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HENNEPIN COUNTY MINN.
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DECLARATION OF COVENANTS

FOR

LAKESIDE AT OXBOW COMMONS

OFFICE OF THE REGISTRAR
OF TITLES
HENNEPIN COUNTY, MINNESOTA
CERTIFIED FILED ON
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DECLARATION OF COVENANTS
FOR
LAKESIDE AT OXBOW COMMONS

DECLARATION

LUNDGREN BROS. CONSTRUCTION, INC. hereby declares that the Active Development Area described below (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 1.
GENERAL DEFINITIONS**

1.1. Definitions of Land.

- 1.1.1. **"Active Development Area"** means the real property, including Homesites and the Common Areas, that are or become subject to this Declaration, namely,

Lots 1 through 7, Block 1; Lots 1 through 13, Block 2; Lots 1 through 5, Block 3; Lots 1 through 13, Block 4; Lot 1, Block 5, and Outlots G, H and I of LAKESIDE AT OXBOW COMMONS, according to the recorded plat, on file or of record in the office of the Registrar of Titles for Hennepin County, Minnesota,

and such additions thereto as may be annexed pursuant to this Declaration.

- 1.1.2. **"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 Homesite will be:

Lot 1, Block 5 and Outlots G, H and I of LAKESIDE AT OXBOW COMMONS, according to the recorded Plat.

Additional Common Areas may be annexed into the Active Development Area pursuant to Section 13.6 of this Declaration.

- 1.1.3. **"Neighborhood Park"** means that portion of the Common Areas consisting of Lot 1, Block 5, LAKESIDE AT OXBOW COMMONS, together with the landscaping, recreational facilities and other improvements thereon owned by the

Association for the common use and enjoyment of the Owners, and such portions of the Future Development Area as the Declarant may, in its discretion, designate for such purposes.

1.1.4. **"Future Development Area"** means the lands which may be annexed into the Active Development Area pursuant to Section 13.6, namely Outlots A, B and C, LAKESIDE AT OXBOW COMMONS.

1.1.5. **"Homesite"** means each of the following platted lots:

- (a) Lots 1 through 7, Block 1;
Lots 1 through 13, Block 2;
Lots 1 through 5, Block 3; and
Lots 1 through 13, Block 4
all in LAKESIDE AT OXBOW COMMONS according to the recorded plat thereof; and
- (b) Such additions thereto as may be annexed into the Active Development Area pursuant to this Declaration.

1.1.6. **"Landscape Maintenance Areas"** means the following areas of the Homesites and specified public property areas:

- (a) Certain rear yard fences and the grass, trees, shrubs, plantings, irrigation systems, berms, and related landscaping improvements along the perimeter of the Active Development Area, all as originally installed by Declarant. The initial Landscape Maintenance Areas specified in this Subsection 1.1.6(a) are located along the rear of the following described Homesites and include the grass, irrigation systems and landscaping (but not any sidewalk or bituminous trail) in the adjacent public right of way of Regent Avenue North and those portions of Outlot F lying east of the northerly prolongation of the rear boundary line of Lot 1, Block 2, LAKESIDE AT OXBOW COMMONS:

Lots 1 through 7, Block 1; and
Lots 1 through 5, Block 2
all in LAKESIDE AT OXBOW COMMONS according to the recorded plat thereof.
- (b) The grass, trees, shrubs, plantings, irrigation systems, and related landscaping improvements (but not any sidewalk or bituminous trail) all as originally installed by Declarant on the City's public property comprising Outlot J, LAKESIDE AT OXBOW COMMONS.

Additional Landscape Maintenance Areas may be annexed into the Active Development Area pursuant to this Declaration.

1.2. **Definitions of Persons.**

1.2.1. **"Architectural Committee"** means the architectural review and control committee, as described in Article 4 of this Declaration.

- 1.2.2. **"Association"** means Lakeside Homeowners Association, Inc., a Minnesota nonprofit corporation, its successors and assigns. The Association has jurisdiction over the Active Development Area, including the Homesites and the Common Areas, pursuant to this Declaration, as it may be amended from time to time.
- 1.2.3. **"Board"** means the Board of Directors of the Association.
- 1.2.4. **"City"** means the City of Brooklyn Park, a Minnesota municipal corporation.
- 1.2.5. **"Declarant"** means Lundgren Bros. Construction, Inc., a Minnesota corporation, and its successors and assigns, to the extent that Lundgren Bros. Construction, Inc. has assigned any rights of Declarant hereunder by express written assignment to the Owner of any Homesites or the owner of any Future Development Area.
- 1.2.6. **"Owner"** means the record owner, whether one or more persons or entities, of the fee simple title to any Homesite except that, where a Homesite is being sold on a contract for deed and the contract vendee is in possession of the Homesite, 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.
- 1.2.7. **"Resident"** means any person occupying a home other than the Owner(s).
- 1.3. **Other Definitions.**
 - 1.3.1. **"Declarant Control Period"** means the time period during which Declarant has the exclusive right to control the operation and administration of the Association, including without limitation the power to appoint and remove the directors and officers of the Association, as further defined in Section 12.4 below.
 - 1.3.2. **"Declaration"** means this Declaration of Covenants for Lakeside at Oxbow Commons, as it may be amended and supplemented from time to time.
 - 1.3.3. **"Governing Documents"** means this Declaration, and the Association Articles of Incorporation, Bylaws and Rules and Regulations, as amended from time to time, all of which shall govern the use and operation of the Active Development Area.
 - 1.3.4. **"Lake Declaration"** means the Declaration of Covenants dated September 15, 2003 and recorded October 8, 2003, as Document No. 3852559, in the office of the Hennepin County Registrar of Titles, as it may be amended from time to time.
 - 1.3.5. **"Rules and Regulations"** means the rules and regulations of the Association as approved from time to time pursuant to Section 7.2.

Article 2.

GENERAL COVENANTS AFFECTING ALL HOMESITES

- 2.1. **Residential Purposes.** Each Homesite shall be used only for one single family house and ancillary uses. No Homesite may be used for any commercial purpose, except that Homesites or portions of Homesites may be used by Declarant and other professional home builders pursuant to Section 2.10 of this Declaration and by all Owners for home

occupations that are permitted by the applicable zoning ordinances. However, no Homesite 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.

2.2. Building Specifications.

- 2.2.1. **Height.** No dwelling shall be erected, altered or placed on a Homesite 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.
- 2.2.2. **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.
- 2.2.3. **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 Homesite shall be of the same color and design as the house on the Homesite and shall be subject to approval by the Architectural Committee.
- 2.2.4. **Completion.** Each house or other structure constructed or placed on a Homesite shall be completely finished on the exterior thereof within nine months after commencement of construction.
- 2.3. **Setbacks.** All buildings must be set back from all Homesite boundary lines in compliance with City ordinances, as modified by any applicable planned unit development special use permit.
- 2.4. **Nuisance.** No noxious or offensive trade or activity shall be conducted upon any Homesite in the Active Development Area, 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.
- 2.5. **Prohibited Dwellings.** No structure of a temporary character, trailer, recreational vehicle, basement, tent, shack, garage, barn, or other outbuilding shall be used on any Homesite at any time (either temporarily or permanently) as a dwelling.
- 2.6. **Antennas.** Satellite dishes less than 24 inches in diameter are allowed on every Homesite, but the locations must be approved by the Architectural 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 Homesite without the written permission of the Architectural Committee. Subject to applicable federal regulations, the Architectural 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 Homesites nearby. Any structure intended to shield an exterior antenna from sight shall be subject to review by the Architectural Committee.

