

# DISCLOSURE MATERIALS

## EAGLE'S NEST CONDOMINIUMS

Brookfield, Wisconsin

The Developer (Declarant) is JBJDEVELOP, L.P. Its business address is W198 N9912 Rivercrest Drive, Suite 101; Germantown, WI 53022.

THESE ARE THE LEGAL DOCUMENTS COVERING YOUR RIGHTS AND RESPONSIBILITIES AS A CONDOMINIUM OWNER. IF YOU DO NOT UNDERSTAND ANY PROVISION CONTAINED IN THEM, YOU SHOULD OBTAIN PROFESSIONAL ADVICE.

THESE DISCLOSURE MATERIALS GIVEN TO YOU AS REQUIRED BY LAW, MAY BE RELIED UPON AS CORRECT AND BINDING. ORAL STATEMENTS MAY NOT BE LEGALLY BINDING.

YOU MAY AT ANY TIME WITHIN 5 BUSINESS DAYS FOLLOWING RECEIPT OF THESE DOCUMENTS, OR FOLLOWING NOTICE OF ANY MATERIAL CHANGES IN THESE DOCUMENTS, CANCEL IN WRITING THE CONTRACT OF SALE AND RECEIVE A FULL REFUND OF ANY DEPOSITS MADE.

In compliance with the Disclosure Requirements of Section 703.33, Wis. Stats., as amended, the following represents an Executive Summary and copies of the following are herewith supplied:

1. GENERAL CONDOMINIUM CONCEPT. In general terms, a residential condominium form of ownership blends the amenities of single family residential ownership with that of the amenities of association or cooperative living arrangements. The property which is dedicated and subject to the condominium laws create two forms of ownership, to-wit: (i) Units which are owned individually by Unit Owners and (ii) common areas which are collectively owned and maintained by all of the Unit Owners. A Unit Owner is responsible for the general maintenance and repair of the Unit Owner's Unit. Every Unit Owner is a Member of the condominium Unit Owner's Association which, among other duties and responsibilities, shall be responsible for the maintenance and repair of the common areas.
2. DECLARATION OF CONDOMINIUM OWNERSHIP. The Declaration is a written document recorded with the Register of Deeds in the county where the real estate is located which creates the condominium from one or more parcels of real estate. The Declaration (i) identifies the Units which are individually owned and the common elements which are owned in common by all of the Unit Owners; (ii) sets forth the percentage of ownership interest in the common elements which is assigned to each Unit Owner; (iii) creates the Owner's Association and sets forth the duties and responsibilities of the Association and (iv) establishes the number of votes that each Unit Owner has in the affairs of the Association. The Declaration establishes and describes the condominium, the units and the common areas. The Declaration begins on Page A-1, Table of Contents page iii, iv, v and vi.
3. BY-LAWS. The By-Laws contain rules which govern the affairs of the condominium association and affect the rights and responsibilities of Unit Owners. The By-Laws begin on Page B-1.
4. ARTICLES OF INCORPORATION. The operation of the condominium are generally governed by an association, of which each Unit Owner shall be a member. The powers, duties, and operation of this association are specified in its Articles of Incorporation. The Articles of Incorporation being on Page C-1.
5. MANAGEMENT AND EMPLOYMENT CONTRACTS. Certain services are provided to the condominium through contracts with individuals or private firms. There are no such contracts affecting this condominium at this time.
6. ANNUAL OPERATING BUDGET. The Association will incur expenses for the operation of the condominium which are assessed to the unit owners. The operating budget is an estimate of those charges which are in addition to mortgage and utility payments (other than those which are a part of the common expense). At this point the Association supplies a Projected Operating Budget. A more detailed and more accurate budget may be supplied as time progresses. The budget begins on Page D-1.
7. STATUTORY RESERVE ACCOUNT. A text of the proposed amendments to Chapter 703 regulating Statutory Reserve Accounts are, only for the convenience and information of Unit Owners, set forth in the disclosure materials and commenced on Page E-1.
8. LEASES. Units in some condominiums are sold subject to one or more leases of property or facilities which are not a part of the condominium. This is not the case with this Condominium.

9. CONDOMINIUM PLAT. A map of the condominium, which shows the location of all Units and all facilities and common areas which are part of the condominium, is attached to the Declaration commencing on Page A-36 as Exhibit A.

10. FLOOR PLANS. Declarant has provided a floor plan of the Units being offered for sale. The floor plan and map begin on page A-37.

11. EXPANSION PLANS: In certain cases, a condominium project expands to additional real estate. If the condominium project is expandable, the Developer or Builder will reserve this right and same shall be set forth in the Declaration. This condominium project is not expandable.

12. DECLARANT. The Declarant is identified and defined in the Condominium Declaration in Article I, Section 2 (c). The Declarant is, generally, the owner or developer declaring and dedicating the property to the Condominium Ownership Act by the recording of the Declaration and the Condominium Plat. Generally, the Declarant reserves a period of control over the condominium affairs which allows the Declarant time to complete construction of the condominium project and sell the Units. During this period of "declarant control," Declarant exercises all of the powers and responsibilities normally reserved to the association and which, ultimately, will be assigned and passed to the association. As individual Units are sold, elections are held and Unit Owners other than the Declarant elect an increasing number of members to the Association's Board of Directors. The Declarant's control of the affairs of the association may last up to three (3) years in condominiums which are not expandable and up to ten (10) years in expandable condominiums.

13. UNIT. A Unit is described in Article I, Section 2 (m) of the Declaration. Units are individually owned by Unit Owners, said Unit Owner having the exclusive ownership and possession of the Unit Owned. The boundaries of each Unit are defined in the Declaration. The definition of the Unit may impact the Unit Owner's maintenance and insurance responsibilities and the rights to make improvements or alterations.

14. COMMON ELEMENTS. The common elements are defined in Article III of the Declaration. Generally speaking, all of the property dedicated to the Condominium Ownership Act that is not a Unit is considered common elements. This may include the land, the exterior and common areas of buildings such as entrance ways, elevators, meeting rooms and halls, landscaping, roads and any outside parking areas, outdoor lighting and recreational facilities. Common areas are allowed to be utilized by all Unit Owners.

