

000375 FEB 16 8



DECLARATION OF
COVENANTS, CONDITIONS AND
RESTRICTIONS OF
WHITETAIL HILLS

3362133

REGISTER'S OFFICE
WAUKESHA COUNTY, WI
RECORDED ON

02-16-2006 10:09 AM

MICHAEL J. HASSLINGER
REGISTER OF DEEDS

REC. FEE: 72.00
REC. FEE-CO: 5.00
REC. FEE-ST: 2.00
TRAN. FEE:
TRAN. FEE-STATE:
PAGES: 35

Return to:
WHITETAIL HILLS LLC - John Bergman
N16 W23390 Stoneridge Drive, Suite C
Waukesha, WI 53188

08
79
35

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
WHITETAIL HILLS**

This Declaration of Covenants, Conditions and Restrictions of Whitetail Hills (this "Declaration") is made and entered into by Whitetail Hills, LLC ("Declarant").

Recitals

Declarant owns certain real property, described on the attached Exhibit A, upon which Declarant intends to develop a subdivision for residences and other related improvements.

Each lot purchaser should be fully aware of the restrictions that are contained herein and the building and zoning codes of the Town of Merton before purchasing a lot in Whitetail Hills.

By this Declaration, Declarant intends to subject such property and improvements to certain easements, rights, restrictions and obligations with respect to the ownership, use and maintenance of such property and improvements and all components thereof.

Now, therefore, Declarant, as fee owner of such property, by this Declaration (1) establishes and imposes certain provisions, restrictions, conditions, easement and uses upon such real property; and (2) specifies that the provisions of this Declaration shall constitute covenants running with the land which shall be binding upon Declarant, its successors and assigns, and all subsequent owners and occupants of all or any part of such real property.

ARTICLE 1. DEFINITIONS

The following terms shall have the assigned definitions:

- 1.1 Association. The "Association" shall mean Whitetail Hills Home Owner's Association, Inc., the members of which shall be all Owners of Lots in the Subdivision.
- 1.2 Association Insurance. "Association Insurance" shall mean all policies of insurance as may be maintained by the Association under this Declaration.
- 1.3 Board. The Board or "Board of Directors" shall be the governing body of the Association, elected according to the Bylaws.
- 1.4 Building. A "Building" shall be any freestanding structure located in the Subdivision. A "dwelling" or a "residence" is a Building intended for occupancy in accordance with Section 5.1.

- 1.5 Bylaws. The “Bylaws” shall mean the Bylaws of the “Association” as adopted by the Board.
- 1.6 “Common Areas”. The ““Common Areas”” shall consist of the Outlots 1, 2, 4 and 5 (not outlot 3) (which includes certain wetland and stormwater features).
- 1.7 Common Improvements. The “Common Improvements” consist of the following, some of which may be located in “Common Areas” and some of which may be located in public streets: all signs on the Property generally identifying the Whitetail Hills Subdivision, and any ponds, Buildings, fences, sports equipment, playground equipment and related supplies or other improvements made by the Association in the “Common Areas”.
- 1.8 Declarant. The “Declarant” shall mean Whitetail Hills, LLC and the successors and assigns of Declarant pursuant to assignment in accordance with Section 15.7 of this Declaration.
- 1.9 Declaration. “Declaration” shall mean this Declaration as the same may be amended from time to time.
- 1.10 Development. The Whitetail Hills development in the Town of Merton, Wisconsin.
- 1.11 Director. A “Director” shall mean a member of the Board.
- 1.12 Drawings. The term “Drawings is defined in Section 6.1(b).
- 1.13 Lot. “Lot” shall mean a platted lot intended for construction of a residence as shown on the Plat. The reference to a Lot by a number shall mean that particular Lot as shown on the Plat.
- 1.14 Mortgage. “Mortgage” shall mean a recorded first lien mortgage against a Lot or the vendor’s interest under a recorded first lien land contact relating to a Lot.
- 1.15 Mortgagee. “Mortgagee” shall mean the holder of a Mortgage.
- 1.16 Occupant. “Occupant” shall mean the Owner and any other person residing on a Lot.
- 1.17 Outlot. “Outlot” shall mean any Outlot as shown on the Plat. The reference to an Outlot by a number shall mean that particular Outlot as shown on the Plat.
- 1.18 Owner. “Owner” shall mean each fee simple owner of a Lot. The Declarant is an Owner with respect to Lots to which it holds title.
- 1.19 Pet. A “Pet” is a domestic dog, fish, cat, small animals or bird (other than large birds of prey) which are not maintained for breeding or commercial purposes. By virtue of this definition, no other animals are permitted to be on the Property as pets of any occupant.

- 1.20 Plat. A “Plat” is the plat of the Property as recorded in the Register’s Office.
- 1.21 Property. The “Property shall mean the real estate subject to this Declaration, as described on Exhibit A and all Buildings and other improvements constructed or to be constructed thereon.
- 1.22 Register’s Office. The “Register’s Office” shall mean the office of the Register of Deeds for Waukesha County, Wisconsin.
- 1.23 Rules. The “Rules” shall mean rules established by the Association governing the administration of the “Common Areas” and Common Improvements.
- 1.24 Subdivision. “Subdivision” shall mean all of Lots as shown on the Plat. “Whitetail Hills” located in the Town of Merton, Wisconsin.
- 1.25 Town. “Town shall mean the Town of Merton, Wisconsin and its successors.
- 1.26 Whitetail Hills Documents. “Whitetail Hills” shall consist of this Declaration, Articles of Incorporation of the Association and the Bylaws of the Association.
- 1.27 Wetlands Preservation. A “Wetland” area is delineated in outlot #2 by the Declarant located to the rear of lots 10, 11 and 12 in Whitetail Hills. The following restrictions apply to the wetland:
- a. Grading and filling shall be prohibited.
 - b. The removal of topsoil or other earthen materials shall be prohibited.
 - c. The removal or destruction of any vegetative cover, i.e., trees, shrubs, grasses, etc., shall be prohibited, with the exception of the removal of dead, diseased or dying vegetation at the discretion of the H.O.A. or agricultural thinning upon the recommendation of a forester or naturalist and the approval of the Town of Merton.
 - d. Grazing by domesticated animals, i.e., horses, cows, etc. shall not be permitted.
 - e. The introduction of plant materials not indigenous to the existing environment of the wetland preservation shall be prohibited.
 - f. Ponds/Wetland areas are subject to rules established by the Town of Merton and if applicable, the Wisconsin Department of Natural Resources, and the Army Corp of Engineers.
 - g. Construction of buildings within the wetland preservation areas is prohibited.
- 1.28 Storm Water Retention Ponds. The storm water retention ponds located in Whitetail Hills have been created by the “Declarant” and were required by the Town of Merton to assist in the removal, control and retention of storm water from Whitetail Hills.

ARTICLE 2. ASSOCIATION OF OWNERS

- 2.1 Administration. Declarant shall establish the "Whitetail Hills" Home Owners Association (H.O.A.), which shall be incorporated and shall adopt Bylaws for its governance and administration of the "Common Areas" and Common Improvements. The H.O.A. will be governed by a management "Board" consisting of three members. This management "Board" is referred to herein as "The Board". "The Board" will conduct and manage all of the responsibilities of the Association. The members of "The Board" will be selected as follows:
- a. At any time that the Declarant owns Eighteen (18) or more of the lots in the "Development", including all future additions to the "Development", all three of the "Board" members will be appointed by the Declarant.
 - b. At any time that the Declarant owns Twelve (12) of the lots in the "Development", including all future additions to the "Development", two members of the "Board" will be appointed by the Declarant and one member will be chosen according to the procedure stated below.
 - c. At any time that the Declarant owns Eight (8) of the lots in the Development including all future additions to the "Development" one member of the "Board" will be appointed by the Declarant and two members will be chosen according to the procedure stated below.
 - d. At any time that the Declarant owns fewer than Eight (8) of the lots in the "Development", including all future additions to the "Development" all three members of the "Board" will be chosen according to the procedure stated below.

2.2 Election of Board Members

- a. No later than sixty (60) days before the expiration of any term of the "Board" members a notice of the election of "Board" members will be sent to all Homeowners. The notice will state the number of "Board" positions that are subject to election and will solicit nominations for those positions. The notice will also state the date, time and place for a meeting of the Association, to be held no later than ten (10) days prior to the expiration of any term of the "Board" members at which time an election of "Board" membership will take place.
- b. At the election meeting, the nominations for "Board" membership will be announced and additional nominations may be taken from the floor. Only homeowners may be nominated for "Board" membership except for the initial members named above, who may be reappointed to successive terms by the Declarant, subject to the criteria of sections 2.1 and 2.2 of this Declaration.
- c. Each homeowner is entitled to vote in person or by written proxy in elections for selecting members of the "Board". Homeowners will have one vote for each single-family lot owned.
- d. "Board" membership will be assigned to those Homeowners receiving the greatest number of votes at the meeting.
- e. Except for the initial members, "Board" member's terms will be for two calendar years, beginning January 1 of the year immediately after the applicable election. If any member of the "Board" dies, resigns, becomes unable to act or is no longer a Homeowner the unexpired term of such member must be filled by a special election

or appointment by the Declarant, if applicable, at a meeting called as soon as possible after the "Board" vacancy exists.

