

ST. GERARDS MANOR SECOND ADDITION

**A Single-Family Residential Development
In The
City of Brooklyn Park, County of Hennepin, State of Minnesota**

DECLARATION OF COVENANTS

THIS DECLARATION is made and executed this ____ day of _____, 1999 by TSM DEVELOPMENT, Inc., a Minnesota Corporation ("Developer").

WITNESSETH:

WHEREAS, Developer is the owner of certain property located in the City of Brooklyn Park, County of Hennepin, State of Minnesota, in the recorded plat of St. Gerards Manor Second Addition, Hennepin County, Minnesota, upon which Developer contemplates the future development of a single-family residential development in accordance with a Planned Unit Development approval (as from time to time amend or modified) from the City of Brooklyn Park, Hennepin County, Minnesota ("City"); and

WHEREAS, Developer desires to preserve the values and amenities of the single-family detached residential development in St. Gerards Manor Second Addition through this Declaration of Covenants, Conditions and Restrictions ("Declaration") by establishing (i) a mechanism for the maintenance, improvement or repair of common entrance monuments and associated landscaping or landscape plantings, common open space and wetlands defining and unifying the appearance of St. Gerards Manor Second Addition; and (ii) a system of architectural controls of present and future single-family detached residential developments in St. Gerards Manor Second Addition; and

WHEREAS, Developer desires by this Declaration, to create and declare certain covenants, conditions, easements, restrictions, charges and liens, hereinafter set forth (Covenants"), for the benefit of those portions of St. Gerards Manor Second Addition now or hereafter subjected to this Declaration, and the present and future owners thereof; and

WHEREAS, Developer has incorporated the St. Gerards Manor Second Addition Owners Association, Inc., as a Minnesota non-profit corporation ("Association"), to which has been delegated the power and duty to administer the terms of this Declaration, including the enforcement of the terms hereof and the levy, collection and disbursement of certain assessments and charges provided for herein.

NOW, THEREFORE, Developer hereby declares, imposes upon and makes all of the Subdivisions subject to the following covenants, conditions, restrictions, reservations, and easements, the burden of which shall run with the Subdivisions and bind all persons who now or hereafter have any right, title, or interest in the Subdivisions, and the benefit of which shall run with the Subdivisions and inure to the benefit of all persons who now or hereafter have any right, title, or interest in the Subdivisions.

ARTICLE I **DEFINITIONS**

Section 1. The following terms, in addition to those defined in the foregoing Recitals, when used in this Declaration (unless the context shall prohibit), shall have the following meanings:

- a. **Association.** St. Gerards Manor Second Addition Owners' Association, a Minnesota non-profit corporation, or such other association which succeeds to the rights and obligations of St. Gerards Manor Second Addition Owners Association.
- b. **City.** City of Brooklyn Park, a municipal corporation under the laws of the State of Minnesota.
- c. **Developer.** TSM Development, Inc., a Minnesota Corporation, and its successors or assigns.
- d. **Landscape Amenities.** Real property and improvements, or interests therein (including but not limited to, entrance monuments and associated landscaping and including without limitation, fee or easement interests), owned or held by the Association, for the benefit of the members thereof ("Members").
- e. **Landscaped Cul-de-sac Islands.** Landscape improvements made to an area of located in the approximate center of a cul-de-sac that is maintained by the Association, for the benefit of the members thereof (Landscaped Cul-de-sac Islands plan is attached and made a part of this covenant as Exhibit C).
- f. **Lots.** A legally platted lot within the Initial Property, intended for, or improved with, a single family detached residence.