- 2.7. **Animals.** No animal may be bred, kept, or maintained for business or commercial purposes anywhere in the Active Development Area. 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 Homesite. The Board shall have the right to order an Owner to immediately remove from the Owner's Homesite any animal that the Board 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 Homesite any animal that continually barks in an uncontrolled manner, repeatedly wanders from the Homesite 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 of such offensive behavior to the owner of the offending animal and such Owner shall have 30 days to correct such offensive behavior.
- 2.7.1. **Number.** 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 cumulative total of three dogs and/or cats (in any combination) be kept on any Homesite; 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 Homesite. Owners shall be responsible for cleaning up after their pets. Failure to promptly clean up after a pet will subject the Owner and his or her Homesite to a special assessment for the cost of such cleanup.
- 2.7.2. **Leash Requirements.** When a dog is on its owner's Homesite, it must be under physical or electronic control or under verbal command of the Owner or Resident. When a dog is elsewhere, it must be on a leash not more than six feet long.
- 2.7.3. **Prohibition of Kennels.** No kennel, dog house or other similar building or outside run or other enclosure for animals may be erected or constructed on any Homesite.
- 2.8. **Driveways; Parking; Vehicles.** All driveways and parking areas constructed on any Homesite 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 Homesite visiting for less than 15 days in any 30 day period may park their vehicles on unenclosed paved areas of the Homesite.

- 2.9. **Signs.** No sign of any kind shall be displayed to the public view on any Homesite, except: (a) signs that comply with municipal ordinances advertising Homesites and/or homes for sale; and (b) political signs for impending elections.
- 2.10. **Rights of Declarant and Home Builders.** Until the last Homesite is sold and conveyed to an Owner other than Declarant or another professional home builder, or the date on which Declarant is no longer entitled to annex Future Development Area pursuant to Section 13.6, whichever occurs last, the following actions by Declarant and other professional home builders will not be deemed violations of the foregoing restrictions:
- 2.10.1. the use of trailers as a construction offices or sales offices;
- 2.10.2. the use of houses as model homes, sales offices or construction offices; and
- 2.10.3. the storage of equipment, materials and earth during the construction of new houses.
- 2.11. **Leases.** Any lease between an Owner and a tenant: (a) shall be in writing; (b) 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 Association Articles of Incorporation, Bylaws and Rules and Regulations; and (c) shall provide that failure by the tenant to comply with the terms of such documents shall be a default under the lease.
- 2.12. **Lawn and Yard Installations and Maintenance.**
- 2.12.1. **Declarant Installations.** As each Homesite is completed, Declarant will install vinyl edger strips and bark mulch defining the shrub planting areas on each Homesite ("**Planter Areas**") and sod turf on the remainder of the Homesite yard area and the contiguous public right of way extending from the Homesite front and side boundary lines to the back of curb of the adjacent public streets ("**Turf Areas**"). If a certificate of occupancy for a house is issued in October through April, Declarant will install the Turf Area sod and Planter Area edging and mulch by approximately July 15th. If a certificate of occupancy for a house is issued in May through September, Declarant will install the Turf Area sod and Planter Area edging and mulch within approximately 60 days after issuance of the certificate of occupancy.
- 2.12.2. **Association Responsibility.** The Association is responsible for the periodic mowing of the grass in the Turf Areas and Trail Outlots D, E and F (as defined in Section 2.12.3(b) below) on such schedule as the Association deems necessary and appropriate. The Association is not responsible for Turf Area or Trail Outlot irrigation, fertilization, aeration, application of pesticides or herbicides, or any other landscape maintenance other than periodic lawn mowing. The Association is not responsible for mowing former Turf Areas which have been enclosed with Architectural Committee approved fences pursuant to Section 4.3.3.
- 2.12.3. **Owner Responsibilities.** Except as provided in Sections 2.12.1 and 2.12.2, and subject to Section 2.13, each Owner is solely responsible for the installation, maintenance, repair and replacement of all irrigation systems, trees, shrubs and all other landscaping or other improvements on the Homesites which are not part of the Landscape Maintenance Areas described in Section 1.1.6.

- (a) All trees, shrubs, grass and landscaping which are an Owner's maintenance responsibility shall be irrigated, fertilized, trimmed and otherwise regularly maintained in a neat and healthy condition.
- (b) Owners are not generally required to install automatic irrigation systems on their Homesites, as long as the grass and other landscaping on their Homesites is otherwise adequately irrigated. Notwithstanding the foregoing, each Owner of a Homesite whose sideyard adjoins the City's public property comprising Outlots D, E or F, LAKESIDE AT OXBOW COMMONS ("Trail Outlots") shall:
 - (i) Install sod turf from the Homesite sideyard boundary to the edge of the sidewalk or bituminous trail maintained by the City on the adjacent Trail Outlot.
 - (ii) Install and maintain an automatic irrigation system capable of irrigating the sod turf installed by the Owner pursuant to Subsection 2.12.3(b)(i).
 - (iii) Irrigate, fertilize and otherwise regularly maintain (other than periodic mowing which shall be performed by the Association) the Trail Outlot sod turf installed by the Owner pursuant to Subsection 2.12.3(b)(i).
 - (iv) Owner obligations pursuant to Subsections (i) through (iii) above exclude that portion of Outlot F which is designated as part of the Landscape Maintenance Areas pursuant to Section 1.1.6(b).
- (c) Lawn ornaments (such as statuettes, birdbaths, windmills and whirly-gigs), lawn art (such as sculpture and statues) or similar items are prohibited on all Homesite Turf Areas.
- (d) No trees, shrubs, fences or other improvements shall be installed in the Homesite Turf Areas unless first approved by the Architectural Committee pursuant to Article 4 or unless installed by Declarant.

2.13. Tree Maintenance Easement. The Declarant hereby reserves unto itself and grants unto the Association easements allowing the Declarant or the Association to plant, maintain, and replace trees on each Homesite in accordance with the City's tree restoration and preservation requirements for Lakeside at Oxbow Commons.

2.13.1. Except to the extent required by the City, neither the Declarant nor the Association shall be obligated to plant any particular trees in the first instance, but if the Declarant or the Association plants any tree on a Homesite, then:

- (a) Except as provided in Subsection 2.13.1(d) below, the Owner of the Homesite upon which the tree was planted shall maintain the tree for so long as the tree lives and shall remove and replace the tree (with another tree of the same species and original size) if it dies or becomes diseased;
- (b) If the Owner fails to maintain or replace the tree, then the Association 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 Homesite for the cost thereof; and

- (c) The Declarant shall have the right (but not the obligation) to maintain the tree and to replace it, if it dies or becomes diseased.
- (d) The Association shall be responsible for maintaining any trees in the Landscape Maintenance Areas but not any trees located on other areas of the Homesites.

