

**RIVER'S EDGE
DECLARATION OF
RESTRICTIONS
AND
COVENANTS**

DOC# 1150289



Recorded
JAN. 23, 2007 AT 03:00PM
SHARON A MARTIN, REGISTER OF DEEDS
WASHINGTON COUNTY, WISCONSIN

Fee Amount: \$63.00

THIS DECLARATION, made this 12 day of January, 2007, by WB2 INVESTMENTS, LTD., hereinafter referred to as "DEVELOPER."

WITNESSETH:

WHEREAS, DEVELOPER owns all the land which has been platted as "River's Edge" a subdivision located in the City of West Bend, hereinafter referred to as "River's Edge", consisting of 85 residential single family lots and 8 duplex lots.

WHEREAS, DEVELOPER desires to subject River's Edge subdivision to the conditions, covenants, restrictions, reservations and easements hereinafter set forth, for the benefit of said Subdivision and for the benefit of each Lot Owner in said Subdivision:

NOW, THEREFORE, DEVELOPER HEREBY DECLARES that the real property hereafter described in Article II, Section 2.01 shall be used, held, transferred, sold and conveyed subject to the conditions set forth, which shall inure to the benefit of and pass with said property and each and every parcel thereof as covenants running with the land and shall apply to and bind all successors in interest, users and owners thereof.

103-27

Return To: Richard A. Rechlicz, Esq.
Ladewig, Rechlicz & Iggens
N88 W15125 Main Street
Menomonee Falls, WI 53051

**ARTICLE I
DEFINITIONS**

1.01

- (a) "Association" shall mean the River's Edge Home Owner's Association, an incorporated association, created under Article IV, Section 4.01 of this Declaration.
- (b) "Architectural Control Committee" (hereinafter referred to as "Committee") shall mean the Committee referred to in Article V and created under this Declaration, comprised of those persons elected in accordance with Section 5.01 serving as Members of said Committee.
- (c) "Common Area" shall mean those portions of River's Edge Subdivision which are designated on the plat as Common Areas, easements for the public utilities, storm water facilities and landscaping thereon. The Common Area will generally consist of and include green space, detention basins, entry monuments and related landscaping and other facilities and improvement, which serve River's Edge Subdivision.
- (d) "County" shall mean Washington County, Wisconsin or any political entity which may from time to time be empowered to perform the functions or exercise the powers vested in the County as of the recording of this Declaration.
- (e) "Developer" shall mean WB2 INVESTMENTS, LTD., as well as any Successor-Developer. Developer hereby expressly reserves the right to appoint, in writing, a third party to act as his agent to carry out Developer's duties and responsibilities.

(f) "Duplex Lot" shall mean and refer to Lots 86, 87, 88, 89, 90, 91, 92 and 93, which shall be improved with one or more two (2) family residential Dwellings (as approved by the City of West Bend).

(g) " Dwelling" shall mean a residential building which contains one family and is limited solely to residential purposes and which shall not include any attached garage.

(h) "Family" shall mean one or more persons related by blood, adoption or marriage living, cooking, sleeping and eating on premises as a single housekeeping group and shall exclude a group of persons where three or more persons are not so related or engaged as household employees.

(i) "Lot" shall mean a platted Lot within River's Edge (Lots 1 through 85, inclusive and the 8 duplex Lots) identifiable by reference to a name and lot number, and which has been expressly made subject to this Declaration, including any and all improvements constructed thereon.

(j) "Lot Owner" shall mean the fee simple Owner, whether one or more, of record title, legal or equitable, to the Lot, regardless of the type of tenancy or estate, but shall not include the holder of any leasehold interest or any mortgage or commercial lien prior to acquisition of legal or equitable title.

(k) "Municipality" shall mean the City of West Bend, Washington County, Wisconsin.

(l) "Single Family Lot(s)" shall refer to Lots 1 through 85, inclusive.

(m) "Section" shall mean all those provisions included within a number capitalized heading, including all subsections [e.g. 0.00 (a)0] and paragraphs [e.g. 0.00 (a)(1)].

(n) "Subdivision" shall mean that portion of River's Edge subdivision subject to this Declaration, including thereto all 85 single family lots and 8 duplex lots.

(o) "Structure" and "improvement" shall be synonymous and shall both mean and include any and all of the following, regardless of whether temporary or permanent in character or intended use: building, outbuilding, shed, booth, garage, carport or aboveground storage facility; tent; antennae, tower or pole (including any satellite, cellular or other device or mechanism for the sending or receipt of electronic signals); fence, retaining or other wall or enclosure; fountain; aboveground or inground swimming or wading pool; pet kennels or run line; screened or other type of porch, patio or gazebo; berms and swales; and any other similar or related type of improvement not located within the exterior walls of the single family dwelling constructed upon the lot.

(p) "Subject Property" shall mean the real estate described on Exhibit A.

(q) "Successor-Developer" shall mean any person, corporation, partnership or other entity to which Developer expressly assigns or otherwise transfers his rights and obligations hereunder, or any successor to Developer by operation of law. The Successor-Developer shall not be interpreted to mean any agent referenced under Section 1.01(d).

(r) "Transfer Date" shall mean the date on which the rights of Declarant to designate the Members of the Board and Architectural Control Committee are terminated under and pursuant to Sections 4.08(a) and 5.01, respectively.

ARTICLE II

2.01 PROPERTY SUBJECT TO DECLARATION

The following property shall be the subject to this Declaration, including all lots and parcels thereof:

See Exhibit A attached hereto and incorporated herein by reference, hereinafter referred to as "Subject Property."

