

**DECLARATION OF COVENANTS,
CONDITIONS, EASEMENTS AND RESTRICTIONS
FOR
SOUTHERN LAKES**

THIS DECLARATION, made this [19th] day of [September], 1997, by Lyman Development Co., a Minnesota Corporation (“Declarant”).

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described in Exhibits A and B to this Declaration; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in the community and for the maintenance of the private open spaces and to this end desires to subject the real property described in Exhibit A hereof “the Property” to the easements, restrictions, covenants, conditions, charges and liens set forth in the Declaration, each and all of which is and are for the benefit of the property and each owner thereof; and

WHEREAS, Declarant has and retains the option to add all or part of the real property described in Exhibit B here in (“the additional property”) to the Property; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities in the community to create an agency to which should be delegated and assigned the power of maintaining certain landscaping and monuments, administering and enforcing the covenants and restrictions contained in this Declaration and collecting and disbursing the assessments and charges created by this Declaration; and

WHEREAS, Declarant has therefore incorporated, under the laws of the State of Minnesota, as a non-profit corporation, Southern Lakes Homeowners Association, Inc., for the purpose of exercising these functions;

NOW, THEREFORE, Declarant declares that the Property is, and shall be, held transferred, sold conveyed and occupied subject to the following covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as “covenants and restrictions”), which covenants and restrictions shall run with the real property and be binding on all parties having any right, title or interest in the hereinafter described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I
DEFINITIONS**

1.1) The following words, when used in this Declaration (unless the context shall prohibit) shall have the following meaning:

(a) **Association** shall mean and refer to Southern Lakes Homeowners Association, Inc., a non profit Corporation created pursuant to Minn. Stat. Chapter 317A, and whose members consist of all owners as defined herein.

(b) **Board** shall mean and refer to the duly elected Board of Directors of the Association.

(c) **Bylaws** shall mean and refer to the Bylaws of the Association, as amended from time to time.

(d) **Committee** shall mean and refer to the Southern Lakes Architectural Control Committee (ACC) established for the Property as hereinafter set forth.

(e) **Common Driveway** shall mean refer to the hard surfaced driveway which provides vehicular access to Lots ____ and ____, Block ____, Southern Lakes ____ Addition.

(f) **Conservation Easement** shall mean and refer to a private easement applied to and across certain specific areas within Southern Lakes for the purpose of preserving said property in its natural condition or in its “as restored” condition after the Declarant has completed the grading of the property.

(g) **Declarant** shall mean and refer to Lyman Development Co., its successors and/or assigns.

(h) **Governing documents** shall mean and refer to this Declaration, and the Articles of Incorporation, Bylaws and Rules and Regulations of the Association, and any amendments and supplements thereto, all of which shall govern the use and operation of the Property.

(i) **Lot** shall mean and refer to any platted plot of land, upon which a residential dwelling (living unit) is or hereafter maybe located, as shown upon any recorded plat of the Property, excluding Common Property, if any.

(j) **Member** shall mean and refer to members of the Association.

(k) **Mortgagee** shall mean and refer to any entity or person named as mortgagee in any mortgage deed granting a lien (Mortgage) on any lot.

(l) **Owner** shall mean and refer to the record Owner or contract vendee of the fee simple title to any Lot, but excluding contract vendors, mortgagees or any others having such interest as security for the performance of an obligation.

(m) **The Property** shall mean and refer to the real property submitted to this Declaration

and such additions thereto as may become subject to this Declaration.

(n) **Restrictions** shall mean and refer to those certain Covenants, Restrictions, Easements, Charges and Liens hereinafter set forth.

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

2.1) **Existing Property.** The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is that property referred to in the County of Dakota and State of Minnesota, and is legally described on Exhibit "A" attached hereto and incorporated herein.

2.2) **Additional Property.** The Additional Property may become subject to the covenants and restrictions of this Declaration by filing for record in the Office of the Dakota County Registrar of Titles, an amendment to this Declaration which shall extend the scheme of the covenants and restrictions of this Declaration to the Additional Property. Any amendment to add the additional property may be made by the Declarant, its successors or assigns, and without the consent of the members of the Association. The right reserved to Declarant to add the Additional Property shall terminate Six (6) years from the date of recording this Declaration or upon earlier express written withdrawal of such right by Declarant, unless extended by a majority vote of the owners who are class A members. The additional property may be added in parcels consisting of one or more platted lots or portions thereof. Declarant is under no obligation to add the additional property, and it may be developed by Declarant or its successors for other purposes, subject only to approval by the appropriate governmental authorities. All covenants, conditions and restrictions contained in this Declaration shall apply to any Additional Property added to the Property.

