to time before the tenth anniversary of the date this Declaration is recorded. Such annexations shall be accomplished by means of one or more supplemental declarations (which may be entitled amendments to declaration) executed by the Developer and recorded with the County Recorder and/or Registrar of Titles, as appropriate.

C. The Developer desires to amend certain terms and conditions of the Declaration as set forth below.

D. Outlot C, THE PRESERVE AT NOTTINGHAM THIRD ADDITION is the Future Development Area under the Declaration. The Developer has replatted such Outlot C, together with Outlot J, PALISADES AT NOTTINGHAM, into THE PRESERVE AT NOTTINGHAM FOURTH ADDITION and desires to annex such replatted property into the Active Development Area and subject it to the Declaration, as set forth below.

NOW, THEREFORE, the Developer amends and supplements the Declaration as follows:

1. Annexation into Active Development Area. Blocks 1 through 3, and Outlots A, B, and C, THE PRESERVE AT NOTTINGHAM FOURTH ADDITION are hereby annexed into the Active Development Area and the definition of "Active Development Area" in Article I, Section 1 of the Declaration is hereby amended by adding the descriptions of the foregoing described land to such definition.

2. Future Development Area. Article I, Section 1 of the Declaration is hereby amended to reflect that there is no Future Development Area.

3. Addition of Lots. The definition of "Lots" in Article I, Section 1 of the Declaration is hereby amended by adding the following described lots (the "**Added Lots**") to the list of Lots described in the Declaration:

Lots 1 through 9, Block 1;
Lots 1 through 3, Block 2; and
Lots 1 through 11, Block 3; all in
THE PRESERVE AT NOTTINGHAM FOURTH ADDITION, according to
the plat thereof on file and of record in the office of the County Recorder for
Hennepin County, Minnesota.

The Added Lots are hereby subjected to the Declaration. The Added Lots shall be transferred, held, sold, conveyed and developed always subject to all the easements, covenants, restrictions, conditions and other terms and provisions of the Declaration to the same extent as though the Added Lots had been designated as Lots subject to the Declaration as originally executed.

4. Boulevards. Article II, Section 16 of the Declaration is hereby amended by adding the following two sentences: "Trees and other landscaping should not be planted in the area between the sidewalk and the curb of the street. If an Owner plants landscaping or trees between the sidewalk and the curb, the Owner does so at its own risk and neither the City or the Association shall have for damage or destruction to such trees or landscaping."

5. Pond Sites and Pond Access Lanes. Article III, Section 3 of the Declaration is hereby amended by defining the following additional Pond Site:

Pond Site No. 6: the platted drainage and utility easement at the rear of Lots 4 through 8, Block 3, THE PRESERVE AT NOTTINGHAM FOURTH ADDITION.

6. Landscaping Sites. Article III, Section 4(b) of the Declaration is hereby amended by adding the following Landscaping Sites:

- (15) That part of Lot 6, Block 3, THE PRESERVE AT NOTTINGHAM FOURTH ADDITION within the triangular area formed by extending a line from a point on the northerly line of said Lot that is forty (40) feet from the northeasterly corner of said Lot to a point on the easterly lot line of said Lot that is forty (40) feet from said northeasterly corner.
- (16) That part of Lot 7, Block 3, THE PRESERVE AT NOTTINGHAM FOURTH ADDITION within the triangular area formed by extending a line from a point on the northwesterly line of said Lot that is forty (40) feet from the northerly corner of said Lot to a point on the northeasterly lot line of said Lot that is forty (40) feet from said northerly corner.
- (17) That part of Lot 11, Block 3, THE PRESERVE AT NOTTINGHAM FOURTH ADDITION within the triangular area formed by extending a line from a point on the northerly line of said Lot that is forty (40) feet from the northeasterly corner of said Lot to a point on the southeasterly lot line of said Lot that is forty (40) feet from said northeasterly corner.