- g. **Open Space.** All real property or easement interests therein (including the improvements thereon) owned by the Association for the common use and enjoyment of the Owners and property, the maintenance of which is specifically assumed by Developer and the Association hereunder.
- h. **Owner.** The record Owner or contact vendee of the fee simple title to property St. Gerards Manor Second Addition subject to this Declaration, but excluding contract vendors, mortgagees, or any others having such interest merely as security for the performance of an obligation.
- i. **St. Gerards Second Addition.** The real property platted as St. Gerards Manor Second Addition, Hennepin County Minnesota and such Additional Property as is subjected to this Declarations under the provisions of Article II.
- j. **Residential Improvements.** The clearing of some or all of the trees from the Lot, the grading of the Lot, or the construction, erection or installation of any structure, including, (without limitation) the following: any house, garage, shed or other building; any porch or deck; any fence, any Antenna (as defined in Article VI); any retaining wall, terrace or other landscaping structure; any patio, driveway or parking area; any tennis court; any swimming pool (whether above ground or below ground) and any and all appliances, fixtures and interior and exterior finishes included with the initial construction and improvement of Lot. The planting of trees, shrubs, and other plants shall not be deemed Residential Improvements.
- k. **Subdivisions.** The real property platted as St. Gerards Manor Second Addition, Hennepin County, Minnesota, each Addition being referred to singly as a "Subdivision".
- l. **Wetlands.** The natural areas protected by the Wetland Conservation Act and identified on the attached Exhibit W.
- m. **Minimum Market Value.** The sale price for a Lot together with its Residential Improvements.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Property Initially Subject to this Declaration. The real estate subject to this Declaration is located in the City of Brooklyn Park, Hennepin County, Minnesota, and is described on Exhibit "A" attached hereto, all of which property shall hereinafter be referred to as the "Initial Property."

Section 2. Additional Property Which may be Annexed Later to Declaration. Developer, and its successors and assigns, shall have the right, without the consent or joinder of the other Owners, the Association, or any other person or entity, to subject to this Declaration all or any portion of the "Additional Property" legally described in Exhibit "B" hereto, subject to the following terms and conditions:

- a. Additional Property may be added to the scheme of this Declaration by Developer's Filing for record a Supplementary Declaration of Covenants, Conditions and Restrictions ("Supplementary Declaration") with respect to any portion of the Additional Property to be added. Developer is not required to add any portion of the Additional Property, nor to add portions of the Additional Property, nor to follow any particular plan of development as to any part hereof not added.
- b. No Supplementary Declaration shall revoke, or materially modify or add to, the Covenants contained in this Declaration as to property already subject to the Declaration, unless required by governmental authority. Provided, however, that the Supplementary Declaration may: (i) contain further or additional Covenants specifically applicable to the particular Additional Property being added thereby; (ii) add Additional Landscape Amenities, Open Space, Wetland and/or Landscaped Cul-de-sac Islands to the scheme of this Declaration, and define the property or properties in St. Gerards Second Addition (including property being annexed or already subject to this Declaration) responsible for the cost maintenance, improvement or repair of such Landscape Amenities, Open Space, Wetlands, and/or Landscaped Cul-de-sac Islands; or (iii) amend the description of any Landscape Amenities, Open Space, Wetland, and/or Landscaped Cul-de-sac Islands (including the legal description of any easement).
- c. Upon the recording of a Supplementary Declaration adding Additional Property, said Additional Property, and the Owner thereof, shall be entitled to all of the rights and privileges and subject to all of the duties and obligations imposed by Owners by this Declaration, and by law.
- d. Developer's right to bring Additional Property within the scheme of this Declaration without consent of the Owner's shall expire on December 15, 2010, or by earlier written waiver signed by Developer and recorded against title to any portion of the Additional Property which has not then been annexed.
- e. Any Additional Property and any Supplementary Declaration in connection therewith must require compliance with Section 2, Article VI of this Declaration.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership and Voting Rights. The Association shall have a single class of membership, which shall be comprised of the Owners of the Lots (including Developer) which are subject to this Declaration. Each Member shall be entitled to one (1) vote per Lot owned. The procedure for voting is as set forth in the By-Laws for the Association.

ARTICLE IV

MAINTENANCE; EXPENSE ALLOCATION

Section 1. Initial Maintenance By Developer. The Developer shall furnish all maintenance, repair, and replacement, to all entrance monuments and associated berming and landscaping constituting Landscape Amenities, Open Space, Wetlands, and Landscaped Cul-de-sac Islands for a period of two (2) years following the recording of this Declaration, and shall pay the cost thereof. Maintenance shall include, as necessary, appropriate hazard and liability insurance, or until 90% of the homes are occupied.

Section 2. Assignment of Monument Easements. Following the two (2) year period described in Section 1., all recorded easements in favor to the Developer relating to the erection, maintenance, repair, and replacement of Landscape Amenities, Open Space, Wetlands and Landscaped Cul-de-sac Islands shall be automatically assigned to the Association, which shall assume all of the Developer's obligations thereunder. The Developer and the Association will execute a confirmatory agreement of such easements, but the failure to execute such a document shall not abrogate the effect of this Article IV, Section 2.