2.3) **Other Annexed Property.** Other property may be annexed as provided above upon the prior approval of two-thirds (2/3) of the Members of the Association.

2.4) **Transfer of Lots.** The Lots shall be freely transferable in accordance with the applicable laws of the State of Minnesota; provided, that the share of an Owner is the assets of the Association and the Owners rights and obligations as a member of the Association cannot be assigned, pledged, encumbered or transferred in any manner, except as an appurtenance to his or her Lot.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

3.1) **Membership.** Each Owner of a Lot is a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership.

3.2) **Voting Rights.** The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all Owners of one or more Lots, except Declarant and shall be entitled to one (1) vote for each lot owned. When more than one person or entity shares ownership of a Lot, the vote shall be exercised as they determine among themselves, provided there shall be no split vote permitted.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot owned by it.

The Class B membership shall cease and be converted to Class A membership on the earlier of (i) December 31, 2003 or (ii) when the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership.

3.3) **Suspension of Voting Rights.** the right of any Member to vote shall be suspended during any period in which such member shall be delinquent in the payment of any assessment levied by the Association. Such rights may also be suspended, after notice and hearing, for a period not to exceed sixty (60) days for any infraction of any rules or regulations published by the Association.

ARTICLE IV RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1) **Landscaping Private Areas.** The Declarant shall initially install, and the Association shall thereafter maintain, such landscaping and entrance monuments upon a landscape buffer area located within 50 feet of the Cliff road right-of-way and extending from the west edge of the Property to its east edge. These landscaped private areas shall be encumbered by a conservation easement as more particularly described in Article VIII herein and a maintenance agreement with the city of Inver Grove Heights to assume maintenance in the event of the Association's failure to do so.

4.2) **Services.** The association may contract and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Property, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. However, any such contract for professional management shall provide for termination on ninety (90) days written notice and a maximum contract term of no more than three (3) years.

4.3) **Enforcement of Covenants and Restrictions; Architectural control.** The Association shall be responsible for the enforcement of the covenants and restrictions contained in this Declaration, and of the architectural controls imposed by, and in accordance with, Article VI.

4.4) **Rules and Regulations.** the Association may make such reasonable rules and regulations governing the use of the Lots as it deems necessary to fulfill its duties, which rules and regulations shall be consistent with the rights and duties established in this Declaration and the Bylaws.

4.5) **Board of Directors.** The power and authority of the Association shall be vested in a Board of Directors elected by the Owners in accordance with the By-Laws of the Association. The Association shall act through the Board of Directors, unless specifically provided otherwise in the Governing Documents. All reference herein to the Association shall mean the Association acting through the Board of Directors.

ARTICLE V COVENANTS FOR ASSESSMENTS

5.1) **Creation of the Lien and Personal Obligation of Assessments.** The Declarant for each Lot owned by it hereby covenants, and each Owner of any Lot, by the mere acceptance of a deed or other conveyance therefor, shall be deemed to covenant and agree to pay to the Association (i) annual assessments and (ii) special assessments; such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on each Lot or Lots against which they are assessed and shall be a continuing lien thereon. Each such assessment together with interest thereon and costs of collection thereof, shall also be the personal obligation of the person who was the Owner of each such Lot or Lots at the time when the assessment fell due. Each Lot shall be assessed equally. Owners shall pay the full assessment on their Lot. The Declarant shall pay twenty-five (25%) percent of the regular assessment imposed with respect to each Lot owned by Declarant for which no certificate of occupancy has been issued by the local governmental authority.

5.2) **Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively for the purpose of promoting the enjoyment, health, safety and welfare of the Owners and in particular for the improvement and maintenance of properties, services and facilities devoted to the use and enjoyment of the owners including, without limitation, the private areas referenced in Article 4.1 hereof. The expenses for which such assessments shall be utilized are sometimes referred to in the Governing Documents as “common expenses”.

