



Restrictive Covenants

Eighth supplement and amendment to declaration of covenants, conditions and restrictions dated May 16, 1972

This supplement and amendment made this 31st day of December, by The Preserve, a co-partnership consisting of Carter & Gertz, Inc., a Minnesota corporation, and Minnesota Gas Company, a Delaware corporation, sole partners, hereinafter called “Developer” and “Owners” who are signatories below.

Witnesseth:

Whereas, Developer has executed and caused to be recorded the following instruments with the Registrar of Titles and Register of Deeds for Hennepin County, Minnesota, to-wit:

1. Declaration of Covenants, Conditions and Restrictions dated May 16, 1972, recorded May 18, 1972, as Document No. 1031312 with the Registrar of Titles and recorded June 7, 1973, as Document No. 4020970 with the Register of Deeds.
2. Amendment of Declaration of Covenants, Conditions and Restrictions Dated May 16, 1972, dated June 26, 1972, recorded June 27, 1972, as Document No. 1035856 with the Registrar of Titles.
3. Second Supplement to Declaration of Covenants, Conditions and Restrictions Dated May 16, 1972, dated April 20, 1973, recorded April 27, 1973, as Document No. 1068558 with the Registrar of Titles.
4. Third Supplement to Declaration of Covenants, Conditions and Restrictions Dated May 16, 1972, dated June 19, 1973, recorded June 20, 1973, as Document No. 1074524 with the Registrar of Titles and recorded June 20, 1973, as Document No. 4023685 with the Register of Deeds.
5. Fourth Supplement to Declaration of Covenants, Conditions and Restrictions Dated May 16, 1972, dated October 25, 1973, recorded October 29, 1973, as Document No. 1090064 with the Registrar of Titles and recorded October 26, 1973, as Document No. 4050151 with the Register of Deeds.
6. Fifth supplement to Declaration of Covenants, Conditions and Restrictions Dated May 16, 1972, recorded August 7, 1974, as Document No. 1116584 with the Registrar of Titles.
7. Sixth Supplement to Declaration of Covenants, Conditions and Restrictions Dated May 16, 1972, recorded September 11, 1974, as Document No. 4104393 with the Register of Deeds.

8. Seventh Supplement to Declaration of Covenants, Conditions and Restrictions Dated May 16, 1972, recorded August 26, 1975, as Document No. 4160264 with the Register of Deeds.

All of the aforesaid instruments hereinafter referred to as the “Declaration as amended”; and

Whereas, Section 1 of Article X provides that the Declaration as amended may be amended during the first thirty-year period by an instrument signed by not less than 90 per cent of the Owners, and “Owner” is defined to mean the record owner of the fee simple title of any Lot located within The Preserve, and “The Preserve” is defined to mean all real property and additions subject to the Declaration as amended; and

Whereas, the undersigned are 90 per cent of the Owners in The Preserve and desire to amend the Declaration as amended as hereinafter set forth.

Now, therefore, in consideration of the reliance upon these amendments by first mortgagees and subsequent purchasers of fee simple title to Lots in The Preserve and in accordance with the provision of the Declaration as amended, Developer and Owners who are signatory below declare the Declaration as amended to be further amended as hereinafter set forth.

1. Section 4 of Article I is deleted in its entirety and the following is inserted in lieu thereof.

“Section 4. ‘Lot’ shall mean and refer to any plot of land shown on any recorded subdivision plat of real estate located within The Preserve with the exception of Common Properties and shall specifically include but shall not be limited to ‘Townhouse Lot’ and ‘Condominium Lot’ as those terms are defined in Section 10 and Section 11 of the Article I.”

2. The following Section 12 is added to Article I.

“Section 12. ‘First Mortgagee’ shall mean and refer to any person, corporation or other entity named as the mortgagee in any mortgage deed granting a first lien upon the fee simple title to any Lot located within The Preserve or the assignee of such interest.”

3. Section 2 of Article III is amended by deleting the subparagraph entitled “Class D” and the following is inserted in lieu thereof.

“Class D. Class D members shall be all Owners of Lots upon which are constructed or are to be constructed multi-family structures containing Living Units constructed for rental purposes. For purposes of this Subparagraph, Lots zoned for such multi-family structures shall be deemed to be Lots upon which are to be constructed multi-family structures whether or not the multi-family structures are ever constructed.

