

Hunters Bay Estates 1st Amended Covenants

Abstract Document
#460717

OFFICE OF COUNTY RECORDER

State of Minnesota, County of Cass
I hereby certify that the within instrument
was filed in this office for record on the
8th day of Jan. A.D. 2003
at 10:00 O'clock A M and was duly
recorded as Micro Doc. No. 460717

Kathryn M. Norling
COUNTY RECORDER *jm*

**FIRST AMENDED AND RESTATED
DECLARATION OF RESTRICTIVE COVENANTS
AND RESERVATIONS OF EASEMENTS
HUNTERS BAY ESTATES
CASS COUNTY, MINNESOTA**

Plaza Development Group, Inc., a corporation whose post office address is 1220 Main Avenue, Ste. 225, Fargo, ND 58107 has established and is the Owner/Developer of Hunters Bay Estates in Cass County, Minnesota. A Plat of Hunters Bay Estates (hereinafter the "Premises") is on file with the Cass County Recorder. This Plat was recorded on 12-24-2002, 2002, at 1:40 PM as Microcard No. 460122.

A Declaration of Restrictive Covenants and Reservations of Easements, Hunters Bay Estates, Cass County, Minnesota was recorded with the Cass County, Minnesota Recorder on 12-24-, 2002, as Microcard No. 460123. Plaza Development Group, Inc., remains the owner of all lots of Hunters Bay Estates and by this document does amend and restate the Declaration of Restrictive Covenants and Reservations

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of Easements for Hunter's Bay Estates, Cass County, Minnesota in its entirety as follows:

The Owner/Developer declares that the real property described as the Premises is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, reservations and easements as set forth in this document, the burden of which shall run with the Premises and bind all persons who now or hereafter have any right, title or interest in or to any of the Premises and inure to the benefit of all persons who now or hereafter have any right, title or interest in or to any part of the Premises. These restrictions, covenants, conditions and easements shall be deemed to run with the Premises and shall be binding upon the heirs, administrators, executors, successors and assigns of any person to whom the Premises may be conveyed.

Section 1. **Definitions.**

Section 1.1. **Premises** – refers to all property as described in the Certified Plat of Hunters Bay Estates, Cass County, Minnesota on file with the Cass County, Minnesota Recorder, recorded on 12-24-2002 at 1:40 PM as Microcard No. 460122. This definition shall also include any part of the Premises.

Section 1.2. **Lot** – refers to any lot as established and as assigned a number on the Certified Plat of Hunters Bay Estates, Cass County, Minnesota and any amendments thereto.

Section 1.3. **Hunters Bay Estates** – refers to the property as established and described in the Certified Plat of the Premises.

Section 1.4. **Owner or Developer** – refers to Plaza Development Group, Inc., a corporation whose post office address is P.O. Box 1691, Fargo, ND 58107 and whose street address is 1220 Main Avenue, Ste. 225, Fargo, ND 58102, its successors and assigns.

Section 1.5. **Covenants** – refers to all restrictive covenants, easements, restrictions, conditions, reservations, and/or easements set out in this document.

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Section 1.6. **Certified Plat** – refers to the Certified Plat for Hunters Bay Estates, Cass County, Minnesota recorded with the Cass County Recorder on 12-24, 2002, at 1:40 PM as Microcard No. 460122 and any amendments thereto.

Section 1.7. **Lakeside Lots** – refers to Lots One (1), Two (2), Five (5), Six (6), Seven (7), Nine (9), and Ten (10) as set forth in the Certified Plat.

Section 1.8. **Forest Lots** – refers to Lots Three (3), Four (4) and Eight (8) as set forth in the Certified Plat.

Section 1.9. **Setback Line** – refers to the line on each Lakeside Lot which represents the closest point to the lake to which any structural improvement may be constructed. The Setback Lines are referred to in the Certified Plat. The property between the lake and the Setback Line will be referred to as the "front" of the Lakeside Lot. The property located on the other side of the Setback Line will be referred to as the "back" property of that Lot.

Section 1.10. **Zoning and Building Codes** – refers to the zoning ordinances, regulations, and codes and the building codes, ordinances, and regulations of Cass County, Minnesota as may be amended from time to time.

Section 2. **Property Affected**. The Premises is the property affected by and is the subject of these Covenants.

Section 3. **Term**. These Covenants shall be in effect for an initial term through December 31, 2012. These Covenants shall thereafter automatically be renewed and extended for successive terms of ten years unless on or before the end of any such ten-year period by vote of the owners of a majority of the Lots in the Premises as evidenced by written instrument, duly recorded with the Cass County, Minnesota recorder and signed by owners of a majority of Lots, said owners declare a termination, change, amendment, or modification of these Covenants. This instrument will be effective on recording.