5.3) **Annual Assessments.** Until the conveyance of the first lot to an Owner, Declarant shall pay all expenses of the Association. Thereafter, the annual assessments in an amount to be determined by the Board shall be assessed equally per Lot. The annual assessment may not be increased by more than ten (10%) percent above the assessment for the previous year without a vote of the membership. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum. Annual Assessments shall provide for an adequate reserve fund for maintenance, repair and replacement of those landscaping improvements, etc., which normally require maintenance or

replacement on a periodic basis.

5.4) **Individual Lot Maintenance Assessments.** In the event that any Owner violates any covenant or fails to perform any condition contained in this Declaration, the Association may perform the act, remove the defect or correct the violation upon thirty (30) days written notice to the Owner, and, as appropriate, pursuant to the procedures contained in Article VI hereof. If the Association so acts on behalf of an Owner, the Association may levy an assessment (hereinafter, "Individual Lot Maintenance Assessment") against the Lot for the cost of the performance or correction.

5.5) **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 any improvement upon the Public Area, including fixtures and personal property related thereto, provided that each such assessment shall have the assent of Members holding two-thirds (2/3) of the votes in each class of voting membership who are voting in person or by proxy at a meeting duly called for this purpose.

5.6) **Changes in Annual Assessments.** Subject to the limitations of Section 5.3, the Association may change the assessments fixed by that Section, prospectively, for any such period; provided, that any such change must be approved by two-thirds (2/3) of each Class of Members who are voting in person or by proxy at a special meeting duly called and constituted for this purpose.

5.7) **Date of Commencement of Annual Assessments: Due Date.** **ANNUAL ASSESSMENTS WILL NOT BE LEVIED UNTIL THE ASSOCIATION HAS HELD IT FIRST ANNUAL MEETING.** The first annual assessment shall be adjusted according to the number of months remaining in the calendar year at the time of the assessment. 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 whether the assessments on a specified Lot have been paid. A properly execute 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.

5.8) **Procedures for Fixing Special Assessments.** The Association shall fix the date of commencement and the amount of the special assessment for each Lot or Lots for each assessment period, and give written notice of the amounts and dates to the respective Owners thereof, at least thirty (30) days in advance of such period and shall at the time prepare a roll of the Lots and assessment applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Owner. The association shall, upon demand and for a reasonable administrative fee, furnish to any Owner liable for said assessments a certificate in writing signed by an officer of the Association setting

forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of non-payment of any assessment relating to the Lot in question.

5.9) Non-Payment of Assessments; Liens; Remedies.

(a) If the assessments are not paid on the due date as specified in accordance with Article 5.7, then such assessments shall be delinquent and shall, together with such interest thereon and costs of collection, including reasonable attorneys fees the Association shall have a continuing lien on the Lot, which shall bind the Lots in the hand of the then owner, and any transferee, heir, devisee, personal representative, or assign. The personal obligation of the then Owner to pay such assessment shall remain his personal obligation, and shall not pass to his successors in title unless expressly assumed by them. The Liability in absolute and unconditional.

(b) If the assessment is not paid within ten (10) days after the due date, the assessment shall bear interest from the due date at the rate of ten percent (10%) per annum, and the Association may Foreclose its lien under the laws of the State of Minnesota (i) by action, or (ii) by advertisement as a lien under a mortgage containing a power of sale. The Association, or its authorized representative, shall have the power to bid in at the Foreclosure sale to acquire, hold, lease, mortgage, and convey any Lot so acquired. The owner, and any other person claiming an interest in the Lot, by the acceptance or assertion of any interest in the Lot, grants to the Association a power of sale and full authority to accomplish the foreclosure. The association shall further have the right to pursue any other remedy at law or in equity against an Owner who fails to pay any assessment or other charge against the Lot.

(c) No Owner may waive or otherwise avoid liability for any assessments by non-use of the Public or Private Areas abandonment of his Lot.