2.13.2. Maintenance shall include watering, fertilizing (subject to Section 2.16), trimming and any other work required to keep the tree attractive and sound.

2.13.3. The easements reserved in this Section 2.13 shall be nonexclusive, irrevocable, assignable commercial easements in gross for the benefit of the Declarant, the Association, and their respective successors and assigns. The easements in favor of the Association shall be perpetual, but the easements in favor of the Declarant shall expire automatically when the Declarant no longer owns any Homesite.

2.14. **Sidewalks.** Declarant reserves the right, but not the obligation, to construct sidewalks within the right-of-way of streets in the Active Development Area, if the City allows such use of the right-of-way. The Association shall keep the sidewalk free and clear of snow, ice, and leaves and debris. If any sidewalk is not kept clear of snow, ice, leaves and debris to the City's satisfaction, the City has the right to clear the sidewalk and assess the cost to the Owners of the adjacent Homesites as a special assessment under Chapter 429 of Minnesota Statutes. Association maintenance pursuant to this Section specifically excludes the sidewalks and trails located on Outlots D, E, F and J, of LAKESIDE AT OXBOW COMMONS or in the right of way of Regent Avenue North or 101st Avenue North, and any repairs or replacement of the structural components of any public sidewalks or trails.

2.15. **Weed Control.** The Owner of each Homesite shall keep all areas of the Homesite which are not mowed by the Association free of noxious weeds in accordance with applicable state and local law. If an Owner fails to control noxious weeds, 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 Homesite for the cost thereof. The easements reserved in this Section shall be nonexclusive, irrevocable, assignable commercial easements in gross for the benefit of the Association and the Declarant and their successors and assigns. The easement in favor of the Association shall be perpetual but the easement in favor of the Declarant shall expire automatically when the Declarant no longer owns any Homesite and is no longer entitled to annex Future Development Area.

2.16. **Phosphate Fertilizer.** Phosphate fertilizers shall not be used on lawns or landscaping on any portion of the Active Development Area. They are prohibited throughout Lakeside at Oxbow Commons.

2.17. **Boulevards.** Except as provided in Section 2.12.2, the Owner of each Homesite shall maintain the boulevard area between the property line of the Homesite and the curb of the

adjacent public streets. The Association shall maintain the boulevard area between the property line of any Common Area lot and the curb of the adjacent public streets.

2.18. **Fences.** Fences are permitted on the Homesites, subject to the following requirements:

2.18.1. All fences are subject to review and approval by the Architectural Committee. All fencing requests must be submitted to the Architectural Committee in writing with a site plan showing the fencing locations and details about the fencing materials. No fence may be installed on the Homesites without the prior written approval of the Architectural Committee.

2.18.2. Every fence on a Homesite must be located behind an imaginary line running through the garage wall located farthest from the front property line.

2.18.3. No fence shall exceed six (6) feet in height, provided that sideyard fences adjacent to Outlots D, E and F of LAKESIDE AT OXBOW COMMONS shall not exceed four (4) feet in height. In every segment of every fence, the opacity of the fencing material shall be less than 50%. In other words, the area of the openings in the fence shall be greater than the area of the solid portions of the fence when looking at the side of the fence. If one side of the fence is more attractive than the other side, the more attractive side shall face the neighboring property. Galvanized, chain link, vinyl, vinyl-coated, plastic and plastic-coated fences are prohibited. Swimming pool fencing shall conform to all applicable codes and laws.

2.19. **Fire Hydrants.** The Owner of each Homesite containing a fire hydrant or adjacent to a fire hydrant shall keep the hydrant free of obstructions, including without limitation, landscaping, snow, ice and debris.

Article 3.

SPECIAL COVENANTS AFFECTING CERTAIN HOMESITES AND OUTLOTS

3.1. **Entrance Improvements.** The Declarant may install Entrance Improvements on the Common Areas at the entrances to the Active Development Area. If the Declarant installs Entrance Improvements in such locations, the Declarant hereby reserves unto itself, a perpetual easement to maintain, repair and replace the Entrance Improvements, together with access thereto and underground utilities. "**Entrance Improvements**" means monuments, signs, walls, fences, vegetation, landscaping structures, lighting, sprinkler systems, utility lines and related improvements.

3.2. **Neighborhood Park.** The Declarant intends to build recreational facilities upon Lot 1, Block 5, of LAKESIDE AT OXBOW COMMONS (the "**Neighborhood Park**") and to convey the Neighborhood Park to the Association as Common Area. The Declarant shall have the right (but not the obligation) to build, maintain, repair and replace recreational facilities on the Neighborhood Park for so long as the Declarant owns a Homesite or is entitled to annex Future Development Area.

3.2.1. The recreational facilities may (but need not) include the following facilities: swimming pool; pool house or other structures for restrooms, pool equipment and storage; tot lot, basketball facility, picnic area, putting green, landscaping, fences, and lighting and other utilities. All recreational facilities, equipment and other

improvements on the Neighborhood Park shall belong to the Association as Common Areas and shall be operated, maintained and repaired by the Association in perpetuity for the benefit of the Owners of the Homesites, the Residents of the Homesites, members of their households and accompanied guests.

3.2.2. The Association shall have the right to remove (without replacing) any recreational facilities, equipment or improvements in the Neighborhood Park; but so long as Declarant owns a Homesite or Declarant is entitled to annex Future Development Area, such removal shall require Declarant's consent. The Neighborhood Park shall not be improved with a dwelling suitable for habitation by humans; and this sentence shall not be amended without the approval of the City Council.

3.3. **Ponds.** There are no ponds located in the Active Development Area at the time this Declaration is recorded. However, there will be ponds located in lands which Declarant expects to annex into the Active Development Area at a future date, in which event the following shall apply:

3.3.1. **Special Definitions.**

- (a) "Pond Sites" will be specified by Declarant in the supplemental declaration annexing Future Development Area into the Active Development Area pursuant to Section 13.6.
- (b) "Pond Access Lanes" are improved or non-improved access ways that provide access to Pond Sites. The Pond Access Lanes will be specified by Declarant in the supplemental declaration annexing Future Development Area into the Active Development Area pursuant to Section 13.6.
- (c) "Pond Edge" means the three foot (3') strip of land located immediately upland from the normal water level elevation of the pond.
- (d) "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.

3.3.2. **Easement Rights.** The Declarant hereby reserves easements for itself and grants easements to the Association as follows:

- (a) Over 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, if any, in and around the ponds; and
- (b) Over Pond Access Lanes for access to remove sediment from the ponds and otherwise maintain the Pond Sites, the Pond Equipment, if any, and underground utility lines serving any Pond Equipment.
- (c) These easements shall be nonexclusive, irrevocable, assignable, commercial easements in gross for the benefit of the Declarant, the Association, and their respective successors and assigns. The Declarant's rights in the Pond Sites and Pond Access Lanes shall expire when the

Declarant no longer owns any Homesite and is no longer entitled to annex Future Development Area. The Association's rights and obligations in the Pond Sites and Pond Access Lanes shall be perpetual. Neither the public nor the Owners of Homesites shall have any rights in the Pond Sites or the Pond Access Lanes solely by virtue of the easements described in this section 3.3.2.