ARTICLE III

3.01 GENERAL PURPOSE AND SCOPE

As to the Lots, the following shall apply:

(a) The general purpose of this Declaration is, among others, to help assure that the Subdivision will become and remain an attractive residential community. In furtherance of such purpose, this Declaration shall aspire to: preserve and maintain the natural beauty of certain areas within the Subdivision; maintain high aesthetic standards for all improvements, as well the natural beauty of certain open spaces; help assure the best use and most appropriate development and improvement of each building site; protect Owners of Lots against such use of surrounding Lots and buildings as will detract from the residential value of said property; guard against the erection or maintenance of poorly designed or proportioned structures; obtain harmonious use of materials and color schemes; insure the highest and best residential development of the Lots in the Subdivision consistent with the purpose for which same are platted; encourage and secure the erection of attractive residential structures with appropriate locations on said Lots; prevent haphazard and inharmonious improvements of building sites; secure and maintain a proper spatial relationship of buildings, structures and other improvements; and otherwise secure mutual enjoyment of benefits for Owners and occupants of residential Dwellings constructed on said Lots.

(b) This Declaration shall be constructed and interpreted in favor of restricting the use of each Lot consistent with the purposes hereof and any ambiguity shall be resolved against any Lot Owner constructing any structure or engaging in any activity not authorized under this Declaration or approved, in writing, by the Board of Directors or the Architectural Control Committee.

(c) It is inherent to protective covenants and restrictions that from time to time those covenants and restrictions are subject to interpretation. In those instances wherein an interpretation is required because there is no definitive rule to be followed, or because there is a question regarding an intangible concept such as, but not limited to, what constitutes harmonious architectural design, what is poor design or proportion and what is aesthetically pleasing, the matter shall be subject to the opinion of the Architectural Control Committee for the granting of a final approval.

(d) The City of West Bend and all public and private utilities (including cable companies) serving Subdivision are hereby granted the right to lay, construct, renew, operate, and maintain conduits, cables, pipes, wires, transformers, switching apparatus and other equipment, into and through the Subdivision for the purpose of providing

utility services to the Subdivision or any other portion of the Subject Property.

3.02

SUITABILITY

(a) Developer makes no representation or warranty whatsoever, express or implied, regarding the physical condition of any Lot. Developer recommends that prospective buyers undertake whatever inspections and tests by qualified professionals deemed appropriate by said prospective Buyer.

(b) Developer suggests, but does not require, that Buyers utilize a properly licensed architect in any construction.

3.03

SINGLE FAMILY LOTS.

(a) All Lots shall be used solely and exclusively for single family residential purposes and the Duplex Lots shall allow 2 Dwellings per Duplex Lot (excluding Lot 86 with the number of Dwellings to be as allowed by the City). Notwithstanding the foregoing, only 1 family shall occupy each Dwelling.

(b) No buildings shall be erected, altered, modified or permitted to remain on any Lots other than one single-Unit dwelling, not exceeding two and one-half stories in height, with an attached private enclosed garage meeting the requirements of Section 3.07 hereof.

(c) No other outbuildings shall be erected, placed or permitted to remain on any of Lots without the approval of the Committee and the City of West Bend. It is the intent of the Committee to permit only outbuildings associated with a free-standing gazebo, screened structure or swimming pool cabana, provided that the latter is required to store mechanical pool equipment. All permitted structures shall be constructed of materials that conform with the decor and are in harmony with the Dwellings in the development.

3.04 USE AND MAINTENANCE OF STORM DRAINAGE AND LANDSCAPE AREAS

(a) All storm drainage and landscape areas shall be used for their intended purposes (e.g. open spaces, storm drainage, etc.) for the common benefit of River's Edge.

(b) Each Owner of a Lot shall be liable for the maintenance and repair of any drainage areas or landscape areas located within said Lot Owner's Lot, including any and all costs attributable thereto.

(c) No Owner of a Lot shall undertake any repairs to or construction within any drainage areas or landscape areas which would impair the function of same or impair the interrelated harmonious function of the drainage and landscape areas of the subdivision.

(d) Outlot 1 of the plat of River's Edge is owned and shall be maintained by the River's Edge Homeowner's Association for storm water retention purposes and open space. Each individual lot owner shall have an undividable fractional ownership of Outlot 1. In the event the Homeowner's Association should fail to properly maintain Outlot 1 the City of West Bend as set forth in Section I, D, 4, of the River's Edge Developer's Agreement may enter the property

and preform all necessary repairs. Any costs incurred by the City are subject to Section III, B, 1, & 2 of the River's Edge Developer's Agreement.

3.05 ARCHITECTURAL APPROVAL REQUIRED FOR IMPROVEMENTS

(a) No building, structure, wall, fence, swimming pool or other improvement shall be constructed, erected or placed on any Lot or altered, modified or changed (as to layout, location, exterior design, color or in any other way) until the plans, specifications, drawings and a written proposal therefore have been approved in writing by the Committee as to: material composition and quality; external design, harmony and color coordination with existing and planned structures and improvements; location with respect to topography, setbacks, finished grade elevations, driveways and plantings and compliance with other applicable restrictions contained in this Declaration.

(b) Upon approval by the Committee of all plans, designs, specifications and written proposals and upon receipt of all necessary municipal and governmental approvals and permits, a Lot Owner may commence construction in accordance therewith, provided that no substantial changes shall be made with respect thereto unless the prior, written approval from the Committee is obtained.

(c) Unless otherwise specifically provided herein to the contrary, construction of improvements shall be completed and an occupancy permit shall be issued within one year after the last approval or permit has been obtained necessary for commencement of construction. For its own benefit to ensure compliance, the Committee may, at its discretion, require performance bonds from any contractor responsible for construction of the improvements.

(d) Any suit for damages and/or injunctive relief based upon the failure of any Lot Owner to obtain approval from the Committee or City of West Bend, as appropriate and as required under this Declaration, shall be commenced by Committee or any other Lot Owner within one (1) year following completion of construction, installation, change or modification of any building, structure, wall, fence or other improvement, otherwise, the approval required therefore shall be conclusively presumed to have been given and the Committee or any Lot Owner, and their respective successors and assigns, shall forever be barred with respect thereto. In no event, however, shall the Committee or any Lot Owner be precluded from enforcing this Declaration as to any subsequent or other construction installation, change or modification for which written approval of the Committee is required.

3.06 MINIMUM DWELLING LIVING AREAS

For each and every Dwelling proposed to be constructed in River's Edge, the following minimum living areas shall apply:

- (i) All ranch style homes shall be a minimum of 1,300 square feet.
- (ii) All one and one-half story and two story homes shall be a minimum of 1,600 square feet with a minimum of 800 square feet on the first floor.