5.10) **Subordination of Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any First Mortgage now or hereafter placed upon a Lot, subject to assessments; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the date of expiration of the period of redemption following a mortgage foreclosure sale, or the date of any sale or transfer in lieu of foreclosure. Upon the expiration of the period of redemption following a mortgage foreclosure sale the interest of the holder of the Sheriff's Certificate shall be prior and superior to the lien of any assessments then against the Lot, and such assessments shall become a lien against all of the other Lots in equal shares. Such sale or transfer shall not release a Lot from liability from any assessment thereafter becoming due, nor from a lien of any such subsequent assessments.

**ARTICLE VI
ARCHITECTURAL CONTROL**

6.1) **Architectural Control Committee.** So long as the Declarant shall be the fee owner

of at least one (1) Lot, included in the Property or proposed within the Additional Property, the Declarant shall retain the right to appoint a standing three (3) member Architectural Control Committee (ACC), the members of which need not be Members of the Association.

Upon the last sale of Lots by Declarant within the Property including those Lots created in the Additional Property, the Association's Board of Directors shall appoint an ACC consisting of three (3) members who shall serve the Board at its pleasure.

6.2) **Plan Approval.** No structure shall be erected on any Lot without the prior review and written approval of the ACC of plans, specification, and exterior building materials and colors. The owner or his/her Contractor shall submit in duplicate the following materials to the ACC for its review prior to the commencement of construction:

a.) House plans and detailed exterior elevations drawn to at least a scale of 1/4" == 1' 0". All four elevations shall be fully detailed;

b.) Certificate of Survey showing the house on the Lot, setback measurements, easements and existing and proposed elevations of the proposed house and lot grading. The Certificate of Survey shall be prepared and certified by a Registered Land Surveyor; and

c.) Detailed description of exterior colors, brick, light fixtures, roofing shingles and all visible finishing and fixtures proposed to be used or employed in the construction.

6.3) **Review of Modifications.** After the completion of original Residential improvements on a Lot, the construction of exterior modification of any building or structure, including front yard fences, shall require prior written approval by the ACC of the plans and specification for the construction, in accordance with the standards set forth in Section (6.4)

6.4) **Standard of Review.** The ACC may promulgate detailed standards and procedures consistent with this Declaration governing its areas of responsibility and practice. In addition, the following shall apply: the plans and specifications shall be reviewed as to the quality of workmanship, design and harmony of external design with existing structures, topography, and finish grade elevation. No permission or approval shall be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his or her residence or to paint the interior of his or her residence any color desired.

6.5) **Procedure.** If the ACC fails to approve or disapprove plans and specifications within thirty (30) days after the submission of the same to it, approval will be deemed to have been granted. In the event of disapproval by the ACC, the requesting Owner may give written notice that the Owner wishes to appeal the ACC decision and request a hearing by the Association's Board of Directors. Such notice must be furnished to the ACC within ten (10) days of its decision. The hearing shall be at a special meeting of the

Board of Directors to be held within thirty (30) days of receipt of the Owner's notice of appeal.

6.6) **Removal and Abatement.** The ACC or the Association shall have the right to order an Owner to remove or alter any structure on any Lot erected in violation of the terms of this Declaration, and to employ appropriate judicial proceedings to compel the alteration or demolition of any nonconforming construction or other violation.

6.7) **Variances.** Reasonable Variances to the covenants, conditions and restrictions may be granted by the ACC after review, in order to overcome practical difficulties or to prevent unnecessary hardship. A variance may only be granted if it is not detrimental to other property and shall not defeat the purpose of this Declaration.

ARTICLE VII PROHIBITED USES

7.1) **Uses.** Subject to the provisions of section 8.6 hereof, no Lot shall be used except for residential purposes; no dwelling shall be erected, altered, or placed on a lot or permitted to remain there other than one detached single family dwelling not to exceed two (2) stories in height, as measured from grade. In the event the dwelling includes a walk-out basement to the rear, the basement shall not be counted as a story. Such dwelling shall have an attached garage for at least two (2) automobiles, and may have an attached building for storage purposes. If the dwelling has one story (whether all on one level as in a rambler or on different levels as in a split-level), excluding any walk-out basement, the first floor area shall be at least 1,600 square feet. If the dwelling has two stories, excluding any walk-out basement, the combined total floor area of the first and second floors shall be at least 2,200 square feet. The first floor area described in the preceding two sentences shall be exclusive of breezeways, open porches or garages. All structures constructed or placed on the property shall be completely finished on the exterior thereof within six months after commencement of construction.

