

**DECLARATION OF
PROTECTIVE COVENANTS AND EASEMENTS**

KNOW ALL MEN BY THESE PRESENTS that S.J.W. Enterprises, LLC, fee owner of the following described property (hereinafter also referred to as "Declarant") Mortgagee, of the following described property situated in the County of Washington and State of Minnesota, to-wit:

Lots 1-5, inclusive, Block 1; Lots 1-10, inclusive, Block 2; Lots 1 and 2, Block 3; Lot 1, Block 4; Lots 1 and 2, Block 5; and Outlots A-D, inclusive, all in Tana Ridge;

do hereby declare and impose the following protective covenants, restrictions and easements upon said premises, which are for the benefit of and appurtenant to said premises and each and every lot described.

**ARTICLE 1
LAND USE AND BUILDING TYPE**

No dwelling shall be erected, altered, placed or permitted to remain on any lot other than one single family dwelling not to exceed two and one-half (2½) stories in height. Such dwelling shall have an attached garage for not more than three (3) cars without the express written approval of the Architectural Committee. The garage shall be constructed of the same exterior materials, color and style as the main structure. All garages shall be set back from the main structure or side loaded unless another location for the garage is approved by the Architectural Control Committee.

No lots shall be further subdivided except by revisions or

modification of these protective covenants and restrictions in accordance with Article 23 herein. No earth homes, log homes, dome homes, foam homes or other uncommon type houses will be allowed. Any out-buildings or other structures shall comply with the City of Lake Elmo Codes and shall be constructed of the same exterior material, color and style as the main structure.

ARTICLE 2 ARCHITECTURAL CONTROL

No building, fence or wall shall be erected, placed or altered on any lot until the plans and specifications and a plan showing the location of the structure, fence or wall, have been approved by the architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade evaluation. All building plans, landscapes plans and site and grading plans must be submitted to the Architectural Control Committee for approval. Approval shall be as provided in Paragraph B of Article 20 hereof.

ARTICLE 3 DWELLING SIZE

A. A one-story dwelling with basement shall have a minimum floor area of 1600 square feet exclusive of basement area.

B. A one-story dwelling without a basement shall have a minimum floor area of 1800 square feet of which no more than 100 square feet of floor area may be a utility room.

C. A two-story dwelling shall have a minimum floor area of

1000 square feet per floor exclusive of basement area.

D. A two and one-half story dwelling shall have a minimum floor area of 1000 square feet per floor exclusive of the one-half story and basement areas.

E. A split foyer dwelling shall have a minimum floor area of 1600 square feet per floor.

F. A one and one-half story dwelling shall have a minimum floor area of 1600 square feet on the first floor, exclusive of porches and garages.

The above minimum square footage is computed on the main structure exclusive of porches and garages.

ARTICLE 4 OUTSIDE FINISHING

Only earth tone colors will be allowed on exterior surfaces.

All homes erected shall have no less than 25% of their exposure area (excluding window and door openings) covered in brick, stone, stucco or shakes. Siding should not reveal more than 8 inches per individual siding and shall be the same on all sides of the house.

ARTICLE 5

DRIVEWAYS

All driveways must be constructed of concrete, bituminous, paving stones or other hard surface material, and shall be finished no later than one year after a Certificate of Occupancy is issued for any dwelling constructed on a lot.

ARTICLE 6 BUILDING LOCATION

A. No building shall be located on any lot nearer to a front lot line, a rear lot line, an interior lot line or nearer to a side street right-of-way line, than the applicable City of Lake Elmo ordinance as related to the subject plat shall allow.

B. For the purpose of this covenant, eaves and steps shall not be considered as part of a building; provided, however, that this shall not be construed to permit any portion of eaves or steps on a lot to encroach upon another lot or to encroach further into a setback area than the applicable ordinances allow, as it relates to this plat.

ARTICLE 7 FENCES

All fences installed must not exceed a height of 54 inches, must conform and blend in with the surroundings, and must allow at least 50% or more see-through space. All fences will be constructed of brick, stone, rod iron or wood. Exceptions to this will be where certain rules and regulations override; such as enclosure regulations for swimming pools. All fence plans and specifications must be approved in writing by the Architectural Control Committee before its construction.

ARTICLE 8 STORAGE

No boats, inoperable automobiles, snow mobiles, trailers, camping vehicles, tractors/trailers, or trucks in excess of 9,000 pounds gross shall at any time be stored or parked on any lot

outside of a garage or on a public street within Tana Ridge without the express written approval of the Architectural Control Committee.