In the event these Covenants should expire, the easements created by these Covenants shall remain in full force and effect and shall run with the land; further, any and all remedies for breach of these Covenants committed or suffered prior to expiration or termination shall remain actionable.

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Section 4. **Amendment by Owner/Developer.** Owner/Developer reserves the right to amend these Covenants at any time through December 31, 2012. Any amendment of these Covenants by the Owner/Developer will not affect the validity of any mortgage or deed of trust and will not change the burden to any Lot or any portions of a Lot without the consent of the mortgage holder of said Lots, if any.

Section 5. **Land Use and Building Type.** All Lots as set forth in the Certified Plat shall be used for single family residential purposes only. More than one single family residence may be constructed on Lots if it is permissible in accordance with Zoning and Building Codes. Outbuildings may be constructed on Lots in accordance with the Zoning and Building Codes and in accordance with the provisions of these Covenants.

Section 6. **No Commercial Use.** No commercial use may be made of the Lots except that an Owner may engage in a home business if allowed under the Zoning and Building Codes provided the home business does not involve more than two employees at the home at any time; there is no sign advertising the home office/business; and no motor vehicles of a commercial nature, such as trucks and vans are used as part of the business.

Section 7. **Residential Structures.**

Section 7.1. All residential structures and other buildings and structural improvements must be constructed on the Back side of the Setback Lines shown for each Lakeside Lot.

Section 7.2. No white or light-colored roofing materials may be used.

Section 7.3. No steel, vinyl, aluminum, or other metal siding or roofing may be used on any buildings except as set forth in Section 8.5.

Section 7.4. All exterior finish materials and colors shall be designed to have a natural appearance.

Section 7.5. No patio, deck, or other improvement may be constructed on the Front of the Setback Line for each of the Lakeside Lots. This does not restrict the placement of docks or boatlifts in the water at the lakeshore of each Lakeside Lot.

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Section 7.6. All improvements to a Lot shall be constructed with a sidelot setback of at least ten feet or such greater setback as may be required by Zoning and Building Codes of Cass County, Minnesota.

Section 7.7. No mobile homes or other manufactured homes such as what is commonly referred to as a doublewide mobile home, may be placed on or used as residences on the property. Every home on the property must be placed on a permanent foundation of either concrete, concrete block, rock, brick, treated lumber, or some combination thereof. While Developer owns any lot of Hunters Bay Estates, Developer's determination on what constitutes a mobile home or manufactured home shall be final. Upon Developer ceasing to own any lots in Hunter's Bay Estates, a Home Owner's Association established by the lot owners may make such determination.

Section 8. Garages and Out Buildings.

Section 8.1. Any garage or out building constructed on Lakeside Lots must be constructed on the Back (non-lake) side of the principal residence constructed on the property. The non-lake side is generally the south side of the principal residence.

Section 8.2. All garages and out buildings must be constructed in accordance with Zoning and Building Codes of Cass County, Minnesota.

Section 8.3. The exterior of all garages and out buildings must have the same exterior finish materials and color scheme as the principal residential building constructed on the property.

Section 8.4. No steel, vinyl, aluminum, or other metal siding or roofing may be used on any buildings.

Section 8.5. As an exception to Sections 7.3 and 8.4, Lots Three (3), Four (4), and Eight (8) may have outbuildings with steel, vinyl, or aluminum siding and/or roofs. The finish on any such outbuildings must be a dark color such as a dark green or dark brown. The buildings may not have a light-colored finish on the walls or roof such as white, almond, cream, sandalwood, or similar light colors. Written approval of exterior colors of outbuildings to be constructed on Lots 3, 4, and 8 must be obtained from Developer prior to construction. Developer may require product samples and other information necessary to make a decision prior to approval. All other restrictions will apply to these forest Lots.

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Section 9. **Fencing.**

Section 9.1. No fence may be constructed closer to the lake than ten feet behind (generally southerly) of the front side of the principal residence located closest to the lake on each Lakeside Lot.

Section 9.2. Chain link fences visible from any point not on the Lot on which the chain link fence is located are prohibited.

Section 9.3. All barbed wire fences are prohibited.

Section 10. **Basketball Backboards and Hoops.** No basketball backboards or hoops shall be attached to a residential dwelling, garage, storage shed or other building structure on a Lot. A separate pole for installation of such equipment may be erected and maintained at the expense of the Lot Owner.