7.2) **Subdivision.** No Lot shall be subdivided or split by any means whatsoever into any greater number of residential Lots, nor into any residential plots of smaller size without the express written consent of the City of Eagan, other governmental entities having authority, and the Board.

7.4) **Standards.** All uses of the Lots shall, as a minimum, comply with the zoning and other applicable ordinances and regulations of the City of Eagan. The standards contained in this Article VII shall be considered as requirements in addition to said zoning and other applicable ordinances and regulations.

7.4) **Signage.** No sign shall be placed on any Lot or within the Property without the express written consent of the Architectural Control Committee, except that one "for sale" sign may be placed on a Lot by an Owner or the Developer without Committee approval.

7.5) **No Pets and Animals.** No birds, animals or insects shall be kept on any Lot except dogs, cats and other common household pets, provided that they are not kept, bred or maintained for any commercial purposes, and are restricted in freedom in the manner required by the ordinances of the City of Eagan.

7.6) **Home Occupation.** No profession involving “in home” public contact or home industry shall be conducted in any dwelling or on any Lot without the specific written approval or the Declarant, as long as it has Class “B” votes as hereinbefore defined, and by the ACC thereafter. The Declarant or the ACC, whichever has authority at the time in question, in its discretion, upon consideration of the circumstances in each case, and particularly the effect on surrounding property, may permit a Lot to be used in whole or in part for the conduct of the profession or home industry. No such profession or home industry shall be permitted, however, unless it is considered by the Declarant or by the ACC, whichever then has authority, to be compatible with the residential neighborhood.

7.7) **Nuisances.** No clothes line or drying yards shall be permitted unless concealed by hedges or screening acceptable by the Committee. No weeds, or other unsightly growths shall be permitted to grow or remain upon the premises. No refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. Firewood shall be stored only to the rear of the residence and shall be concealed by screening acceptable to the Committee. In the event that an Owner of any Lot shall fail or refuse to keep such premises free from weeds, or refuse piles or other unsightly growths or objects, then the Developer or the Committee may enter upon such land and remove the same at the expense of the Owner and such entry shall not be deemed as trespass and in the event of such a removal, a lien shall arise and be created in favor of the Association and against such Lot for the full cost of such removal, including both direct and incidental costs of the Association, and such amount shall be due and payable within thirty days after the Owner is billed therefor. No Lot shall be used in whole or in part for the storage of rubbish of any character whatsoever, nor for the storage of any property or thing that will cause such Lot to appear in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace, quiet, comfort, or serenity of the occupants of surrounding property. The outside storage of an unlicensed or inoperable motor vehicle upon the premises shall also be construed as a nuisance.

7.8) **Storage.** Outside storage of such items as equipment and trash and garbage containers shall not be allowed unless effectively screened from view outside the Lot. The design of any screening enclosures must be approved by the committee. Household trash and garbage shall be regularly collected and may be kept outside only if in tightly covered containers. No boats, inoperable automobiles, snowmobiles, trailers, camping vehicles, tractors/trailers, or trucks in excess of 9,000 pounds gross weight shall at any time be stored on any Lot outside of a garage or on public streets within the Property without the express written approval of the ACC, which approval may be withheld without stated reason.

7.9) **Leasing.** Any lease between an Owner and a non-Owner Occupant shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration, the Articles of Incorporation and By-Laws of the Association, and shall provide that any failure by the Non-Owner occupant to comply with the terms of such documents shall be default under the lease. Other than the foregoing, there shall be no restrictions on the use or occupancy of a dwelling by a non-Owner occupant.

7.10) **Fences and Walls.** No wall or fence shall be constructed on any Lot until the height, type, design, and location have been approved in writing by the ACC. Under no circumstances shall a boundary wall or fence be permitted with a height of more than six (6) feet. The height or elevation of any wall, fence or hedge shall be measured from the existing ground elevations on the property at or along the applicable point of lines. Any questions as to such heights may be completely determined by the ACC. The height limitations as set forth in this paragraph shall not be applicable to tennis court enclosures, provided such enclosures have been approved by the ACC. A refusal by the ACC to allow or permit a fence or wall (including tennis court enclosures and swimming pool fences) on any particular Lot or in any particular location shall not be construed to be an abuse of discretion.