All Dwellings shall have full basements with the exception of split-level or bi-level dwellings. Any exposed basement or foundation walls must be constructed with materials similar to that used on the exterior walls.

Homes too similar in appearance will not be permitted to be constructed in close proximity to one another.

3.07

BUILDING SETBACK LINES

(a) No buildings, garage or other structure (excluding eaves, steps, overhangs, patios or other appurtenances not built on a foundation or frost-footings) shall be located on any Lot so that the front, side and rear yard distances are less than minimums as required in the Building and Zoning Code for the City of West Bend and as further modified and required by the Architectural Control Committee (hereinafter referred to as "ACC"). The intention and purpose of the ACC to further impose said modifications is to harmonize and coordinate adjacent building placements. Each corner Lot shall be determined by the ACC to have one rear line, one side Lot line, one front Lot line and a side street based on the proposed orientation of the Dwelling and other improvements.

(b) Notwithstanding the set-back requirement specified above, the orientation and precise location of each Dwelling and garage, as well as all other improvements on a Lot, must be approved, in writing, by the Committee prior to any construction, it being intended that the Committee may, in its discretion, impose greater set-back requirements than those specified above in order to achieve or maintain the aesthetic appearance which Developer or Committee deems advisable for River's Edge or any portions thereof. Any exposed basement or foundation wall shall be covered with materials similar to the exterior walls of the Dwelling.

(c) Committee, in its sole and absolute discretion, may permit improvements (other than the Dwelling, garage and any other improvements expressly permitted herein) to be constructed, installed and located with the set-back areas described above; provided, such permission must be in writing to be effective and can only be granted after notice to all adjoining and adjacent Lot Owners advising said adjoining Lot Owner(s) of the proposed improvement and affording said adjoining Lot Owner(s) the opportunity to be heard with respect to the proposed improvement.

3.08

GARAGE AND DRIVEWAY

(a) Each Lot shall have a private enclosed attached garage for the on-site storage of not less than two automobiles for the Dwelling built or to be built upon said Lot. The exterior portions of the garage shall harmonize with the residential Dwelling as to design, materials and finished floor elevations and shall be completed prior to occupancy of the Dwelling. The garage shall be located within the building setback lines as specified in this Declaration.

Gravel driveways are prohibited.

All driveway curb openings constructed at the time of curb construction that are not used for driveways must be closed by removing the curb and gutter and replacing with full face curb and gutter pursuant to the City of West Bend.

(b) The garage shall be constructed on the high side of the Lot unless otherwise approved by the ACC and shall be connected to the street by a properly surfaced asphalt or concrete driveway which shall not be closer than six (6) feet to the side property line of any Lot. Said driveway shall be installed in accordance with City of West Bend specifications and completed within one year from the date of the issuance of the occupancy permit.

3.09

ROOFING MATERIALS AND CONSTRUCTION

(a) All roofs on any Dwelling and garage construction on a Lot shall be made of a 30 year warranted dimensional shingle or better and such dimensional shingles shall be a "weatherwood" color. The Committee reserves the right to approve any type of roofing so as to insure that such materials are in keeping with the architecture of the Dwelling as proposed and the purpose of this Declaration as set forth in Article III, Section 3.01 hereof.

(b) All roof designs, shingle grade and specifications for pitch for any Dwelling and Garage to be constructed on any Lot shall be subject to the approval of the Committee. The roofs shall be pitched to rise at least eight (8) inches vertically for each twelve (12) horizontal inches, except for homes of one and one-half stories which have roofs that may be pitched to rise four (4) inches vertically for each twelve (12) horizontal inches on certain rear portions of the Dwelling which will be determined by the ACC.

3.10

EXTERIOR BUILDING MATERIALS AND DWELLING QUALITY

(a) It is expected that the design of each Dwelling shall be consistent and unified and that building materials appropriate for that design shall be used. All Dwellings should reflect those aesthetics and the spirit of the traditions they seek to exemplify.

(b) All Dwellings proposed to be erected, altered or modified shall, on the construction plans, denote materials acceptable to the ACC and the construction shall be carried out in accordance with the material(s) as approved by the ACC. All 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), aluminum, vinyl, cedar, cement board siding, stucco, or combinations thereof.

(c) The design, layout and exterior appearances of each Dwelling proposed to be erected, altered or modified on any Lot shall be such that, in the opinion of the ACC at the time of approving of the building plans, the Dwelling will be of high quality and shall have no (substantial) adverse effect upon property values.

3.11

PRESERVATION OF TREES

(a) No existing tree, with a diameter of six inches or more (at a height of four feet from the ground) beyond six feet from the approved Dwelling location on a Lot shall be moved, removed or destroyed in any way, other than upon prior, written approval of the ACC, and all existing trees shall be protected during periods of construction and grading as may be required by said ACC. This provision shall also pertain to the installation of tree wells and root and trunk preservation.

(b) Any trees or plantings installed by the Developer on private lots or outlots (excluding street trees which are within the City right-of-way) are the responsibility of the Lot Owners to maintain and replace.

3.12

GROUND FILL ON BUILDING SITE

Where ground fill is necessary on any Lot to obtain the proper topography and finished ground elevation, it shall be ground fill free of waste material, and shall not contain noxious materials that may emit odors or produce health hazards of any kind. All dumping of fill materials shall be leveled immediately upon completion of the Dwelling and shall be graded and contoured in accordance with the Master Site Grading Plan approved by and on file with the Municipality.

3.13 **CONSTRUCTION MATERIALS - STORAGE**

No building or construction material shall be stored on any Lot outside of a Dwelling or garage or building, other than during periods of actual construction or remodeling and only for as long as may be necessary therefore. It shall be the primary obligation of the Lot Owner and Lot Owner's builder to keep the Lot clean and free of debris and garbage during the period of construction.