Section 11. **Letter and Delivery Boxes.** The Developer will determine the location of the mail or delivery boxes. No other mail or delivery box may be maintained by any Owner. No delivery boxes other than boxes for the US Mail shall be permitted on any Lot or abutting such Lot.

Section 12. **Fuel Tanks.** No fuel tanks of any kind, including propane tanks or gas tanks, may be stored on the property except to the extent the same are stored behind a fence or other barrier so that they are not visible from the Lake, a road, or any other Lot.

Section 13. **Garbage.** All garbage, refuse, and rubbish shall be kept in a container and stored in a building or on a Lot at a location on the Lot where it may not be viewed from the Lake, other Lots, or roads passing by the Lot. The only exception is that garbage containers may be put out for a period not exceeding 24 hours for garbage pickup on scheduled garbage pickup days.

Section 14. **Building Materials.** All building materials not being used in on-going construction on a Lot shall be stored in such a manner, in a building or otherwise that the same are not visible from any other Lot, the lake, or any road passing by the Lot.

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Section 15. **Nuisances.** No Lot shall be used in whole or in part for storage of garbage or rubbish of any kind whatsoever nor for the storage of any property or things which will cause such Lot to appear to be untidy or have an appearance which will create a negative image for the Premises or any part of the Premises or cause injury or threat of injury to the health, safety, or welfare of users of the Premises.

Section 16. **Non-Operational Motor Vehicles and Noxious Materials.** No disabled or non-operational motor vehicles or powered vehicles used for recreation such as boats, motorcycles, snowmobiles, all-terrain vehicles, or other similar items may be stored on the Premises except within the confines of an enclosed building. No major mechanical repairs on motor vehicles may be undertaken except within an enclosed building. No substance, thing, or material shall be kept on any Lot which will emit a foul or obnoxious odor or that will cause any noise that will or might disturb the peace, quiet, comfort, serenity, and appeal of the Premises.

Section 17. **Signs.** No billboards or advertising signs of any kind or character shall be erected, placed, permitted, or maintained on any Lot or improvements except as herein expressly permitted. A name and address sign used solely for the purpose of identification of the dwelling house and/or its occupants may be placed on a Lot by the occupants. A standard and customary "For Sale" sign related to the sale of a Lot and the improvements on the Lot may be placed on the Lot provided the sign does not exceed two feet by three feet in surface area on either side of the sign. This restriction shall not apply to restrict or in any way inhibit the right of the Developer to have signs of any size on the Premises for purpose of promoting sale of the Premises or any parts thereof. The Developer may erect, place, or maintain such signs or structures as it deems necessary for the operation or identification of the Premises.

Section 18. **Satellite Dishes.** All satellite dishes, receivers, and antennas shall be placed in such a manner as to be out of view from the lake, the road servicing the Lot, and from any other Lot within the Premises.

Section 19. **Drainage.** No owner nor anyone acting on behalf of an Owner shall change the natural drainage of the property in such a manner as to cause water from a Lot to drain onto any other Lot or water from any other Lot to drain onto that Lot.

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Section 20. Access Road.

Section 20.1. There is an access road servicing Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), and Eight (8). This road will initially be graded and a gravel or similar type of surface will be put on the road by Developer to specifications of the Developer. Any future paving of the road will be as a result of a decision by the owners of these Lots and at their expense. Each Lot will pay a share of the cost of improving, repairing, and maintaining the road as follows:

Lot Number	Voting Percentage and Percentage of Cost Payment
1	15.40 percent
2	15.40 percent
5	15.40 percent
6	15.40 percent
7	15.40 percent
3	7.70 percent
4	7.70 percent
8	7.70 percent
9	0.00 percent
10	0.00 percent

Section 20.2. All decisions concerning the road will be made by decision of those holding more than a 50 percent ownership interest as set forth in the above table. These percentage interests apply only on decisions made regarding road improvement and maintenance. The Owners of Lot Nine (9) and the Owners of Lot Ten (10) do not have any interest in the road nor do they share or have access to the road except as invitees or guests of one of the Lots served and not for access to Lot Nine (9) or Lot Ten (10). The road is located on a dedicated public roadway.

Section 20.3. The costs to each of the Lots set forth in Section 20.1 for improving, repairing, and maintaining the road shall be paid within 30 days of notification to each Lot Owner of that Lot Owners' portion of the cost. Any amount not paid when due will represent a lien against the Lot which may be evidenced by a Notice of Lien recorded against the Lot with the Cass County, Minnesota Recorder's office. The lien will be in favor of the Lot Owners who have made payment or in favor of a homeowners association, if established. Any lien may be enforced or foreclosed using the same procedure as for enforcement of a mechanic's lien with the requirements necessary to create a mechanic's lien being expressly waived

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by the Developer and each owner by accepting a deed to a Lot subsequent to the recording of this document.