ARTICLE 9
EXTERIOR LIGHTING

All exterior lighting must comply with the City of Lake Elmo Code and any other applicable rules and regulations of a governing authority.

ARTICLE 10
EASEMENTS

A. Utilities. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structures, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public utility company is responsible.

B. Conservation Easement. Declarant has conveyed a Conservation Easement to the City of Lake Elmo and/or the Minnesota Land Trust over Outlots A, B, C and D, Tana Ridge. The Association shall have such duties and responsibilities as regards maintenance, insurance, taxes and other matters as are set forth in the said Conservation Easement, the terms of which are incorporated herein by reference.

C. Entrance Monument Easement. Declarant has created an easement over the Northeast corner of Lot 1, Block 5, Tana Ridge, for an entrance monument. The Association shall have the responsibility for the maintenance and repair of such monument and easement area.

**ARTICLE 11
COMMON AREA MAINTENANCE**

The Association shall have the responsibility for the maintenance of the landscaping areas within the road right-of-way and on Outlot E. In addition the Association shall have the responsibility for the maintenance of the siltation pond on Outlot A, all within the Plat of Tana Ridge.

**ARTICLE 12
WASTE WATER TREATMENT SYSTEM**

Each lot in the property is or will be served by common waste water treatment system located on Outlot D of Tana Ridge and on Outlot L of Fields of St. Croix Second Addition. The Fields of St. Croix Community Association (Fields) shall own both Outlots. Pursuant to an agreement between Fields and the Tana Ridge Homeowners Association (Tana Ridge), the maintenance of the waste water treatment system shall be provided by Fields with the costs incurred to be shared as follows:

Tana Ridge shall pay 20/88ths of the cost of such maintenance and Fields shall pay 68/88ths of such cost. The terms and conditions of the agreement relating to the use and maintenance of the said waste water treatment system and the assessment procedures

relating thereto are incorporated herein by reference.

**ARTICLE 13
NUISANCES**

No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

**ARTICLE 14
STRUCTURES AND DWELLINGS**

No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other building shall be used on any lot at any time as a residence either temporarily or permanently.

No dwelling shall be occupied until the exterior thereof is completed. The exterior of all structures shall be completely finished no later than twelve (12) months after commencement of the excavation and construction thereof, subject to delays beyond the reasonable control of the owner. No structures of any kind shall be constructed before commencement of the construction of the residential dwelling.

**ARTICLE 15
SIGNS**

No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one (1) square foot, and one sign of not more than thirty-two (32) square feet advertising the property for sale or rent, or signs used by a

builder to advertise the property during the construction and sales period, subject to compliance with City of Lake Elmo ordinances. Signs used by the developer to market the project until sold out shall not be limited by this provision.

ARTICLE 16 LIVESTOCK AND POULTRY

No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lots, except that dogs, cats or other domestic household pets may be kept, provided they are not kept, bred or maintained for any commercial purposes.

ARTICLE 17 GARBAGE AND REFUSE DISPOSAL

A. No part of the individual lots or boulevards shall be used at any time for the storage or abandonment of junked automobiles or other motor equipment.

B. No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. Garbage, rubbish and trash shall not be kept on said premises except in sanitary containers. No outside incinerators, trash burners or garbage receptacles shall be installed or erected on any lot or plat. This covenant shall not be construed to prohibit the use of outdoor barbecues or fireplaces.

ARTICLE 18 SOIL CONTROL

Except as approved by the Architectural Control Committee, no sod, soil or gravel shall be sold or removed from the premises in

this subdivision and all soil and gravel available from any excavation for the construction or alteration of a residence or any appurtenance on any lot and by whomsoever owned shall be hauled and disposed of at the discretion of the Architectural Control Committee.

ARTICLE 19
SITE SEEDING AND/OR SODDING

All yards on each lot shall be seeded and/or sodded within six (6) months of occupancy, weather permitting, or during the first planting season after occupancy. The lot owner shall accept responsibility for site maintenance and for controlling storm water runoff. The lot owner shall correct all site maintenance and drainage problems within 30 days of written notice from the City of Lake Elmo or Declarant, weather permitting. After said 30 day period, the Declarant and/or the City of Lake Elmo shall have the right to enter the property, correct the site problem and bill the lot owner for the work done.