- 2.3 **"Board" Meetings** All meetings of the "Board" will be open to Homeowners and will be held upon not less than three (3) days prior written notice to all of the Homeowners. Two (2) members of the "Board" constitute a quorum. Actions of the "Board" are by majority vote.
- 2.4 **Duties of the "Board"** The "Board" has the following duties:
- a. Provide for the maintenance of improvements in the Common Area, which it may deem necessary or desirable. Such improvements consist of entryway monuments, fencing, lighting, landscaping and such other improvements as may be approved by the "Board".
 - b. Inspect, maintain, dredge, keep clear through algae and weed control and keep in good operating condition all storm water retention and detention basins and storm water drainage easements.
 - c. Provide for the maintenance of all outlots, landscaped courts and boulevards.
 - d. Establish dates and procedures for the election of members of the "Board".
 - e. Promulgate operating procedures for the conduct of the H.O.A. affairs.
 - f. Enforce the provisions of this Declaration.
- 2.5 The Board may but need not, from time to time adopt and amend Rules that are binding on all Owners and Occupants. The Board shall administer and enforce the the provisions of this Declaration and the Bylaws, the Rules, and all other uses of and restrictions on the Property. Until the establishment of the Association, all powers of the Association shall be exercised by Declarant.
- 2.6 **Membership and Voting.** Each Lot Owner in "Whitetail Hills Subdivision" shall be a member of the Association. In the Association, the Owner(s) of each Lot shall be entitled to one vote for each Lot owned. If one or more Lots change their status to some other form of ownership, the votes appurtenant to each original Lot shall not be changed. No member shall be permitted to vote if such member is more than thirty (30) days delinquent in the payment of any "Whitetail Hills" real estate taxes or any amount due to the Association under Article 3 of this Declaration.
- 2.7 **Control of Association.** Declarant shall have the right to appoint and remove Directors of the Association and to exercise any and all powers and responsibilities assigned to the Association, the Board or its officers, by the Articles, By Laws, this Declaration or the Wisconsin Nonstock Corporation Law (as amended from time to time), as per Section 2.1 of this Declaration.
- 2.8 **Management.** The H.O.A. may employ a professional management agent or company to assist in carrying out its duties regarding the "Common Areas", the Common Improvements, and this Declaration, with such experience and qualifications and on such terms and conditions as are acceptable to the Board. Any such agreement must be

terminable by the Board, without cause, upon ninety (90) days notice without payment of any penalty.

- 2.9 Approvals. Any proposal by an Owner requiring Board approval shall be submitted in writing, in such detail and with such supporting documents as the Board may require to facilitate its understanding and review. The Board may approve or disapprove any proposal submitted by an Owner after considering one or more of the following concerns and any additional concerns as the Board deems prudent: (1) freedom and safety of access and convenience to other areas of the Property; (2) the costs to be paid by the Owner for restoration of "Common Areas" and Common Improvements to their prior physical condition upon the completion of work or use contemplated by the proposal; and (3) a fair and reasonable monthly charge to be paid by Owner to the Association for any encroachment on any "Common Areas" resulting from the proposal. The Board may at its discretion impose further conditions upon its consent to any proposal as it deems appropriate, including payment of out of pocket charges for professional advice and a standard review fee. Approval of a proposal shall be deemed given if the Association president indicates approval in writing. Proposals to affect the "Common Areas" or Common Improvements require approval of the Board, not the ACC. If the result of a proposal would be to cause an encroachment on any public street or utility, or any easement area or would affect the storm water drainage system on the Property, the prior express written consent of the Town is required.
- 2.10 Ownership of "Common Areas". Each Owner of a Lot shall own a percentage interest in the "Common Areas" as a tenant in common with all other Owners. The interest of each Lot is a fraction equal to 1 divided by the number of Lots. Initially, the interest is 1/27. Each such interest is subject to the following incidences:
- (a) By each initial conveyance of a Lot to an Owner, each Owner shall obtain its interest in the "Common Areas". Each Owner, on its own behalf and on behalf of its successors and assigns, by acceptance of a deed or other transfer of a Lot, waives any and all right that the Owner might now or hereafter have to maintain any action or petition for partition with respect to the Owner's interest in the "Common Areas" or to compel any sale by action at law or in equity. No Owner shall sever its interest in the "Common Areas" from its ownership of its Lot.
 - (b) The Declarant and the Owners hereby appoint the Association as the "agent" for the administration of the "Common Areas", with the complete authority over the "Common Areas" as described herein. The Association shall not have the right to sell, mortgage or lease any or all of the "Common Areas" except if approved by the Owners as an amendment hereto under Article 9.
 - (c) The appointment of the Association as the agent for the "Common Areas" is not intended to create any other agency, joint venture or partnership relationship among the Owners or between the Association and the Owners. No Owner shall have fiduciary duties to another by virtue of the tenancy-in-common interest in the "Common Areas". The Association shall not have any

- duties as a partner, or the like, including but not limited to income tax reporting to the Owners.
- (d) The rights of the Association, as agent, and the Owners as to the "Common Areas" shall not be affected by federal or state bankruptcy or insolvency proceedings, or analogous proceedings for creditor or debtor relief, against any one individual Owner.
 - (e) Declarant is advised that each Owner's interest in the "Common Areas" will be assessed and taxed for real estate purposes, and will be included on the tax bill for such Owner's Lot. Declarant makes no assurance that taxes will be levied in this manner. If any one Owner fails to pay taxes as and when due with respect to such Owner's interest in one or more of the "Common Areas", then the Association may, but is not obligated to, pay such amount and levy a special assessment in such amount on such Owner.
 - (f) Appointment of the Association as agent shall not be rescinded or limited unless the appointment is rescinded or limited by an amendment to this Declaration in accordance with Article 9.
 - (g) "Septic on Outlot". The Association shall permit an Owner to use a reasonable portion of an Outlot located as closely as feasible to the Owner's Lot for purposes of installation, maintenance, repair and replacement of a private sewage system for the residence on the associated Lot if the Owner can show that it is impractical to locate such sewage system on the Owners Lot. In order to obtain such permission, the Owner must apply for permission under Section 2.5, and the Association may impose a fee for its costs of review and enforcement, and may impose requirements and fees to be paid by the subject Owner regarding, among other matters, the reconstruction and repair of the landscaping on Outlots 1, 2, 4 or 5 the condition of the sewage system, and the effects of the sewage system on the environmental condition of Outlots 1, 2, 4 or 5. Any such sewage system installed must be in compliance with all applicable laws at all times.

ARTICLE 3. ASSESSMENTS

- 3.1 Budget and Assessments. The association shall annually adopt a budget of common expenses and levy assessments on the Lots allocating such assessments equally to each Lot, subject to the limitations herein. The budget shall include amounts representing assessments that are bad debts, and may but need not include a replacement reserve, which in each case shall constitute part of the general assessments. The Association may also levy (a) special assessments on all Lots for any purpose for which a general assessment may be levied and special assessments, or (b) fines on particular Owners for the purpose of collecting any amounts due the Association or enforcing compliance by such Owners with any provision of this Declaration, the Bylaws or any Rules. The Board may adopt a Rule to impose uniform charges for services which the Association provides related to transfer of Lots, review of proposals under Section 2.5, and the like. The Board may adopt an initial budget showing the anticipated amounts necessary to cover common expenses.

- 3.2 Installments: Late Payments. General assessments shall be levied on an annual basis but shall be due and payable as determined by the Board from time to time. Special assessments shall be due and payable at such time and in such manner as the Board may determine. Any assessment or installment of an assessment not paid within ten (10) days of its due date may be subject to a late charge and/or interest as set forth in the Bylaws or in a Rule.
- 3.3 Enforcement: Liens. If an Owner defaults in any payment, the Association shall take appropriate measures as permitted by law. The defaulting Owner shall be responsible for all costs incurred by the Association in seeking to enforce payment including the Association's reasonable attorney's fees. Owners shall be personally liable for assessments or fines and a lien shall be imposed against such Owner's Lot for any unpaid assessments. The lien shall be effective as of the recording of a notice thereof in the Register's Office. Liens for unpaid assessments shall also extend to and secure interest, fines and reasonable costs of collection including attorney's fees incurred by the Association incident to the collection of assessments or enforcement of liens. The Association may purchase a property upon the foreclosure of its lien. Under Section 2.2, an Owner delinquent in payments may in some cases not be permitted to vote on matters before the membership of the Association.
- 3.4 Association Statements. Within ten (10) business days of written request from an Owner or a Mortgagee, the Association shall provide a letter stating the existence and amount of outstanding general or special assessments against the Owner's property, if any. Notwithstanding anything to the contrary in the preceding sentence, all property conveyed by Declarant shall be deemed conveyed free from outstanding general, special or working capital assessments and no such letter shall be required or given as to such property.
- 3.5 Common Expenses and Surpluses. Common expenses and surpluses shall be allocated in the same manner as general assessments are allocated. All common surpluses for each fiscal year shall be retained for common expenses for the next succeeding fiscal year.
- 3.6 Litigation Reserve. Upon initial conveyance of each Lot by Declarant, each new Owner shall deposit with the Association a nonrefundable sum of \$400, to be placed in a litigation reserve fund. The litigation reserve fund shall be used to pay legal fees and costs in the event that the Association is involved in a proceeding to enforce or defend the terms and conditions of the Declaration, whether in a proceeding commenced by or against the Association or in which the Association intervenes. The Board may invest said funds and all returns on such investments shall become a part of the fund; provided that the Board may transfer amounts out of the fund to the Association's general funds if it is determined that a lesser amount is appropriate. If necessary, the Board may levy a general or special assessment to replenish such fund. The Declarant shall not be obligated to contribute any funds to the litigation reserve escrow fund.