Until a multi-family structure is constructed, the Owner of the Lot shall be entitled to one vote. After a multi-family structure has been constructed on such a Lot, the Owner of the Lot shall thereafter be entitled to one vote for each Living Unit at such time as such Living Unit is first occupied by a tenant. When more than one person owns such Lot, all such persons shall be Members and the vote for each Living Unit shall be exercised as such persons among themselves determine, but in no event shall more than one vote be cast with respect to any occupied Living Unit. The votes represented by all Class D Members shall at no time be entitled to a weight greater than 49 per cent of the vote on any matter pending before the Association. The Developer shall be a Class D member as to Lots now zoned for multi-family structures and with respect to such Lots, Developer shall not also be a Class E member. In the event the developer is the Owner of more than one Lot zoned for multi-family structures, one Lot so zoned shall entitle Developer to be a Class D Member in connection therewith as herein provided and all other Lots so owned by Developer shall entitle Developer to be a Class E Member and shall entitle the Developer to votes as computed as a Class E Member as provided in the Subparagraph relating to Class E membership contained in this Section 2. As soon as a person other than Developer becomes the Owner shall become a Class D Member and all remaining Lots owned by Developer zoned for multi-family structures shall entitle Developer to Class E membership in this Section 2. Tenants occupying a Living Unit shall have the right to accept and use an easement of enjoyment in and to the Common Properties to the extent the same is delegated to the tenant by a Class D member.

“In the event that a Lot zoned for multi-family structures is in fact used for the construction and/or sale of real property pursuant to the provisions of Chapter 457, Minnesota Statutes, 1975, (the Minnesota Condominium Act) then and in such event membership shall upon such use be determined under the Subparagraph entitled ‘Class C’ of this Section 2.”

4. Section 2 of Article III is amended by deleting the Subparagraph entitled “Class E” and the following is inserted in lieu thereof.

“Class E. The Class E Member shall be the Developer and shall be entitled to three votes for each Lot owned or for each Living Unit which the Village of Eden Prairie approves to be constructed on any Lot shown on a plat which is subject to the terms of this Declaration which has been zoned and approved for the construction of Condominium Units or multi-family structures whether said Lot is owned by the Developer or not. In no event shall the Class E Member be entitled to both three votes for a Lot and three votes for each Living Unit approved by Eden Prairie for construction on said Lot but if such a situation should arise, the number of its votes shall be based upon the number of approved Living Units only. The foregoing in subject to the limitation that any Lot which creates a Class D membership and voting rights in accordance with the preceding Paragraph as amended shall not be again counted hereunder for a Class E membership nor for voting rights relating hereto. At such time as a Condominium Lot or a multi-family structure Living Unit which was

not earlier assigned to Class D membership as provided in the preceding Paragraph as amended, is completed on such Lots and is either sold or occupied by a tenant, the Owner of said condominium Lot or said Living Unit shall be entitled to one vote as a Class C or Class D Member, as the case may be, and the Class E Member shall no longer be entitled to any votes as to that Condominium or that Living Unit.

“The Class E membership shall cease and be converted to Class A, Class B, Class C or Class D membership, as the case may be, on the happening of either of the following events, whichever occurs earlier:

“(a) When Class A, B, C, and D memberships are all in existence and the total votes outstanding in the Class A, B, C, and D memberships equals or exceeds the total votes outstanding in the Class E membership, or

“(b) On January 1, 1990.”

5. Section 1 of Article IV is deleted in its entirety and the following is inserted in lieu thereof.

“Section 1. Subject to the provision of Section 2 hereof, every Owner shall have a right and easement of enjoyment in and to the Common Properties which shall be appurtenant to and pass with the title to every Lot.”

6. Section 2, a of Article IV is deleted in its entirety and the following is inserted in lieu thereof.

“a. The right of the Association, un accordance with its Articles and Bylaws, to borrow money for the purpose of improving, repairing or maintaining the Common Properties, or any improvements located thereon. Provided the directors have obtained the assent by vote of at least 75 per cent of the Owners of each class of membership and further provided that the directors have obtained the assent by vote of at least 75 per cent of the First Mortgagees, the Association shall have the right to abandon, partition, subdivide, encumber, mortgage, sell or transfer the Common Properties or improvements thereon, and the rights of any mortgagee of the Common Properties shall be subordinate to the rights of the Association’s Members created by this Declaration; provided, however, that in the event any of the financing for the construction and/or owning of any of the property within The Preserve of the Owners of any class of membership is at the time insured by FHA and/or VA, then and in such event, in addition to the assent by vote as aforesaid, the assent by written instrument shall be required from FHA, if it has issued such insurance, and from VA, if it has issued such insurance with respect to the right of the Association to abandon, partition, subdivide, sell or transfer the Common Properties or improvements thereon.”

7. There is hereby added to the end of Section 2,e of Article IV the following sentence.

“The granting of easements for public utilities consistent with the intended use of the Common Properties shall not be deemed a transfer within the meaning of Section 2,a of this Article IV.”