3.14 **LANDSCAPING**

(a) No plantings shall be permitted in the existing or proposed drainage swales, and no grading shall be carried out in the rear 10 feet of any Lot without the prior, written approval of the City of West Bend and ACC, as appropriate.

(b) Landscaping shall be completed within twelve (12) months following the issuance of the occupancy permit for any Dwelling on any Lot.

(c) The Lot Owners of Lots 86 and 93 shall be responsible for maintaining the landscaping and lawn area around the entrance sign to be installed by the Developer.

3.15 **SWIMMING POOLS**

All swimming pools proposed to be erected, altered or modified on any Lot shall require the approval of the ACC and the City of West Bend. Plans, of a nature and content as acceptable to the ACC, shall be submitted to the ACC for approval. All plans shall denote offsets, landscape treatment and fencing proposed.

3.16 **STORM WATER DRAINAGE AND DETENTION POND**

Developer is required by the City of West Bend to design and submit to the City Engineer for approval storm water drainage and retention facilities adequate to accommodate expected surface water flow within and through the Development, in accordance with Chapter 23 of the Municipal Code of the City of West Bend.

3.17 **NUISANCES**

(a) No noxious or offensive odor, activities or conditions shall be permitted to exist in, on or about any Dwelling or Lot, which may be, or may become, an annoyance or nuisance to the Subdivision.

(b) Each Lot Owner shall perform periodic yard maintenance as may be necessary to keep the lot neat and clean in appearance, including without limitation, the mowing of grass and removal of weeds, leaves and unsightly

debris.

3.18 **TEMPORARY STRUCTURES, VEHICLES PROHIBITED**

No temporary structure or vehicle shall be used on any Lot for temporary or permanent housing, sleeping or other residential purposes, nor packed, kept or stored on said Lot outside the garage or building for any purpose.

3.19 **MAILBOXES**

Each Lot Owner will be required to install a uniform mailbox as selected by the Association.

3.20 **SIGNS**

No sign of any kind shall be placed or displayed to the public view on any Lot, except one sign of not more than six square feet advertising the Dwelling for sale.

3.21 **ANIMALS AND PETS**

No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats and other normal household pets may be kept so long as not kept, bred or maintained for any commercial purpose nor in any unreasonable number or which may be contrary to applicable law. The right of any Lot Owner to keep such a pet on any Lot is subject to the condition that the pet is not allowed to unreasonably annoy any other Lot Owner and is not allowed to run at large.

3.22 **WATER SUPPLY**

Each Dwelling shall be connected to the water supply mains of the Municipality. No individual wells shall be permitted.

3.23 **SEWAGE DISPOSAL**

Each Dwelling shall be connected to the Municipality's sewer system. No septic tank or individual sewage system shall be permitted.

3.24 **GARBAGE AND REFUSE DISPOSAL**

No Lot shall be used or maintained as a dumping ground for trash, garbage, refuse or debris of any kind. All trash, garbage or waste materials shall be in sanitary containers either inside the garage or, when outside, in sanitary containers adjacent to the Dwelling, and suitable screened from view from streets and adjoining lots. There shall be no burning or burial of any garbage, trash or debris at any time other than burning of leaves and light brush if approved by the ACC and conducted in compliance with all applicable laws and ordinances.

- (a) Outside incinerators are not permitted.

3.25 **WIRES AND ANTENNAS**

(a) All exterior telephone and electric service and utility wiring (including, without limitation, service lines to individual dwellings) shall be installed underground unless otherwise permitted by the ACC prior to such installations.

(b) No solar panel, external television, cable television, ham or radio antennas, dishes greater than 30 inches in diameter or other similar devices shall be erected upon, atop or on any dwelling or within any Lot without the prior approval of Developer or ACC.

3.26 **RESERVATION OF RIGHTS BY DEVELOPER**

(a) The Lots subject to these restrictions shall be subject to any easements granted or hereafter to be granted by the undersigned or its successors and assigns to the City of West Bend and easements granted or hereafter to be granted or the erection and maintenance of electric power lines and telephone lines, gas or other utilities upon, under and over portions of any Lot. The undersigned does hereby reserve for Developer and Developer's successors and assigns and for the benefit of the City of West Bend and public or semi-public utility companies, the easements and pipes and conduits for the transmission of electricity for lighting, telephone and for other purposes, and for the placing of the necessary attachments in connection therewith for public and private sewers, storm water drains, gas mains, water pipes and mains, and other similar services, and for performing any public or quasi-public utility or function which they or the City of West Bend may deem fit and proper for the improvement and benefit of the Lots. Such easements and right-of-way shall be confined, so far as possible, in the area within ten feet of all lot lines, with the necessary right to do whatever may be necessary to carry out the purposes for which this easement is created. Maintenance of easements shall be the responsibility of the Lot Owner.

(b) During the construction and marketing of the Subdivision, Developer shall retain certain rights set forth in this Declaration, which rights shall include, without limitation, the right, prior to the turnover date, to appoint all Members to the Board and ACC, as more fully described in Sections 4.08(a) and 5.01, respectively, and the right to enter upon the Subject Property in connection with Developer's efforts to sell Lots in the Subdivision and other rights reserved in this Declaration.

3.27 **FENCES AND WALLS**

No fence or wall of any height shall be permitted on any Lot except as required for a pool, decorative landscape purposes and fencing related to a dog kennel and upon the prior, written approval of the Committee; provided, however, that in no event, shall any proposed fence or wall be permitted to extend beyond the front face of the Dwelling as extended on a plane to the side Lot lines.

3.28 **RECREATIONAL VEHICLES**

All recreational vehicles, including but not limited to, any and all motorcycles, snowmobiles, trail bikes, dune buggies, boats, off-street motorized vehicles or recreational vehicles of any kind shall be stored in enclosed garages on the lot and shall not be operated or stored on the Lot, driveway, parking area or open space or common area within the Subdivision, except for the necessary transportation of these vehicles to and from the Subdivision on the

public street system.

**ARTICLE IV
LOT OWNER'S ASSOCIATION**

4.01

(a) Developer hereby creates and establishes a non-profit incorporated Lot Owner's Association to be known as River's Edge Lot Owner's Association, with all rights, powers, privileges and obligations as provided in this Declaration ("Association").