ARTICLE 4. MAINTENANCE AND ALTERATIONS OF COMMON

AREAS, EASEMENTS, IMPROVEMENTS AND EQUIPMENT

- 4.1 Owner Responsibility. Each Owner shall reimburse the Association for the cost of the Association's repair or replacement of any portion of the "Common Areas" or Common Improvements damaged through the fault or negligence of such Owner or such Owner's family, guest, invitees or tenants. Each Owner shall, at the Owner's cost, even if no residence has been constructed by such Owner, maintain the yard, including the cutting of grass and snow removal from driveways and, if any, sidewalks, in an orderly and neat manner and shall maintain all structures on the Lot in good repair and condition.
- 4.2 Association Responsibility. The Association shall maintain in good condition and repair, replace and operate all of the "Common Areas" and Common Improvements, including landscaping, trees and plantings in the "Common Areas", trimming of such trees for sight lines, repair and/or maintenance of surface water drainage facilities, retention ponds, detention ponds and maintenance, repair or replacement of the "playground equipment". The Association may, in its discretion, install addition Common Improvements in the "Common Areas".
- 4.3 Town of Merton Easement Maintenance and Remedy. The Town is authorized to perform the corrective actions if the Association does not make the required corrections within a reasonable time period. The costs and expenses for such corrections shall be entered on the tax roll as a special assessment or special charge against all Lots in the Subdivision on a pro rata basis and collected with any other taxes levied thereon for the year in which the work is completed. In the event that the Association does not properly maintain any stormwater retention basins, drainage easements, or the like, the Town may send written notice to the Association indicating that the Town has determined that the same are not properly maintained and further indicating that the Town will perform such maintenance if not properly done by the Lot Owners or Association. The above-mentioned notice shall give the Lot Owners and/or the Association a minimum of seven (7) days to correct the problem, unless an emergency exists, in which case less than seven (7) days may be allowed for correction of the problem. If maintenance is not properly performed within the time granted by the above-referenced notice, the Town shall then have the authority to perform the maintenance referred to in said notice and shall have the right to charge the Lot Owners or the Association on a pro rata basis (1/27th of the cost) for any costs incurred by the Town as a result of such maintenance. Said costs shall be assessed as special charges pursuant to §66.0627, Wis. Stats. If such charges are not paid by the Lot Owners or the Association within the period fixed by the Town, the charges shall become a lien upon the Lots within the Subdivision as provided in §66.0627, Wis. Stats., and shall be extended upon the tax rolls as a delinquent tax against the Lots within the Subdivision as provided in §66.0627, Wis. Stats.
- 4.4 Recreational or Other Easements. "Declarant", or its successors and assigns, including the Board of Directors of the Association, shall have the right to (i) grant easements upon, over, through and across (a) an Outlot controlled or owned by the Association or Lot Owners in common with one another or (b) Common Areas as may be required for or by any type of utility services, including but not limited to, cable television or master

antenna service, which easements may be granted by or to the Association or its nominee as may be necessary for excavation and construction of any of the services to be provided by the easements; and (ii) grant easements, upon, over, through or across the Common Areas or an Outlot for ingress and egress to or from the Common Areas or an Outlot or for recreational purposes across the Common Areas provided such proposed use would not have a material adverse impact on the Common Areas or an applicable Outlot.

- 4.5 Vacant Lot Maintenance Easement. “Declarant” hereby declares, creates and reserves a vacant lot maintenance easement to the Town granting the Town the right (but not obligation) to enter upon any vacant Lot in the Subdivision in order to inspect, repair or restore any part of the Lot the Town deems necessary so that the Lot is in compliance with all applicable provision of the Town of Merton Municipal Code. A vacant Lot shall include any Lot that does not have an occupied principal dwelling unit that is used for single-family purposes at the time of inspection, repair or restoration. All actual costs, including professional fees and all other fees as may be reimbursed pursuant to the applicable section of the Town of Merton Municipal Code, incurred by the Town in exercising its right to inspect, repair or restore the Lot, shall be borne by the owner of the Lot necessitating such inspection, repair or restoration and if not paid by such Lot owner within forty-five (45) days of receipt of any invoice therefore, may be placed against the tax roll for the Lot and collected as a special assessment or a special charge by the Town.
- 4.6 Visual Easement. Developer hereby declares, creates and reserves an easement over those certain Lots in the Subdivision shown on the Plat for purposes of maintaining a visual buffer along certain boundary lines as show on the Plat (the “Visual Easement”) of varying widths. The Visual Easement is shown on the Plat and identified as “Visual Easement”. No structures of any sort shall be placed on the Visual Easement, but plantings and selective vegetation are permitted. Each individual Lot Owner shall be responsible for maintaining the Visual Easement on his or her Lot, including but not limited to controlling noxious weeds and removing debris.
- 4.7 Vision Corner Easement. Developer hereby declares, creates and reserves an easement over several Lots and Outlots identified on the Plat identified as “Vision Corner Easement” (“Vision Corner Easement”). In the Vision Corner Easement no planting of berms, fences, signs and other structures shall be permitted that exceed twenty-four (24) inches in height above the elevation of the center of the intersection, except for necessary traffic signs, public utility lines and open fences through which there is clear vision. In addition, no access to any roadway shall be permitted within the Vision Corner Easement.
- 4.8 Wetland and Primary Environment Corridor Areas. Certain areas on the Final Plat are identified as Wetland and Primary Environmental Corridor Areas. Those areas are subject to various local and County rules and ordinances that must be observed. In addition, specific prohibitions for these areas are set forth on the Final Plat.

ARTICLE 5. RESTRICTIONS ON USE AND OCCUPANCY

5.1 Permitted Uses. Each Lot shall be occupied and used only for single-family residential purposes and for no other purpose. No trade or business shall be carried on anywhere in the Subdivision, except for (1) the incidental use of a Lot for personal business conducted by mail and telecommunications which does not burden the use of the Subdivision by frequent visits by business service providers or customers, subject to any Rules relating to such burdens, or (2) the sale of Lots, subject to the other provisions hereof and any Rules related thereto, or (3) the establishment of offices by Declarant or its agents for sales of Lots or by the Association for conducting its affairs. The term "residential purposes" includes only those activities necessary for or normally associated with the use and enjoyment of a homesite as a place of residence and limited recreation. No garage or other mobile or accessory structure shall be used for temporary or permanent living or sleeping for family or guests without prior approval of the ACC. Buyer is aware that Whitetail Hills subdivision is presently zoned A-1 which allows Whitetail Hills subdivision to be a residential cluster development under Sec. 17.59 of the Town of Merton zoning ordinance.

5.2 Pets.

- (a) Except as provided below, the Owner or Occupant may keep no more than three (3) pets per Lot on the conditions that:
- (1) the pet is not permitted on any of the "Common Areas" while unattended;
 - (2) the owner of the pet shall comply with such further rules of pet ownership as may be promulgated by the Board.
 - (3) the pet is licensed by the Town or appropriate licensing authority, if required under applicable ordinances;
 - (4) no reptiles or uncaged birds shall be permitted; and
 - (5) the pet must immediately and permanently be removed from the Property if, in sole judgment of the Board, the pet is or becomes offensive, a nuisance or harmful in any way to the Property or any Owner or Occupant, or otherwise violates the terms of this Section 5.2 or any Rules adopted relating to Pets. Possession of pets shall not be considered a property right.
- (b) If a dog kennel or similar enclosure is to be erected and maintained for any pet, such kennel or enclosure will require approval prior to installation under Section 6.1. Any and all costs of repairing damage caused by a pet or other unauthorized animal of an Occupant shall be borne by its owner and, if different, The Owner of the Lot where the pet or other animal is housed.

- (c) Notwithstanding the foregoing, only the Owners or Occupants of Lots 16, 17, 18 and 19 may, (after obtaining all municipal approvals), keep other animals on such Lots, in addition to those permitted in subsection (a), on the following conditions:
- (1) reasonable precautions must be taken which are intended to confine the animals to the Owner's or Occupant's Lot, unless the prior written consent of an adjoining Lot Owner is obtained;
 - (2) the animals are maintained in accordance with all municipal ordinances.
NOTE: Conditional use permits may be required by the Town of Merton for some uses under this Section 5.2.
 - (3) the animals are not kept for hire or as part of any business, other than incidental boarding of animals for others;
 - (4) the Owner and Occupant complies with Municipal Rules which are reasonably related to preventing strays, smells or other potential nuisances of such animals from affecting adjacent Lots.

In connection with the foregoing, the Owners of such Lots may propose the construction of fences, corrals, pens, barns or other structures for such animals. Such structures are subject to Article 6 of this Declaration.

- 5.3 Vehicles. No continued outdoor parking of vehicles shall be permitted on the Lots, without the express prior consent of the Board, and, except for parking as necessary in connection with the construction or reconstruction of a residence on a Lot. No person shall occupy, park or otherwise use a vehicle so as to block access to a Lot. storage of trailers, campers, camping trucks, boats or other marine craft, horse or boat trailers, motorcycles, mopeds, motorized bicycles, vehicles licensed as recreational vehicles or commercial vehicles, snowmobiles, all-terrain vehicles, inoperative or unlicensed vehicles or the like shall not be permitted on a Lot, except (1) in a garage, or (2) in the case of recreational vehicles, commercial vehicles and boats, outside of a garage but no closer to the street than the furthest most projection of the residence or garage to the front Lot line, on a hard surface area of concrete, asphalt, paving brick or similar material, and screened from public view by fencing, shrubbery, decorative gates or other means, in all cases acceptable to the ACC. Without limiting the foregoing, no motorized vehicles may be operated on any Outlot.
- 5.4 Waste. Accumulations of waste, litter, excess or unused building materials or trash other than in appropriate receptacles is prohibited, and garbage containers shall be situated only in locations designated by the Association. No incineration of waste is permitted on the Property. **LOTS SHALL BE KEPT FREE OF DEBRIS DURING CONSTRUCTION OF IMPROVEMENTS THEREON BY MAINTENANCE OF A DUMPSTER ON-SITE WHICH MUST BE REMOVED WHEN FILLED TO ITS LEGAL CAPACITY WITHIN FIVE (5) DAYS OF BEING FILLED.** The refuse and garbage receptacles for each occupied home shall be stored in the residence or

garage, except for a period of 12 hours prior to and following the scheduled garbage pickup.