8. There is hereby added to Article IV the following Section.

“Section 3. An Owner may delegate his right and easement of enjoyment in and to the Common Properties to the members of his family, or to his guests, or to his tenants who reside on his Site or Lot. Use and enjoyment of the Common Properties by guests shall in all cases be done subject to rules and regulations established from time to time by the Board of Directors of the Association.”

9. The last full paragraph of Section 4 of Article VI is hereby deleted in its entirety and the following is inserted in lieu thereof.

“From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5 per cent above the maximum assessment for the previous year without a vote of the membership. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5 per cent only by a vote of at least two-thirds of the Owners of each class of membership. The board of directors may fix the annual assessment at an amount not in excess of the maximum. In fixing the annual assessments, the board of directors shall specifically consider, determine and allocate a portion of the annual assessments as an adequate reserve fund for replacement of the Common Properties, and such portion of the annual assessment so determined shall be separated when collected and deposited in a separate account apart from the other funds so separated shall be imposed with a trust to be applied by the Association for the purposes for which the funds were determined and segregated. Within the foregoing limitations, the board of directors shall be under an obligation to fix an annual assessment which is adequate to cover anticipated operating expenses and an adequate reserve for replacement with respect to the Common Properties owned by the Association.”

10. Section 11 of Article VI is deleted in its entirety and the following is inserted in lieu thereof.

“Section 11. The lien of the assessments provided for herein shall be subordinate to the lien of a First Mortgagee, its successors and assigns now or hereafter placed upon a Lot, Townhouse Lot or condominium Lot subject to assessments; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the expiration of the period of redemption from a mortgage foreclosure sale, the acceptance of a deed in lieu of foreclosure, or any other proceeding in lieu of a mortgage foreclosure sale. It shall be deemed that the First Mortgagee, its successors and assigns, comes into its improvements upon the

expiration of the period of redemption. The purchaser at a foreclosure sale of the lien of a first mortgage shall, upon expiration of the period of redemption, hold title to the Lot; Townhouse Lot or Condominium Lot free and clear of any lien for assessments, general or special, and such purchaser shall not be personally liable for such assessments, and the sale at foreclosure or acceptance of a deed, as the case may be. Such sale and the expiration of the period of redemption shall not release a Lot or Condominium Lot from liability for any assessments, general or special, thereafter due, nor from the lien of any such subsequent assessments.”

11. There shall be inserted at the end of Article VI a new Section 13 as follows.

“Section 13. In the event the Association shall receive insurance proceeds from an insurance carrier pursuant to any insurance policies insuring against fire and extended coverage insurance with respect to Common Properties, such insurance proceeds shall be held in trust by the Association for the purpose of repair, replacement or reconstruction of the Common Properties and for no other purposes, and the Association shall be under a duty to rebuild to the extent of insurance proceeds so received. In the event that the financing for the construction or ownership of any of the property by any Owner of any class of membership is insured by FHA and/or VA, the duty to rebuild by the Association shall not terminate unless released by written instrument by FHA, if it has issued such insurance. No provision contained in this instrument or in the Declaration as amended shall be construed to give priority to an Owner with respect to distribution of any insurance proceeds arising as aforesaid, or with respect to proceeds arising as a result of condemnation awards or from any other reason whatsoever, and distribution of insurance proceeds or condemnation awards for any reason whatsoever shall be made to Owners only after securing in each individual case the specific written consent to such distribution by the First Mortgagee with respect to the Lot, Townhouse Lot or Condominium Lot the Owner of which is to receive such distribution.”

12. Article X is deleted in its entirety and the following is inserted in lieu thereof.

“Article X – General Provisions

“Section 1. The covenants, conditions, restrictions and easements of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty years from the date this Declaration is recorded, after which time said covenants, conditions, restrictions and easements shall be automatically renewed for successive periods of ten years. The covenants and restrictions of this Declaration as amended may, subject to the consent of 75 per cent of the First Mortgagees as set forth below, be amended at any time by an instrument signed by not less than 75 per cent of the Owners. Owners may execute such an instrument through an irrevocable power-of-attorney coupled with an interest designated by a written instrument signed by an Owner. Matters contained in this Declaration as amended which must, in addition to the

written consent of 75 per cent of the Owners, also receive the written consent of 75 per cent of the First Mortgagees, are:

“a. Any amendment which changes the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner, including specifically the ratio of assessments against Owners; and

“b. Any amendment which shall operate to waive or abandon the scheme of regulation or enforcement pertaining to architectural design and exterior appearance of improvements upon a Lot or Condominium Lot, the maintenance of part walls, common fences, driveways, the upkeep of lawns and the plantings on the Common Properties; and

“c. Any amendment which shall have as its effect the release of the Association of its duty to rebuild with insurance proceeds or of its duty to maintain fire and extended coverage insurance on the Common Properties in an amount not less than 100 per cent of the full replacement cost as provided in Article XVII of the By-Laws.