Section 3. Maintenance By Association. Following the two (2) year period described in Section 1, the Association shall provide all maintenance, repair and Landscape Amenities, Open Space, Outlots, Wetlands, and Landscaped Cul-de-sac Islands. The Association may, at such time, provide such further or additional maintenance and repair to Landscape Amenities and Open Space in St. Gerards Manor Second Addition, subject to the provisions set forth below.

a. Outlots, including center islands, medians and cul-de-sacs, shall be irrigated and maintained from the top of the berm to the street by the Association.

b. The berm along Regent Avenue on Lots Block shall be maintained by the Association from the top of the berm to the street.

Section 4. Expense Allocation. The expense of any maintenance, repair or replacement performed by the Association and assessed to Lots, pursuant to Article V, below, shall be allocated on the basis of one expense share to each Lot, from Association Assessments other than for the cost of landscape maintenance.

ARTICLE V

ASSESSMENTS

Section 1. Creation of Assessments. The Developer, for each Lot owned by it, hereby covenants, and each Owner, by acceptance of a deed for a Lot, whether or not it shall be expressed in such deed or other conveyance instrument, is deemed to agree to pay to the Association: (i) annual assessments or charges, and (ii) 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's fees, shall be a charge upon the Lots and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not be passed to successors in title unless expressly assumed by them

Section 2. Annual Assessments: Purpose of Annual Assessments: Certain Increases in Assessments. There shall be an annual assessment levied for the purpose of paying the costs of the Association's performance of its obligations as defined in Article IV, together with the incidental costs of operating the Association. In any calendar year, the assessments payable by the Members as a whole, other than for insurance coverages, shall not be increased beyond 150% of the aggregate assessments for the prior year without a vote of the Membership, at a special meeting called for the purpose of considering such increase.

Section 3. 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 the capital improvement upon the Landscape Amenities, Open Space, Wetlands and Landscaped Cul-de-sac Islands, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 4. Uniform Rate of Assessment . Both the annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 5. Notices of Assessments. The annual assessment or special assessment for each year shall be fixed, and written notice shall be provided to each Lot Owner at least thirty (30) days prior to the date which the assessment is due. Failure by a Lot Owner to receive such notice shall not render any assessment or special assessment invalid.

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 said in forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on the Lot is binding upon the Association as of the date of its issuance.

Section 6. Effect of Non-Payment of Assessments: Remedies of the Association. If any assessment is not paid when due, it shall become delinquent and shall, together with interest at a rate of eight percent (8%) per annum plus any cost of collection and any attorneys' fees, become a continuing lien on the Lot at the time the assessment is made. The lien may be enforced and foreclosed by action or advertisement in the same manner in which mortgages may be foreclosed in Minnesota. The lien created by this Declaration shall be subordinate to the lien of any first mortgage to provide financing (or refinancing) of any Lot or improvement thereon, and any first mortgagee, or its successor in interest, which obtains title to a Lot by foreclosure or deed in lieu of foreclosure of a first mortgage shall not be liable for unpaid assessments which have accrued prior to acquisition of title to such Lot by such first mortgagee, or its successors in interest (in case of a deed in lieu of foreclosure) or prior to the expiration of the statutory period of redemption (in the case of a foreclosure of a first mortgage).

ARTICLE VI

GENERAL COVENANTS AFFECTING ALL LOTS

Section 1. Residential Purposes. Each Lot shall be used only for residential purposes, except that Lots or portions of Lots may be used by the Developer and/or home builders for temporary marketing, temporary offices, model homes and/or for subdivision entrance monuments. Residential purposes include houses and other Residential Improvements .

Section 2. Minimum Market Value. The establishment of the Minimum Market Value for single-family detached residences developed within the Initial Property and all Additional Property is essential to create and maintain the values and amenities of the Property. Each Lot together with its Residential Improvements within the Initial Property must, at the time a Certificate of Occupancy is issued, meet the following Minimum Market Value:

1999	\$159,900.00
2000	\$165,900.00
2001	\$169,900.00

Minimum Market Value for each Lot for which a building permit has not been previously issued shall be established January 1st of each of the foregoing years.

Each future Subdivision derived from the Additional Property and brought within the terms of this Declaration through a Supplementary Declaration of Covenants, Conditions and Restrictions shall comply with the Minimum Market Value stated above.