7.11) **Storage Tanks.** No permanent storage tanks of any kind shall be erected, placed, or permitted on any Lot.

7.12) **Temporary Structures.** No structure of 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.

7.13) **Auxiliary Structures.** No detached dog kennels, runs or enclosures shall be permitted unless design and location of same shall be approved by the ACC. No detached storage building shall be permitted except those approved by the ACC as conforming in design and appearance to the dwelling, and which are located in the proximity of the dwelling or garage.

7.14) **Exterior Ornaments.** Exterior ornaments including but not limited to precast concrete, plastic or wood figurines, wishing wells and windmills shall be prohibited unless approved by the Committee prior to the installation or construction.

7.15) **Antennas.** Except with the prior written approval and authorization of the Committee, no exterior television or radio antennas of any sort shall be placed, allowed or maintained upon any portion of a Lot or the improvements or structures located thereon.

ARTICLE VIII CONSERVATION EASEMENT

8.1) **Area Encumbered.** A Conservation Easement for the purposes and on the terms herein specified, shall exist over, on and across that portion of the Property as described in Exhibit C attached hereto and made a part hereof and upon such portions of the Additional as shall (i) added by the Declarant, and (ii) designated by the Declarant as part of the Conservation Easement.

8.2) **Purpose.** The purpose of the Conservation Easement is to assure that the easement area shall at all times: remain in its present natural condition; constitute scenic surroundings; and constitute a suitable habitat for fish and/or wildlife. This Conservation Easement shall in no way be construed as to grant to the public any rights to use or improve the easement area as or for a park or common open space, whether public or private.

8.3) **Building Restrictions.** No buildings or other structures of any kind, and no fences, roads, signs, billboards or other advertising of any kind, and no utility equipment poles, wires or other material of any kind, shall hereafter be erected, installed, constructed or place, or allowed to be erected, installed, placed or constructed, on or above all or any part of the easement area without the express prior written approval of the Association.

8.4) **Dumping and Storage Restrictions.** No storage of any manmade objects and no soil, trash, waste or unsightly or offensive materials or other substance shall be dumped or placed, or allowed to be dumped or placed, as landfill or for any other purpose, reason or cause on all or any part of the easement area without the express prior written approval of the Association.

8.5) **Vegetation Removal Restrictions.** No trees, shrubs or other vegetation shall be removed, or be allowed to be removed, from all or any part of the easement area without the express prior written approval of the Association.

8.6) **Excavation Restriction.** No loam, peat, gravel, soil, rock or other material or substance shall be excavated, dredged or removed, or allowed to be excavated, dredged or removed from all or any part of the easement area without the express prior written approval of the Association.

8.7) **General / Environmental Restriction.** No activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation or fish and/or wildlife habitat preservation, and no other acts or uses detrimental to the retention or preservation of the easement area as a natural and scenic open or wooded space or as a fish and/or wildlife habitat, shall be conducted or permitted to be conducted on all or any part of the easement area without the express prior written approval of the Association. No surface use shall be made of all or any part of the easement area except for purposes consistent with the maintenance and preservation of the easement area in its natural condition without the express prior written approval of the Association.

8.8) **Maintenance.** with the specific exception of the landscaped private areas detailed in

Section 4.1 herein, the easement area shall be maintained at all times by the individual Owners of the Lots which are subject thereto, and their heirs, representatives, and successors and assigns, in full compliance with all applicable ordinances of Inver Grove Heights now or hereafter enacted and in full compliance with the provisions of this Declaration.

8.9) **Restrictions in Landscaped Private Areas.** With the specific exception of installing entrance monuments, all restrictions enumerated in 8.3 through 8.7 shall apply in the landscape buffer area along Cliff Road as defined in Section 4.1 herein. Any exceptions may only be granted in writing by the City of Inver Grove Heights only.

ARTICLE IX GENERAL PROVISIONS

9.1) **Association Easement.** The Association shall have an easement to enter upon any Lot in order to perform any obligations or duties of the Association hereunder, or to exercise any right or remedy of the Association hereunder.