- 5.5 Temporary Structures. No structure, trailer, shack or barn, temporary or otherwise, shall be placed or maintained on any portion of a Lot or Common Area without written approval of the Board, except for construction trailers maintained by Declarant and its successors and assigns, or the Association.
- 5.6 Quiet Enjoyment. Each Owner shall have the right to use its property in accordance with this Declaration and applicable law, free from unreasonable interference from any other Owner, Occupant and other invitee. No person shall cause or permit the "Common Areas" to be used so as to deny any Owner or Occupant the full use of the "Common Areas" except as permitted by the Association under Section 2.5.
- 5.7 Noxious Activity. No use or practice shall be allowed in the Subdivision or the "Common Areas" which is immoral, improper or offensive in the opinion of the Board or which is in violation of the Whitetail Hills Documents. By way of example and not limitation, offensive activity shall include excessive amplification of musical instruments and/or audio or audio visual equipment.
- 5.8 Patios and Balconies. Patios, decks and balconies of Buildings on Lots shall not be used for storage of any kind, including, but not limited to, the storage of motorcycles, any motorized equipment, baby carriages, bicycles, ATV's or wagons.
- 5.9 Signs. No Owner or Occupant may erect, post or display posters, signs or advertising material on the "Common Areas" or at locations within a Building which are visible from the public streets or "Common Areas" without the prior written consent of the Board, except (a) Declarant may do so without such approval and (b) an Owner may erect or post a temporary sign of customary and reasonable dimension relating to the sale of a Lot. The Board may at its discretion, in particular circumstances or in general, delegate its right to consent under this Section to the ACC described in Article 6. Where Board consent is sought and obtained, the permitted signs will be erected and maintained in accordance with all ordinances, rules, regulations and conditions applicable thereto. "Signs" as used herein shall be construed and interpreted in the broadest possible sense and shall include any placard, posters or other such devices as may be affixed to the interior of any exterior windows so as to be visible from the exterior of the Building.
- 5.10 Environmental Matters. Each Owner and Occupant shall comply with all applicable governmental or Association statutes, ordinances, regulations or rules relating to the storage, transport and release to, from, on or in such Lot of any substance or compound governed by any one or more of Wis. Stats. Chap 292 (as the same may be renumbered from time to time); Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"); Toxic Substances Control Act ("TOSCA"); Resource Conservation and Recovery Act ("RCRA"); Town ordinances; and similar laws relating to the storage, transport or release of substances, compounds recyclable materials, all as in effect from time to time.

- 5.11 Obstructions. No additional playground equipment, bicycle racks or other equipment or material may be placed on the "Common Areas" other than what has been placed by the "Declarant", except as the Board permits by Rule.
- 5.12 No Further Divisions Or Land Combinations. No Lot or Outlot, other than Outlot 3, may be further subdivided or combined with other real estate.
- 5.13 Occasional Use of "Common Areas". If the Association places gazebos or other structures in the "Common Areas", then the Owners shall be entitled to the use thereof at no cost, subject to Rules to be made by the Board concerning the reservation and use of such Common Improvements. Any user will be responsible for removal of all debris from such use. Any damage to the "Common Areas" or Common Improvements from such use will be repaired by the Association but at the cost of the Owner under Section 4.1. An Owner using a Common Area or Common Improvement shall not leave the Owner's guests unaccompanied during their use of the same. Outlots shall not be developed or used except as contemplated by this Declaration.
- 5.14 **STORM WATER RETENTION PONDS THE STORM WATER RETENTION PONDS ARE NOT INTENDED TO BE USED FOR SWIMMING OR RECREATIONAL FACILITIES, AND ANY USE OF THE STORM WATER RETENTION PONDS FOR SUCH USE IS STRICTLY PROHIBITED. ANY PERSONS ENTERING OR USING THE STORM WATER RETENTION PONDS EITHER INTENTIONALLY OR ACCIDENTALLY DO SO AT THEIR OWN RISK. BY PURCHASE OF A LOT IN WHITETAIL HILLS, EACH HOMEOWNER AND ITS RESPECTIVE SUCCESSORS, ASSIGNS, HEIRS AND PERSONAL REPRESENTATIVES THEREBY WAIVES TO THE FULLEST, EXTENT PERMITTED BY LAW, ANY AND ALL CLAIMS FOR LIABILITY AGAINST THE DECLARANT, THE DECLARANT, WHITETAIL HILLS HOMEOWNER'S ASSOCIATION, THE TOWN OF MERTON, AND THEIR RESPECTIVE AGENTS, CONTRACTORS, EMPLOYEES, OFFICERS, DIRECTORS AND SHAREHOLDERS, FOR INJURY OR DAMAGE TO PERSON OR PROPERTY SUSTAINED IN OR ABOUT OR RESULTING FROM THE USE OR EXISTENCE OF THE STORM WATER RETENTION PONDS. IN ADDITION, EACH HOMEOWNER (AND ITS SUCCESSORS, ASSIGNS, HEIRS AND PERSONAL REPRESENTATIVES) AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE DECLARANT, THE DEVELOPER, WHITETAIL HILLS HOMEOWNER'S ASSOCIATION, THE TOWN OF MERTON AND THEIR RESPECTIVE AGENTS, CONTRACTORS, EMPLOYEES, OFFICERS, DIRECTORS AND SHAREHOLDERS, FROM AND AGAINST AND ALL LIABILITIES, CLAIMS, DEMANDS, COSTS AND EXPENSES OF EVERY KIND AND NATURE (INCLUDING ATTORNEY'S FEES) INCLUDING THOSE ARISING FROM ANY INJURY OR DAMAGE TO ANY PERSON (INCLUDING DEATH) OR PROPERTY DAMAGE SUSTAINED IN OR ABOUT OR RESULTING FROM THE USE OR EXISTENCE OF THE STORM WATER RETENTION PONDS.**

- 5.15 No Agency for Other Homeowners. No Homeowner, other than members of the H.O.A. "Board", has any authority to act for the H.O.A. or the other Homeowners as agent or otherwise, or to bind the Association or the H.O.A. to contracts, negotiable instruments or other obligations or undertakings of any kind.

ARTICLE 6. ARCHITECTUAL CONTROL

6.1 Architectural Controls; Restrictions on Development.

- (a) Architectural Control "Board". Composition. Declarant shall establish an Architectural Control "Board" ("ACC"), related to the Association as provided herein, consisting of three (3) members who shall have the duties as set forth in this Article. The initial ACC shall be appointed by Declarant. One or more ACC members may delegate their ACC duties to any one or more of the other ACC members. After Declarant conveys to purchasers 75% of the Lots, then the initial members of the ACC shall resign and the Board shall elect the three (3) members from the Owners of Lots to serve on the ACC; provided, however, that if selected by the Board, a representative of Declarant may serve on the ACC. Notwithstanding the election of the new members of the ACC, the approval of Drawings (defined below) for the initial construction of a residence on a Lot shall not be effective without the express prior consent of the Declarant; approval of Drawings for other matters will not require Declarant's approval.
- (b) **NO DEVELOPMENT WITHOUT PRIOR APPROVAL. NOT LESS THAN TEN DAYS PRIOR TO EACH TIME ANY OF THE FOLLOWING IS PROPOSED TO OCCUR:**
- (1) Commencement of construction of any Building or other improvements on any Lot, or
 - (2) the reconstruction of any Building or other improvements on any portion or portions of such property following a casualty loss thereto, or
 - (3) the demolition of any Building or other improvements on any portion or portions of such property, or
 - (4) the initial painting, or subsequent decoration or alteration of the exterior of any Building or other improvement on such property, or
 - (5) the installation of an awning, enclosure, hot tub, deck, swimming pool, mailboxes, fences or other landscape features on any such property,

the Owner(s) of such property shall submit to the ACC for consideration as described below two copies of written information, which shall include a survey of such property prepared by a licensed surveyor, ("Drawings") showing:

- i. the location, size, elevations and type of Building(s) and other improvements, including, but not limited to, homes garages and fences or other matters proposed to be erected or reconstructed on such property,
- ii. detailed plans and specifications for construction or reconstruction, including building material, type and color and plans to screen the demolition, construction or reconstruction from view,
- iii. the proposed landscaping, and
- iv. the proposed location and specifications for utilities servicing such improvements.

The survey shall reflect the proposals in i through iv above, which are appropriate to be shown on the survey. Any of the actions described in clauses (1) through (5) above may be taken (subject to subsections (c) following) on or after the date on which the ACC approves or does not object or is deemed to have done so as provided in subsection (c) following, unless such time periods are waived by the ACC in its sole discretion where the ACC believes that such earlier commencement is consistent with the purposes of this Declaration. No action described in paragraphs (1) through (5) above shall take place without the written approval by the ACC of the Drawings for such action, except if the action is the repair or replacement of previously approved exterior features that are identical or if the action is the repainting of an exterior surface with paint of the same color.

- (c) Standards and Procedural Matters of Consideration. The ACC shall not unreasonably refuse to consider submitted Drawings provided that any fees imposed for review have been paid. In considering any Drawings, the ACC shall consider, among other factors, whether all of the improvements and the lighting, exterior finishes (such as materials, decorations and paint color), landscaping, the placement and protection of trees as provided in Section 6.6(b), and such other matters proposed in such Drawings comply with the terms of this Declaration and the Town ordinances and otherwise are, in the ACC's sole opinion, in keeping with and do not detract from or depreciate any portion of the Property, whether then undeveloped, developed or in the process of development, even if the Drawings (absolutely or conditionally), may object to Drawings (absolutely or conditionally), or may state that it has no objection to Drawings (absolutely or conditionally). Approval must be express and in writing. The failure of the ACC to approve, object or acquiesce conditionally as above within twenty business days after submittal of the complete Drawings and payment of any review fees shall be deemed as if the ACC stated that it has no objection to the

Drawings as submitted. If the ACC objects to Drawings in whole or in part for any reason, the submitting Owner shall thereafter resubmit Drawings to the ACC with such revisions as are required. Each time an Owner so submits the Drawings, the ACC shall have the right to approve, acquiesce conditionally or object to the Drawings as described above in the time periods as measured from the last submittal. Following the ACC's approval of the Drawings, the improvements described therein shall be developed strictly in accordance with the approved Drawings. If the approved improvements are not completed within one (1) year of their initial approval, then such approval shall be deemed withdrawn and the same or different Drawings required to be submitted or resubmitted, as the case may be; provided that the ACC may, in its discretion, extend such period by up to an additional 6 months if it reasonably determines that delay has been primarily caused by factors outside of the control of the Owner; and provided further that the initial driveway need not be completed until the time period specified in Section 6.6(c).