15. LIMITED COMMON ELEMENTS. The Limited Common Elements are defined in Article IV of the Declaration. The limited common elements are those Common Elements which are identified in the Declaration and Plat and are reserved for the exclusive use of more than one, but not all, of the Unit Owners. A Unit Owner may not own the Limited Common Element individually, but may be the only one entitled to use the identified Limited Common Element. The use of the Limited Common Elements is generally subject to the restrictions set forth in the Declaration. Examples of Limited Common Elements would be storage areas, patios, decks, balconies and garage parking spaces.

16. PERCENTAGE INTERESTS. Every Unit Owner shares in the ownership of the Common Elements with the other Unit Owners. This percentage interest in the Common Elements is defined in Article III, Section 2 of the Declaration. This ownership right vests automatically with the ownership of a Unit. The percentage interest often determines the share of common expenses that a Unit Owner must pay for the maintenance of the

Common Elements and for the operation of the Association. The percentage interest may be an equal percentage for all Units based upon the number of Units in the condominium project, be in proportion to the square footage of the Units, upon the location or value of the Units or upon some other formula which is set forth in the Declaration.

17. ASSOCIATION. The Association is the entity made up of the Unit Owners formed to manage and maintain the condominium property and finances. The Association will either be a not-for-profit, non-stock corporation or an unincorporated Association. In this condominium project, the Association is a non-stock not-for-profit corporation. Every Unit Owner is required to be a member of the Association. The members of the Board of Directors and the officers of the Association are Unit Owners initially appointed by the Declarant and ultimately voted into office by the Unit Owners. The Association duties include, but are not limited to, maintenance of the common areas, collecting condominium assessments, maintaining the books and records of the Association, overseeing reserved funds, preparing financial reports and filing tax returns. Some or all of these functions may be delegated to a manager or other professionals. The powers and duties of the Association is set forth in Article VII of the Declaration.

18. ASSESSMENT FEES. The Association establishes a budget for all of the condominium expenses and divides these expenses among all of the Unit Owners. These fees are typically paid monthly. The Association may also recreate reserves for future maintenance and repairs.

# DECLARATION OF CONDOMINIUM OWNERSHIP

## OF

### EAGLE'S NEST CONDOMINIUMS

#### Brookfield, Wisconsin

#### TABLE OF CONTENTS

PREFACE		A-1
Article I	Definitions and Legal Description of Land	A-2
Section 1	Legal Description of Land	
Section 2	Definitions	
	(a) "Association"	
	(b) "Common Elements"	
	(c) "Declarant"	
	(d) "Expandable Condominium"	
	(e) "Limited Common Elements and Restricted Common Elements"	A-3
	(f) "Majority"	
	(g) "Mortgage"	
	(h) "Mortgagee"	
	(i) "Occupant"	
	(j) "Owner"	
	(k) "Percentage Interests"	
	(l) "Person"	
	(m) "Unit"	
	(n) "Unit Identification"	A-4
	(o) "Unit Owner Improvements"	
	(p) "Voting Member"	
Article II	Property and Units - Submission to Act	A-4
Section I	Submission of Property to the Act	
Section 2	Condominium Unit Identification	

Section 3	Description and location of Units	A-6
Section 4	Boundaries of Units	A-7
Section 5	Interpretation of Plans	A-8
Section 6	Modification of Plans	A-9
Section 7	Construction in Phase	
Article III	Common Elements	A-10
Section 1	Description of Common Elements	
Section 2	Ownership of Common Elements	
Section 3	Use of the Common Elements	
Section 4	Limitation on Use of Common Elements	
Section 5	No Severance of Unit Ownership	A-11
Section 6	Easements for Use of Common Areas	
Section 7	Maintenance of Common Elements	
Section 8	No Partition of Common Elements	A-12
Article IV	Limited Common Elements	A-12
Section 1	Description of Limited Common Elements and Facilities	
Section 2	Patios, Decks and Porches	A-13
Section 3	Use	
Section 4	Conveyance of Limited Common Elements	A-14
Section 5	Improvements to Limited Common Elements	
Article V	Other Property Rights and Obligations of Owners	A-14
Section 1	Use and Rental of Units	
Section 2	Use of Units by Declarant	
Section 3	Use of Parking Areas	A-15
Section 4	Prohibition of Damage and Certain Activities	
Section 5	Subdivision of Units	
Section 6	Rules and Regulations	
Section 7	Delegation of Use	
Section 8	Construction	
Section 9	Separate Mortgages of Units	A-16
Section 10	Separate Real Estate Taxes	
Section 11	Maintenance, Repairs and Replacement	
Section 12	Negligence of Unit Owner	A-18
Section 13	Common Surpluses	

Article VI	Association of Unit Owners and Voting Rights	A-18
Section 1	Membership	
Section 2	Voting	
	(a) Class A	
	(b) Class B	A-19
	(c) Rights of Declarant	
Section 3	Unit Value for Voting	
Section 4	Amplification	
Article VII	Rights and Obligations of the Association	A-19
Section 1	The Common Elements	
Section 2	Fire Protection Sprinkler System	
Section 3	Services	
Section 4	Personal Property for Common Uses	A-20
Section 5	Rules and Regulations	
Section 6	Implied Rights	
Section 7	Personal Liability	
Article VIII	Covenant for Assessments	A-20
Section 1	Agreement to Pay Assessment	
Section 2	Purpose and Computation of Assessments	A-21
Section 3	Annual Assessments	
Section 4	Special Assessment for Capital Improvements	
Section 5	Special Assessment Against a Particular Unit	A-22
Section 6	Statutory Reserve Account	
Section 7	Notice of Meetings	A-23
Section 8	Uniform Rate of Assessment	
Section 9	Date of Commencement of Annual Assessments	
Section 10	Declarant's Obligation for Common Expenses During Period of Declarant Control	
Section 11	Lien for Assessments	
Section 12	Effect of Nonpayment of Assessments	A-24
Section 13	Sale or Conveyance	A-25
Section 14	Additional Rights of Lenders	
Article IX	Architectural Control	A-26
Section 1	Architectural Control Authority	