- 3.3.3. **Water Quality and Aquatic Vegetation.** The rights of the Declarant and the Association to maintain Pond Sites (as set forth in Section 3.3.2(a) 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 Declarant and the Association shall have the right, but not the obligation to provide such treatments and if the Declarant or the Association provide such treatments, the Declarant and the Association may discontinue such treatments at any time.
- 3.3.4. **Uniform Pond Edge Treatment.** All Pond Edges as initially established and landscaped by Declarant shall be left undisturbed. There shall be no mowing, trimming or other alterations of the high grasses or other plantings in the Pond Edges by the Association or any Owner.
- 3.4. **Street Circulation.** Portions of Toledo Drive North and Scott Avenue North may be closed to through or circulating traffic during periods of construction. However, at the conclusion of development activities these streets will be throughways providing traffic circulation throughout Lakeside at Oxbow Commons.
- 3.5. **Disposition of Outlots and Neighborhood Park Property .** Following is the disposition of the outlots in LAKESIDE AT OXBOW COMMONS:
 - 3.5.1. **Outlots A, B and C** are Future Development Area
 - 3.5.2. **Outlots D, E and F** shall be deeded to the City for public trail corridors and landscaping purposes.
 - 3.5.3. **Outlots G, H and I** shall be deeded to the Association as Common Areas and may be improved with Entrance Improvements and landscaping.
 - 3.5.4. **Outlot J** shall be deeded to the City for public trail, open space and landscaping purposes.
 - 3.5.5. **Lot 1, Block 5** shall be deeded to the Association as Common Areas for Neighborhood Park purposes.

Article 4.

ARCHITECTURAL COMMITTEE

- 4.1. **Architectural Committee Members and Purposes.** The Architectural Committee shall consist of three individuals appointed by the Declarant until the date the Declarant no longer owns any Homesite and is no longer entitled to annex Future Development Area. Thereafter the Architectural Committee shall consist of three individuals appointed by the

Board. The Architectural Committee shall review and approve any and all exterior work on Homesites.

- 4.2. **Alterations Requiring Architectural Committee Approval.** Without any approvals from the Architectural Committee, the Declarant may perform any work upon any Homesite owned by the Declarant or owned by a person who has hired the Declarant to perform the work. Before anyone else performs any of the following work ("Alterations") on any Homesite, the plans and specifications for the Alterations must be reviewed and approved by the Architectural Committee:

- 4.2.1. clearing of one or more trees from the Homesite;
- 4.2.2. grading the Homesite;
- 4.2.3. constructing, erecting or installing any structure on the Homesite, 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 (other than identical replacements), newspaper box, or light post; any exterior antenna (subject to Section 2.6); any storm door visible from another Homesite or Common Area; 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);
- 4.2.4. changing the exterior color, style or materials of any structure and installation of storm doors on the Homesite; or
- 4.2.5. installing trees, shrubs, fencing or other improvements in the Turf Areas which are mowed by the Association.

The following types of work are not Alterations and do not require Architectural Committee approval: planting shrubs and other plants in the Planter Areas; and changing the interior of any structure.

- 4.3. **Review of Plans and Specifications.** At least 60 days prior to the projected commencement of any Alteration on a Homesite, the Owner of the Homesite shall submit to the Architectural Committee one complete set of plans and specifications for the proposed Alteration (including, without limitation, full site plans, grading, drainage and landscape plans, building elevations, roof pitches, exterior colors and materials). If the Architectural Committee fails to approve or disapprove in writing within 60 days after receipt of said plans and specifications and all other information requested by the Architectural Committee, then the Owner's plans and specifications shall be deemed approved, and this Section shall be deemed to have been fully satisfied, so long as the Alteration is done in accordance with the plans, specifications and related information that were submitted. The Architectural 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 Architectural Committee may disapprove plans and specifications only for one or more of the following reasons:

- 4.3.1. Non-compliance with this Declaration, municipal ordinances or other governmental regulations;

- 4.3.2. Failure of the proposed work to be compatible with the Homesite, in terms of topography, drainage, soils and existing vegetation;
- 4.3.3. Incompatibility of the work with the Association's mowing of Turf Areas pursuant to Section 2.12.2 or encroachment into the Association Landscape Maintenance Areas. The Architectural Committee may condition approval of a fence or other Alteration upon the Owner agreeing (on behalf of the Owner and the Owner's heirs, successors and assigns) to assume responsibility for maintenance of the Alteration, including mowing any former Turf Areas which are enclosed by any approved fence).
- 4.3.4. 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 Declarant or already built by anyone, in terms of style, building material, color, general size, height and width, quality of construction, price range and other characteristics;
- 4.3.5. Failure of the plans and specifications to show all information necessary to evaluate the foregoing characteristics; and/or
- 4.3.6. Failure of the builder to have a reputation for building high quality homes with high quality customer service.
- 4.4. **Multiple Product Lines.** The Declarant may market two or more different product lines of homes in the Active Development Area, and those product lines may differ from each other in terms of style, general appearance, size, height and width, quality of construction, price range and other characteristics. The Declarant makes no guarantees, assurances or representations concerning the style, general appearance, 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 Homesites. Also, the Declarant reserves the right to introduce new and different product lines in areas annexed into the Active Development Area.
- 4.5. **Architectural Committee Actions Conclusive.** The Architectural Committee's determinations concerning the builder and plans and specifications shall be conclusive. If the Architectural Committee disapproves the builder or the plans and specifications, it shall state in writing the reason for such disapproval and, in the case of the plans and specifications, the deficiencies which must be cured to obtain approval. The Architectural 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.
- 4.6. **Remedies Against Owners.** If any work is commenced without the Architectural Committee's approval of the plans and specifications, or if any work is not completed 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 Architectural Committee. Any such action shall not be subject to the dispute resolution provisions of Article 9 of this Declaration.

- 4.7. **Remedies Against Architectural Committee.** If the Architectural Committee and/or the members of the Architectural Committee fail to discharge their respective obligations under this Article 4, 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 Section 9.4.3 of this Declaration and within one-hundred and eighty (180) 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 one-hundred and eighty (180) 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 Architectural Committee and/or its members to discharge such obligations. Under no circumstances shall Declarant, the Architectural Committee or members of the Architectural Committee be liable to any person for damages (direct, consequential or otherwise).

Article 5.

COMMON AREAS AND ASSOCIATION MAINTENANCE OBLIGATIONS

- 5.1. **Owner's Rights of Use .** 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 Homesite, 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 and the Board is authorized to reasonably restrict access to Entrance Improvements and similar landscape and maintenance areas which are not designed or intended for active use. Usage of the Common Areas shall be limited to those activities which, in the judgment of the Board, shall not be a nuisance or an annoyance to the neighboring Homesites. Nevertheless, the Association may sponsor occasional special events (such as neighborhood picnics) upon any Common Areas. Owners shall not have any right of access to or use of the Landscape Maintenance Areas, except for maintenance and repair of any utilities servicing an Owner's Homesite.
- 5.2. **Improvements in Common Areas and Landscape Maintenance Areas.** Only the Association shall have the right to install any improvements or plantings in the Common Areas or Landscape Maintenance Areas. Upon the installation of any improvements and plantings in the Common Areas or Landscape Maintenance 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 and Landscape Maintenance Areas. The Association may, in its discretion, choose to remove and not replace any improvements and plantings in the Common Areas or Landscape Maintenance Areas. Any improvements to Common Areas or Landscape Maintenance Areas shall comply with City requirements for the Active Development Area; and the Association shall obtain any and all City permits that may be required to modify or build such improvements.
- 5.3. **Actions Affecting Common Areas.** The Common Areas shall not be abandoned, partitioned, subdivided, encumbered, leased, sold, transferred or dedicated for public use, except by recording an instrument executed by the Association, by the Owners owning at

least 67% of the Homesites, and by the Declarant (if the Declarant owns any Homesite or is still entitled to annex Future Development Area).