ARTICLE 20
ARCHITECTURAL CONTROL COMMITTEE

A. Until Declarant has sold all of the lots it owns, either by deed or contract for deed, Declarant or its designee, shall be the Architectural Control Committee. At such time as Declarant has sold all of the lots in its ownership, then the Architectural Control Committee shall be composed of three members to be appointed by the owners of said lots. In the event said lots are

owned by more than one person or persons, the said appointment shall be made by simple majority of those present at a special meeting of the owners of said lots held at a reasonably convenient time and place no less than ten (10) days after written notice of such meeting and its purpose is delivered to said owners or mailed to said owners at their last known address. In making any such appointment, each owner shall have one vote for each lot owned by him or her. When more than one person holds an interest in any lot, the vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot.

In the event of the death or resignation of a member of the committee, the remaining members shall have full authority to designate a successor; provided however, if as a result of death or resignation there shall be no remaining member of said committee, then and in that case all three (3) vacancies shall be filled by appointment by the owners of said lots as hereinbefore provided for the initial appointment of committee members.

Neither the members of the committee nor its designated representatives shall be entitled to any compensation for services performed pursuant to this covenant.

B. The committee's approval or disapproval as required in these covenants shall be in writing, and in the event the committee or its designated representative fails to approve or disapprove within thirty (30) days after plans and specifications

have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

ARTICLE 21
NON-DISCRIMINATION

No owner of any lot in Tana Ridge shall refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale of or rental of, or otherwise make unavailable or deny any of the property owned by him or her on said lot to any person because of race, color, religion, sex or national origin. Any restrictive covenant affecting the property covered by this Declaration relating to race, color, religion, sex or national origin which is inconsistent with this Article is recognized as being illegal and void and is specifically disclaimed.

ARTICLE 22
TERM

These restrictions and covenants are to run with the land and shall be binding upon all parties and all persons claiming under them for a period of twenty (20) years from the date these covenants are recorded, after which time said restrictions and covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the lots has been recorded agreeing to change said covenants in whole or in part.

ARTICLE 23
REVISIONS AND MODIFICATIONS

Except as provided in Article 20, any of the protective

covenants and restrictions herein contained may be revised or modified by the affirmative vote of a two-thirds (2/3rds) majority of all the owners of said lots at a special meeting called for that purpose held at a reasonably convenient time and place not less than ten (10) days after written notice of such meeting and its purpose is delivered to said owners or mailed to said owners at their last known address. The notice of said special meeting required herein shall contain a written statement of the protective covenants or restrictions proposed for revision or modification and the proposed revision or modification thereof. Each owner shall have one vote for each lot owned by him. When more than one person holds an interest in any lot, the vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot. In lieu of casting a vote at such meeting, any owner of any of said lots may indicate his approval of any such proposed revision or modification by submitting written approval thereof to the person or persons proposing the revision or modification or their representative prior to said meeting.

Notwithstanding the foregoing, the provisions in these Covenants (including the provisions of the Conservation Easement incorporated by reference) setting forth the Homeowner's Association's duties regarding the Easements, Waste Water Treatment System and Storm Water Ponds cannot be amended without the written consent of the City of Lake Elmo.

ARTICLE 24 ENFORCEMENT

The provisions contained herein may be enforced against violation by the Tana Ridge Homeowner's Association, or by an aggrieved owner of record of fee title to any part of the premises or a share therein by injunctions, action for damages or other appropriate legal or equitable remedy. It shall be the duty of every owner to pay his proportionate share of any expenses incurred by the Homeowner's Association in the enforcement of these covenants, including attorney fees and court costs. The Homeowner's Association shall bill each owner for his proportionate share of any such expenses incurred or anticipated in the enforcement of these covenants in such fashion as it shall deem advisable from time to time.

ARTICLE 25 DEFINITIONS

"Owner" as used in this Declaration shall mean and refer to the record owner, whether one or more persons or entities of any of said lots but notwithstanding any applicable theory of mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee shall acquire title pursuant to foreclosure or any proceeding in lieu of foreclosure.

"Common Area" shall mean all the real property (including any improvements thereto), owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of conveyance of the first lot is

described as follows:

Outlots A through D, inclusive, Tana Ridge.

"Association" shall mean and refer to Tana Ridge Homeowner's Association, a Minnesota nonprofit corporation, its successors and assigns.