Section 21. Easements.

Section 21.1. Perpetual easements are hereby created and granted along and 10 feet either side along the outside edge of the road and road easements shown on the Certified Plat of Hunters Bay Estates servicing Lots One (1), Two (2), Three (3), Four (4), Five (5), and Eight (8), for the purpose of installation and maintenance of electrical lines, telecommunication lines, gas lines, water lines, and sewer lines under, on, or above these easement areas. These easement areas are further reserved for drainage. Within these easement areas, no structure shall be placed or permitted to remain and no plantings or other materials shall be placed or permitted to remain in any manner which will interfere with the installation and maintenance of utilities and drainage except as permitted by the public utility using said easement. The easement area shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility is responsible.

Section 21.2. Perpetual easements for the benefit of Premises are granted over, across, and under the respective Lots and parcels of land in the locations set forth on the Certified Plat of Hunters Bay Estates which is made a part hereof.

Section 21.3. A perpetual easement for the benefit of Lots One (1), Two (2), and Five (5) is hereby granted and described as follows:

An easement for ingress and egress 33.00 feet in width over and across parts of Lots Two (2), Four (4), and Five (5), Block One (1) HUNTERS BAY ESTATES, plat of record, Cass County, Minnesota, the centerline of which is described as follows: Commencing at the corner common to said Lots Two (2), Four (4), and Five (5); thence North 6°13'14" West, assumed bearing along the line common to said Lots Two (2) and Five (5) a distance of 89.56 feet; thence south 68°22'23" East 170.96 feet to a point on the right of way of Woman Lake Circle, as dedicated in said plat, the point of beginning of the centerline to be herein described: thence North 68°22'23" West 51.50 feet to a point hereinafter referred to as Point "A"; thence continue North 68°22'23" West 184.89 feet; thence North 77°42'37" West 71.93 feet to the line common to said Lot Two (2) and

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Lot One (1), said Block One (1) and said centerline there terminating. And an easement over and across part of said Lot Five (5), lying easterly and northerly of the following described line: Beginning at said Point "A"; thence North $21^{\circ}37'37''$ East 59.63 feet to the line common to said Lot Five (5) and Lot Six (6), said Block One (1) and said line there terminating. And from said Point "A"; thence South $68^{\circ}22'23''$ East 51.50 feet to said right of way of Woman Lake Circle and said line there terminating.

This Easement is for ingress and egress to Lots One (1), Two (2), and Five (5). It may be used only to cross Lots Two (2), Four (4), and Five (5) and may not be used for standing, parking, or storage of any motor vehicles. Any costs associated with maintaining, repairing, or improving this Easement Area shall be borne equally by the owners of Lots One (1), Two (2), and Five (5). Decisions on maintaining, repairing, and improving this Easement Area shall be by majority decision of the Owners of Lots One (1), Two (2), and Five (5). This Easement shall run with the land and be binding upon all present and future owners of Lots One (1), Two (2), Four (4), and Five (5).

Section 21.4. A perpetual easement for the benefit of Lot Seven (7) is hereby granted and described as follows:

An easement for ingress and egress 33.00 feet in width over and across parts of Lots Seven (7) and Eight (8), Block One (1) HUNTERS BAY ESTATES, plat of record, Cass County, Minnesota, the centerline of which is described as follows: Beginning at the corner common to said Lots Seven (7) and Eight (8) and Lot Nine (9), said Block One (1) and assuming the line common to said Lots Seven (7) and Eight (8) bears South $78^{\circ}47'56''$ West; thence South $72^{\circ}12'12''$ West 94.74 feet; thence South $48^{\circ}48'25''$ West 68.06 feet to a point on the right of way of Woman Lake Circle as dedicated in said plat and said centerline there terminating.

This Easement is for ingress and egress to Lot Seven (7). It may be used only to cross Lots Seven (7) and Eight (8) and may not be used for standing, parking, or storage of any motor vehicles. Any costs associated with maintaining, repairing, or improving this Easement Area will be the responsibility of the Owners of Lot Seven (7). Decisions on maintaining, repairing, and improving the Easement Area shall be made by the Owners of

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Lot Seven (7). This Easement shall run with the land and be binding upon all present and future owners of Lots Seven (7) and Eight (8).