- (d) Prior Approval for Changes. If after the completion of the improvements to an affected property, the Owner thereof desires to construct any additional improvements or to substantially alter the then existing improvements or the grade of the affected property, the Owner shall comply with the provisions of subsection (a) above. A proposed alteration will be deemed substantial if it affects the location or exterior appearance of the approved improvements.
- (e) Procedures and Budget. The ACC may set its own operating procedures consistent with this Declaration and any limitations hereafter imposed by the Board. The costs of operating the ACC shall be assessed by the Association as common expenses, except as permitted below. The ACC may but need not require the payment of a review fee in connection with the submittal of any Drawings pursuant to a written policy. The ACC may engage consultants (e.g., architects, engineers or attorneys) either on a general or on a case-by-case basis, and the costs thereof may be charged to the applicant. The members of the ACC shall not draw any compensation for serving thereon but may be reimbursed for expenses incurred in performing their duties. All funds relating to the ACC shall be handled by the treasurer of the Association.
- (f) Separate Town Approval. Matters which require approval of the ACC may also require approval of the Town. Obtaining approval from the ACC and from the Town is solely the responsibility of the Owner desiring approval. Approval of Drawings by the ACC shall not be deemed approval by the Town and approval by the Town shall not be deemed approval by the ACC.
- (g) Uniformity Standards; Waiver. Certain standards of architectural control are set forth in Section 6.2 through 6.6 below. The ACC may adopt additional written standards of uniformity, setback, grading, landscaping, basements, roofing or exterior, whether generally or for certain types of improvements. The ACC may waive any such standard which it has adopted, may waive any standard in Sections 6.1 through 6.6, and waive any floor area requirements in Section 6.3 by up to 10%. The ACC may in its discretion also permit comparable or superior construction

materials as substitutes for those required in this Declaration. Any such waiver or approval must be express and in writing. The ACC may enforce any standard even if it has, expressly or by acquiescence, permitted previous deviations from such standard. Any variance granted hereunder may be conditioned, and may be permanent or time-limited (and if not expressly time limited will be deemed to be effective for so long as the use of such property is not materially altered). The ACC may waive any standard as above even the in absence of an “unnecessary hardship”; those judicially determined standards for granting variances under zoning regulations shall not apply to the ACC.

(h) Indemnification. Each member or former member of the ACC, together with the personal representatives and heirs of each such person, shall be indemnified by the Association against all loss, costs, damages and expenses, including reasonable attorney’s fees, asserted against, incurred by, or imposed in connection with or resulting from any claim, action, suit or proceeding, including criminal proceedings, to which such person is made or threatened to be made a party by reason or service as a member thereof, except as to matters resulting in a final determination of negligence or willful misconduct on the part of each member. In the event of settlement of such proceeding, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Association is advised by counsel that the person to be indemnified has not been guilty of negligence or willful misconduct in the performance of such person as a member in the matter involved. This right of indemnification shall be in addition to all other rights and defenses. All liability, loss, damage, costs and expense incurred or suffered by the Association in connection with this indemnification shall be a common expense. Nothing in this subsection shall be deemed an indemnification of such person with respect to such person’s status as an Owner, Occupant or otherwise.

6.2 Antennas. No antenna, aerial, satellite dish or cable for television or radio reception which greater than 30” in diameter shall be erected or installed on or in any roof or any other portion of a Building on any Lot or on the unimproved portions of such properties, except as erected or installed by Declarant, the Association, or any individual Owner with written approval of the ACC, and, in each case, in compliance with Town ordinances. When and/or if approved, these items in Section 6.2 must be installed so as not to be seen from a street view of the front of the Lot.

6.3 Minimum Home Size Requirements.

a. Only one single-family home may be constructed on each Lot. The following types of homes on Lots shall have the following minimum sizes:

<u>Residence Type</u>	<u>Minimum Size</u>
One Story	2,000 square feet
More than one story	2,400 square feet (minimum of 1,200 square feet on the first floor)

- b. For purpose hereof, "more than one story" includes homes referred to as one and a half story, two story, split level or bi-level. The type of residence and the number of square feet shall be determined on a uniform basis by the ACC and shall not include basement, attic, garage, porch or patio areas in the computation.
- c. Setbacks. The required Town Minimum building setbacks are as follows:
- | | |
|------------|---------|
| Front Yard | 50 Feet |
| Side Yard | 20 Feet |
| Rear Yard | 20 Feet |

6.4 Garages.

- d. Each residence on a Lot shall have a garage for not less than 2 cars attached to the residence containing a minimum of 450 square feet. Garage entrances must be located on a side of the residence which does not face the street fronting the Lot, except in the case of a Lot bordered by two streets in which case the garage must be located on the side on which the front entrance does not face. Garages must be located on the side of the Lot which has the highest elevation, except as permitted by the ACC. Driveways shall be paved with a hard surface material acceptable to the ACC and, within its jurisdictional limits, the Town. Garages must be constructed at the time of construction of the residence and all exterior features must be completed prior to occupancy of the residence.
- e. Detached garages may be permitted by the ACC, provided that the following requirements have been satisfied:
- i. The garage shall have a minimum of two stalls.
 - ii. Door openings and all overhead doors shall not exceed 10 feet in height.
 - iii. Color and building materials shall be consistent with the residence on the Lot.
- (c) Any storage sheds shall contain not less than 129 square feet nor more than 180 square feet. All sheds shall be of a style, color and building material consistent with the residence on the Lot. A shed must be rectangular, and not square. No steel, vinyl, aluminum, prefabricated or kit sheds shall be permitted. Approval for sheds is required under Section 6.1. If an Owner desires to connect electricity to a shed, whether at or after the time of initial construction, the installation of electrical connections must be underground and must be performed in accordance with all laws and regulations.

- 6.5 Certain Exterior Features. With respect to the construction of a Building on a Lot or other improvement to a Lot:
- (a) If shutters or window casings and trim features are used on windows or divided-lite windows are used, in any case on the front of the residence, then they shall be used on such of the side and rear windows as the ACC shall require.
 - (b) A residence shall have a roof made of 30 year warranted dimensional shingles, or better, with a minimum pitch ratio of 8:12, or such other pitch as is specifically approved by the ACC. Such dimensional shingles shall be a "weatherwood" color.
 - (c) Exterior walls of residences shall be constructed of brick, stone, wood (including wood wafer board products of a type and quality approved by the ACC), cedar, stucco, concrete siding (i.e. hardi-plank) or combination thereof. **IN NO EVENT SHALL THE EXTERIOR OF ANY STRUCTURE CONSIST OF METAL OR VINYL SIDING.** Basement or foundation walls shall not be exposed by more than 8 inches.
 - (d) If vertical siding or the like is used on the exterior walls of a residence, the same shall terminate only at an inside corner or other suitable break in the residence's architecture as the ACC shall approve. Exterior masonry walls must abut another wall.
 - (e) The ACC shall be acting reasonably if it disapproves the Drawings for a residence because such residence would be similar in appearance to other residences in close proximity.
 - (f) The ACC shall be acting reasonably if it requires that, on Lots with significant grades as determined by the ACC, portions of basement walls be exposed to allow for a more natural transition between residences. Any such exposed basement or foundation walls shall be covered with suitable material consistent with the overall architecture of the residence.
 - (g) No excavated soil shall be removed from any Lot nor excess soil stored on any Lot (except for prompt use for backfilling, finish grading or landscaping) unless in either case contemplated by the approved Drawings. Even if so approved, the final grades (sometimes called a "finish grade") of a Lot must conform to grading plans approved by the Town. If during construction, the Owner reasonably believes that excess fill or topsoil will be available from the construction site, the Owner shall notify Declarant and Declarant may, within five (5) days of receipt of such notice, notify the Owner that Declarant intends to use some or all of such excess. If Declarant elects to do so, Owner shall at its cost transport the excess to a place in the Subdivision designated by

Declarant. If Declarant does not timely give notice, Declarant shall have waived the right to use such excess. If additional excess soil is generated, the Owner shall give additional notice.