Application of the above stated Minimum Market Value to individual Lots within the Initial Property and Additional Property shall be subject to adjustment. Any Lot within the Additional Property for which a building permit for Residential Improvements has not been issued by January 1st of the third year following the year in which the first building permit for Residential Improvements within the Subdivision has been issued (the "Adjustment Date") shall be subject to an adjusted Minimum Market Value equal to ninety percent (90%) of the then applicable Minimum Market Value. For example, if the first building permit for Residential Improvements within a Subdivision derived from the Initial and/or Additional Property is issued in September, 1999, the Adjustment Date for all Lots within that Subdivision will be January 1, 2001. If the first permit in a Subdivision of the Initial and/or Additional Property is issued in August, 1999, the Adjustment Date for that Subdivision will be January 1, 2002.

Compliance with the Minimum Market Value as required by this Section 2 shall be enforced by the Architectural Review Committee as more fully set forth in Article VIII of this Declaration.

Section 3. Building Specifications.

- a. **Height.** No dwelling shall be erected, altered or placed on a Lot or permitted to remain there other than one detached single family house not to exceed two stories in height, as measured from grade. If the house includes a walkout basement, the basement shall not be counted as a story.
- b. **Roof Pitches and Roof Lines.** Roof pitches shall be at minimum of 6/12. Roof lines should vary in angle and/or height to provide a changing profile.
- c. **Garages.** Each house shall have three or more attached fully-enclosed garages so that the total house width (including the garages) is at least 45 feet, but no carports or detached garages shall be permitted. The minimum garage square footage shall be 660 square feet. There may be garage space for any number of cars, but from the street in front of the house it must appear that there is garage space for no more than three cars.
- d. **Exterior Materials.** Exterior materials may be a combination of brick, stone, wood, stucco or siding, but masonite is not permitted. Garage doors shall have raised panels. Front elevation shall have 1/2 of usable surface covered by brick or stone.

e. **Elevations.** Identical house elevations are not permitted on adjacent Lots or Lots which are directly across the street from one another.

f. **Storage Structures.** Attached or detached structures for storage purposes are permitted, but any storage structure large enough to hold an automobile shall be considered a garage whether or not it is used as a garage. Each storage structure on a Lot shall be of the same color, design and quality of construction as the house on the Lot. The aggregate floor area of all storage structures on a lot shall not exceed 144 square feet. Storage Structures must be setback a minimum of 30 feet from the 97th Avenue Right-of-Way and a minimum of 30 feet from the east trail corridor.

g. **Completion.** Each house or other structure constructed or placed on a Lot shall be completely finished on the exterior thereof within five (5) months after commencement of construction.

h. **Floor Area and House Widths.** The following minimum house sizes shall apply:

- | | |
|--------------------------|--|
| 1. Rambler: | 1,400 square feet at or above the front entry elevation. |
| 2. Two Story: | 1,800 square feet at or above the front entry elevation. |
| 3. Modified Two Story: | 1,600 square feet at or above the front entry elevation. |
| 4. Split Entry: | 1,200 square feet at or above the front entry elevation. |
| 5. Modified Split Entry: | 1,350 square feet at or above the front entry elevation. |

The first floor areas described herein shall be exclusive of breezeways, open porches and garages.

"At or Above the Front Entry Elevation" shall include all floor area at or above a floor level no more than two steps below the front door elevation.

i. **Hardsurface Coverage.** The maximum hardsurface coverage of any individual lot shall be 40% . Hardsurface coverage shall be defined as the amount of a lot covered by building, pavement, concrete or other impervious material.

Section 4. Setbacks. Building setbacks from all Lot lines shall comply with city ordinances, as modified by any applicable Planned Unit Development Agreement with the minimum front yard setback being 30 feet, the minimum side yard setback being 10 feet and the minimum rear yard setback being 30 feet.

Section 5. Nuisance. No noxious or offensive trade or activity shall be carried on or upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to any other Lot or Lot Owner.

Section 6. Prohibited Dwellings. No structure of a temporary character, trailer, basement, shack, garage, barn, or other outbuilding shall be used on any Lot at any time (either temporarily or permanently) as a dwelling.

Section 7. Antennas. No exterior antenna, aerial, tower, dish or other device for transmitting or receiving radio, television, microwave, laser or other electromagnetic signals ("Antenna") shall be constructed, erected, installed, placed or used on any Lot except dishes used for receiving television with an outside diameter no greater than 18 inches. Approved dishes will be erected or placed on the house or garage so as to minimize visibility of the dish from the street.