7. Wetland Buffers. Article III, Section 6(a) of the Declaration is hereby amended by adding the following descriptions of Wetland Buffer Areas:

- (8) The Wetlands at the rear of Lots 1 and 2, Block 1, THE PRESERVE AT NOTTINGHAM FOURTH ADDITION have Wetland Buffer Areas that are at least 40 feet wide, the upland boundaries of which are identified by permanent wetland monuments toward the rear of said Lots.
- (9) The Wetlands at the rear of Lots 3, 4, 5, and 6, Block 1, THE PRESERVE AT NOTTINGHAM FOURTH ADDITION have Wetland Buffer Areas that are at least 25 feet wide, the upland boundaries of which are identified by permanent wetland monuments toward the rear of said Lots.
- (10) The Wetlands at the rear of Lot 7, Block 1, THE PRESERVE AT NOTTINGHAM FOURTH ADDITION have a Wetland Buffer Area that varies from 25 to 40 feet wide, the upland boundary of which is identified by permanent wetland monuments toward the rear of the Lot.
- (11) The Wetlands at the rear of Lot 8, Block 1, THE PRESERVE AT NOTTINGHAM FOURTH ADDITION has a Wetland Buffer Area that is at least 40 feet wide, the upland boundary of which is identified by permanent wetland monuments toward the rear of the Lot.
- (12) The Wetlands at the rear and the easterly side of Lot 9, Block 1, THE PRESERVE AT NOTTINGHAM FOURTH ADDITION have a Wetland Buffer Area that varies from 25 to 40 feet wide, the upland boundary of which is identified by permanent wetland monuments toward the rear of the Lot.
- (13) The Wetlands at the rear of Lot 1, Block 2, THE PRESERVE AT NOTTINGHAM FOURTH ADDITION have Wetland Buffer Areas that are 40 feet wide and 10 feet wide, respectively, the upland boundaries of which are identified by permanent wetland monuments toward the rear of the Lot.
- (14) The Wetlands at the rear of Lots 2 and 3, Block 2, THE PRESERVE AT NOTTINGHAM FOURTH ADDITION have Wetland Buffer Areas that are at least 10 feet wide, the upland boundaries of which are identified by permanent wetland monuments toward the rear of said Lots.
- (15) The Wetlands at the rear of Lots 2, 3, 9, 10, and 11, Block 3, THE PRESERVE AT NOTTINGHAM FOURTH ADDITION have Wetland Buffer Areas that are at least 10 feet wide, the upland boundaries of which are identified by permanent wetland monuments toward the rear of said Lots.

With respect to the foregoing Wetland Buffer Areas, Article III, Section 6(a) of the Declaration is hereby to state that the wetland monuments shall be a 4" x 4" wooden post set in the ground on end with a sign attached indicating that it is the boundary of the Wetland Buffer Area.

8. Overflow Swales. Article III, Section 9 of the Declaration is hereby amended by adding the following location where an emergency overflow swale will be constructed: in the platted drainage and utility easements along the boundary between Lots 5 and 6, Block 1, and in

the platted drainage and utility easement adjacent to the southern boundary of Lot 3, Block 2, THE PRESERVE AT NOTTINGHAM FOURTH ADDITION.

9. Disposition of Outlots. Article III, Section 11 of the Declaration is hereby amended and restated as follows:

Outlot A, THE PRESERVE AT NOTTINGHAM has been replatted as THE PRESERVE AT NOTTINGHAM SECOND ADDITION.

Outlot B, THE PRESERVE AT NOTTINGHAM will be conveyed to the Association as Common Area. It contains Wetlands, Wetland Buffer Areas, a Mitigation Area, a Natural Vegetation Zone and Entrance Improvements. The Outlot is within the Tree Protection Zone.

Outlot A, THE PRESERVE AT NOTTINGHAM SECOND ADDITION was replatted as part of THE PRESERVE AT NOTTINGHAM THIRD ADDITION.

Outlot B, THE PRESERVE AT NOTTINGHAM SECOND ADDITION was replatted as part of THE PRESERVE AT NOTTINGHAM THIRD ADDITION.