“Any amendments must be properly recorded before the same become legally operative.”

“Section 2. Any notice required to be sent to any Association Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed postpaid to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.”

“Section 3. Enforcement of these covenants, conditions and restrictions shall be by any proceedings at law or in equity against any person or persons violating or attempting to violate any covenant or restriction either to restrain violation or to recover damages and against the land to enforce any lien created by these covenants; and failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

“In the event of a default in the keeping of the covenants, conditions and restrictions by an Owner or any person violating or attempting to violate the same, and provided such default has not been cured within 60 days from the date of happening of the default the Association agrees to give notice of such default in such specificity as fully informs the recipient, such notice to be given to the First Mortgagee of the Lot or Condominium Lot the Owner of which has committed or permitted the default. Such notice shall be given to the First Mortgagee by mailing the same postpaid to the last known address of the First Mortgagee.

“Section 4. First Mortgagees shall have the right to examine the books and records of the Association during regular business hours upon reasonable notice, which shall not be less than 5 days.

“Section 5. No Lot or Condominium Lot subject to the Declaration as amended shall ever be subject to any “right of first refusal,” and the board of directors of the Association shall at no time have any authority to subject the Common Properties and improvements thereon or a Lot, Townhouse Lot, or Condominium Lot as aforesaid or the improvements thereon to any “right of first refusal” for the benefit of the Association or any other person.

“Section 6. Invalidation of any one of these covenants or restrictions by judgment or court shall in no wise affect any other provision which shall remain in full force and effect.

“Section 7. As long as the Association has a Class E membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, mortgaging of Common Properties, dedication of Common Properties and amendment to this Declaration of Covenants, Conditions and Restrictions.”

Except as hereinbefore amended, said Declaration as amended shall remain in full force and effect in accordance with its terms.

Declaration of Covenants

Conditions and Restrictions

This Declaration, made this 16th day of May, 1972, by the Preserve, a copartnership consisting of Carter & Gertz, Inc., a Minnesota corporation and the Minneapolis Gas Company, a Delaware corporation, sole partners, hereinafter called “Developer”.

Article I.

Definitions

Section 1: “Association” shall mean and refer to The Preserve Association, a nonprofit corporation organized and existing under Chapter 317, Minnesota Statutes, 1969, as supplemented and amended, or upon its merger or consolidation with another corporation or corporations, then the surviving corporation or new corporation resulting from said merger or consolidation.

Section 2: “The Preserve”, unless specifically stated otherwise herein, shall mean and refer to all such real property and additions thereto as are subject to this Declaration of any supplemental declaration under the provisions of Article II hereof.

Section 3: “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot located within The Preserve but shall not mean or refer to the mortgagee of any such lot unless and until such mortgagee has acquired title pursuant to foreclosures of said mortgage and the period within which

the fee owner may redeem from such foreclosure has terminated. Where any such Lot is being sold by the fee owner to a contract vendee who is entitled to possession of the Lot, the contract vendee shall be considered the "Owner" upon furnishing adequate proof of this situation to the Association. In the event that any Lot located within The Preserve shall be submitted to the provisions of Laws of Minnesota, 1963, Chapter 457, as supplemented and amended, then each "Apartment Owner" located upon said land submitted to the provisions of said Act, as the term "Apartment Owner" is defined in said Act shall be considered as Owner hereunder.

Section 4: "Lot" shall mean and refer to any plot of land shown on any recorded subdivision plat of real estate located within the Preserve with the exception of Common Properties.

Section 5: "Common Properties" shall mean and refer to those areas of land shown on any recorded subdivision plat of real estate located within The Preserve and devoted to the common use and enjoyment of the owners of property located in The Preserve and such other persons as they may delegate this right to pursuant to the Association's By-Laws and to all improvements located thereon and owned or otherwise held by the Association for the common use and enjoyment of said persons. The Common Properties to be owned by the Association at the time of the conveyance of the first Lot is described on Exhibit "A" attached hereto and hereby incorporated as a part hereof by reference thereto.

Section 6: "Site" shall mean and refer to any parcel of land conveyed to any one grantee for single family residence purposes whether a single platted lot, or more, or less than a single platted lot.

Section 7: "Developer" shall mean and refer to the copartnership comprised of Carter & Gertz, Inc., a Minnesota corporation, and the Minneapolis Gas Company, a Delaware corporation, and to any legal entity to which said partnership may specifically assign the rights and interests vested in Developer pursuant to the terms of this Declaration.

Section 8: "Members" shall mean and refer to those persons entitled to membership as provided in the Declarations.