Section 8. Animals. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats and other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purposes. The combined total number of dogs and cats kept on a Lot at one time shall not exceed three (3).

Section 9. Driveways; Parking; Vehicles. All driveways and parking areas constructed on any Lot shall be paved with an asphalt, brick, or concrete surface from the garage to the street pavement (including any area within the public right of way). Operable vehicles may be kept, stored, or parked only on paved driveways, on paved parking areas, or in enclosed garages. All other vehicles shall be kept, stored, or parked only in enclosed garages. "All other vehicles" means all motorized and all non-motorized vehicles except operable automobiles, including (without limitation) the following: automobiles that are inoperable, recreational vehicles, all-terrain vehicles, motorcycles, bicycles, snowmobiles, watercraft, aircraft, tractors, house trailers, camping trailers, and other trailers. Notwithstanding the foregoing prohibition, guests of the Owner of a Lot visiting for less than 15 days in any 30 day period may park their vehicles on unenclosed paved areas of the Lot.

Section 10. Rubbish. No Lot shall be used or maintained as a dumping ground for rubbish, except during construction of Subdivision improvements and houses. Trash, garbage, and other waste shall be kept in sanitary containers.

Section 11. Signs. No sign of any kind shall be displayed to the public view on any Lot except as follows:

- a. One sign no larger than 6 square feet in area may be placed on each Lot advertising the Lot for sale, unless the Lot is a corner Lot, in which case one such sign for each side of street frontage is permitted.
- b. During the initial construction and sales period of the Subdivision, one additional sign no larger than 36 square feet in area may be placed on any Lot containing a model home.

Section 12. Utility and Drainage Easements. Easements for installation and maintenance of utilities and drainage are reserved as shown on the recorded plat of the Subdivision.

Section 13. Landscaping. All front, side, and rear yard areas from the street pavement to the rear lot line (including any area within the public right of way) shall have top soil sod and landscaping pursuant to the City Code of Ordinance and as described below:

- a. Five (5) trees, two of which must be in the front yard and one of those two must be a deciduous tree within one (1) foot of the public right-of-way and two of which must be deciduous trees in the rear yard within five (5) feet of the rear lot line. The size must comply with the following:
 - 1) Deciduous - two (2) caliper inches, balled and burlapped.
 - 2) Coniferous - six (6) foot, balled and burlapped.
 - 3) Ornamental - one and one-half (1.5) caliper inches, balled and burlapped.
- b. Ten (10) front yard foundation shrubs a minimum of three (3) gallons potted or eighteen (18) inches.
- c. All homeowners shall be given a copy of the Landscape Plan as approved by the City of Brooklyn Park.

Section 14. Soil Removal. No sod, soil, sand, or gravel shall be sold or removed from any Lot, except for the purpose of excavating for the construction or alteration of a house on the Lot or appurtenances thereto, or for the proper grading thereof, or for road improvement.

Section 15. Rights of Developer and Home Builders. until the last Lot within the entire development of St. Gerards Manor Second Addition (all Subdivisions) are sold and conveyed to an Owner other than the Developer or a professional home builder, the

following actions by said persons will not be deemed violations of the foregoing restrictions:

- a. Use of a house for model and sales office purposes;
- b. The storage of equipment, materials, and earth during the construction of new houses; and
- c. The display of signs of any legal size advertising lots or houses in the subdivision.

ARTICLE VII

COVENANTS AFFECTING CERTAIN LOTS

Section 1. Fencing. Any fencing installed shall be approved by the Architectural Review Committee and shall be uniform throughout the entire Initial Property. The minimum specification for fencing shall be as specified in Exhibit D. The fencing shall not be altered without the prior approval of the Architectural Review Committee. The property owner shall be responsible for the maintenance of the fence, yard and boulevard area on both sides of a fence.

Section 2. Berming and Landscaping. Berming and Landscaping has been and/or will be placed in the rear yard of certain Lots (Exhibit E). The berming and landscaping shall be maintained by the respective Lot Owners and shall not be altered without the approval of the Architectural Review Committee.

Section 3. Wetlands and Associated Drainage and Utility Easements. On lots that include wetlands (Exhibit W), no sod shall be placed within the drainage and utility easements that include said wetlands. Said wetlands and association drainage and utility easements shall not be mowed, cut, altered, damaged, disturbed or treated by any Lot Owner without prior written approval from the Architectural Review Committee.