- 5.4. **Driveway and Walkway Snow Removal.** The Association shall be responsible for snow removal from the Homesite driveways and the private walkway extending from the driveway to the stoop or porch at the front door of the home. The Association shall not be responsible for any snow removal from the stoop or porch or any steps leading to the stoop or porch.
- 5.5. **Garbage Removal.** The Association shall contract for the weekly removal of a certain quantity of refuse from each Homesite. Each Owner shall be responsible for the prompt removal of all excess refuse from the Owner's Homesite.
- 5.6. **Care and Maintenance by the City.**
 - 5.6.1. If, in the opinion of the City Council expressed in a resolution, the Association or the Owners have failed to provide: (i) adequate control of surface water drainage; (ii) adequate construction, maintenance and repair of any sanitary sewer, storm sewer, storm water holding pond or other public utilities the construction, and/or maintenance and repair of which are the responsibility of the Association or the Owners; or (iii) adequate care of the Common Areas or Landscape Maintenance Areas, then duly authorized agents of the City may enter upon the Common Areas or Landscape Maintenance Areas and perform such work as the City Council shall have deemed necessary to preserve the health, safety and welfare of the residents of the Homesites or of the City.
 - 5.6.2. If the City performs maintenance or makes repairs pursuant to this Declaration or constructs any public improvements pursuant to the laws of the State of Minnesota, then the City may assess the cost of said maintenance or repairs or public improvement directly against the benefited Homesites, or the City may assess the Common Areas for the cost of said maintenance or repairs, or public improvement. If the City assesses the Common Areas for the cost of said maintenance or repairs, then the Association shall levy a special assessment against all the Homesites to defray the total amount of the City assessment. Such a special assessment by the City or the Association need not have the consent of the Owners or Residents of the Homesites.
 - 5.6.3. The title of the Association in and to the Common Areas is hereby made subject to a nonexclusive easement in favor of the City for the purpose of ingress and egress for police, fire, rescue and other emergency calls, animal control, health and protective inspection and to provide to the Owners other public services deemed necessary by the City, and for the purposes set forth herein.
- 5.7. **Maintenance and Repairs by Owners.** Each Owner is solely responsible for insuring, maintaining, repairing and replacing the dwelling and all other improvements, including any fencing, irrigation systems and landscaping improvements on the Owner's Homesite, with the exception of (i) any Landscape Maintenance Areas located on the Homesite, and (ii) the Turf Area mowing and driveway and walkway snow removal services provided by the Association.

Article 6.
ASSOCIATION INSURANCE

- 6.1. **Liability Insurance.** The Association shall keep in force at all times a policy of commercial general liability insurance, with coverage of at least \$2,000,000 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.
- 6.2. **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.
- 6.3. **Other Insurance.** The Association shall also procure:
- 6.3.1. Fidelity bond 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 reasonably available. The fidelity bond or insurance shall name the Association as the named insured and shall be written in an amount equal to the greater of (i) the estimated maximum of Association funds, including reserves, in the custody of the Association or management agent at any given time while the bond is in force; or (ii) a sum equal to 3 months aggregate Association assessments on all Homesites plus reserves. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers, or a waiver of defense based upon the exclusion of persons serving without compensation shall be added;
- 6.3.2. Worker's compensation insurance if required by law;
- 6.3.3. Directors and officers liability insurance with such reasonable limits and coverages as the Board shall determine from time to time; and
- 6.3.4. Such other insurance as the Board may determine from time to time to be in the best interest of the Association and the Owners.
- 6.4. **Cost of Insurance.** The cost of such insurance shall be assessed against the Owners and their Homesites as provided in Article 8 below.
- 6.5. **First Mortgagees.** First mortgagees of Homesites, 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 Homesites establishing entitlement to such reimbursement.

Article 7.
INCORPORATION OF THE ASSOCIATION

- 7.1. **Membership; Voting Rights.** 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 Homesite. The Association shall have one class of voting membership. Members shall be entitled to one vote for each Homesite owned. When more than one person owns any Homesite, all such persons shall be members. The vote for such Homesite shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Homesite. Upon becoming an Owner, each Owner shall register his address with the Secretary of the Association and, if a Homesite 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 Homesite.
- 7.2. **Rules and Regulations.** The Board shall have exclusive authority to approve and implement such reasonable Rules and Regulations as it deems necessary or desirable from time to time for the purpose of operating and administering the affairs of the Association and regulating the use of the Active Development Area, including the Common Areas and Landscape Maintenance Areas, provided that the Rules and Regulations shall be consistent with the other Governing Documents. The inclusion in other parts of the Governing Documents of authority to approve Rules and Regulations shall be deemed to be in furtherance, and not in limitation, of the authority granted by this Section. New or amended Rules and Regulations shall be effective only after reasonable notice has been given to the Owners.

Article 8.
COVENANT FOR GENERAL AND SPECIAL ASSESSMENTS

- 8.1. **Lien.** The Declarant, for each Homesite, hereby covenants, and each subsequent Owner of any Homesite 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 Homesite and shall be a continuing lien upon each Homesite. If payable in installments, the full amount of the General assessment is a lien on the Homesite from the time the first installment thereof becomes due. 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.
- 8.2. **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 Homesite 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 Homesite shall not affect the assessment lien, except as provided in Section 8.11 of this Article.

- 8.3. **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 Homesites and for the improvement and maintenance of the Common Areas, the Landscape Maintenance Areas and the Association's other easement areas and may include (without limitation) payment by the Association for the following items:
- 8.3.1. Utility services;
 - 8.3.2. Taxes and special assessments against the Common Areas, if any;
 - 8.3.3. Income and other taxes levied or assessed against or charged to the Association, if any;
 - 8.3.4. 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 and Landscape Maintenance Areas;
 - 8.3.5. Repair, replacement, construction, reconstruction, alterations, maintenance, snow removal, and additions to personal property and improvements owned by the Association;
 - 8.3.6. The cost of labor, equipment, and materials for all work done by or for the Association;
 - 8.3.7. Reasonable fees for management and supervision of the Association's real and personal property; and
 - 8.3.8. Unless billed directly to the Owners pursuant to the Lake Declaration, the Owners' proportionate share of maintenance charges levied pursuant to the Lake Declaration, which charges shall be allocated equally among the Homesites.
- 8.4. **Reserve Funds.** Adequate reserve funds funded from general assessments and not from special assessments, shall be maintained for (i) maintenance, repair and replacement of the Common Areas and Landscape Maintenance Areas, including the Neighborhood Park, the 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.
- 8.5. **Maximum General Assessment.** Commencing with 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) ten percent (10%) 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 majority of a quorum of the votes of Owners cast in person, by proxy or by written ballot pursuant to the Association Bylaws.