Section 2	Antennae	
Section 3	Declarant Control	A-27
Section 4	Use of Building and Units	
Article X	Party Walls	A-27
Section 1	General Rules of Law to Apply	
Article XI	Insurance	A-27
Section 1	Obligation of Association	
Section 2	Combined Insurance	
Section 3	Insurance Proceeds	A-28
Section 4	Destruction and Reconstruction	
Section 5	Partition	
Section 6	Other Insurance	A-29
Article XII	Notices	A-29
Article XIII	Exculpation of Association Liability	A-30
Article XIV	Declarant's Rights	A-30
Article XV	Expanding Condominium	A-30
Article XVI	Grievance Procedure	A-30
Section 1	Complaint	
Section 2	Mailing	
Section 3	Hearing	
Section 4	Determination	A-31
ARTICLE XVII	General Provisions	A-31
Section 1	Enforcement	
Section 2	Severability	
Section 3	Failure of Association to Insist on Strict Performance Not Waiver	
Section 4	Termination	A-32
Section 5	Encroachments	
Section 6	Binding Effect	



Section 7	Rules and Regulations	
Section 8	Dedication for Utilities	A-33
Section 9	Construction of Terms	
Section 10	Amendments	
Section 11	Registered Agent for Service of Process	
Section 12	Number and Gender	
Section 13	Captions	A-34
Section 14	Right of First Refusal	
Exhibit A	Condominium Plat	A-35

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DECLARATION OF CONDOMINIUM OWNERSHIP AND OF EASEMENTS, RESTRICTIONS, COVENANTS AND CONDITIONS FOR EAGLE'S NEST CONDOMINIUMS

3375791

REGISTER'S OFFICE WAUKESHA COUNTY, WI RECORDED ON

04-06-2006 2:48 PM

MICHAEL J. HASSLINGER REGISTER OF DEEDS

REC. FEE: 136.00 REC. FEE-CO: 5.00 REC. FEE-ST: 2.00 TRAN. FEE: TRAN. FEE-STATE: PAGES: 67

EAGLE'S NEST CONDOMINIUMS Brookfield, WI

THIS DECLARATION, made this 16th day of February, 2006, by JBJDEVELOP, L.P. (hereinafter referred to as the "DEVELOPER/DECLARANT").

WHEREAS, DECLARANT is the owner in fee simple of certain real estate hereinafter described in this Declaration, located in the Town of Brookfield, Waukesha County, Wisconsin (hereinafter referred to as 'Subject Property'); and

WHEREAS, DECLARANT intends to, and does hereby submit and subject the Subject Property, together with all buildings, structures, improvements and other permanent fixtures of whatsoever kind thereon, and all rights and privileges belonging or in anyway pertaining thereto, to all provisions of the Wisconsin Condominium Ownership Act, Chapter 703, Wis. Stats. as amended; and

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

WHEREAS, DECLARANT desires to establish certain rights, conditions, restrictions, covenants and easements in, over and upon the Subject Property for the benefit of DECLARANT and all future owners of any part of the Subject Property, and any unit or units thereof or therein contained, and to provide for the harmonious, beneficial and proper use and conduct of the Subject Property and all units; and

143/67

WHEREAS, DECLARANT desires and intends that the several unit owners, mortgagees, occupants and other persons hereafter acquiring any interest in the Subject Property shall at all times enjoy the benefits of, and shall hold their interests subject to, the rights, conditions, restrictions, covenants and easements hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the cooperative aspect of the Subject Property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Subject Property.

NOW, THEREFORE, Declarant, as the title holder of the Subject Property and described herein, and for the purposes above set forth, (i) submits the Subject Property and buildings to the condominium form and use and ownership as provided in the Act, subject to taxes and assessments not yet due and payable, municipal and zoning ordinances, recorded easements and all other matters of record; (ii) establishes and imposes the following provisions, conditions, restrictions and uses to which the condominium may be put, and (iii) specifies that the provisions of this Declaration shall constitute covenants to run with the land and shall be binding upon DECLARANT, its successors and assigns and all subsequent owners and occupants of all or any part of the condominium, and further DECLARES AS FOLLOWS:

**ARTICLE I**  
**DEFINITIONS AND**  
**LEGAL DESCRIPTION OF LAND**

Section 1. **LEGAL DESCRIPTION OF LAND:** The Subject Property which is hereby submitted and subjected to the provisions of the Condominium Ownership Act, Chapter 703, Wis. Stats. (1999-2000) as amended, is legally described as follows:

Lot 1 of CERTIFIED SURVEY MAP NO. 9888, being a part of the Southeast 1/4 of the Southeast 1/4 of Section 29, Township 7 North, Range 20 East, in the Town of Brookfield, Waukesha County, Wisconsin.

Tax Key No. BKFT 1124-974

A survey of the Subject Property, showing the boundaries of the Condominium, is contained in the Plat of EAGLE'S NEST CONDOMINIUMS (hereinafter referred to as "Condominium Plat"), a copy of which is attached hereto and marked Exhibit A, Sheet 1.

The Subject Property and all improvements thereon and appurtenances thereto shall be known as EAGLE'S NEST CONDOMINIUMS.

Section 2. **DEFINITIONS:** For the purpose of brevity and clarity, certain words and terms used in this Declaration are defined as follows:

- (a) "ASSOCIATION" shall mean and refer to EAGLE'S NEST CONDOMINIUMS OWNER'S ASSOCIATION, INC., a corporation formed under the nonstock corporation statute, Chapter 181, Wis. Stats. (1999-2000) as amended, its successors and assigns.
- (b) "COMMON ELEMENTS" shall mean and refer, unless otherwise provided in this Declaration or amendments thereto, to the common areas and facilities consisting of the land and the entire premises described and identified in the Condominium Plat, excepting the Units and excepting and subject to any structures built or improvements installed by or for public utilities.
- (c) "DECLARANT" shall mean and refer to JBJDEVELOP, L.P. and its successors and assigns. Declarant may also be referred to as the Developer.
- (d) "EXPANDABLE CONDOMINIUM" shall mean a condominium to which additional property or units or both may be added in accordance with the provisions of this Declaration and Chapter 703 Wis. Stats. This condominium project is not expandable.