Section 9: "Living Unit" shall mean and refer to a single family residence or to any portion of a multiple residence building located upon property in The Preserve which is designated and intended for use and occupancy as a residence by a single family unit.

Section 10: "Townhouse Lot" shall mean and refer to each Townhouse "Living Unit" constructed upon real estate located within The Preserve.

Section 11: "Condominium Lot". Where real property located within The Preserve has been submitted to the provisions of Laws of Minnesota, 1963, Chapter 457, as supplemented and amended, (popularly known as the "Minnesota Condominium Act") the term "Condominium Lot" shall mean and refer to the entire right, title and interest in said real property which is owned by each "Apartment Owner" of a Condominium Unit constructed thereon as that term is defined in said Minnesota Condominium Act.

Article II.

Property Subject to This Declaration and Additions Subjected Hereto

Section 1: The real property which is and shall be held, transferred, sold, conveyed and occupied subject to the covenants and restrictions in this Declaration is located in the Village of Eden Prairie, County of Hennepin, State of Minnesota, and is more particularly described as follows, to-wit:

High Point, according to the plat thereof on file and of record in the office of the Registrar of Titles in and for said Hennepin County, Minnesota.

All of which real property shall be referred to herein as "Existing Property".

Section 2: Additional real property may become subject to the covenants, conditions and restriction contained in this Declaration in the following manner:

- a. Additions in accordance with a General Plan of Development. The Developer, its successors and assigns, shall have the right to bring within the terms and conditions of the Declaration additional real property which is located within the "Planned Unit Development" approved by the Village Council of the Village of Eden Prairie and commonly known by the name "The Preserve" Planned Unit Development as approved by the Village Council of the Village of Eden Prairie on the date of filing of a Supplementary Declaration of Covenants, Conditions and Restrictions describing said real property shall constitute additional real property regardless of whether or not it as included in said "The Preserve" Planned Unit Development as of the date of this Declaration.

The additions authorized under this and the succeeding subsection b. shall be made by filing of record in the office of the Register of Deeds or Registrar of Titles of Hennepin County (whichever is appropriate in connection with the real property described) a supplementary Declaration of Covenants, Conditions and Restrictions with respect to the additional real property which shall extend the scheme of the covenants, conditions and restrictions of this Declaration to the real property described in said Supplementary Declaration. Such Supplementary Declaration may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary or desirable to reflect the different character, if any, of the additional real property and as are not inconsistent with the scheme of this Declaration. In no event, however, shall any such Supplementary Declaration revoke, modify or add to the covenants, conditions or restrictions established by this Declaration within the Existing Property.

Prior approval of the Federal Housing Administration or the Veterans Administration must be obtained before the Developer may bring additional real property within the terms and conditions of this Declaration pursuant of the Article 2. a.

- b. Other additions. Upon approval in writing of the Association pursuant to assent given thereto by at least two-thirds (2/3rds) of the vote of each class of members of the corporation, the Owner of any real property who desires to add it to the jurisdiction of the Association

may file of record a Supplementary Declaration of Covenants, Conditions and Restrictions in the manner set forth in subsection a. hereof.

Article III.

Membership and Voting Rights in the Association

Section 1: Every owner of a Lot, Condominium Lot, or Townhouse Lot which is subject to assessment shall be a member of the Association. Membership shall by appurtenant to and may not be separated from ownership of such Lots which are subject to assessment.

Section 2: The Association shall have five classes of voting membership:

Class A: Class A members shall be all Owners, with the exception of the Developer, of Lots upon which is constructed a single family detached home, and shall be entitled to one vote for each Site owned. When more than one person owns any Site, all such persons shall be members. The vote for such Site shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Site.

Class B. Class B members shall be all Owners, with the exception of the Developer, of Townhouse Lots and shall be entitled to one vote for each Townhouse Lot owned. When more than one person owns and Townhouse Lot all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Townhouse Lot.

Class C. Class C members shall be all Owners, with the exception of the Developer of Condominium Lots and shall be entitles to one vote for each Condominium Lot owned. When more than one person holds and interest in any Condominium Lot, all such persons shall be members. The vote for any such Condominium Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Condominium Lot.

Class D. Class D members shall be all Owners of Lots, with the exception of the Developer, upon which are constructed multifamily structures containing Living Units constructed for rental purposes and shall be entitled to one vote for each Living Unit owned at such time as such Living Unit is first occupied by a tenant. When more than one person owns any said Living Unit, all such persons shall be members. The votes for such Living Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Living Unit. The votes expressed by any such members, if voted in a bloc, shall be entitles to a weight not greater than 49 percent of the vote on any mater pending before the Association.