- 8.6. **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 Common Areas, the Entrance Improvements, the Landscape Maintenance Areas 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 majority of a quorum of the votes of Owners cast in person, by proxy or by written ballot pursuant to the Association Bylaws.
- 8.7. **Working Capital Contribution.**
- 8.7.1. **Contribution; Amount.** When each Homesite is sold and closed by Declarant, there shall be contributed to the Association on a one-time basis an amount equal to two months' of the estimated general assessment for the Homesite being conveyed. The contribution to the Association working capital shall be paid by the Homesite purchaser at the closing of the sale of the Homesite to the purchaser by Declarant or other homebuilder. If said contribution is not paid at the closing, then: (i) the Association shall have a lien against the Homesite for said contribution; (ii) the Association may foreclose the lien in the same manner as assessment liens; and (iii) the Association shall have all other remedies as if the unpaid contribution were an unpaid Association assessment.
- 8.7.2. **Deposit and Use.** The working capital contributions paid to the Association are in addition to the regular installments of Association assessments. The funds shall be deposited into the Association's account and may be used to fund operating expenses, reserves and other common expenses of the Association. Declarant may not use the funds to satisfy Association general or special assessments levied against Declarant's Homesites or to defray any other Declarant expenses or construction costs; provided that Declarant may be reimbursed from Association funds for Association common expenses advanced by Declarant on behalf of the Association.
- 8.8. **Rate of Assessment.** Both general and special assessments shall be fixed at a uniform rate for all Homesites; provided, however, each Homesite owned by Declarant shall be assessed at twenty-five percent (25%) of the rate assessed against Homesites owned by persons other than Declarant until substantial completion (evidenced by a certificate of occupancy) of a house constructed on the Homesite.
- 8.9. **Date of Commencement of General Assessments; Due Dates.** Until a general assessment is levied, Declarant shall pay all accrued expenses of the Association and the Common Areas and Landscape Maintenance Areas. The Board shall fix the amount of the general assessment provided for herein against each Homesite at least thirty (30) days in advance of each assessment. The initial general assessment period shall run through the fiscal year in which general assessments commence. Each succeeding general assessment period shall be a full fiscal year. Written notice of the general assessment amount and due dates shall be sent to every Owner subject to assessment.
- 8.10. **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 a rate equal to the lesser of: (a) eight percent (8%) per annum; or (b) the highest rate allowed by applicable law. 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 Homesite 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 9. No Owner may waive or otherwise escape liability for assessments by non-use of the Common Areas or by abandonment of the Owner's Homesite. 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 recovering costs of collection.

- 8.11. **Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage recorded prior to recordation of documents commencing the foreclosure of the Association's assessment lien ("**Priority Mortgage**"). While the transfer of any Homesite generally does not affect the assessment lien, the foreclosure of a Priority Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such foreclosure 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. Notwithstanding the foregoing, if a Priority Mortgage on a Homesite is foreclosed, and no Owner redeems during the Owner's period of redemption provided by Minnesota Statute Chapters 580, 581, or 582, then the holder of the sheriff's certificate of sale from the foreclosure of the Priority Mortgage shall take title to the Homesite subject to unpaid Assessments that became due, without acceleration, during the six months immediately preceding the first day following the end of the Owner's period of redemption. No sale or transfer shall relieve such Homesite from liability for any assessments thereafter becoming due or from the lien thereof.
- 8.12. **Certificate of Payment.** The Association shall, upon demand and for a reasonable administrative charge, furnish a certificate signed by an officer of the Association in recordable form setting forth whether the assessments on a specified Homesite 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 Homesite shall be binding upon the Association as of the date of its issuance.

Article 9. DISPUTE RESOLUTION

- 9.1. **Alternative Method for Resolving Disputes.** Declarant and its officers, directors, employees and agents; the Association, its officers, directors and committee members; all Owners; any builder of a home on a Homesite and its officers, directors, employees and agents; and any other person or other entity not otherwise subject to this Declaration who agrees to the procedures contained in this Article 9 (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 9.2 (collectively, "**Claims**") to the procedures set forth in Section 9.4.

- 9.2. **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 9.

- 9.3. **Exclusions from Claims.** Notwithstanding Section 9.2, unless all parties thereto otherwise agree, the following shall *not* be Claims and shall *not* be subject to the provisions of this Article 9:

- 9.3.1. Any suit by the Association against any Bound Party to enforce the provisions of Article 8 (Covenant for General and Special Assessments);
- 9.3.2. Any suit by the Association, the Architectural Committee or Declarant 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 2 (General Covenants Affecting All Homesites), Article 3 (Special Covenants Affecting Certain Homesites), Article 4 (Architectural Committee), and Article 5 (Common Areas and Association Maintenance);
- 9.3.3. Any suit by the City or the Association to enforce the provisions of Section 5.6 (Care and Maintenance by the City);
- 9.3.4. Any suit between or among Owners, which does not include Declarant, a builder of a home on a Homesite, 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
- 9.3.5. Any suit in which any indispensable party is not a Bound Party.

With the consent of all parties thereto, any of the excluded claims may be submitted to the alternative dispute resolution procedures set forth in Section 9.4.

- 9.4. **Mandatory Procedures.**

- 9.4.1. **Two-Thirds Vote 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:

- (a) 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);

- (b) the imposition and collection of assessments;
- (c) proceedings involving challenges to property taxes and governmental special assessments;
- (d) counterclaims brought by the Association in proceedings instituted against it;
- (e) proceedings brought by the Association to compel the parties to follow the dispute resolution process required by this Article 9; or
- (f) proceedings brought by the Association to enforce awards granted pursuant to this Article 9.

9.4.2. **Declarant's Right to Notice and Opportunity to Cure.** Prior to the Association or any Owner commencing any proceeding to which Declarant is a party, including but not limited to an alleged defect of any improvement, Declarant 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.

9.4.3. **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:

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

9.4.4. **Negotiation and Mediation.**

- (a) 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.

- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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 9.4 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 9.4. 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.

9.4.5. Binding Arbitration.

- (a) 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.

- (b) Each Party shall bear its own costs and expenses, including, but not limited to, filing fees and an equal share of the arbitrator fees 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).
- (c) 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.
- (d) The arbitrator(s) shall have no authority to award any damages that are not measured by the Claimant's actual out-of-pocket loss. For example special, consequential, exemplary and punitive damages shall not be awarded.
- (e) The award of the arbitrator(s) shall be enforceable by a court of law (Hennepin County District Court).

- 9.5. **Amendment of Article 9.** Without the express written consent of Declarant, this Article 9 may not be amended for a period of twenty years from the date this Declaration is recorded.