- (e) "LIMITED COMMON ELEMENTS AND RESTRICTED COMMON ELEMENTS" shall refer to those common elements identified herein as reserved for the exclusive use of one or more, but less than all, of the Unit Owners.
- (f) "MAJORITY" shall mean the Condominium Unit Owners with more than fifty percent (50%) of the votes assigned the Units in this Declaration.
- (g) "MORTGAGE" shall mean any Mortgage or other security instrument by which a Unit or any part thereof is encumbered.
- (h) "MORTGAGEE" shall mean any person named as the Mortgagee under any Mortgage under which the interest of any Owner is encumbered, or any land contract vendor of any Unit, or any successor to the interest of such person under such Mortgage or such land contract.
- (i) "OCCUPANT" shall mean a person, as herein defined, in lawful possession of a Unit, as herein defined, other than the Unit Owner, as herein defined, of such Unit.
- (j) "OWNER" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Unit, including the holder of an equitable interest as a Land Contract Vendee, but excluding those having such interest merely as security for the performance of an obligation.
- (k) "PERCENTAGE INTERESTS" shall refer to the appurtenant, undivided interest of Unit Ownership, as herein defined, in the Common Elements, as herein defined, expressed as a percentage and calculated by dividing (a) the number "one" (1) by (b) the total number of Units, as herein defined, in the Condominium. For purposes of this Declaration, the percentage interest of all Unit Owners will be equal.
- (l) "PERSON" shall refer to an individual, corporation, partnership, association, trust or other legal entity.
- (m) "UNIT" shall mean and refer to a part of the property subject to the Declaration, consisting of one (1) or more cubicles of air at one (1) or more levels of space or one (1) or more rooms or enclosed spaces located in one (1) or more floors (or parts thereof) in a building and bounded along such boundaries as shown on the building and floor plans attached hereto as Exhibit A, Sheets 1 through 33, inclusive, together with all facilities and improvements therein contained, excluding the land underneath same.

- (n) "UNIT IDENTIFICATION" shall mean that each Unit has a street address, a real estate tax key number, and a unit identification number, which shall be legally sufficient for all conveyance purposes. Said Unit information is set forth herein and on the Condominium Plat.
- (o) "UNIT OWNER IMPROVEMENTS" shall mean any Improvements located within a Unit, except utility lines and facilities.
- (p) "VOTING MEMBER" shall refer to the one person with respect to each Unit Ownership entitled to vote at any meeting of the Unit Owners.

**ARTICLE II**  
**PROPERTY AND UNITS:**  
**SUBMISSION TO ACT**

Section 1. SUBMISSION OF PROPERTY TO THE ACT: Declarant hereby submits the Subject Property described in Exhibit A and all buildings and improvements constructed or to be constructed thereon to the provisions of said Condominium Ownership Act (the "ACT"), pursuant to Chapter 703, Wis. Stats. (1999-2000) as amended.

Section 2. CONDOMINIUM UNIT IDENTIFICATION: Each Unit shall be specifically designated by its Unit Number as set forth in Exhibit A, Sheet 33, attached hereto. The Unit Number of each Unit and the post office street address, square footage and tax key number assigned by the Town of Brookfield are as follows:

UNIT NUMBER	ADDRESS	TAX KEY NUMBER	SQUARE FOOTAGE
Building 1			
1101	18825 Eagle Drive, #101	to be assigned	1,436
1102	18825 Eagle Drive, #102	to be assigned	2,014
1103	18825 Eagle Drive, #103	to be assigned	1,436
1201	18825 Eagle Drive, #201	to be assigned	2,044
1202	18825 Eagle Drive, #202	to be assigned	2,044
Building 2			
2101	18875 Eagle Drive, #101	to be assigned	1,436
2102	18875 Eagle Drive, #102	to be assigned	2,014

2103	18875 Eagle Drive, #103	to be assigned	1,436
2201	18875 Eagle Drive, #201	to be assigned	2,044
2202	18875 Eagle Drive, #202	to be assigned	2,044
Building 3			
3101	18925 Eagle Drive, #101	to be assigned	1,436
3102	18925 Eagle Drive, #102	to be assigned	1,436
3201	18925 Eagle Drive, #103	to be assigned	2,044
3202	18925 Eagle Drive, #201	to be assigned	2,044
Building 4			
4101	255 Aerie Circle, #101	to be assigned	1,436
4102	255 Aerie Circle, #102	to be assigned	2,014
4103	255 Aerie Circle, #103	to be assigned	1,436
4201	255 Aerie Circle, #201	to be assigned	2,044
4202	255 Aerie Circle, #202	to be assigned	2,044
Building 5			
5101	240 Aerie Circle, #101	to be assigned	2,967
5102	240 Aerie Circle, #102	to be assigned	2,967
Building 6			
6101	230 Aerie Circle, #101	to be assigned	1,436
6102	230 Aerie Circle #102	to be assigned	1,436
6201	230 Aerie Circle, #201	to be assigned	2,044
6202	230 Aerie Circle, #202	to be assigned	2,044
Building 7			
7101	220 Aerie Circle, #101	to be assigned	1,436
7102	220 Aerie Circle, #102	to be assigned	2,014
7103	220 Aerie Circle, #103	to be assigned	1,436

7201	220 Aerie Circle #201	to be assigned	2,044
7202	220 Aerie Circle, #202	to be assigned	2,044
Building 8			
8101	180 Aerie Circle, #101	to be assigned	1,436
8102	180 Aerie Circle, #102	to be assigned	2,014
8103	180 Aerie Circle, #103	to be assigned	2,014
8104	180 Aerie Circle, #104	to be assigned	1,436
8201	180 Aerie Circle, #201	to be assigned	2,044
8202	180 Aerie Circle, #202	to be assigned	2,044
Building 9			
9101	165 Aerie Circle, #101	to be assigned	1,436
9102	165 Aerie Circle, #102	to be assigned	2,014
9103	165 Aerie Circle, #103	to be assigned	2,014
9104	165 Aerie Circle, #104	to be assigned	1,436
9201	165 Aerie Circle, #201	to be assigned	2,044
9202	165 Aerie Circle, #202	to be assigned	2,044

As provided in the Act, every deed, lease, mortgage or other instrument may legally describe a Unit by its Unit Number and every such description shall be deemed good and sufficient for all purposes.