Outlot A, THE PRESERVE AT NOTTINGHAM THIRD ADDITION will be conveyed to the Association as Common Area. It contains open space, a Natural Vegetation Zone and Entrance Improvements. The Outlot is within the Tree Protection Zone.

Outlot B, THE PRESERVE AT NOTTINGHAM THIRD ADDITION will be conveyed to the Association as Common Area. It contains open space and a Natural Vegetation Zone. The Outlot is within the Tree Protection Zone.

Outlot C, THE PRESERVE AT NOTTINGHAM THIRD ADDITION was replatted as part of THE PRESERVE AT NOTTINGHAM FOURTH ADDITION.

Outlot A, THE PRESERVE AT NOTTINGHAM FOURTH ADDITION will be conveyed to the Association as Common Area. It contains Wetlands, Wetland Buffer Areas, and other open space. A portion of the Outlot is within the Tree Protection Zone. Any improvements constructed within this Outlot shall be maintained, repaired and replaced by the Association at its sole expense.

Outlot B, THE PRESERVE AT NOTTINGHAM FOURTH ADDITION will be conveyed to the Association as Common Area. It contains Wetlands, Wetland Buffer Areas, and other open space. Any improvements constructed within this Outlot shall be maintained, repaired and replaced by the Association at its sole expense.

Outlot C, THE PRESERVE AT NOTTINGHAM FOURTH ADDITION will be conveyed to the City for construction of a public trail, a footbridge over Elm

Creek, and open space. The Association shall have no obligation to maintain, repair or replace any improvements within this Outlot.

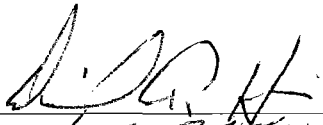
10. Severability. If any clause, phrase, provision or portion of this Third Amendment or the application thereof to any person or circumstance shall be invalid or unenforceable under applicable law, such event shall not affect, impair or render invalid or unenforceable the remainder of this Third Amendment nor any other clause, phrase, provision or portion hereof, nor shall it affect the application of any clause, phrase, provision or portion hereof to other persons or circumstances, and it is also the intention of Developer that in lieu of each such clause, phrase, provision or portion of this Third Amendment that is invalid and unenforceable, there be added as a part of this Third Amendment a clause, phrase, provision or portion as similar in terms to such invalid or unenforceable clause, phrase, provision or portion as maybe possible and be valid and enforceable.

11. Declaration Continues. Except as specifically amended by this Third Amendment, the Declaration continues unmodified, in full force and effect. In the event of any conflict between the terms of the Declaration and the terms of this Third Amendment, the terms of this Third Amendment shall control.

IN WITNESS WHEREOF, Developer has executed this instrument as of the day and year first above written.

DEVELOPER:

LUNDGREN BROS. CONSTRUCTION,
INC.

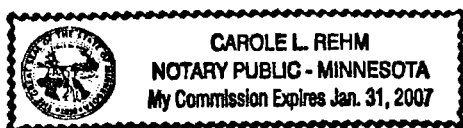
By 
Its VICE-PRESIDENT

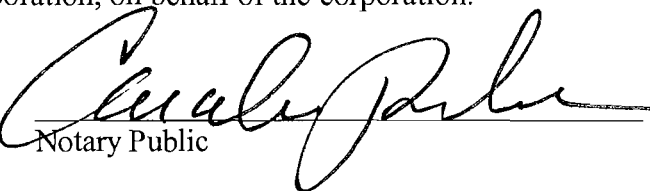
STATE OF MINNESOTA

COUNTY OF HENNEPIN

} ss.

The foregoing instrument was acknowledged before me this 17th day of May, 2004 by David A. Hanners, the vice president of Lundgren Bros. Construction, Inc., a Minnesota corporation, on behalf of the corporation.




Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

LEONARD, STREET AND DEINARD P.A. (RLS)
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402