ARTICLE 26 PROPERTY RIGHTS

A. Owners' Easements of Enjoyment. Every owner shall have a non-exclusive right and easement of enjoyment in and to the Common Area subject to the following provisions:

- (1) The right of the Association to make reasonable rules and regulations regarding the use of the Common Area and any recreational facilities located thereon provided that such rules and regulations shall not discriminate against any owner.
- (2) The rights of the Association to suspend the voting rights and right to use the recreational facilities by an owner for any period not to exceed 60 days for any infraction of its published rules and regulations.
- (3) The rights of the Association to dedicate or transfer to any public agency, authority, or utility an easement for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer is signed by two-thirds (2/3rds) of each class of members has been recorded.

B. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE 27

DUTIES OF THE ASSOCIATION

The Tana Ridge Homeowner's Association shall be responsible for the management and control of the Common Area owned by the Association and shall keep and maintain the same in accordance with the terms of the Development Agreement with the City of Lake Elmo for Tana Ridge and with the terms of the conservation easement. Such maintenance obligation shall not be eliminated, amended, transferred, or otherwise modified without the written consent of the City of Lake Elmo as to the requirements of the Development Agreement and the City of Lake Elmo and the Minnesota Land Trust as to the requirements of the conservation easement.

In the event that the Association fails to satisfy its obligations set forth in these Covenants, the Conservation Easement or the Development Agreement with the City of Lake Elmo as determined by the City's Consulting Engineer, the City may undertake such obligations and assess all costs incurred to the Association.

ARTICLE 28 MEMBERSHIP AND VOTING RIGHTS

Each owner of a lot which is subject to assessment shall be a member of the Tana Ridge Homeowner's Association ("Association").

Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

The Association shall have two classes of voting memberships:

Class A. Class A members shall be all owners, with the exception of the Declarant, and shall be entitled to one vote for

each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any lot.

Class B. The Class B member shall be the Declarant and shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- a. when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

ARTICLE 29 COVENANT FOR MAINTENANCE ASSESSMENTS

A. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot owned within the Properties, hereby covenants, and each owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest,

costs and reasonable attorney fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them and said assumption is consented to by the Association in writing.

B. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties, and for the improvement and maintenance of the Common Area. The assessments shall include the cost of maintenance relating to the Conservation Easement, Entrance Monument Easement, Waste Water Treatment System, landscaping areas within the right of ways and the siltation pond.

C. Annual Assessment. The Board of Directors of the Association may establish in any assessment year an annual assessment to cover the estimated operating cost of the Association for the succeeding year provided that any such assessment shall have the assent of two-thirds (2/3rds) of the votes of each class of members where voting in person or by proxy at a meeting duly called for this purpose.

D. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in

whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto provided that any such assessment shall have the assent of two-thirds (2/3rds) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

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

F. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis.

G. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of

the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year.

The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth the assessments on a specified lot and if they have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

H. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eight percent (8%) per annum. The Association may bring an action at law against the owner personally obligated to pay the same, may suspend the right of such owner to use the Common Area, and/or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his lot.

I. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien

of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE 30 MINIMUM BUILDING ELEVATIONS

Minimum building elevations are hereby established as set forth below unless later modified with the approval of the Valley Branch Watershed District or other governing authority.

<u>Block</u>	<u>Lot</u>	<u>House Type</u>	<u>Minimum Bsmt Floor Elev.</u>
1	1	w/o	910
1	2	w/o	910
1	3	w/o	910
1	4	w/o	910
1	5	w/o	910
2	1	w/o	910
2	2	w/o	910
2	3	w/o	910
2	4	w/o	910
2	5	w/o	910
2	6	w/o	910
2	7	w/o	910
2	8	w/o	910
2	9	w/o	910
2	10	w/o	910
3	1	split	918.8
3	2	L/o	915
4	1	split	918.8
5	1	L/o	910
5	2	split	910

Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

DECLARANT:
S.J.W. Enterprises, LLC

By:
Its:

Subscribed and sworn to before me this _____ day of _____,
1999, by _____, Chief Manager of S.J.W.
Enterprises, LLC, Declarant.

Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

Subscribed and sworn to before me this _____ day of _____,
1999, by _____, the _____ of
Heritage Bank, Mortgagee, Declarant, on behalf of the bank.

Notary Public

This instrument was drafted by:
Robert G. Briggs
Eckberg, Lammers, Briggs,
Wolff & Vierling, P.L.L.P.
1835 Northwestern Avenue
Stillwater, MN 55082