Section 3. DESCRIPTION AND LOCATION OF UNITS: The Condominium shall consist of nine (9) buildings containing a total of 42 Units (four (4) buildings containing five (5) Units; two (2) buildings containing four (4) Units; one (1) building containing two (2) units and two (2) buildings containing six (6) units), all as fully described in Exhibit A, Sheets 1 and 33, both of which are attached hereto and made a part of this Declaration. Each Unit to be constructed shall be under and pursuant to the building permit issued by the Town of Brookfield procured by Declarant. Units shall be constructed pursuant to the plans and specifications submitted by Declarant and approved by the Town of Brookfield and additionally, each Unit shall be required to comply with any and all municipal and private building and use restrictions and covenants. Declarant represents that the Units within each Building shall be comparable in quality to the others within said Building. The nine (9) Buildings are located as indicated on Exhibit A, Sheet 1. Construction shall be completed in phases as Units are sold in each building to prospective Unit Owners pursuant to the Plans and Specifications and Building Permits procured by Declarant.

Each Unit will contain central-forced air gas heat, central air conditioning, and water heater. Electricity, minimum 100 AMP service, shall be provided to each Unit on separate meters and shall be paid for individually by each Unit Owner. Water and sewer service shall be provided to each Unit on separate meters and shall be paid for individually by each Unit Owner. Each Unit Owner's liability for payment of common expense is set forth in this Declaration.

Each Unit shall have an attached minimum two(2) car garage which shall comply with this Declaration and all municipal ordinances of the Town of Brookfield. All Buildings, save for Building 5 which contains only two (2) Units, shall have a fire protection system as required by municipal codes.

For purposes of providing service to the common areas, a common water meter will be installed in each building in addition to a meter for each individual Unit. The water usage charge and related fees, including the fire protection charge assessed by the Town of Brookfield, will be billed for this common water meter to the Association and is the responsibility of the Association. If said bill would become delinquent it will be assessed on the tax roll for Unit 101 in the respective building. The Association is responsible to reimburse the Owner of Unit 101 for any charges and fees assessed against them related to the common water meter.

The Buildings are located as indicated on Exhibit A, Sheet 1. The foundation floor plans of each Building are shown on Exhibit A, Sheets 2 through 32, inclusive. The location and designation of each Unit, the Unit numbers and the street addresses of each Unit and the immediate Common Elements to which each Unit has access and the Limited Common Elements appurtenant to each Unit, are all shown on Exhibit A, Sheets 1 and 33. The approximate area, dimensions and number of rooms of each Unit within each Building are depicted on Exhibit A, Sheets 2 through 32, inclusive, but shall be ultimately determined based upon the plans and specifications submitted by Declarant and as are approved by the Town of Brookfield pursuant to the issuance of a building permit.

Section 4. BOUNDARIES OF UNITS: The boundaries of each Unit shall consist of that part of the cubic area of the building which is enclosed as follows:

- (a) The vertical boundaries of each Unit shall be the vertical plane of the walls bounding a Unit, the face of which coincides with the face of the wall studs, or, in the case of foundation walls, the face of the masonry foundation walls. The lower horizontal boundary of a Unit shall be the plane of the upper surfaces of the base floor of the lowest level of the Unit, and the upper horizontal boundary shall be the plane of the under surface of the joists supporting the ceiling of the highest level of the Unit.
- (b) All windows, window frames, and doors (including garage doors), including all glass and all screens in all windows and doors, shall be considered a part of the Unit. All attic space accessible exclusively from one Unit shall be considered part of that Unit. All installations for



providing power, light, gas, hot and cold water, heating, refrigeration and air conditioning exclusively to one Unit shall be considered a part of that Unit. All plaster, drywall, wallpaper, interior paint, carpet, carpet pad, vinyl flooring, finished wood flooring, crown and base moldings, and similar interior finishing and decorating shall be considered part of the Unit.

- (c) Plumbing and electrical fixtures serving a particular Unit, but not the Building generally, whether located within the Unit or the Common Areas of the Building, shall be maintained and repaired by and at the expense of the Owner of that particular Unit. Any changes in the heating or air-conditioning system servicing a particular Unit shall be made at the expense of the Unit Owner.
- (d) All installations for providing power, light, gas, hot and cold water, heating, refrigeration and air conditioning exclusively to one Unit shall be considered a part of that Unit. Any utility lines and plumbing equipment located outside of Units, and any utility lines and plumbing equipment contained inside the boundaries of a particular Unit but which service a different Unit, are common elements and shall be repaired and maintained by and at the expense of the EAGLES NEST CONDOMINIUMS OWNER'S ASSOCIATION, INC. (the "Association"), except as otherwise provided in this Declaration or the By-Laws of the Association. The furnace, water heater and air-conditioning system for each Unit are part of the respective Unit serviced by said items and shall be repaired and maintained by and at the expense of the Owner of said Unit.
- (e) A Unit Owner may make improvements or alterations within the Unit which do not affect in any manner, the Common Elements or the Limited Common Elements of the Condominium, provided, however, that all such work shall be performed and all contracts for such work shall be in compliance with this Declaration and the rules established by the Association. No alteration or improvement to the Unit which would affect the Common Elements or Limited Common Elements may be made by any Unit Owner without prior written consent of the Association, notwithstanding the provisions of Section 703.13(5)(a) of the Act. The conditions for consent shall include, but not be limited to, proper insurance coverages, indemnification from claims for injury to person or property, waivers or indemnification against construction liens and approval by an architect approved by the Association insofar as the work affects Common Elements and Limited Common Elements.

