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Kristin  
Down*

Original

DECLARATION OF RESTRICTIONS

KRISTIN DOWN

This Declaration of Restrictions is made as of July 26, 1976, by Kristin Down Joint Venture, (a joint venture consisting of M. C. Development Co., Inc and Rite Realty Corp.) (the "Developer").

PRELIMINARY RECITALS

The Developer owns certain real estate in Muskego, Wisconsin (the "City") subdivided into 83 single-family lots, together with outlots 1 through 4, which is known as Kristin Down (the "Subdivision"): The Developer desires to subject the Subdivision to the conditions, restrictions, covenants, reservations and easements set forth in this Declaration of Restrictions for the benefit of the Subdivision and the owners of it as a whole and for the benefit of each separate owner of any part of the Subdivision.

NOW, THEREFORE, the Developer hereby declares that the Subdivision (including the real property described in this Declaration of Restrictions and all buildings, improvements, easements and appurtenances) shall be used, held, transferred, sold and conveyed subject to the conditions, restrictions, covenants, reservations and easements set forth in this Declaration of Restrictions, which shall inure to the benefit of and pass with such property and each and every parcel thereof, and shall apply to and be binding upon any owner thereof and any successors in interest to such owner.

ARTICLE I

GENERAL PURPOSE; PROPERTY SUBJECT TO THIS DECLARATION OF RESTRICTIONS

Section 1.01. General Purpose. The general purpose of this Declaration of Restrictions is to help assure that the Subdivision will become and remain an attractive community and toward that end to preserve and maintain the open spaces and recreational areas now in existence or as may hereafter be constructed by the Developer and conveyed to the Association within and in the vicinity of the Subdivision; to insure the best use and the most appropriate development and improvement of each Lot; to protect

owners of Lots against such use of surrounding Lots as will detract from the residential value of their property; to guard against the erection on Lots of poorly designed and proportioned dwellings and structures; to obtain harmonious use of material and color schemes; to insure the highest and best residential development of the Subdivision consistent with the purposes for which it is platted; to encourage and secure the erection of attractive dwellings and structures on Lots with appropriate locations thereon; to maintain proper spatial relationship of dwellings and structures to other dwellings and structures and Lot lines; and to provide for the maintenance repair and upkeep of property as to which the Lot owners have a common right of usage, even though constructed and developed and conveyed to the Association after the date hereof. It is recognized that the Developer may construct and develop certain property on outlots which is intended to be for the common usage of all owners of Lots in the Subdivision, such as a water system to provide water to the Subdivision, and certain recreational facilities, such as playground areas, tennis courts, swimming pools, parkways and the like, and will convey such property to the Association even though constructed and developed by the Developer, and conveyed to and accepted by the Association after the recording of this Declaration of Restrictions. All deeds of conveyance for the Lots shall be subject to this Declaration of Restrictions and this Declaration allows and requires the Association to confer upon Lot owners unilaterally a common right of usage in such property conveyed to and accepted by it, even though the Association acquires such property after the date the Lot owner acquires his Lot.

Section 1.02. Property Subject to Declaration. The following property is subject to this Declaration of Restrictions:

Lots numbered one through eighty-three and Outlots one, two, three and four in "Kristin Down", a part of the Southeast 1/4 and Southwest 1/4 of Section 9, Town 5 North, Range 20 East, City of Muskego, Waukesha County, Wisconsin, according to the Plat thereof recorded on June 10, 1976 in Vol. 43 of Plats at Pages 84 through 86 as Document No. 954014.

## ARTICLE II

### DEFINITIONS OF TERMS

Section 2.01. Approving Agent. The "Approving Agent" means the person or persons designated in the By-Laws of the Association, or in the

manner specified in such By-Laws, as the person or persons whose approval must be obtained when required under the provisions of this Declaration of Restrictions. Until the Developer has sold all of the Lots in the Subdivision, the Approving Agent named in the By-Laws of the Association is either Raymond J. Gray or Jeffrey N. LaBonte, whose business address is 11063 West Bluemound Road, Wauwatosa, Wisconsin, 53226. The written approval of either of them shall be a sufficient approval required by this document. After the Developer has sold all of the Lots in the Subdivision, the Approving Agent shall be the chairman of the Architectural Control Committee established by the Board of Directors of the Association, who shall act as directed by majority vote of the Committee.

Section 2.02. Association. "Association" means the Kristin Down Homes Association, Inc., a nonstock, not-for-profit Wisconsin corporation, or any corporate successor to such corporation.

Section 2.03. Dwelling. "Dwelling" means a building which is intended to be used for, and is in fact used for, residential living purposes of a single family.

Section 2.04. Single Family. "Single Family" means one or more than one person living, sleeping, cooking or eating in a dwelling as a single housekeeping group, but does not include a group or groups of persons where three or more persons of such group or groups are not household employees or related by blood, adoption or marriage.

Section 2.05. Lot. "Lot" means a lot in the Subdivision platted for residential development (Lots 1 through 83), but does not include any platted pedestrian walkways, common areas, or outlots.