Class E. The Class E member shall be the Developer and shall be entitled to three votes for each Lot owned or for each Living Unit which the Village of Eden Prairie approves to be constructed on any Lot shown on a plat which is subject to the terms of this Declaration and which has been zoned and approved for the construction of Condominium Units or multifamily structures, whether said Lot is owned by the Developer or not. In no event shall the Class E member be entitled to both three votes for a Lot and three votes for each Living unit approved by Eden Prairie for construction on said Lot but if such a situation should arise the number of approved Living Units only. At such time as a Condominium Lot or a multifamily structure Living Unit is completed on such Lots and is either sold or occupied by a tenant, the owner of said Condominium Lot or said Living Unit shall be entitled to one vote as a Class C or Class D member, as the case may be, and the Class E member shall no longer be entitled to any votes as to that Condominium Lot or that Living Unit.

The Class E membership shall cease and be converted to Class A, Class B, Class C or Class D membership, as the case may be, on the happening of either of the following events, whichever occurs earlier:

- (a) When Class A, B, C and D memberships are all in existence and the total voted outstanding in the Class A, B, C and D memberships equals or exceeds the total votes outstanding in the Class E membership, or
- (b) On January 1, 1990.

Article IV.

Property Rights in the Common Properties

Section 1: Subject to the provisions of Section 3 hereof, every owner of the Association shall have a right and easement of enjoyment in and to the Common Properties which shall be appurtenant to and shall pass with the title to every Lot.

Section 2: The rights and easements of enjoyment created hereby and the title of the Association to the Common Properties shall be subject to the following:

- a. The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving, repairing or maintaining the Common Properties, or any improvements located hereon, and in aid thereof with the assent of two-thirds (2/3rds) of each class of membership to mortgage said Properties, and the rights of said mortgagee in said Common Properties shall be subordinate to the rights of the Association's members created by this Declaration.
- b. The right of the Association to take such steps as reasonably necessary to protect said Common Properties against foreclosure.
- c. The right of the Association, as provided in its Articles and By-Laws, to suspend the enjoyment rights of any member of the Association for any period during which any assessment remains unpaid, and to suspend the said enjoyment rights for any period not to exceed sixty

(60) days for each infraction of its published rules and regulations; provided, however, that nothing contained in this paragraph 2. c. shall be deemed to deny an Owner, his tenants, invitees or licensee's, access to and from his Lot located in The Preserve.

- d. The rights of the Association, as provided in its Articles and By-Laws, to impose a reasonable fee or admission charge for the use of the Common Properties.
- e. The right of the Association to grant easements for public utility purposes to any municipality or public utility, for the purpose of installation and maintenance of necessary utilities to serve the Common Properties or to serve and Lot located in The Preserve; provided, however, that said public utility easements shall not be inconsistent with the use of said Common Properties for the purpose for which they are being used.
- f. The right of the Association, as provided in its Articles or By-Laws, to sell, lease, exchange or dispose of the Common Properties.

Article V.

Design Review

Section 1: No residence, commercial building, garage, fence, wall, utilities, driveway, landscaping, outbuildings or other on any kind shall be commenced, erected or constructed on any Lot prior to January 1, 1990 until the plans, specifications, working drawings and proposals of the same showing the nature, kind, shape, type, materials and location thereof shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Developer. In the event said Developer fails to approve or disapprove in writing such plans, specifications, working drawings and proposals within one hundred twenty (120) days after the date they are submitted to it, or in any event if no suit to enjoin the construction, addition, alteration or change has commenced prior to completion thereof, approval will not be required and this Article V, Section 1, will be deemed to have been fully complied with. After January 1, 1990 said approval must be obtained from the Design Review Committee of the association appointed and operating pursuant to this Declaration.

Section 2: After the initial construction of any residence, commercial building, garage, fence, wall, utilities, driveway, landscaping, outbuildings or other structures of any kind in the manner approved pursuant to Article V, Section 1 hereof, no exterior addition to or alteration or change of any of such facilities shall be made until the plans, specifications, working drawings and proposals of the same showing the nature, kind, shape, height, materials and location thereof shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Design Review Committee of Association appointed and operating pursuant to this Declaration. In the event said Design Review Committee fails to approve or disapprove in writing such plans, specifications, working drawings and proposals within one hundred twenty (120) days after the date they are submitted to it, or

in any event if no suit to enjoin the construction, addition, alteration or change has been commenced prior to completion thereof, approval will not be required and the Article V, Section 2 will be deemed to have been fully complied with.

Section 3: The Design Review Committee shall be composed of the Board of Directors of the Association or of three (3) or more representatives appointed by the Board of Directors. Members of the Design Review Committee shall not receive compensation for services rendered to the corporation but may be reimbursed for actual expenses incurred in the performance of their duties. The design Review Committee is authorized to obtain the advice of an architect, engineer or other professional planner to assist it in the exercise of its duties.