- (h) Above-ground pools and in-ground pools may be installed on a Lot only with approval of the ACC, which will be acting reasonably if it does not approve an in-ground pool which is not completely enclosed by a secure wall or fence of a minimum of 4 foot elevation, with a self-closing or self-latching gate or door (at the top of such gate or door). There must be an unobstructed area of at least 4 feet between the fence and the pool. All pools, pool enclosures and safety devices must have written approval of all governing authorities.
- (i) Each Owner is required to install and energize before occupancy, and thereafter to maintain, a front yard light post and lantern in a style and from a manufacturer approved by the ACC from time to time. The initial post and lantern will be purchased from Declarant. The light post and lantern must be (1) located at least 6 feet and no more than 10 feet from the front lot line and (2) adjacent to the driveway. Prior to occupancy of a residence on a Lot, the Owner shall demonstrate to the ACC that such light post and lantern is connected to electrical service (paid for by such Owner). No owner shall tamper with such lantern controls.
- (j) Each Owner is required to install and maintain a mailbox and mailbox support post as selected by the ACC in locations as determined by the U.S. Postal Service. The ACC may designate one or more styles of mailboxes to be used, guided by an effort to keep mailboxes and posts as uniform as practicable.
- (k) In making determinations under subsections (i) and (j), the ACC will give priority to the goal of achieving uniformity of aesthetics, but without abrogating its right to grant variances or to change its aesthetic scheme from time to time.
- (l) Each Owner shall maintain its light post and lantern and mailbox and mailbox post in good condition and working order, and shall cause electrical service to be continued to such lantern. Without limiting the authority of the Association generally, the costs of enforcing the covenants in subsections (i) and (j) may be assessed to an offending Owner as a special assessment on such Lot under Article 3.
- (m) If Declarant, in its discretion, installs any light post, lantern, mailbox or mailbox post, or performs or pays for any other matter required herein on behalf of any Owner, it shall not be deemed a waiver of any of the requirements herein as to any other Lot or Owner and shall not obligate Declarant to perform the same action on any other Lot, for any other Owner, or on any subsequent occasion.

- (n) All utilities shall be installed underground.
- (o) No exterior active solar collectors shall be erected, installed or used unless presented in the Drawings and approved by the ACC.
- (p) No fences shall be permitted in the front yard setback area except for decorative wood or stone type fences in the areas of the corner of each Lot. No wire mesh fencing is allowed except in connection with a dog kennel or run if approved by the ACC.

6.6 Grading and Landscaping.

- (a) Declarant has established a master surface drainage plan (the "Master Grading Plan") designating the manner in which each Lot shall drain in relation to all other Lots. Compliance of all grading and construction work to the Master Grading Plan is important to the effective drainage of all Lots, and affects the value of all Lots. A copy of the Master Grading Plan is on file in the office of the Town of Merton's Town Clerk and/or Town Engineer. When the ACC reviews any Drawings, it shall consider whether the proposed improvements affect the Master Grading Plan, and may reject any Drawings on that basis. Within 60 days after substantial completion of a dwelling on any Lot, the Owner shall grade the Lot to conform to the Master Grading Plan. Each Owner will take such action as is reasonably necessary to maintain the grading and landscaping of the Owner's Lot in accordance with the Master Grading Plan, and shall refrain from taking actions which would cause the grading or landscaping to not conform to the Master Grading Plan. Declarant and the Association shall each have the right to enter upon any Lot at any time for the purpose of inspection, maintenance, correction of any drainage condition, and the Owner is responsible for the cost thereof. Despite Declarant's efforts to prepare a Master Grading Plan which will achieve the effective and efficient drainage of storm water from and within the Subdivision, Declarant does not warrant or represent that the Master Grading Plan will achieve any particular effect.
- (b) No existing live tree with a diameter of eight inches or more, at a height of four feet above the ground shall, without approval of the ACC and the Town of Merton Planner, be cut down, destroyed, mutilated, moved or disfigured. This prohibition shall not apply to trees or older vegetation within drainage, electrical and gas utility easements. All such existing trees shall be protected during construction and preserved by wells or islands and proper grading in such manner as shown in approved Drawings. Within 1 year after the first occupancy of a dwelling on a Lot, the Owner of the Lot will plant at least 3 trees which have a minimum 2.5 inch diameter when measured 4 feet above the root system (including those trees planted prior to or during construction). At least 2 of these trees shall be planted in the front yard.

- (c) Each Lot shall be landscaped and seeded or sodded within 1 year after substantial completion of a dwelling on the Lot. Landscaping shall include the area between the front Lot line and the edge of the street pavement. Landscaping must include a drive which shall be hard surfaced material. No permanent gravel drive will be permitted. The hard surface of concrete, asphalt or similar material shall be installed within 2 years from the date the dwelling is substantially completed. Owners are cautioned that the Town may require a permit to construct a Lot Owners driveway and approach. No driveway apron shall extend out into the street further than the face of the curb or the edge of the paved portion. All driveway entrances and approaches shall be so constructed that they shall not interfere with the drainage of streets, side ditches or roadside areas or with existing structures on the right-of-way. Concrete drives shall not extend beyond the edge of the highway right-of-way. Driveway approaches between the edge of highway right-of-way and the edge of pavement must be gravel or bituminous pavement. No abutment at culvert ends shall be constructed so as to interfere with snowplowing. All driveways must comply with the Town of Merton's Public Works code per Section 8.02.
- (d) "The topography and ground elevation of each lot shall be finished by lot owner as required by the DECLARANT and in accordance with the Master Grading Plan on file with the TOWN for the efficient discharge and drainage of surface groundwater throughout the subdivision. Final grading of the lot shall be completed within two months following the date an occupancy permit is issued for a dwelling.

- 6.7 Drainage Easements, Maintenance and Town Remedy. Except for drainage easements located on a lot owner's property which shall be maintained by the individual lot owner, any and all drainage easements, detention ponds or the like shall be repaired and/or maintained by the Association. Any drainage easement or detention area located on the plat shall be maintained in a natural state and clean, clear and free of all obstructions or barrier of any kind. Landscaping within these areas shall be restricted to ground cover to inhibit erosion. Any maintenance deficiency, obstruction or barrier shall be removed by the lot owner. In failing therein, it shall be removed, repaired and/or maintained by the Association. The Association shall be empowered to determine whether or not the cost incurred therein shall be assessed to the individual owner. Any maintenance deficiency not remedied thereby, may be corrected by the TOWN. Should it become necessary for the TOWN to maintain any drainage easement, detention pond or the like, the TOWN may assess a special charge pursuant to Sec. 66.0627 and imposed by levy an assessment on a "pro rata" basis for such expenses incurred in maintaining such area in the event the Association and/or lot owner fails to maintain such area. Such special assessment or special charge shall be collected on the next succeeding tax roll pursuant to Sec. 66.0627. Prior to taking any corrective action the TOWN must first determine a deficiency exists under these Declarations concerning the maintenance of the drainage easements and the public interest required compliance. Thereafter the TOWN shall give written notice of the deficiency to the landowner and the Association which notice shall specify the time in which to rectify the deficiency and if the deficiency is not rectified within the time

period, the TOWN shall have the right to enter upon such property using its own employees and equipment or contracting with others for such work to rectify the condition. The cost of such work shall be billed to the owner if the deficiency relates to a drainage easement located on the lot owner's property and the Association for all other deficiencies. The owner and the Association do hereby consent in the levying of such special charges and hereby waives any notice and hearings which may otherwise be required by State statutes for the levying of such special charges."

6.8 Construction Matters.

- (a) No building or construction materials shall be stored on any Lot outside of Buildings on the Lot, except during periods of actual construction or remodeling, and then only for so long as reasonably necessary and only if kept in a neat manner. Neither Declarant or Association is responsible for the security of materials stored on a Lot.
- (b) During grading, the Owner of the Lot is solely responsible for compliance with all erosion control requirements.
- (c) Each Owner shall include the following provisions in all construction contracts for improvements to the Owner's Lot:
 - (1) The roadway abutting the Lot shall be cleaned each day of mud and debris during the period of construction.
 - (2) There shall be no loud music at the construction site during the period of construction.
 - (3) A dumpster for debris shall be provided at the building site for the period of construction.
 - (4) All debris will be disposed of off-site in accordance with applicable laws.
 - (5) There shall be no more than one sign on any Lot during the period of construction, which sign shall not exceed six square feet.
 - (6) No sign of the contractor shall be placed at the entry way to the Property.
 - (7) The Owner shall comply with the soil and erosion plan control ordinance of the Town and Waukesha County.

- 6.9 Signs. No sign or banner of any kind may be placed or displayed to public view on any lot, except: 1) One sign not more than six square feet advertising the property for sale,

and 2) One standard sign (showing the lot owner's name) as may be approved by the Town of Merton for uniform use in terms of size, design, appearance and location for each lot in the Development and 3) Such signs as the Declarant or the City may approve for placement on those lots affected by the entry landscaping for the purpose of advertising Whitetail Hills Subdivision.

ARTICLE 7. SPECIAL FEATURES

- 7.1 Trails. The Association may establish and maintain trails over portions of the "Common Areas", with the exact location of such trails on such property to be determined by the Association ("Walking Trails"). The Walking Trails are intended to be marked and available for use by Owners and Occupants of the Lots for pedestrian purposes. The Declarant and the Association can give no assurance that the Walking Trails will be not used by unauthorized persons or for unauthorized purposes. The Owners and Occupants of any of the Lots affected by the Walking Trails, by acceptance of a deed thereto, waive and release Declarant and the Association from any and all liability or responsibility for personal injury or property damage which may occur as a result of the establishment, maintenance or use of the Walking Trails. The Walking Trails shall be property intended for "recreational" use as defined in Wis. Stats. 895.52.
- 7.1 Detention Areas. The "Common Areas" include one or more surface water detention areas. The detention areas will be maintained by the Association solely for drainage and stormwater detention or retention purposes and not for recreational purposes. The Association has no duty to ensure the safety of persons using the detention areas, or to warn of dangers concerning them. The detention areas are being created in connection with the development of the Subdivision, are not intended to be available for recreational use or to be connected to public waters of the State of Wisconsin, and are intended to be private and remain private. The Association may take such actions as the Board determines reasonable in order to preserve the private status of such areas. Owners and Occupants use the detention areas solely at their own risk. Owners and Occupants are not permitted to use the "Common Areas" to launch any watercraft into the detention areas or in connection with swimming in the detention areas. Neither the Declarant nor the Association is responsible for the safety of any detention area for use by humans or pets, and neither represents nor warrants that any detention area is safe for any such use.

ARTICLE 8. INSURANCE

- 8.1 Association Insurance. The Association shall obtain and maintain comprehensive general public liability insurance for occurrences on the "Common Areas" (including areas which are included in such definition by virtue of easements granted herein) and with respect to Common Improvements not in the "Common Areas", all-risk casualty insurance coverage on all Common Improvements, and such other policies and/or coverages as the Board deems necessary or advisable.