9.2) **Duration of Declaration of Covenants, Restrictions and Easements.** The covenants, restrictions, and easements of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, or their respective legal representatives, heirs, successors and assigns. The easements set forth herein shall be perpetual. The covenants and restrictions herein set forth shall have a term of twenty (20) years from the date of this Declaration is recorded, after which time said covenants and restrictions shall be automatically renewed 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 the covenants and restriction in whole or part. The covenants and restrictions of this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than seventy-five percent (75%) of the Owners and thereafter by an instrument signed by not less than sixty-seven percent (67%) of the Owners. Any amendment must be properly recorded.

9.3) **Enforcement.** In the event any Owner fails to comply with the provisions of this Declaration, or the By-Laws or Articles of Incorporation of the Association or with decisions of the Association which are made pursuant thereto, such failure will give rise to a cause of action on the part of the Association, or any aggrieved Owner for the recovery of damages or for injunctive relief, or both. Owners shall have a similar right or action against the Association. Enforcement of these covenants and restrictions may be by any proceeding at law in equity.

9.4) **Severability.** Invalidation of any one of the provisions hereof or by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

9.5) **Rules and Regulations.** The Board of Directors of the Association may, from time to time, adopt such rules and regulations as the Board, in its sole discretion, deems appropriate or necessary, including, without limiting the generality of the foregoing, additional rules and regulations concerning the use of parking areas, maintenance of the public and private areas, and additional rules and regulations concerning the appearance of each Lot and utilization of ponding areas.

9.6) **Rights of Declarant.** Until the last Lot is sold and conveyed to an Owner other than a Declarant, the following activities by Declarant or with the written consent of Declarant will not be deemed violations of restrictions contained in this Declaration:

(a) the use of a Lot or Lots for model and sales office purposes;

(b) the storage of a construction trailer, equipment, materials and earth during the construction of new dwellings;

(c) the display of signs advertising the Property, or new dwellings and the maintenance of temporary fencing, walkways, landscaping and berming in the vicinity of model and sales units.

9.7) **Underground Pipelines.** The Property is traversed by two easements for underground pipelines. The easements are shown on the plat of the Property and will be shown on any supplemental plat. Owners of Lots adjacent to or encumbered by the easements are advised that all planting, excavation and similar construction activities within the easements must be done in conformance with the regulations of the applicable pipeline company.

ARTICLE X RIGHTS OF MORTGAGES

10.1) **Mortgagee's Rights.** Notwithstanding any other provisions of this Declaration, the Articles of Incorporation or the By-Laws of the Association, the provisions of this Article X shall control, and in the event of a conflict between the provisions of this Article and the provisions of such Declaration, Articles or By-Laws, the provisions of this article shall control.

10.2) **Notice of Default.** Any Mortgagee holding a first Mortgage on a Lot, and who shall have previously filed a written request with the Association, shall be entitled to written notification of any default by the mortgagor or Owner of such Lot or his, or their, heirs, successors or assigns in the payment of any assessments or the performance of any other duties or obligations herein set forth which shall have remained in default for a period of thirty (30) days or more. The neglect or failure of the Association to tender such notice to the Mortgagee shall toll as to the mortgagee only the running of any time limits applicable to the procedure for the collection of such assessment or remedies available to the Association on account of such default.

10.3) **Consent Required.** Without the prior written approval of two-thirds (2/3) of the holders of mortgage liens against all Lots, the Association shall not be entitled to:

(a) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer any Property which the Association shall have acquired for the benefit of the Owners;

(b) change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot;

(c) by act or omission, change, waive or abandon the scheme of exterior and architectural controls, as hereinabove set forth.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has execute this Declaration of Covenants, Conditions and Restrictions for Southern Lakes this [19th] day of [September], 1997.

LYMAN DEVELOPMENT CO.

By: [Stephen T. Ryan]
Stephen T. Ryan
Executive Vice President

STATE OF MINNESOTA)

) ss.

COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this [19th] day of [September], 1997, by Stephen T. Ryan, Executive Vice President of Lyman Development Co., a Minnesota Corporation on behalf of the corporation.

[Conni Keller]
Notary Public

THIS INSTRUMENT DRAFTED BY:
Lyman development Co.
P.O. Box 40
Excelsior, MN 55331