Article VI.

Covenants for Maintenance Assessments

Section 1: The Declarant for each Lot owned by it hereby covenants and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be and hereby is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges; (b) special assessments for capital improvements, such assessments to be fixed, levied, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on each such Lot and shall be a continuing lien on each such Lot against which each assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall also be the personal obligation of the person or legal entity who was the Owner of each such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's successor in title to the property against which such assessment was made unless expressly assumed by such successor.

Section 2: The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in The Preserve and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and of the Living Units in The Preserve including but not limited to, the payment of taxes, insurance in regard to Association owned property, the Common Properties and the use thereof, repair, replacement and additions, and for the cost of labor, equipment, materials, management and supervision.

Section 3: Assessments shall be levied as to each Lot on the basis of the class of membership as is hereinafter set forth. The assessment for the Class E member for any vacant Lot owned by it or any Lot owned by it superimposed with an unoccupied, unsold living unit structure shall be 25 percent of the annual assessment for a Class A member.

Section 4: Until January 1 of the year immediately following the conveyance of the first Lot to an owner, the maximum annual assessment shall be as follows for each class so designated:

Class A - \$50.00 per Lot.

- Class B - \$50.00 per Lot or per Townhouse Lot located thereon, whichever is greater.
- Class C - \$50.00 per Lot or per Condominium Lot located thereon, whichever is greater.
- Class D - \$50.00 per Lot or per completed Living Unit located thereon, whichever is greater.
- Class E - As stated in Section 3 above, the assessment for the Class E member shall not be less than 25 percent of the annual assessment for a Class A member for any vacant Lot owned by it or any Lot owned by it superimposed with an unoccupied, unsold living unit structure.

From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than five (5%) percent above the maximum assessment for the previous year without a vote of the membership. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above five (5%) percent by a vote of two-thirds (2/3rds) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose. The Board of Directors may fix the annual assessments at an amount not in excess of the maximum.

Section 5: In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Properties, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3rds) of the votes of each class of members who are voting in person or proxy at a meeting duly called for this purpose.

Section 6: Written notice of any meeting called for the purpose of taking any action authorized under Section 4 or 5 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty (60%) percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 7: Both annual and special assessments must be fixed at a uniform rate within each class of membership and may be collected on a monthly, or quarterly, or annual basis. However, the amount of the assessment in any one year and from year to year may vary between developer and improved Lots, between a Single Family Area and a Multiple Family Area (including apartments and condominiums), and between Single or Multiple Family Areas and areas devoted to other uses.

Section 8: The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Properties.

The annual assessment for each Lot upon which Living Units (whether townhouse, condominium or multiple family structures) are completed subsequent to the

commencement date fixed by the Board of Directors shall originally commence on the basis of a Lot alone until such time as each of said Living Units are completed. Said annual assessments as to each of said Living shall commence on the first day of the calendar month subsequent to the date that such Living Unit is completed. Each Living Unit shall be considered completed at such time as it is ready for occupancy but in no event later than the date upon which it is sold or first occupied. The amount of the first years assessment upon a Living Unit shall be an amount which bears the same relationship to the annual assessment per Living Unit as the number of months left in the year from the time the assessment commences as to said Living Unit bears to twelve.

Section 9: The Association's Board of Directors shall fix the date of commencement and the amount of the assessment against each Lot or Condominium Lot for each assessment period at least thirty (30) days in advance of such date or period and shall at that time prepare a roster of the Lots or Condominium Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every owner subject thereto.

The Association shall upon demand and for a reasonable charge at any time furnish to any Owner liable for said assessment a Certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot or Condominium Lot has been paid. Such Certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 10: If the assessments are not paid on the date when due then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof, as hereinafter provided, become a continuing lien on the Lot or Condominium Lot which shall bind such properties in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. Said lien on the Lot or Condominium Lot may be enforced and foreclosed by action at law in the same manner as a mortgage. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within the thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of six (6%) per annum and the Association may bring an action at law against the owner personally obligated to pay the same, or to foreclose the lien against the Lot or Condominium Lot, and there shall be added to the amount of such assessment the cost of preparing and filing the complaint in such action; and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided, and a reasonable attorney's fee to be fixed by the Court, together with the cost of the action. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Properties or abandonment of his Lot.

Section 11: The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage now or hereafter placed upon a Lot or Condominium Lot subject to assessments; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of a Lot or Condominium Lot pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure, such sale or transfer shall not release a Lot or Condominium Lot from

liability for any assessments thereafter become due, nor from the lien of any such subsequent assessments.