Article 10. COMPLIANCE AND REMEDIES

- 10.1. **General.** Each Owner and Resident, and any other person owning or acquiring any interest in the Active Development Area, shall be governed by and comply with the Declaration, the Governing Documents, the Rules and Regulations, the decisions of the Association, and such amendments thereto as may be made from time to time. A failure to comply shall entitle the Association to the relief set forth in this Article 10, in addition to the rights and remedies authorized elsewhere by the Governing Documents and by law.
- 10.2. **Entitlement to Relief.** All Claims, as defined in Article 9, shall be subject to the Dispute Resolution provisions of Article 9. Pursuant to the Dispute Resolution provisions of Article 9, the Association may seek to recover sums due, for damages, for injunctive relief or to foreclose a lien owned by it, or any combination thereof, or any other relief authorized by the Governing Documents or available at law or in equity. Relief may be sought by the Association against any Owner, or by an Owner against the Association or another Owner, to enforce compliance with the Governing Documents, the Rules and Regulations, or the decisions of the Association. However, no Owner may withhold any assessments payable to the Association, or take (or omit) other action in violation of the

Governing Documents, or the Rules and Regulations as a measure to enforce such Owner's position, or for any other reason.

- 10.3. **Sanctions and Remedies.** In addition to any other remedies or sanctions, expressed or implied, administrative or legal, the Association shall have the right, but not the obligation, to implement any one or more of the following remedies against Owners and Residents and/or their guests who violate the provisions of the Governing Documents, or the Rules and Regulations:
- 10.3.1. In accordance with Article 9, the Association may commence legal action for damages, or equitable relief in any court of competent jurisdiction.
 - 10.3.2. The Association may impose late charges of up to 15% of each late payment of an assessment or installment thereof.
 - 10.3.3. In the event of default of more than 30 days in the payment of any assessments or installment thereof, all remaining installments of assessments assessed against the Homesite owned by the defaulting Owner may be accelerated and shall then be payable in full, if all delinquent assessments, together with all costs of collection and late charges, are not paid in full prior to the effective date of the acceleration. Reasonable advance written notice of the effective date of the acceleration shall be given to the defaulting Owner.
 - 10.3.4. The Association may impose reasonable fines, penalties or charges for each violation of the Governing Documents or the Rules and Regulations.
 - 10.3.5. The Association may suspend the voting rights of any Owner and the rights of any Owner or Resident and their guests to use the Neighborhood Park and other Common Area amenities; provided, that this limitation shall not apply to any portions of Common Areas providing utilities service and access to the Homesite. Such suspensions shall be limited to periods of up to 60 days for each violation.
 - 10.3.6. The Association may restore any portions of the Common Areas and Landscape Maintenance Areas which are damaged or altered, or allowed to be damaged or altered, by any Owner or Resident or their guests in violation of the Governing Documents, and assess the cost of such restoration against the responsible Owners and their Homesites.
 - 10.3.7. The Association may enter any Homesite as to which a violation or breach of the Governing Documents exists which materially affects, or is likely to materially affect in the near future, the health or safety of the other Owners or Residents, or their guests, or the safety or soundness of any dwelling or other part of the Active Development Area or the property of the Owners or Residents, and to summarily abate and remove, at the expense of the offending Owner or Resident, any structure, thing or condition on the Homesite which is causing the violation; provided that any improvements which are a part of a dwelling may be altered or demolished only pursuant to a court order or with the agreement of the affected Owner.
 - 10.3.8. The Association may foreclose any lien arising under the provisions of the Governing Documents or under law, in the manner provided for the foreclosure of

mortgages by action or advertisement under a power of sale in the State of Minnesota.

- 10.4. **Rights to Hearing.** Before imposing any of the remedies authorized by Subsections 10.3.4, 10.3.5 or 10.3.6, the Board shall, upon written request of the offender, grant to the offender a fair and equitable hearing. The offender shall be given notice of the nature of the violation and the right to a hearing, and at least 10 days within which to request a hearing. The hearing shall be scheduled by the Board and held within 30 days after receipt of the hearing request by the Board, and with at least 10 days prior written notice to the offender. If the offender fails to appear at the hearing, then the right to a hearing shall be waived and the Board may take such action as it deems appropriate. The decision of the Board and the rules for the conduct of hearings established by the Board shall be final and binding on all parties. The Board's decision shall be delivered in writing to the offender within ten days following the hearing, if not delivered to the offender at the hearing.
- 10.5. **Lien for Charges, Penalties, Etc.** Any assessments, charges, fines, penalties or interest imposed under this Article 10 shall be a lien against the Homesite of the Owner or Resident against whom the same are imposed and the personal obligation of such Owner in the same manner and with the same priority and effect as Assessments under Article 8. The lien shall attach as of the date of imposition of the remedy, but shall not be final as to violations for which a hearing is held until the Board gives written notice following the hearing. All remedies shall be cumulative, and the exercise of, or failure to exercise, any remedy shall not be deemed a waiver of the right to pursue any others.
- 10.6. **Costs of Proceedings and Attorneys' Fees.** respect to any collection measures, or any measures or action, legal, administrative, or otherwise, which the Association takes to enforce the provisions of the Governing Documents or Rules and Regulations, whether or not finally determined by a court or arbitrator, the Association may assess the violator and his or her Homesite with any expenses incurred in connection with such enforcement, including without limitation fines or charges previously imposed by the Association, reasonable attorneys' fees, and interest (at the highest rate allowed by law) on the delinquent amounts owed to the Association.
- 10.7. **Liability for Owners' and Residents' Acts.** An Owner shall be liable for the expense of any maintenance, repair or replacement of the Active Development Area rendered necessary by such Owner's acts or omissions, or by that of Residents or guests in the Owner's Homesite, to the extent that such expense is not covered by the proceeds of insurance carried by the Association or such Owner or Resident. However, any insurance deductible amount and/or increase in insurance rates, resulting from such acts or omissions may be assessed against the Owner or Resident responsible for the condition and also against the Owner's Homesite.
- 10.8. **Enforcement by Owners.** The provisions of this Article 10 shall not limit or impair the independent rights of other Owners to enforce the provisions of the Governing Documents.

Article 11.
ADDITIONAL RIGHTS OF MORTGAGEES

- 11.1. **Notice of Meetings.** The holder of any mortgage of record against any Homesite, 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.
- 11.2. **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 Bylaws 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.
- 11.3. **Notice of Defaults.** The holder of any mortgage of record against any Homesite, 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 Homesite upon which such mortgage is a lien, then or thereafter existing, in fulfilling his obligations under this Declaration or the Bylaws 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.
- 11.4. **Copy of Budget.** The holder of any mortgage of record against any Homesite, 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 12.
DECLARANT'S RIGHTS

In addition to Declarant's rights set forth elsewhere in this Declaration, the Declarant hereby reserves exclusive and unconditional authority to exercise the following "**Special Declarant Rights**" for as long as it owns a Homesite or has the right to subject any of the Future Development Area to this Declaration, or for such shorter period as may be specifically indicated.