(b) Association shall exist during the term(s) of this Declaration and shall automatically terminate upon termination of this Declaration. The affairs of the Association shall be governed by the Board of Directors of the Association ("Board") as set forth under Section 4.08 hereof.

4.02

MEMBERSHIP

(a) Each Lot Owner shall automatically be a member of the Association and shall be entitled to one membership and one vote for each Lot Owned, with ownership of a Lot being the sole qualification for membership. The membership in the Association appurtenant to a Lot shall be owned jointly and severally by all co-owners of the Lot, regardless of the form of tenancy, estate or interest in the Lot.

(b) Association membership and voting rights shall be appurtenant to each Lot and shall not be assigned, conveyed or transferred in any way except upon transfer of an ownership interest in the Lot and then only to the transferee, nor shall membership or voting rights be retained except upon retention of an ownership interest in the Lot. Any attempt to make a prohibited transfer or retention of such rights shall be null and void.

(c) Notwithstanding any provision in this Declaration to the contrary, Developer shall be entitled to one membership and one vote for each Lot owned by Developer.

4.03

VOTING

(a) The vote appurtenant to each Lot shall be cast as a whole (in person or by proxy) by the Lot Owner or any co-Owner.

Fractional votes will not be allowed; and if co-Owners of a Lot do not agree on how the vote shall be cast or if a fractional vote is attempted, the right to vote on the matter in question, shall be forfeited by such Owners. The Association may treat any co-Owner of a Lot or the proxy of any such co-Owner as duly authorized to vote for all co-Owners of that Lot.

(b) A quorum for voting purposes shall consist of fifty percent (50%) or more of the votes entitled to be cast.

(c) There shall be no cumulative voting. All decisions and actions of the Association for which a vote is required, except as otherwise specifically provided for in this Declaration, shall be by a majority of the votes present and entitled to be cast.

(d) A Lot Owner shall not be entitled to vote on a matter so long as any general or special assessment against the Lot is then delinquent.

(e) Proxies shall be valid only for the particular meeting or time period designated in the proxy, unless sooner revoked, and must be filed with the Secretary at or before the appointed time of the meeting.

4.04

MEMBERSHIP LIST; NOTICES

(a) The Association may maintain a current Membership List. Each Lot Owner shall be responsible for furnishing the information necessary for the Association to maintain such Membership List.

(b) All notices required to be given to a Lot Owner shall be deemed to have been duly given: at the time of personal delivery to the Lot Owner or free Dwelling of the Lot Owner; or 48 hours after mailing within the State of Wisconsin by regular or certified mail to the Lot Owner's mailing address shown in the Membership List. Notice to one co-Owner of a Lot shall be deemed effective notice to all other co-Owners of such Lot.

4.05

ASSOCIATION MEETINGS

(a) Written notice of all meetings of the Association stating the time, place, and purpose for which the meeting is called shall be given by the President or Secretary to each Lot Owner not less than four (4) nor more than 30 days prior to the date of such meeting; provided, however, that notice of any meeting may be waived in writing by any Lot Owner at any time.

(b) The annual meeting of the Association shall be held at a time and place each year for the purpose of electing members of the Board (subject to Section 4.08) and transacting any other business authorized to be transacted by the Association. The Board shall select the specific date, time and place of the annual meeting for a given year and shall furnish written notice to each Lot Owner in accordance with Section 4.05(a).

(c) Special meetings of the Association shall be held whenever called by the President or two officers; however, such meetings must be called upon receipt by the President of a written request signed by Owners with one-fourth (1/4) or more of all votes entitled to be cast.

A quorum for meetings necessary to conduct Association business shall consist of Lot Owners, present in person or by proxy, representing fifty percent (50%) or more of all votes entitled to be cast.

(d) The act of a majority of the votes at any meeting at which a quorum is present shall be the act of the Association, unless a greater percentage is required under this Declaration.

(e) If a quorum is not present at a meeting, no business of the Association shall be transacted; however, the majority of votes present (in person or by proxy) may adjourn the meeting from time to time without further notice if such adjourned meeting at which a quorum is present is held within 15 days of the meeting originally noticed. If a quorum is present at such an adjourned meeting, any business may be transacted which might have been transacted at the meeting as originally noticed.

POWERS AND RESPONSIBILITIES OF THE ASSOCIATION

(a) Without limitation, the Association shall have the following powers in addition to any others which may be necessary or incidental to performance of any duties or powers of the Association specified in this Declaration.

1. to levy and enforce payment of general and special assessments on the Lots and against Lot Owners;
2. to enforce this Declaration;
3. to purchase, sell and convey Lots (including the improvements thereon) incident to foreclosure of alien for any assessment and to acquire real estate as additional Common Area.
4. to enter and execute contracts, deeds, mortgages, and documents on behalf of the Association which relate to any performance of obligations to be performed hereunder by the Association;
5. to incur indebtedness on behalf of the Association (but only for the purposes of and as may be reasonably necessary for carrying out its duties and obligations hereunder) and to execute drafts and other negotiable instruments;
6. to employ the services of any person, firm, or corporation to carry out the duties of the Association;
7. to acquire, sell, transfer or exchange goods, equipment and other personal property or fixtures in the name of the Association for the operation of the Association;
8. to commence, prosecute, defend or be a party to any suit, hearing or proceeding (whether administrative, legislative or judicial) involving the enforcement of this Declaration or otherwise involving the exercise of any powers, duties or obligations of the Association;
9. to maintain trees, shrubs, flowers, grass and all other landscaping on the Common Area;
10. to maintain, repair and replace all recreational facilities, monument signs and other improvements located on the Common Area;
11. to maintain, repair and replace all storm water facilities and associated structures located within designated Common Areas.