ARTICLE VIII

ARCHITECTURAL REVIEW COMMITTEE

Section 1. New Improvements. No Residential Improvement shall be commenced upon any Lot by anyone except the Developer without the prior written approval by the Architectural Review Committee ("Committee") of the person who will actually perform the work and of the plans and specifications for the work.

Section 2. Changed Improvements. The exterior color, style, and materials of any structure on a Lot shall not be changed by anyone except the Developer without prior written approval by the Committee of the person who will actually perform the proposed work and of the plans and specifications for the work.

Section 3. Committee Members. The Committee shall consist of three individuals appointed by the Developer until the date the Developer no longer owns any

Lot in St. Gerards Manor Second Addition. Thereafter the Committee shall consist of three individuals appointed by the Board of Directors of the Association.

Section 4. Committee Chairperson. The Committee shall appoint one of its members to be its chairperson. The chairperson shall call meetings of the Committee. A quorum of the Committee shall consist of two of its members. The committee may act upon the vote or written consent of any two of its members. The chairperson of the Committee is authorized to execute certificates of approval, notices of disapproval and similar instruments effectuating decisions of the Committee.

Section 5. Submission of Plans and Specifications. At least seven (7) days prior to work on a Lot is commenced, the Owner of the Lot shall submit to the Committee one complete set of plans and specifications (including, without limitation, certificate of survey, grading and drainage plan, building elevations, building floor plans, exterior colors and materials, and landscaping plan).

Section 6. Review of Plans and Specifications. Within seven (7) days after receipt of plans and specifications, the Committee shall disapprove plans and specifications for one or more of the following reasons:

- a. **Non-compliance .** Non-compliance with this Declaration, municipal ordinances or other governmental regulations, or such standards or specifications, not inconsistent herewith, which the Committee may adopt and publish from time to time.
- b. **Incompatibility With the Lot.** Failure of the proposed Residential Improvement to be compatible with the Lot upon which it is to be built, in terms of topography, soils, and existing vegetation.
- c. **Incompatibility With St. Gerards Manor Second Addition.** Failure of the proposed Residential Improvement to be compatible with the houses and other structures in St. Gerards Manor Second Addition, in terms of style, general size, height, and width, quality of construction, price range, obstruction of views and the orientation of structures on the Lot.
- d. **Inadequate Information.** Failure of the plans and specifications to show all information necessary to evaluate the foregoing characteristics.
- e. **Failure to Meet Minimum Value.** Failure of the plans and specifications to demonstratively evidence to the Committee that the Lot and Residential Improvements on completion will meet the Minimum Market Value as required by this Declaration. "Demonstrable Evidence" shall include such information as the Committee may require, including, but not limited to bids, contracts, sworn construction statements and such other further information as the Committee may deem appropriate.

Section 7. The Committee's approval of the builder and plans and specifications shall be stamped on all plans and specifications approved by the Committee. No application for a building permit for construction of residential improvements shall be made unless accompanied by plans and specifications approved and stamped as approved by the Committee.

Section 8. Variances. The Committee shall have authority to grant variances from the strict application of the requirements of this Article, or any standards or specifications adopted by the Committee pursuant to the authority contained herein, on the basis of hardship or similar grounds. Notwithstanding the Committee's right to grant variances, the Committee shall not be entitled to grant a variance to the Minimum Market Value requirement without written authorization from the City.

Section 9. Remedies Against Owners. If construction of or exterior changes to a Residential Improvement are commenced without the Committee's approval of the plans and specifications, or if construction of or exterior changes to a Residential Improvement are completed not in accordance with approved plans and specification, any Owner of a Lot in St. Gerards Manor Second Addition may bring an action to enjoin further construction and to compel the Owner to conform the Residential Improvement with plans and specifications approved by the Committee. Any such action must be commenced and a notice of lis pendens must be filed within ninety (90) days after the date on which the certificate of occupancy is issued by the appropriate municipal authority, in the case of a house, or within ninety (90) days after the date of completion, in the case of any other Residential Improvement.

Section 10. Remedies Against committee. In the event tha the Committee and/or the members of the Committee shall fail to discharge their respective obligations under this Article VIII, then any Owner of a Lot in St. Gerards Manor Second Addition may bring an action to compel the discharge of said obligations. Any such action must be commenced within ninety (90) days after the date on which the certificate of occupancy is issued by the appropriate authority, in the case of a house, or within ninety (90) days after the date of completion, in the case of any other Residential Improvement. Such an action shall be the exclusive remedy of any Owner of a Lot for failure of the Committee and/or its members to discharge such obligations. Under no circumstances shall the Developer, the Committee or members of the Committee be liable to any person for damages (direct, consequential or otherwise).