- 12.1. **Complete Improvements.** Declarant has the right to complete all improvements included in Declarant's development plans and to make alterations in the Common Areas, the Landscape Maintenance Areas, and other parts of the Active Development Area owned by it, to accommodate its activities.
- 12.2. **Sales Facilities.** Declarant has the right to construct, operate and maintain a sales office, management office, model homes and other development facilities within the Common Area and any other parts of the Active Development Area owned by Declarant; and to allow home builders to do the same on Homesites owned by them.
- 12.3. **Signs.** Declarant has the right to erect and maintain signs and other sales displays offering parts of the Active Development Area for sale or lease, in or on any part of the Active Development Area owned by it or subject to its easement rights; and to allow home builders to do the same on Homesites owned by them.
- 12.4. **Control of Association.** Declarant has the right to control the operation and administration of the Association, including without limitation the power to appoint and remove the directors and officers of the Association, during the "Declarant Control Period" which shall begin on the date this Declaration is first recorded and which shall terminate on the earliest of: (i) voluntary surrender of the right to appoint directors, (ii) the tenth anniversary of the date of recording of this Declaration, or (iii) the date when 75% of the number of Authorized Homesites (as defined below) are conveyed to Owners other than Declarant.
- 12.4.1. For the purposes of this Section 12.4, the number of "**Authorized Homesites**" is the total number of Homesites which Declarant has reserved the right to build, including Future Development Area Homesites that Declarant may add to the Active Development Area pursuant to Section 13.6. At the time this Declaration is recorded there are 74 Authorized Homesites for which Declarant has preliminary plat approval. However, the number of Authorized Homesites could change.
- 12.4.2. The term of any director appointed by the Declarant shall expire no later than 60 days after the Declarant Control Period expires. The Board shall call a meeting of the Members of the Association to elect or appoint successor directors within the 60-day period.
- 12.4.3. Notwithstanding the foregoing, the Owners other than Declarant shall have the right to nominate and elect not less than one-third of the directors at a meeting of the Owners which shall be held within 60 days following the conveyance to persons other than Declarant of 50% of the number of Authorized Homesites.
- 12.5. **Consent to Certain Amendments.** As long as Declarant owns any unsold Homesite, or has the unexpired right to subject Future Development Area to this Declaration, Declarant's written consent shall be required for any amendment to the Declaration or the Governing Documents of the Association which directly or indirectly affects Special Declarant Rights.
- 12.6. **Appointment of Architectural Committee Members.** Declarant has the right to appoint members of the Architectural Committee as provided in Section 4.1 for so long

as Declarant owns any unsold Homesite, or has the unexpired right to subject Future Development Area to this Declaration.

- 12.7. **Transfer of Special Declarant Rights.** Some or all of the Special Declarant Rights may be voluntarily transferred by Declarant by a separate instrument signed by Declarant and the transferee and recorded against the portions of the Active Development Area affected.

**Article 13.
GENERAL PROVISIONS**

- 13.1. **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.
- 13.2. **Duration.** This Declaration shall run with and bind the Homesites 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.
- 13.3. **Amendment.** This Declaration may be amended by an instrument signed by the Owners owning at least 67% of the Homesites and by the holders of first mortgages on at least 67% of the Homesites with mortgages. Each amendment must be recorded with the County Recorder and/or Registrar of Titles, as appropriate.
- 13.4. **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 Homesite, if it is a different address.
- 13.5. **Captions; Singular and Plural.** The title of this instrument and the captions of the articles, sections and subsections hereof are for convenience of reference only. The masculine gender of any word used herein shall include the feminine or neutral gender, or vice versa, and the singular of any word used herein shall include the plural, or vice versa.
- 13.6. **Annexation.** Additional lots and outlots within the Future Development Area may be (but need not be) annexed into the Active Development Area by the Declarant, 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.
- 13.6.1. Such annexations shall be accomplished by means of one or more supplemental declarations executed by the Declarant and recorded with the County Recorder and/or Registrar of Titles, as appropriate.
- 13.6.2. The supplemental declaration annexing Future Development Area may contain such additions and modifications of the covenants, conditions, restrictions, reservation of easements and equitable servitudes contained in this Declaration as may be necessary or appropriate to reflect the different character, if any, of the annexed Homesites, Common Areas and Landscape Maintenance Areas, or as Declarant may deem appropriate in the development of the annexed Homesites,

Common Areas and Landscape Maintenance Areas, and as are not inconsistent with the general plan and scheme of this Declaration. In no event, however, shall such supplemental declaration revoke or modify the covenants, conditions, restrictions, reservation of easements, or equitable servitudes established by this Declaration with respect to the remainder of the Active Development Area which is not covered by such supplemental declaration.

13.6.3. Declarant may unilaterally revoke or amend any supplemental declaration annexing Future Development Area into the Active Development Area if Declarant is the Owner of all of the real property annexed pursuant to such supplemental declaration.

13.6.4. The Declarant makes no representation, warranty, guarantee or covenant about future annexations of land into the Active Development Area, nor whether future Homesites will be any particular product types.

13.7. **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.

13.8. **Conflicts Among Documents.** In the event of any conflict among the provisions of the Lake Declaration and this Declaration, the Association Articles, Bylaws or Rules and Regulations, the Lake Declaration shall control. As among this Declaration and the Association Articles, Bylaws or Rules and Regulations, the Declaration shall control; and as between the Bylaws and the Rules and Regulations, the Bylaws shall control.

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of 2/11/04, 2004.

DECLARANT:

LUNDGREN BROS. CONSTRUCTION, INC., a
Minnesota corporation

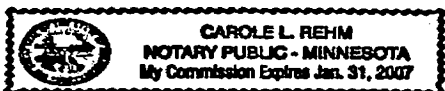
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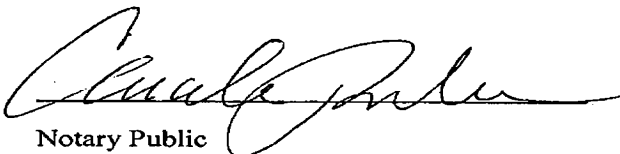
David A. Hinnners
DAVID A. HINNERS

Its: Vice-President

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

This instrument was acknowledged before me on the 11th day of February, 2004, by **David A. Hinnars**, the Vice-President of **Lundgren Bros. Construction, Inc.**, a Minnesota corporation, on behalf of the corporation.




Notary Public

CONSENT AND JOINDER

GMAC Model Home Finance, Inc., a Virginia corporation, the Owner of Lot 13, Block 2, Lakeside at Oxbow Commons, Hennepin County, Minnesota, according to the recorded Plat thereof, hereby consents to and joins in the attached Declaration of Covenants for Lakeside at Oxbow Commons (the "**Declaration**"); provided, that the undersigned is consenting to and joining in the Declaration as an "Owner" and the undersigned does not in any manner constitute itself or obligate itself as a "Declarant" as such terms are defined in the Declaration.

IN WITNESS WHEREOF, the undersigned has executed this Consent and Joinder effective on the 11th day of February, 2004.

GMAC Model Home Finance, Inc., a Virginia corporation

By: [Signature]

Its: AVP

STATE OF Virginia)
COUNTY OF Henrico) ss.

The foregoing instrument was acknowledged before me this 16th day of February, 2004, by Mark P. Paniceia, the AVP of GMAC Model Home Finance, Inc., a Virginia corporation, on behalf of said entity.

My Commission Expires April 30, 2007

[Signature]
Notary Public Leslie Anne Argenta

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