(b) The Association, its employees and agents, shall have the right of ingress to and egress from, all common areas and detention basins, and the right to store equipment on the common areas and easement areas for the purpose of furnishing any maintenance, repairs or replacements of the common area and easement areas. The City of West Bend or any other governmental authority which has jurisdiction over the premises shall have a non-exclusive easement of access over driveways located on the premises for police, fire, ambulance, waste removal, snow removal,

or for the purpose of furnishing municipal or emergency services to the premises. Such access easements shall run with the land, be appurtenant to and pass with title to each dwelling Unit, and shall be subject to and governed by the laws, ordinances and statutes of jurisdiction, the provisions of this Declaration, the By-Laws, and the reasonable rules and regulations from time to time adopted by the Association.

(c) The Association shall have the right and authority from time to time to lease or grant easements, licenses or concessions with regard to any portions or all of the common areas and easement and for such uses and purposes as the Board deems to be in the best interests of the Lot Owners and which are not prohibited hereunder, including, without limitation, the right to grant easements for utilities or any other purpose which the Board deems to be in the best interests of the Owners and the right to grant public access to the Common Area and Easements. Any proceeds from leases, easements, licenses or concessions with respect to the Common Area shall be used to pay common expenses. Also, the Association shall have the right and power to dedicate any part or all of common area and easements to the City of West Bend, but only with the written approval of the City of West Bend. Each person, by acceptance of a deed, mortgage, trust deed, other evidence of obligation, or other instrument relating to a Dwelling, shall be deemed to grant a power coupled with an interest to the Board, as attorney-in-fact, to grant, cancel, alter or otherwise change the easements provided for in this Section. Any instrument executed pursuant to the power granted herein shall be executed by the President and attested to by the Secretary of the Association and duly recorded.

(d) The President, together with one other officer of the Association, is empowered to negotiate, execute and enter contracts, agreements and other undertakings or documents of any kind on behalf of the Association necessary or incidental to exercise of any powers or obligations of the Association or of the Board under this Declaration.

4.07

OFFICERS

(a) The officers of the Association shall be:

1. President. Said President shall: be the chief executive officer of the Association and a member of the Board; be responsible for the proper execution of the business and affairs of the Association (subject to the control of the Board); preside at all meetings of the Association and the Board; have the authority to appoint various committees; have all the general powers and duties usually vested in the office of President, as well as such other powers and duties as may be prescribed from time to time by resolution of the Board. The President of the Association shall be one of the record Owner(s), or an agent thereof.

2. Secretary. Said Secretary shall: keep the minutes of all meetings of the Board and of the Association; have charge of all the Association's books and records; maintain the Membership List and keep it current; have charge of delivering all notices and approvals on behalf of the Board and the Association; and, in general, perform all duties incident to the office of Secretary, together with such other powers and duties as may be prescribed from time to time by resolution of the Association.

3. Treasurer. Said Treasurer shall: be responsible for the Association's funds and assets; keep complete and accurate accounts of all receipts and disbursements, financial records, and books of accounts; deposit all monies in the name and to the credit of the Association in depositories as may from time to time be

designated by the Board; and exercise such other powers and duties as may be prescribed from time to time by resolution of the Association. The Treasurer of the Association shall be one of the record Owner(s), or an agent thereof.

4. One or more Vice-Presidents (not to exceed four at any one time), the number of which shall be determined by resolution of the Board; however, it is not required that the Association have one or more Vice-Presidents. A Vice-President, in addition to serving on the Board, shall have such other powers, duties and restrictions as may be prescribed from time to time by resolution of the Board.

(b) All officers shall be appointed annually by the Board if not subject to appointment by Developer. Each officer shall hold office until a successor is duly elected or until death, resignation, or removal, whichever first occurs. Board members may also be appointed as officers.

4.08 **MANAGEMENT OF ASSOCIATION BY THE BOARD OF DIRECTORS**

(a) Subject to the rights retained by Developer to appoint the initial Board of Directors until transfer of control to the Lot Owners as set forth herein, the Association and its business, activities and affairs shall be managed by a Board of Directors consisting of not less than 3 members all of whom shall be Lot Owners (hereinafter referred to as "Board"). The Board shall exercise and perform, in addition to the powers, duties and obligations specified in this Declaration for the Board, all powers, duties and obligations of the Association (except to the extent this Declaration may otherwise expressly require the prior vote of the Association on a particular matter). Upon conveyance by Developer of more than seventy-five percent (75%) of the Lots, Developer shall transfer control of the Association to the Lot Owners (hereinafter referred to as "Transfer Date"). At a meeting duly called for such purpose, the Lot Owners shall then elect the successor Board of Directors consisting of all Lot Owners, with the 3 Lot Owner receiving the most votes being elected to said successor Board of Directors. Board members shall serve for a term of two (2) years.

(b) Subject to Section 4.08(a) hereof, vacancies in the Board caused by any reason other than the removal of a Director by a vote of the members shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum; and each person so elected shall be a Director until a successor is elected at the next annual meeting of the Association.

(c) At any regular or special meeting duly called, any one or more of the Directors elected by the Members may be removed with or without cause by Members holding more than fifty percent (50%) of the votes and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting.

(d) At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business and the acts of the majority of the Directors present at the meeting at which a quorum is present shall be the acts of the Board. If at any meeting of the Board there is less than a quorum present, then the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

(e) The Board may create committees consisting of one or more Lot Owners to make recommendations

to the Board or the Association on any matter.

(f) No person shall receive any payment for services rendered as a member of the Board or any Committee or as an officer of the Association or as a member of any committee unless specifically authorized by prior resolution of the Association. The Board may reimburse out-of-pocket expenses incurred by an officer or committee member in the performance of specified duties so long as said officer has received the prior, written consent of the Board.

(g) None of the directors of the Association shall be personally liable to the Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such directors and officers except for any acts or omissions found by a court to constitute criminal conduct, gross negligence or fraud. The Association shall indemnify and hold harmless the Declarant and each of the directors, his heirs, executors or administrators, against all contractual and other liabilities to others arising out of contracts made by or other acts of the directors and officers on behalf of the Owners or the Association or arising out of their status as directors or officers unless any such contract or act shall have been made criminally, fraudulently or with gross negligence. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, counsel fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative, or other in which any such director may be involved by virtue of such person being or have been such director or officer; provided, however, that such indemnity shall not be operative with respect to (i) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for criminal conduct, gross negligence or fraud in the performance of his duties as such director or officer, or (ii) any matter settled or comprises, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such person being adjudged liable for criminal conduct, gross negligence or fraud in the performance of his duties as such director or officer.