Section 5. INTERPRETATION OF PLANS: If any portion of the Common or Limited Common Elements shall encroach upon any Unit, or if any Unit shall encroach upon any other Unit or upon any portion of the Common or Limited Common Elements as a result of the duly authorized construction, reconstruction or repair of a building, or as a result of settling or shifting of a building, a valid easement for the encroachment and for its maintenance shall exist so long as the building stands. The existing physical boundaries of a Unit or Common Elements constructed or reconstructed in substantial conformity with the

Condominium Plat shall be conclusively presumed to be its boundaries, regardless of the settling or shifting of the building and regardless of minor variations between the physical boundaries described in this Declaration or shown on the Condominium Plat and the existing physical boundaries of any such Unit or Common Element.

Section 6. MODIFICATION OF PLANS: Declarant reserves the unilateral right to change, without the approval of the Unit Owners or the Condominium Association or any Mortgagee, the layout, location, dimensions and construction details of any building, Unit and Common and Limited Common Elements shown on the Condominium Plat which are not yet constructed, provided that such changes shall not substantially alter the nature, value and quality of the Building and Units therein constructed, and subject to the following:

- (a) Notwithstanding the above, Declarant reserves the right to change the number, size and dimension of the Buildings in which condominium Units are to be constructed as presently shown on the Condominium Plat, to larger or small residential building sizes, at its sole discretion, providing no building shall be constructed with more than eight (8) Units.
- (b) Declarant reserves the right to increase or decrease the square footage of any Unit and/or building, including but not limited to the right to increase or decrease the square footage of land area occupied by any or all buildings.
- (c) Such changes in the size of a Building, the number of buildings, the number of Units in a building, and/or the size of any Units shall not increase the total number of Units to be built within this condominium development.
- (d) In the event of any changes, Declarant shall record, from time to time, an Addendum to the Plat of this condominium development showing the changes, including, but not limited to, location, size and dimensions of said buildings and units with the appropriate designations thereof and any other recording necessities required by law at the time of the recording of the amendment.

Section 7. CONSTRUCTION IN PHASES: This condominium project will not be built at the same time, but rather in phases. It is the intent of Declarant to construct the residential condominium units in stages. The number and stages and start up and completion dates for said construction of the residential condominium units are within the sole discretion of Declarant.

**ARTICLE III**  
**COMMON ELEMENTS**

Section 1. DESCRIPTION OF COMMON ELEMENTS: The Common Elements shall consist of all areas except Units, and by way of explanation shall include:

- (a) The land described in this Declaration;
- (b) The driveways, parking area, signs, private road, paths and walkways located on the land;
- (c) All other parts of the property necessary or convenient to its existence, maintenance and safety, are normally common use;
- (d) The foundations, columns, girders, beams, overhangs, supports, main walls and roofs of the buildings;
- (e) Areas set aside for storage of maintenance equipment;
- (f) Installations for providing central services such as power, light, gas heating, fire protection sprinkler system and cold water;
- (g) Sanitary pumps, storm sewer, water line, controls, fans, compressors, ducts and, in general, all apparatus and installations intended for common use; or

Section 2. OWNERSHIP OF COMMON ELEMENTS: (a) Each Unit Owner shall be entitled to (i) ingress and egress over, upon and across the common area necessary for access to said Unit Owner's Unit; (ii) own an undivided interest in the Common Elements as a tenant-in-common with all other Unit Owners of the property, and (iii) except as otherwise limited in this Declaration, have the right to use the Common Elements for all purposes incident to the use and occupancy of such Owner's Unit as allowed by law and as permitted by this Declaration, all of which said foregoing rights shall be appurtenant to and run with such Unit.

- (b) Each Unit's fractional (also known as its percentage of ownership) ownership in the Common Elements shall be 1/42nd.
- (c) The percentage of ownership in the Common Elements shall be subject to such easements as have been granted or may hereafter be granted to the Town of Brookfield or to public utilities.

Section 3. USE OF THE COMMON ELEMENTS. Subject to the exclusive rights of each Unit Owner to the use and enjoyment of the Unit owned, each Unit Owner shall have the right to the use and enjoyment of the Common Elements in common with all other Unit Owners. The use of the Common Elements and the rights of the Unit Owners with respect thereto shall be subject to and governed by the provisions of the Act, this Declaration and any Association Rules and Regulations.

Section 4. LIMITATION ON USE OF COMMON ELEMENTS: Notwithstanding anything to the contrary set forth in this Declaration, the use of the Common Elements shall be restricted to those Unit Owners who are also "possessors" or "residents" of the Units. A "possessor" or "resident" of the Unit shall refer to either the

Tenant having possession of the Unit by virtue of a Lease with the Unit Owner or the Unit Owner occupying and possessing the Unit as said Unit Owner's residence.

Section 5. NO SEVERANCE OF UNIT OWNERSHIP. No Unit Owner may sell, convey or transfer any legal or equitable interest in said Owner's Unit without including the percentage of ownership interest in the Common and Limited Common Elements and facilities and in all assets and liabilities of the Association appurtenant to said Unit; and any deed, mortgage or other instrument purporting to affect one or more of such interests, without including them all, shall be deemed to include all such rights, title, interests and obligations of the Unit Owner.

Section 6. EASEMENTS FOR USE OF COMMON AREAS: (a) Each Unit Owners shall have a valid, exclusive easement to the space between the interior and exterior walls of said Unit Owner's Unit for purposes of adding additional utility outlets, wall hangings, erection of non-bearing partition walls, and the like, where space between walls may be necessary for such uses, provided that the Unit Owner shall do nothing to impair the structural integrity of any of the buildings, and provided further that the common element and facilities be restored to their former condition by the Unit Owner at Unit Owner's sole expense upon completion or termination of the use requiring the easement. Easements are hereby granted and declared for the benefit of the Unit Owners and the Association for the installation, maintenance and repair of common utility services located in and/or any part of the common elements or Units.