ARTICLE IX

RIGHTS GRANTED TO THE CITY OF BROOKLYN PARK

Section 1. Purpose. The City has executed various agreements with and secured certain covenants from the Developer and has a continuing interest in the performance of those agreements and covenants. Further, the City is concerned that all conditions requested by the City are complied with and that the Property is developed and maintained in accordance with the plan contemplated by this Declaration.

Section 2. Release of Liability. The Developer, for itself, its successors and assigns and, by accepting a conveyance of a Lot, any Owner, for themselves, the Owner's family and invitees, release and shall hold harmless the City (including its elected and appointed officials, employees, servants and agents) from all liability for enforcement or for nonenforcement of this Declaration, and further expressly acknowledge that the City is not obligated to perform or to enforce performance by the Developer, the Association or others of any obligations contained in this Declaration.

Section 3. Performance of Work by the City. In the event the Developer or the Association, as the case may be, does not maintain or repair any Landscape Amenity, Open Space, Wetland, or Landscaped Cul-de-sac Islands within St. Gerards Manor Second Addition in a manner which is reasonably acceptable to the City, the City may, after thirty (30) days' advance written notice to the Developer or Association, as the case may be, perform such maintenance or repair as the City Council of the City, by resolution, shall have deemed necessary to preserve the health, safety and welfare of the residents of St. Gerards Manor Second Addition, charge the cost against the Lots affected as a special assessment under Minnesota Statutes Chapter 429.

Section 4. Specific Rights Enforceable by the City of Brooklyn Park. The City, at its option and in its sole discretion, may enforce for the benefit of itself any of the specific provisions of this Declaration.

Section 5. Exclusive Rights. The rights granted by this section are exclusive to the City and may be exercised only by the City, in its sole discretion. No other person or entity, including the Association, the Developer or Owners, whether or not a resident of Brooklyn Park, shall be entitled to require the City to act pursuant to this Article IX. The rights of the City under this Article IX cannot be rescinded, canceled or amended by the Developer, the Owners or the Association without the written consent of the City.

ARTICLE X

ADMINISTRATIVE PROVISIONS

Section 1. Duration. This Declaration and the Covenants contained herein shall run with and bind the land and shall inure to the benefit of and be enforceable by the Developer, the Association or any Owner subject to this Declaration, or their respective legal representatives, heirs, successors and assigns. The covenants herein set forth shall have a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants and restrictions shall be automatically renewed for successive periods of ten (10) years. The easements contained herein shall be perpetual.

Section 2. Severability. Invalidation of any one or more of the provisions herein by judgment or court order shall not affect any of the other provisions, which shall remain in full force and effect until the date of expiration.

Section 3. Mode of Enforcement. The Association shall and any Owner may enforce the provisions of this instrument by proceedings at law to recover damages or by proceedings at law to recover damages or by proceedings in equity to restrain any violation; provided that the remedies in Article VIII and not the remedies of this Article IX, Section 3 shall apply to violations of Article VI.

Section 4. Amendment: Termination. Except as specifically otherwise provided herein, this Declaration may be amended or terminated only by an instrument signed by not less than seventy-five percent (75%) of Owners, and the Developer, so long as it owns any property in St. Gerards Manor Second Addition. Any amendment or termination must be properly recorded. Notwithstanding the foregoing, no amendment to Article VI, Section 2, shall be made without the written consent of the City.

Section 5. Captions. The title of this instrument and the captions of the articles and sections of this instrument are for convenience of reference only.

IN WITNESS WHEREOF, the Developer has executed this Declaration as of the day and year first above written.

DEVELOPER:

TEC DEVELOPMENT, L.L.C.

By: TSM Development, Inc.

Its Chief Partner

By: _____

Steven A. Schmitt

Its President

STATE OF MINNESOTA)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 19____, by Steven A. Schmitt, President of TSM Development, Inc., a Minnesota corporation, which is the managing general partner of TEC Development, L.L.C., a Minnesota limited liability partnership.

Notary Public

THIS INSTRUMENT DRAFTED BY:

TSM Development, Inc.
222 Monroe Street

Anoka, MN 55303
(612) 576-9121