(h) All decisions of any Committee or the Board on any matter (including, without limitation, decisions under Article V) shall be enforceable against any Lot Owner if made in a good faith exercise of the judgment or discretion of its members so long as such decision is not clearly in conflict with the express provisions of this Declaration. Any Lot Owner or other person seeking to avoid, set aside or challenge any such decision of the Committee or the Board shall have the burden of proof to establish that such standards were not met at the time the decision was made.

ARTICLE V

5.01

ARCHITECTURAL CONTROL COMMITTEE

Developer shall designate the person or persons who shall from time to time comprise the initial membership of the Architectural Control Committee ("ACC"). Said ACC shall consist of not less than 3 nor more than 5 Members. Upon conveyance by Developer of more than 75% of the Lots within the Subdivision, Developer shall surrender authority of the Committee to the Lot Owners (hereinafter referred to as "Transfer Date"). Developer shall appoint an initial ACC consisting of three (3) Members. In the event of the death or resignation of any member or members of said ACC, the Board of Directors shall have full authority to appoint, by majority vote, a successor member or members to serve on said ACC, and, pending such appointment, to approve or disapprove any building plans as provided below. Notwithstanding the foregoing transfer of authority, Developer shall retain the full authority and power

to approve or reject the initial plans of construction by any Lot Owner. All other authority and power of said committee as set forth in this Declaration shall transfer to said ACC comprised of Lot Owners upon transfer of authority to said Lot Owners as set forth herein.

5.02

SUBMISSION FOR APPROVAL: PROCEDURE

(a) Any approval required by this Declaration from the ACC, shall be in writing, with the request therefore submitted in writing. The decisions of such ACC with respect to enforcement of these restrictions shall be final and binding upon all parties. The ACC shall have the right to refuse to approve any such plan or specifications which in the conclusive judgment or a majority of its Member, are not in conformity with these restrictions or are not desirable aesthetically, or for any other reasons. In passing upon such plans and specifications, the ACC may take into consideration the suitability of the proposed building or other structures, its design, elevation and the materials of which it is to be constructed on the proposed site; the harmony thereof with the surrounding buildings, and the view from the adjacent property. All decisions of the committee on said matters shall be final and binding. The ACC shall have the right to waive minor infractions or deviations from these restriction in cases of hardship.

(b) In the event the ACC, or its designated representative, fails to act upon any plans, specification or other written request or approval within 30 days after receipt of all plans, specification and other documents as may be requested approval shall thereby automatically be granted, such that no right shall thereafter exist to enforce these Declarations in so far as any such approval is required hereunder.

(c) Upon request, Developer or his duly authorized representative, shall furnish a statement of the name and address of the person(s) to whom plans, specification and other requests for approval are to be submitted for consideration by said ACC, with submission to the person so designated constituting submission to the ACC. If Developer or his designated representative shall fail to make the aforementioned designation, submission to Developer shall constitute submission of the same to the ACC.

(d) Any approval or permission of the ACC under this Section, to be binding or effective, MUST BE IN WRITING signed by an authorized representative. No oral statements, representations or approvals of the Committee of any of its members or agents shall be binding on Developer or Committee under any circumstances, regardless of any reliance thereon by any Lot Owner.

(e) Within 90 days following construction or installation of any improvements, the Lot Owner shall furnish an as-built certified survey showing the location of the improvement, if requested by Developer or ACC.

ARTICLE VI

6.01 COMMON EXPENSES AND ASSESSMENTS AGAINST LOTS AND LOT OWNERS

(a) Developer hereby covenants, and each Owner of a Lot by acceptance of a deed therefor (whether or not it shall be so expressed in any such deed or other conveyance) shall be and is deemed to covenant and hereby agrees to pay to the Association all charges made with respect to the Owner or said Owner's Lot. Each charge, together with interest thereon and reasonable costs of collection, if any, as hereinafter provided, shall be a continuing lien upon an Owner's Lot against which such charge is made and also shall be the personal obligation of the Owner of said Lot at

the time when the change becomes due. The lien or personal obligation created under this Section shall be in favor of and shall be enforceable by the Association as herein set forth.

(b) "Special Assessments" may be made and levied by the Board against a particular Lot Owner or Owners and said Owners' Lot (without levying against other Lots) or, as appropriate, against all Lot Owners for::

1. costs and expenses (anticipated or incurred) for repair of damage to drainage and landscape areas within an Owner's Lot caused by or at the direction of the Lot Owner, the family or guests of the Lot Owner, or any other party for whom a Lot Owner is responsible;
2. costs, expenses and reasonable attorney's fees incurred in, or in anticipation of, any suit, action or other proceeding to enforce this Declaration against the Lot Owner;
3. interest due on general or special assessments;
4. payment (or build up reserves to pay) expenses other than common expenses incurred (or to be incurred) by the Association from time to time for a specific purpose including, without limitation, to make alterations, additions or improvements to the Common Areas and Easements, or any other property owned or maintained by the Association;
5. to cover an unanticipated deficit under the prior year's budget; and
6. all other costs and expenses anticipated or incurred by the Association which are subject to special assessments as provided under this Declaration.

No special assessment shall be adopted without the affirmative vote of voting members representing at least two-thirds (2/3) of the votes cast on the question and only those Owners of a Lot against which the proposed special assessment shall be levied may vote on the question. The Board shall serve notice of a special assessment on all Owners by a statement in writing giving the specific purpose and reasons therefor in reasonable detail, and the special assessment shall be payable in such manner and on such terms as shall be fixed by the Board. Any assessment collected pursuant to this Section (other than those to cover an unanticipated deficit under the prior year's budget) shall be segregated in a special account and used only for the specific purpose set forth in the notice of assessment.