- (b) There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written consent of the Association except as specifically provided herein. No owner or possessor shall cause to be stored at the premises, any substance defined as a "Hazardous Substance" as defined or designated under Sec. 311 or 307(a) of the Federal Clean Water Act, Superfund Sec. 102, the Federal Resources Conservation and Recovery Act, Sec. 112 of the Federal Clean Air Act and Section 7 of the Federal Toxic Substance Control Act, or any amendments or additions thereto. Nothing shall be altered on, constructed or removed from the Common Elements except upon the prior written consent of the Association. No garbage or rubbish containers shall be placed or kept in any Common Elements, other than those areas designated by the Association therefore. No clothes line shall be maintained on the Common Elements, and said Common Elements shall not be used for hanging of clothes, rugs or other articles.

Section 7. MAINTENANCE OF COMMON ELEMENTS. Except for the Units and Unit Owner Improvements thereon which shall be the responsibility of each Unit Owner, the management, repair, alteration and improvement of the Common Elements and the Landscape Areas shall be the responsibility of the Association. Each Unit Owner shall pay, as an assessment, a share of the common expenses for maintenance, repair, replacement, administration and operation of the Common Elements and Landscape Areas in the same proportion as the Unit Owner's Percentage Interests. Payment thereof shall be in such amount and at such time as may be established in this Declaration. If a Unit Owner fails to pay such

assessment when due, the amount thereof shall constitute a lien on the respective Unit as herein provided. In addition to and in furtherance of the foregoing, the Association hereby states and covenants as follows:

(a) Association shall maintain in good repair the landscaping, natural area, drainage ways and drainage facilities and storm water management facilities and other site improvements which have not been dedicated to the Town of Brookfield and which are located within and upon the Condominium Property.

(b) In the event Association shall fail to fulfill Association's obligations set forth herein relative to such maintenance and repair and said failure by the Association threatens the health, safety or welfare of the public at large or the Town of Brookfield's ability to provide emergency services to the Unit Owners or possessors thereof, then, the Town of Brookfield, after providing not less than ten (10) days written notice to Association of Association's default and the opportunity to cure and failure of Association to initiate said repairs within three (3) business days of receipt said notice of default and repair, the Town of Brookfield shall have the right to enter onto the Condominium Property and undertake any and all necessary repairs as deemed appropriate by the Town of Brookfield and shall have the right to then specifically assess the Association for the cost and expense of the repairs so performed by the Town of Brookfield under and pursuant to this provision. Association shall then levy assessments against each Unit based upon, under and pursuant to this Declaration within thirty (30) days of the date the Association receives the notice of the amount of the assessment from the Town of Brookfield. Any assessment levied under and pursuant to this provision shall commence to accrue interest thirty (30) days after being levied against the Unit at an interest rate 1% above the Town of Brookfield's then current borrowing rate. This provision shall not be amended nor repealed without the written consent of the Town of Brookfield.

Section 8. NO PARTITION OF COMMON ELEMENTS: There shall be no partition of Common Elements through judicial proceedings or otherwise until this Declaration is terminated and the property is withdrawn from its terms or from the terms of any statute applicable to condominium ownership; provided, however, that if any Unit shall be owned by two or more co-owners as tenants-in-common or as joint tenants, nothing herein contained shall be deemed to prohibit a voluntary or judicial partition of said Unit ownership between such co-owners.

#### ARTICLE IV LIMITED COMMON ELEMENTS

Section 1. DESCRIPTION OF LIMITED COMMON ELEMENTS AND FACILITIES: A portion of the Common Elements and facilities, designated as "Limited Common Elements and Facilities," are designated on the Condominium Plat and service and/or are appurtenant to one and only one Unit, whether or not specifically designated as such on said Condominium Plat. The exclusive use of said Limited Common Elements shall be reserved the Owner or occupant of the Unit to which they are appurtenant, to the exclusion

of all other Units and Unit Owners in the condominium. These are the areas immediately in front of garages, patios and decks, balconies, driveways and walkways which service one Unit and the Yard Area described below. Each Unit Owner shall be entitled to the exclusive use and possession of these Limited Common Elements, direct access to which is provided for said Unit Owner's respective Unit, and which is located outside of and adjoining said Unit Owner's respective Unit. The Yard Area shall refer to that area of land directly adjacent to, in the front and the rear of and surrounding a Unit Owner's Unit.

Section 2. PATIOS, DECKS AND PORCHES: All patios, decks and porches, including but not limited to, those covered with a roof or awning and/or enclosed with windows and/or screens, are Limited Common Elements appurtenant to the Unit to which same are attached. Declarant has the express right to construct patios, decks and/or porches, including but not limited to those covered with a roof or awning and/or enclosed with windows and/or screens, at the time of initial construction of any Unit. After the sale of a Unit by Declarant, or the completion of construction of a Unit, whichever is later, the Unit Owner may, (i) if approved by the Association, in the Association's sole discretion, (ii) subject to such approvals and permits as may be required by the municipality in which the condominium is located and (iii) subject to compliance with the requirements of Sec. 703.13(5m), Wis. Stats., add one or more patios, decks and/or porches, including but not limited to those covered with a roof or awning and/or enclosed with windows and/or screens. Any such patio, deck and/or porch added by a Unit Owner shall be located in the side and/or rear yard of the Unit. No patio, deck or porch shall be added by any Unit Owner without the approval required pursuant to this Declaration. The Unit Owner shall be solely responsible for all costs of maintaining and repairing all patios, decks and porches appurtenant to such Unit, including any roof or awning covering same, and including any windows or screens enclosing same. A Unit Owner adding a deck, patio and/or porch shall reimburse the Association, upon demand, for all costs and expenses incurred by the Association relating such addition, and/or the approval thereof, including but not limited to the cost of preparing and recording an addendum to the Condominium Plat showing such addition, and, if applicable, Architect's and engineer's fees. Any such costs and expenses not timely paid shall constitute a special assessment against such unit, whether or not the Unit Owner actually proceeds with the construction of the addition. Unless otherwise specifically authorized by the Association, the Association shall have no liability for repair or maintenance for Unit Owner additions to Limited Common Elements or to said Limited Common Elements once improved by the Unit Owner.