- 8.2 Coverage of Association Insurance. The casualty insurance coverage shall be in an amount equal to the maximum insurable replacement value, with an “agreed amount” and a “replacement cost” endorsement, without deduction or allowance for depreciation. This coverage amount shall be annually reviewed and shall insure against loss or damage by fire and other hazards as commonly covered by a standard extended coverage endorsement and such other hazards as customarily covered with respect to buildings similar in construction, location and use. Commercial general liability coverage shall be in such amounts as the Board determines annually, but not less than \$1,000,000 per occurrence.
- 8.3 Proceeds. Association Insurance proceeds for casualty loss shall be for the benefit of the Association in order to finance construction of damaged “Common Areas” or Common Improvements. Liability coverage and other insurance proceeds shall be applied as the Association directs.
- 8.4 Cost. All premiums for Association Insurance and other insurance obtained by the Association shall be a common expense.
- 8.5 Waiver. The Association and, by acceptance of a conveyance to a Lot or Outlot or use thereof, or any portion thereof or interest therein, each Owner or Occupant acting both for themselves and for their respective insurers, waive any claim it or they may have against the other for any loss insured under any policy obtained by either to the extent of insurance proceeds actually received, however the loss is caused, including such losses as may be due to the negligence of the other party, its agents or employees. All policies of insurance shall contain a provision that they are not invalidated by the foregoing waiver, but such waiver shall cease to be effective if the existence thereof precludes the Association from obtaining any policy of insurance at a reasonable and customary rate.
- 8.6 Acts Affecting Insurance. No Owner or Occupant shall commit or permit any violation of covenants or agreements contained in any of the Association Insurance, or do or permit anything to be done, to keep or permit anything to be kept, or permit any condition to exist, which might (a) result in termination of any such policies, (b) adversely affect the right of recovery thereunder, (c) result in reputable insurance companies refusing to provide such insurance, or (d) result in an increase in the insurance rate or premium over the premium which would have been charged in the absence of such violations or condition, unless, in the case of such increase, the Owner or Occupant responsible for such increase shall pay the same. If the rate of premium payable with respect to the Association Insurance shall be increased by reason of, (1) the size, design or composition of a Building, (2) anything done or kept in a property subject to this Declaration, or (3) the failure of an Owner or Occupant to comply with Association Insurance requirements, or (4) the failure of any such Owner or Occupant to comply with this Declaration or the Bylaws, then the particular Owner or Occupant shall reimburse the Associations for the resulting additional premiums. The Association reimbursement right is without prejudice to any other Association remedy, and may be enforced by special assessment against the particular property involved.

- 8.7 Exclusions From Coverage. Association Insurance coverage shall exclude (a) coverage on any residence or personal property located within or pertaining to the exclusive use of an Owner except to the extent included as a standard coverage in the policy of Association Insurance; and (b) liability coverage on an Owner or Occupant, its guests, invitee, employees or tenants, arising out of any occurrences within a Lot and/or relating in any way to an Owner's or Occupant's personal property. It is the sole responsibility of each Owner or Occupant to obtain such insurance coverages as are excluded from Association Insurance.

ARTICLE 9. AMENDMENT OF DECLARATION

- 9.1 General. Except as otherwise provided herein, this Declaration may be amended only by the written consent of at least Sixty-Seven percent (67%) or more of the total votes of the Association then entitled to vote. Except as otherwise provided herein, an Owner's written consent is not effective unless approved in writing by its Mortgagee, if any, and unless the signature of such Owner is acknowledged before a notary. Regardless of the manner of adoption, no amendment shall adversely affect a special right or easement reserved to Declarant under this Declaration, or the rights of Mortgagees under Article 10, or the rights of the Town under Article 6. The approval for any amendment by either the Town of Merton, the Declarant, the Mortgagee or approval of 67% or more of the total votes of the Association entitled to vote, must be in writing.
- 9.2 Procedures. Amendments shall be prepared and executed by the president of the Association and shall become effective when recorded in the Register's Office. No action to challenge the validity of an amendment shall be commenced more than one (1) year after the amendment is recorded.

ARTICLE 10. RIGHTS OF MORTGAGE HOLDERS

- 10.1 Notice. Any Mortgage holder, insurer or guarantor of a Mortgage on a Lot who submits a written request to the Association, identifying the name and address of such holder, insurer or guarantor and the property involved, will be entitled to timely written notice of:
- (a) Any thirty (30) day delinquency in the payment of assessments owed by the Owner of the Property on which it holds a Mortgage or any breach of the provisions of any of the Whitetail Hills Documents which is not cured by such Owner within thirty (30) days of such Owner's receipt of notice of such breach;
 - (b) A lapse, cancellation or material modification of any Association Insurance; and

- (c) Any proposed action that requires the consent of a Mortgage holder as specified in Article 9.

- 10.2 Mortgagee Acquisition of Lot. A Mortgagee acquiring title to a Lot pursuant to remedies provided in its Mortgage or by a deed in lieu of foreclosure following an Owner's default under the Mortgage shall not be liable for such property's unpaid assessments under this Declaration accruing prior to the Mortgagee's acquisition of title to such property (except to the extent unpaid assessments are included in subsequent budgets generally).

ARTICLE 11. RIGHTS OF DECLARANT

- 11.1 Reserved Rights. Pending the sale of all Lots by Declarant, Declarant:

- (a) may use the Outlots, and any unsold Lots in any manner as may facilitate the sale of Lots including, but not limited to, maintaining a sales and/or rental office or offices, models and signs and/or showing the Lots. Declarant may from time to time also delegate such rights (on a non-exclusive basis and subject to such conditions as Declarant may impose) to persons desiring to construct Buildings on particular Lots as model homes. In delegating such rights to other persons, Declarant's delegees shall not have the right, without Declarant's express written consent, to locate a general office operation in any such model home, although use of a model home to facilitate sales of Lots or sales of Buildings on Lots may be permitted for a period not to exceed 24 months from the date of issuance of the certificate of occupancy therefore; provided, however, that (1) once a model home is used as a residence for an Occupant, it may not thereafter be used as a "model home"; and (2) construction materials shall no be delivered to or stored at a model home, except for construction of such model home.
- (b) shall have the right to (1) grant easements upon, over, through and across the Lots (limited to the 10 feet area adjacent to each Lot line), which rights shall expire one year after conveyance of a Lot by Declarant) and the Outlots as may be required in Declarant's opinion for furnishing any kind of utility services, and maintenance and replacement thereof, or for drainage or other public purposes including, but not limited to, cable television or master antenna service, which easements may be granted to itself or its nominee and as may be necessary for excavation and construction of any Buildings and (2) grant easements upon, over, through or across the "Common Areas" for ingress and egress and maintenance and replacement thereof, to and from, and within, the Property and other real property adjacent to it.
- (c) shall have the right to veto any proposed amendment to this Declaration for any reason, in which case it shall not be deemed approved or effective.

ARTICLE 12. REMEDIES

- 12.1 General Remedies. If any Owner or Occupant fails to comply with this Declaration. The Bylaws, or the Rules, such Owner or Occupant shall be liable for damages, subject to injunctive relief (including an order requiring the removal at the Owner's expense of Buildings constructed without ACC approval, subject to any other remedy provided by the Bylaws, or all of the above, as a result of such noncompliance. The Association or, in a proper case, and aggrieved Owner, may bring an action because of such noncompliance.
- 12.2 Owner or Occupant Violation: Association Right to Cure. In addition to any other remedies provided herein, if any Owner or Occupant fails to comply with this Declaration, the Bylaws or the Rules, which failure continues for a period of fifteen (15) days following written notice from the Association, the Association shall have the right, but not the obligation, to perform or cause to be performed such maintenance, replacement, restoration or other action as the Association deems necessary or appropriate, and if an action or other proceeding is commenced in connection therewith, using the fund established in Section 3.7. Expenses incurred therefore by the Association shall be assessed against the Owner or Occupant and shall be subject to all rights and remedies reserved under this Declaration with respect to collection, expense, late payment penalties or interest, filing of a lien and/or foreclosure as reserved in Article 3 of this Declaration. Once the Association had taken such an action, it shall not obligated to take any other or further action with respect to the same, similar or subsequent failure by the same or different Owner or Occupant.
- 12.3 Sections Enforceable by Town. The restrictions imposed upon the Property, and the obligations of the Declarant, Association and Owners contained in sections 4.2B, 6.7, 13.2 and 13.3 all benefit the Town and are enforceable by the Town as specified in these Sections.
- 12.4 Enforcement by the Town. If an obligation or restriction contained in any of the sections listed in Section 12.3 is not performed or fully complied with by the Association or any one or more of the Owners (in each case, a "Breach"), Town may, but is not required to, seek the following enforcement in the following manner:
- (a) Notice and Hearing. Town shall first provide written notice of the specific Breach to the entity which failed to perform said obligation or who owns the portion of the Property where the restriction or provision or obligation is not being complied with or fully performed (as the case may be), with copy to the Association if the Association is not the offending party, and in any case, the Town shall provide for a hearing regarding the alleged Breach at which all Owners and Occupants may attend and speak.
 - (b) Remedy. If, within thirty (30) days after the hearing provided above, the Town determines that a Breach existed and that such Breach has not been remedied, and if the Association has not taken steps satisfactory to the Town to remedy such a Breach, the Town shall be entitled to seek any one or more of the following remedies:

- (1) Injunction. An injunction compelling the person committing such Breach to remedy it.
 - (2) Money Judgment. A money judgment against the person committing such Breach for all monies owed to Town as a result of the Breach including all legal and professional consulting fees and costs of litigation incurred by Town in obtaining an injunction or money judgment or both.
 - (3) Performance of Work. The Town may cause any work to be performed on the "Common Areas" in order to remedy any Breach. The performance of any such work shall not cause the "Common Areas" to be dedicated to the public, nor shall it constitute the assumption by the Town of any duty to perform any other or further work in the "Common Areas".
 - (4) Special Assessment or Special Charge. If one or more Owners commit or allow a Breach, the Town may levy either a special assessment or special charge against the property owned by the Owner who has committed or allowed the Breach in an amount equal to all damages, cost and expenses incurred by the Town (including all attorney fees and other professional consulting expenses) as a result of such Breach. If the Association commits or allows a Breach, the Town may levy either a special assessment or special charge against the property owned by each of the Owners in an amount equal to such Owner's share, based on the fraction set forth in Section 2.6(a), of all damages, costs and expenses incurred by the Town (including all attorney fees and other professional consulting expenses) as a result of such Breach. Each Owner, on his or her on behalf and on behalf of any successors in interest, hereby accept the levy of such special assessment or special charge pursuant to this subsection and hereby irrevocably waive rights of notice and hearing pursuant to Wis. Stats. §66.0701 and §66.0703 and "special charge pursuant to §66.0627 Wis. Stats." or any amendment thereto.
- 12.5 During development, and until the DECLARANT turns control and maintenance of the subdivision over to a homeowners association, the DECLARANT shall be responsible to maintain all surface and storm water drainage facilities. In the event the DECLARANT does not properly maintain any storm water retention basins, drainage easements, etc. the TOWN may send written notice to the DECLARANT indicating that the TOWN has determined that the same are not being properly maintained, and further indicating that the TOWN will perform such maintenance if not properly done by the DECLARANT. The above-mentioned notice shall give the DECLARANT a minimum of seven (7) days to correct the problem unless an emergency exists, in which case less than seven (7)

days may be allowed for correction of the problem. If maintenance is not properly performed within the time granted by the above-referenced notice, the TOWN shall then have the authority to perform the maintenance referred to in said notice and shall have the right to charge the DECLARANT for any costs incurred pursuant to Sec. 66.0627, Wis. Stats. If such charges are not paid by the DECLARANT within the period fixed by the TOWN, the charges shall become a lien upon the lots within the subdivision owned by the DECLARANT as provided in Sec. 66.0627, Wis. Stats., and shall be extended upon the tax roll as a delinquent tax against the lots within the subdivision as provided in Sec. 66.0627, Wis. Stats.

ARTICLE 13. EASEMENTS

- 13.1** Right of Entry. This section pertains only to Outlots 1, 2, 4 and/or 5 (not Outlot 3). A right of entry to each Lot, Common Area or Outlot 1, 2, 4 and/or 5 (not Outlot 3) is reserved to the Association to service utility installations located on, in or under such Lot, Common Area or Outlot 1, 2, 4 and/or 5 (not Outlot 3) provided request for entry is made in advance and such entry is limited in scope so as to extend only as is reasonably necessary to service such utility installations. In case of emergency, entry by the Association onto any such Lot, Common Area or Outlot 1, 2, 4 and/or 5 (not Outlot 3) may be made immediately, whether the Owner or Occupant of such Lot, Common Area or Outlot 1, 2, 4 and/or 5 (not Outlot 3) is or is not present and without liability of the Association or its agents if such entry is necessary for the safety or welfare of persons or property. Any damage or loss caused as a result of such emergency entry shall be the sole expense of the Owner or Occupant if, in the reasonable judgment of those authorizing the entry, such entry was for emergency purposes. **THE OWNERSHIP OF OUTLOT 3 IS TO BE RETAINED BY THE DECLARANT AND MAY BE COMBINED WITH OTHER ADJACENT PROPERTY TO FORM A BUILDABLE LOT IN THE FUTURE.**
- 13.2** Common Area Easements. The Association may grant easements over and through the "Common Areas" for such purposes as the Board deems reasonable for the benefit of the Owners. The easements granted to the Owners may include but are not limited to the placement of mound systems in the "Common Areas" to service individual Lots as approved by the Association in accordance with Section 2.5 above
- 13.3** Drainage. An easement is reserved to Declarant, the Association and the Town. ^P Outlots 1, 2, 4 and/or 5 are not allowed to be sold, conveyed or easements put upon them so as to form an additional buildable lot or create a driveway to any adjacent land.
- 13.4** over Lots and Outlots for the installation of drainage tile, swales, streams or other storm sewer and drainage system elements as shown on the Plat or in any master plan approved by the Town.

ARTICLE 14. TERMINATION

- 14.1 Termination. This Declaration shall be in effect for a period of 25 years and automatically renewed for successive periods of 10 years each, unless terminated at the end of the original or any extended term by: (1) Declarant (if during the period of Declarant control of the Association), or (2) the written consent of the owners of at least 90% of the aggregate Lots provided that no vote shall effect an amendment to or termination of any provision hereof conferring on or reserving a special right or easement to Declarant without the express written consent of Declarant, as appropriate. Voluntary termination of this Declaration must be express and shall be effective upon recording a written instrument to such effect in the Register's Office.


ARTICLE 15. CONSTRUCTION AND EFFECT

- 15.1 Number and Gender. Whenever used herein, unless the context shall otherwise provide, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.
- 15.2 Including. Whenever used herein, the term "including" preceding a list of one or more items shall indicate that the list contains examples of a general principle and is not intended as an exhaustive listing.
- 15.3 Captions. The captions and article and section headings in this Declaration are intended for convenience and reference only and in no way define or limit the scope or intent of the various provision hereof.
- 15.4 Severability. If any portion of this Declaration or its application to any person or circumstance is held to be invalid or unenforceable, the remainder of this Declaration, or the application of such provision, or any part thereof, to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby. The remainder of this Declaration shall be valid, and enforced, to the fullest extent permitted by law.
- 15.5 Remedies. All remedies herein are cumulative.
- 15.6 Waivers. Whenever a waiver, consent or approval is required or permitted herein, it must be express and in writing; no waiver, consent or approval shall be implied. A waiver, consent or approval to any one matter shall not be deemed a waiver, consent or approval to any subsequent matter whether similar or not.
- 15.7 Assignment of Declarant's Rights. Declarant may from time to time assign any or all of the rights and benefits conferred on or reserved herein for Declarant in its status as such (as opposed to those rights or benefits conferred on or reserved for all Owners or groups thereof), by an instrument in writing specifically identifying the rights and benefits so assigned which is recorded in the Register's Office.

- 15.8 Other Regulation. Nothing herein shall preclude or restrict Declarant recording other covenants, conditions or restrictions which further regulate portions of the Subdivision which Declarant owns at the time of recordation.
- 15.9 ALLOTMENT OF BUILDING PERMITS. The Declarant acknowledges that the Town has adopted a requirement providing for allotment of building permits, which restricts building permits issued or issuable in any one year. The parties agree that the Declarant and any successors to Declarant shall have the right to have a total of 11 building permits issued in 2005, a total of 10 in 2006 and to a total of six in 2007. Notwithstanding the above restrictions, if the maximum required building permits are not issued in any one year, there shall be the right to carryover the un-issued building permits and said building permits shall be issuable in any such subsequent year.

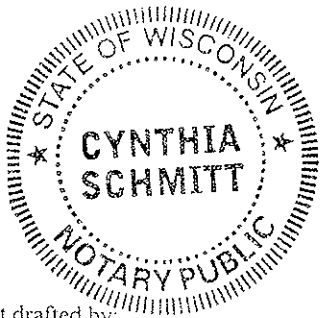
Executed on February 13, 2006.

Whitetail Hills, LLC


 By: Brandon B. Bergman, Managing Member

STATE OF WISCONSIN }
 } ss.
 WAUKESHA COUNTY }

Personally came before me this 13 day of February, 2006, the above-named Brandon V. Bergman to me known to be the person who executed the foregoing instrument and acknowledged the same.




 Cynthia Schmitt

Notary Public, Washington County, Wisconsin

My Commission Expires 4/19/09

This document drafted by:
 John C. Bergman
 N16 W23390 Stoneridge Drive
 Suite C
 Waukesha, WI 53188

EXHIBIT A

All that part of the West One-half (1/2) of the Southwest Quarter (SW ¼) of Section One (1) and the East One-Half (1/2) of the Southeast Quarter (SE ¼) of Section Two (2), Town 8 North, Range 18 East, Town of Merton, Waukesha County, Wisconsin, bounded and described as follows: Beginning at the northwest corner of the Southwest Quarter (SW ¼) of Section 1 being marked by a concrete monument with brass cap; thence North 88°59'03" East along the north line of said Southwest Quarter (SW ¼) 1318.186 feet to the east line of the West One-half of said Southwest Quarter (SW ¼); thence South 0°10'45" West along said east line 2232.631 feet; thence North 89°48'10" West 668.604 feet; thence North 0°55'49" West along the east line of lands described in Reel 2178 on Image 298 as Document No. 2099530, 208.48 feet; thence South 61°06'39" West along the north line of said Document No. 2099530, 497.49 feet; thence North 60°04'41" West 582.00 feet along said line; thence South 44°20'46" West 713.00 feet along said line; thence North 0°35'07" East along the east line of lands described in Document No. 2784392, 1787.181 feet to the southwest corner of Certified Survey Map No. 6182 recorded in Volume 51 of Certified Survey Maps on Pages 46 to 49 as Document No. 1594433; thence North 89°00'57" East along the south line of Map No. 6182, 350.00 feet; thence North 00°22'27" East along the east line of Map No. 6182, 658.01 feet to the north line of the Southeast Quarter (SE ¼) of Section 2; thence North 89°00'57" East along said north line 426.93 feet to the place of beginning. Containing a gross area of 99.131 acres or 4,318,154 square feet of land.