Section 21.5. All claims for damages, if any, arising out of the construction, maintenance, and repair of the utilities or on account of temporary or other inconvenience caused thereby against the Developer or any utility company, governmental entity or private entity, or any of its agents or servants are waived by the Owners of each Lot by the act of acquiring a portion of the Premises. Developer reserves the right to change layout, use, or to discontinue any street or way shown on the Certified Plat of the Premises or part thereof not necessary for ingress or egress to or from a Lot or the Premises.

Section 22. **Mortgages.** The breach of any of the foregoing Covenants shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value as to any Lot or Lots or portions of Lots in the Premises but these Covenants shall be binding upon and effective against any mortgagee or trustee or owner, whose title or whose grantors title is or was acquired by foreclosure, trustee sale or otherwise.

Section 23. **Waiver.** No delay or omission on the part of the Developer or the owners of any Lots in the Premises in exercising any right, power or remedy herein provided, in the event of any breach of the Covenants herein contained, shall be construed as a waiver thereof or acquiescence therein. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the Developer for or on account of its failure to bring any action on account of any breach of these Covenants or for imposing restrictions herein which may be unenforceable by the Developer or any other party.

Section 24. **Right to Enforce.** The restrictions set forth shall run with the land and bind the present Owner or Owners, their heirs, administrators, executors, successors and assigns. All parties claiming by, through or under them, shall hold subject to and hereby agree and covenant with the Owners of said Lots, their heirs, executors, administrators, successors and assigns, and with each of them, to conform to and observe said restrictions as to the use of said Lots hereby restricted and construction of improvements thereon. No restriction, however, shall be personally binding on any person except in respect to breaches committed during his or their ownership of the particular property upon which such violations occurred. For any violations of the covenants herein set forth, the Developer or owner(s) of any Lots or a homeowner's association or common ownership organization made up of

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Owners of Lots in Hunters Bay Estates and other adjacent or nearby property shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of the covenants or to enforce legal action for damages. Damages may be obtained from the offender only. Failure of the Developer or others who have a right to enforce any of the restrictions or covenants herein set forth to bring an action at the time of the violation shall in no event be deemed a waiver of the right to do so thereafter. Developer is under no obligation to bring an action to enforce these restrictions and is not liable for any damages caused by failure to exercise a right to enforce.

Section 25. **Severability**. In the event any one or more of the foregoing Covenants is declared for any reason by a court of competent jurisdiction to be null and void the judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate or nullify any of the Covenants not declared to be void or unenforceable but all of the remaining Covenants not expressly held to be void or unenforceable shall continue unimpaired and in full force and effect.

Section 26. **Dedicated Right**. The Premises shall be subject to any and all rights and privileges the County of Cass or State of Minnesota may have acquired through dedication or the filing or recording of maps or plats as authorized by law and provided further that no Covenants or acts performed shall be in conflict with any Zoning or Building Code or other applicable law of the County of Cass or State of Minnesota.

Section 27. **Developer**.

Section 27.1. Developer Plaza Development Group, Inc., and its successors and assigns is the Developer described herein. The Developer shall have the right to grant and convey all of its rights and its obligations to enforce these covenants to a successor Developer, a homeowner's association, community association or other entity, membership of which is available to Owners of Lots constituting Hunters Bay Estates. This entity may also be open to Owners of Lots adjacent to or near Hunters Bay Estates. On transfer of its rights and obligations, Developer will be released from all obligations and liability hereunder.


Section 27.2. On transfer of all Lots, Developer will be released from all obligations and liability hereunder. Termination of Developer's obligations under these Restrictive Covenants will not cause termination of the Restrictive Covenants or the dedication of easements which will remain in force and effect in accordance with the terms set forth in this document.

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Section 28. **Amendment By Owners.** These Restrictive Covenants may be amended by majority vote of the Owners of Lots One (1), Two (2), Five (5), Six (6), Seven (7), Nine (9), and Ten (10). No amendment may affect an easement granted hereunder except amendment by the Developer as set forth in Section 4 or by the unanimous consent of the Owners of all Lots in the Premises.


Dated: January 3, 2003.

Plaza Development Group, Inc.


By: Larry S. Nygard, President

STATE OF NORTH DAKOTA)
 : ss.
COUNTY OF CASS)

On this 3rd day of January 2003, before me, a Notary Public in and for said County and State, personally appeared Larry S. Nygard, to me known to be the president of Plaza Development Group, Inc., the corporation that is described in and that executed the foregoing instrument, and acknowledged before me that such corporation executed the same.


Notary Public:

This instrument drafted by:
Plaza Development Group, Inc
P.O. Box 1691
Fargo ND 58107-1691

JOHN V. BOULGER
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires SEPT. 20, 2004