Section 3. USE. The manner of use of the Limited Common Elements shall be governed by this Declaration, the By-Laws of the Association, and such rules and regulations as may be established by the Association. No Unit Owner shall alter, remove, repair, paint, decorate, landscape or adorn any limited common element, or permit such, in any manner contrary to this Declaration, the By-Laws and/or the rules and regulations. No major or structural changes or alterations shall be made by any Unit Owner to any of the Limited Common Elements without the prior, written approval of the Association, which approval may be given or denied upon such terms and conditions as the Association deems appropriate. Patios, terraces, decks or balconies shall not be used for any storage of any kind, including, but not limited to, the storage of motorcycles, baby carriages, bicycles or wagons, nor shall patios, terraces, decks or balconies be used for the drying or airing of laundry, carpets, rugs or clothing. Furthermore, no grills shall be used or stored on patios,

terraces, decks or balconies, unless they are of a type using a cover in place while in use and comply with all applicable municipal ordinances. No clotheslines shall be hung in Common or Limited Common Elements.

Section 4. CONVEYANCE OF LIMITED COMMON ELEMENTS: A Unit Owner may not convey said Unit Owner's right to use any Limited Common Element pertinent to said Unit Owner's Unit to any other Unit Owner except for parking stalls. The use of the Limited Common Element so conveyed shall thereupon become appurtenant to the Unit owned by the Grantee. Such conveyance shall be upon a form approved for use by the Association and shall be recorded in the office of the Register of Deeds for Waukesha County. Such instrument shall provide that upon recording the original document it shall be returned to the Secretary of the Association. After such conveyance, the conveying Unit Owner shall have no further right to use the Limited Common Element so conveyed, and Limited Common Element shall thereafter be appurtenant to the Unit owned by the Grantee, as specified in the conveyance form, until further conveyance. A Unit Owner may not lease a parking stall to anyone other than an Owner or occupant of another Unit.

Section 5. IMPROVEMENTS TO LIMITED COMMON ELEMENTS: A Unit Owner shall comply with, among other requirements set forth herein, Sec. 703.13(5m), Wis. Stats. as to any improvement to a Limited Common Element.

## ARTICLE V

### OTHER PROPERTY RIGHTS AND OBLIGATIONS OF OWNERS

Section 1. USE AND RENTAL OF UNITS: (a) The buildings and the Units contained therein, and the common and Limited Common Elements, are intended for and restricted exclusively to residential use as governed by the terms and conditions contained herein, the By-Laws and rules and regulations of the Association.

(b) A Unit shall not be rented for transient or hotel purposes, which shall be defined as: (i) any rental for periods of less than thirty (30) days; or (ii) any rental if the occupants of the Unit are provided customary hotel services, such as room service for food and beverage, maid service, bellboy service or laundry service.

(c) Any lease or rental agreement for Units shall comply with Sec. 703.315, et. seq., Wis. Stats.

Section 2. USE OF UNITS BY DECLARANT. Until such time as Declarant has sold all of its Units in the condominium, Declarant shall have the right to use any or all unsold Units, and any portion of the common elements as may be necessary to expedite the sale of Units, including but not limited to the maintaining of a sales office, the maintaining of one or more model Units, the holding of open houses and the erecting of signs. Declarant shall comply with the By-Laws governing the leasing and rental of Units.

Section 3. USE OF PARKING AREAS: Parking areas (including driveways on which parking is allowed), whether designated as a part of a Unit or as Common Elements or Limited Common Elements, shall be used only for the parking of private passenger automobiles, pickup trucks, motorcycles and bicycles. Such vehicles shall at all times, be in running condition and bear current license plates. Persons using such parking areas shall, at reasonable times, for a reasonable period and upon reasonable notice, remove their vehicles therefrom to permit the parking areas to be maintained, repaired, resurfaced, repainted, striped or to permit cleaning thereof or the removal of snow therefrom or for similar purposes.

Section 4. PROHIBITION OF DAMAGE AND CERTAIN ACTIVITIES: Nothing shall be done or kept in any Unit or in the Common Elements or any part thereof which would increase the rate of insurance on the premises or any part thereof over what the Association, but for such activity, would pay, without the prior written consent of the Association. Nothing shall be done or kept in any Unit or in the Common Elements or any part thereof which would be in violation of any Statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Elements or any part thereof shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by said Unit Owner or said Unit Owner's invitee, to the Association or their Owners. No noxious, destructive or offensive activity shall be carried on in any Unit or in the Common Elements as may become an annoyance or nuisance (including the use of HiFis, stereos, musical instruments, televisions or radios at such time or in such volumes of sound as to be objectionable) to any other Owner or to any other person at any time lawfully occupying the Unit.

Section 5. SUBDIVISION OF UNITS: Units shall not be divisible or subject to division or partition.

Section 6. RULES AND REGULATIONS: No Owner shall violate the rules and regulations for the use of the Units and of the Common Elements as may be adopted, from time to time, by the Association.

Section 7. DELEGATION OF USE: Any Owner may delegate, as may be allowed by and in accordance with the By-Laws and this Declaration, said Unit Owner's right of enjoyment of the Common Elements and facilities to the tenants of said Unit Owner's Unit or contract purchasers of said Unit Owner's Unit and only to said individuals.

Section 8. CONSTRUCTION: In the event any construction or remodeling work shall be performed in or about a Unit by a Unit Owner, or said Unit Owner's contractors, agents, servants, and/or employees, said Unit Owner shall be responsible for maintaining and keeping the Common Elements and public areas such as public walks and drives free and clear of debris, dust, and construction materials, and promptly cause the removal of such debris, dust and construction materials as may be placed thereon and shall be responsible for the cost of repairing or replacing any damage to said Common Elements.