Section 12: The following subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

- a. All properties to the extent of any easement or other interest therein dedicated to and accepted by the United States of America or the state of Minnesota or any agency or political subdivision thereof and devoted to public use.
- b. All common Properties as defined in Article I, Section 5, hereof.

Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

Article VII.

Exterior Maintenance

Section 1: In the event that an Owner of any Lot in The Preserve which is subject to assessment shall fail to maintain the premises which is subject to assessment shall fail to maintain the premises or to maintain or repair the exterior of any improvements situated thereon in a manner satisfactory to the Association's Board of Directors, then the Association, upon approval of a resolution to do so by a two-thirds (2/3) vote of all of the members of the Board of Directors, may provide exterior maintenance upon said Lot, and the improvements situated thereon, as follows: paint, repair, replace, and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, driveways and all other exterior improvements.

Section 2: The cost of such exterior maintenance or repair shall be assessed against the Lot upon which such maintenance is done and shall be added to and become a part of the annual maintenance assessment or charge to which such Lot is subject under Article VI hereof; and as part of such annual assessment or charge, it shall be a lien or obligation of the Owner and shall become due and payable in all respects as provided in Article VI hereof; provided that the Board of Directors of the Association, when establishing the annual assessment against each Lot for any assessment year as required under Article VI hereof, may add thereto the estimated cost of the exterior maintenance or repair for that year but shall thereafter make such adjustment with the Owner as is necessary to reflect the cost thereof.

Section 3: For the purpose solely of performing the exterior maintenance or repair authorized by this Article, the Association, through its duly authorized agents, employees or contractors, shall have the right, after reasonable notice to the Owner, to enter upon any Lot at reasonable hours of any day.

Article VIII.

Nuisances Prohibited; Creation of Building Setback

No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to persons residing in The Preserve.

No sign shall be placed on any Lot except that one “for sale” sign may be placed on any Lot.

No birds, animals, or insects shall be kept on any Site except not to exceed 2 dogs, not to exceed 2 cats and other common household pets, provided that they are not kept, bred or maintained for any commercial purposed.

No objectionable trees or shrubbery, such as cottonwood and box elder trees, shall be planted or permitted to remain on any Site subject hereto.

No profession or home industry shall be conducted in or on any Site without the specific written approval of the Association. The Association in its discretion, upon consideration of the circumstances in each case, and particularly the effect on surrounding property, may permit a Site to be used in whole or in part for the conduct of a profession or home industry. No such profession or home industry shall be permitted, however, unless it is considered by the Association to be compatible with a high quality residential neighborhood.

There is hereby created a setback of fifty (50) feet in depth from and parallel with the Southwesterly right of way line that part of the public road presently known as the East-West Parkway which is located within HIGH POINT according to the plat thereof on file and of record in the office of the Registrar of Titles an and for Hennepin County, Minnesota. This fifty (50) foot setback is created across the following described real estate located within said HIGH POINT, to-wit:

The Northeasterly fifty (50) feet of Lots 1 and 4, Block 1, Block 2, Lots 5 and 6, Block 3, Lots 1, 2, 3, 4, 5 and 6, Block 4 and Outlot A, HIGH POINT.

No buildings, fences or other structures of any kind shall be permitted in said setback area it being the intent that this setback area shall remain unobstructed from the ground level to the sky.

Article IX.

Non-Discrimination

Any person, when he becomes and Owner, agrees that neither he nor anyone authorized to act for him will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny any of the property owned by him in The Preserve to any person because of race, color, religion, sex, or national origin. Any restrictive covenant affecting the property covered by this Declaration relating to race, color, religion, sex or national origin which is inconsistent with this Article IX, is recognized as being illegal and void and is specifically disclaimed.

Article X.

General Provisions

Section 1: The covenants, conditions, restrictions and easements of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, their

respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants, conditions, restrictions and easements shall be automatically renewed for successive periods of ten (10) years. The covenants and restrictions of this Declaration may be amended during the first thirty (30) year period by an instrument signed by not less than ninety (90%) percent of the Owners and thereafter by an instrument signed by not less than seventy-five (75%) of the owners. Any amendments must be properly recorded.

Section 2: Any notice required to be sent to any Association member or Owner under the provisions of this Declaration shall be deemed to have properly sent when mailed postpaid to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 3: Enforcement of these covenants, conditions and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction either to restrain violation or to recover damages and against the land to enforce any lien created by these covenants; and failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

Section 5: As long as the Association has a Class E Membership, the following actions will require the prior approval of the Federal Housing Administration of the Veterans Administration: annexation of additional properties, mortgaging of Common Properties, dedication of Common Properties and amendment of this Declaration of Covenants, Conditions and Restrictions.