(c) "General Assessments" may be made and levied by the Board against each Lot Owner and said Lot Owners' Lot as set forth herein for the following "common expenses" which may be anticipated, incurred or paid by the Association:

1. any insurance maintained by the Association;
2. as to the Owner(s), taxes, assessments and charges of any kind made or levied by the governmental authority against the Association or, as to all Lot Owners, any other property of the Association, if any;
3. all costs and expenses for the operation and administration of the Association, including

legal, accounting and management fees and other costs incident to the exercise of any of its powers or obligations;

4. all items subject to special assessment which have not been collected from a Lot Owner at the time payment of such item is due, provided that upon collection of the special assessment from said Lot Owner, all other Lot Owners shall receive an appropriate adjustment, reimbursement or credit on future general assessments, as the Board may determine, for payments made under this paragraph;

5. all damages, costs, expenses and attorney fees incurred in, or in anticipation of, any suit or proceeding (whether administrative, legislative or judicial) which are not otherwise collected by special assessment);

6. costs and expenses of services, if any, made available to all Lots; and

7. all other costs and expenses declared to be common expenses under this Declaration.

The general assessments for any of the foregoing expenses shall be levied against each Lot. Unless otherwise stated to the contrary, each Lot Owner shall be responsible for such expenses, if any, on the following basis: calculated as the percentage equivalent of a fraction, the numerator of which is one (1) and the denominator of which is the number of Dwellings allowed to be constructed in the Subdivision and which are subject to this Declaration as of the first day of the time period for which the assessment has been levied. For example, the initial basis may be 1/101 (calculated on the basis of 85 Lots with 85 Dwellings and 8 Duplex Lots with 16 Dwellings).

(d) The Association may create and maintain a special capital reserve account, if any, to be used solely for making capital expenditures in connection with the Common Areas and Easements granted to the Association. The Board shall determine the appropriate level of the capital reserve based on a periodic review of the useful life of improvements to the Common Area and Easements granted to the Association and other property owned by the Association and periodic projections of the cost of anticipated major repairs or replacements to the Common Area and Easements granted to the Association and the purchase of other property to be used by the Association in connection with its duties. Each budget shall disclose that percentage of the common assessment, as applicable, which shall be added to the capital reserve and each Owner shall be deemed to make a capital contribution to the Association equal to such percentages multiplied by each installment of said common assessment as applicable paid by such Owner.

(e) The Association shall maintain separate books and records for general assessments, special assessments and capital reserve accounts, if any, of the Lot Owners, as may be necessary, provided that all funds received from either assessment may be co-mingled and thereafter disbursed to pay any costs or expenses incurred by the Association which would be subject to general or special assessment.

(f) Developer shall be responsible for all assessments levied against any platted Lot prior to a conveyance of such Lot by Developer. However, Developer shall not be responsible for any general or special assessments which may be levied for improvements, capital expenditures, reserves, or replacement funds of any kind. The Board may, at any time, levy assessments for such purposes against the Lot Owners (other than Developer) and against all Lots, including those owned by Developer, except that such assessments against any Lot(s) owned by Developer shall not be due or otherwise collectible until Developer conveys title to such Lot and then only from Developer's successors in

interest, with any lien therefor not being effective until after the date of transfer of title.

(g) The Board may determine the estimated expenses of the Association and prepare an annual operating budget in order to determine the amount of the annual general assessments necessary to meet the estimated common expenses of the Association for the ensuing year and shall furnish a copy to each Lot Owner. Notwithstanding the foregoing, for time prior to the date at which Developer is no longer entitled to appoint any Board members, Developer shall have the right, but not the obligation, to estimate annual operating expenses, prepare an operating budget and/or deliver copies thereof to individual Lot Owners.

(h) If the general assessment proves inadequate for any reason (including nonpayment of any Owner's assessment) or proves to exceed funds reasonably needed, then the Board may increase or decrease the assessment payable under this Declaration by giving written notice thereof (together with a revised budget and explanation for the adjustment) to each Owner not less than ten (10) days prior to the effective date of the revised assessment.

6.02

PAYMENT OF ASSESSMENTS

(a) Each Lot Owner shall promptly pay, when due, all general and special assessments levied by the Board against such Owner and said Owners' Lot, together with all costs, expenses and reasonable attorney fees incurred by the Association in collection of any delinquent assessment(s). All assessments shall become due at such times and in such manner as the Board may determine in its sole and absolute discretion (in a lump sum or in installments with or without interest). Time is of the essence with respect to all payments.

(b) All co-Owners of a Lot shall be jointly and severally liable for all general and special assessments levied against said Owner's Lot, regardless of the type of tenancy, estate or interest in said Lot (whether as joint tenants, tenants-in-common, land contract purchaser(s) or seller(s), or otherwise).

6.03

DELINQUENT ASSESSMENTS, INTEREST, LIEN AND COLLECTION

(a) All general and special assessments which are not paid when due: shall bear interest the lesser of twelve percent (12%) per annum, or the maximum rate as may then be permitted by law, from the date due until the assessment is paid in full; shall constitute a lien on the Lot; and shall be collectible and enforceable by the Board (in its own name or the name of the Association) by suit against the Lot Owner, by foreclosure of the lien, and/or in any other manner or method provided under this Declaration or laws of the State of Wisconsin. The lien granted hereunder shall also cover and include all interest accruing on delinquent assessments, plus costs, expenses and reasonable attorney's fees for collection.

(b) The Association (through the Board) shall have the exclusive right and power to collect or enforce collection of all general and special assessments levied by the Board and shall further have the exclusive right to bring any and all actions and proceedings for the collection thereof and/or the enforcement of liens arising therefrom. The Board shall have the right to record a document with the Register of Deeds of Washington County giving notice of said lien for any unpaid assessment. Failure to file any such notice shall not impair the validity of the lien. The Board shall have the right at any time to notify all Lot Owners within the Subdivision of the delinquency of any Lot Owner.

(c) The lien for assessment provided for in this Declaration shall be subordinate to the Mortgagee's mortgage on the Lot which was recorded prior to the date that any such assessment became due. Except as hereinafter