### ARTICLE III

#### USE OF LOTS AND SIMILAR MATTERS

Section 3.01. Architectural Control. All dwellings shall be designed by a registered architect, a professional engineer experienced in home design, or an equally qualified individual or firm. No dwelling, wall, fence or other structure shall be erected, placed, or altered on any Lot until the building plans, specifications and plat of survey showing the location thereof has been approved in writing by the Approving Agent as to quality, materials, harmony of external design and colors with existing or planned dwellings; as to location with respect to typography, set backs, finished

grade elevations, driveways and plantings; and as to compliance with all applicable restrictions contained in this Declaration of Restrictions. The Approving Agent shall have the exclusive right to determine whether the restrictions and requirements of this Article III are or will be fulfilled by any proposed construction of a dwelling on any Lot. A Lot owner shall obtain the written approval of the Approving Agent, prior to commencement of construction, that the proposed construction fulfills the requirements of this Article and is not in violation of any of the restrictions of this Article. Any approval or disapproval by such Agent shall be binding, final and conclusive. Upon approval by the Approving Agent, and upon receipt of all necessary municipal or other governmental approvals, consents and permits, construction may be commenced by the Lot owner. In the event that the Approving Agent fails to act upon any matter duly submitted for his approval within 30 days after such submission, such Agent's approval shall be deemed to have been denied. In the event that the Approving Agent's written approval is obtained, no rights shall exist to enforce any covenants contained in this Declaration of Restrictions insofar as there is any immaterial deviation from the restrictions contained in this Article.

Section 3.02. Single Family Lots; Minimum Living Areas. No Lot within the Subdivision shall be used except for single-family residential purposes. No dwelling shall be erected, altered, placed, or permitted to remain, on any Lot other than one detached, single-family dwelling, not exceeding 2-1/2 stories in height, an attached garage for at least one but no more than 2-1/2 cars, and other outbuildings incidental to the residential use of the Lot. The minimum living area of each single-family dwelling shall be either a:

- (i) One story dwelling containing no less than 1,400 square feet on the first floor;
- (ii) One and one-half or two story dwelling, with no less than 1,000 square feet on the first floor, and no less than 1,600 feet in total; or
- (iii) Tri-level dwelling with no less than 1,400 square feet in total on the two highest levels.

Section 3.03. Dwelling Location. No dwelling, excluding eaves, steps, and open porches, and no garage, shall be located on any Lot nearer to the front Lot line than 30 feet, nearer to a side street line

than 25 feet, nearer to the sideline of an adjoining Lot than 10 feet, or nearer to a rear Lot line than 30 feet. The appurtenances which are excluded from the setback requirements of the preceding sentence (eaves, steps and open porches), shall be located so as not to encroach upon any other Lot to the extent that such appurtenances are located outside of the dwelling setback lines, and the Approving Agent shall determine the extent, if any, to which such appurtenances shall be set back from Lot lines. For the purposes of this section, each corner Lot shall be deemed to have one rear Lot line and one side Lot line, as determined by the Approving Agent from the orientation of the proposed dwelling thereon.

Section 3.04. Garages. All dwellings shall be designed and constructed with attached garages for the on-site storage of at least one but not more than 2-1/2 cars. NO DETACHED GARAGES ARE PERMITTED. Each garage shall be connected to a street by a properly surfaced driveway, shall be located within the building setback line as established under section 3.03 of this Declaration of Restrictions, shall harmonize with the dwelling as to design, materials and finished floor elevations, and shall be a part of or attached to the dwelling. All driveways shall be constructed of bituminous concrete or cement concrete and no other construction method shall be allowed.

Section 3.05. Preservation of Trees. No existing tree with a diameter of two inches or more at a height of four feet from the ground further than three feet from an approved dwelling location shall, without approval of the Approving Agent, be cut down, destroyed, mutilated, moved or disfigured. All existing trees shall be protected during construction and preserved by wells or islands, and proper grating, in such manner as may be required by the Approving Agent.

Section 3.06. Ground Fill and Excavation Earth. If it is necessary to place ground fill on a Lot to obtain the proper topography for finished ground elevation, such ground fill shall be free of waste materials and shall not contain noxious materials that will give off odors of any kind. All ground fill material shall be leveled immediately upon completion of the dwelling. Any excess excavation earth shall be removed from the Lot and deposited within a radius of one mile of the Subdivision where directed and approved by the Approving Agent.

Section 3.07. Plat of Survey. It shall be the responsibility of each owner of a Lot in the Subdivision to procure, prior to the commencement of construction and at his cost and expense, a plat of survey prepared by a land surveyor registered in the State of Wisconsin, showing the proposed location of all dwellings and other structures to be constructed on the Lot. The plat of survey shall further disclose the existing and approved final grade at all Lot corners, and the existing and approved final grade at the dwelling.

Section 3.08. Lot Grade. All grading of each Lot in the Subdivision shall be properly sloped, installed and maintained to the indicated elevation shown on the approved master grading plan. (The master grading plan is on file with the Approving Agent and available for inspection by a Lot owner or his authorized agent during normal business hours.) Any acceptable variance from the proposed grade shall be valid only when approved in writing by the Approving Agent.

Section 3.09. Site Distance at Intersections. No fence, wall, hedge, shrub, planting or other construction which obstructs site lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at point 30 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same site line limitations shall apply on any Lot within ten feet from the intersection of a street property line with the edge of a driveway pavement. No trees shall be permitted to remain within such distances at such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such site lines.

Section 3.10. Nuisances. No noxious odors shall be permitted to escape from any dwelling, other structure or from the Lot, and no activity which is or may become a nuisance or which creates unusually loud sounds or noises shall be suffered or permitted on any Lot.

Section 3.11. Temporary and Certain other Structures. No structure of a temporary character, and no trailer, mobile home, basement, tent, shack, barn, modular home, prebuilt home, sectional home or double-wide home, or other similar outbuilding, shall be permitted to exist on any Lot at any time, either temporarily or permanently.

Section 3.12. Signs. No sign of any kind shall be displayed in public view on any Lot, except one sign of not more than five square feet advertising the property for sale, or a sign used to advertise property during the construction and development of the Subdivision. All signs shall be located within the building setback lines as set forth in this Declaration of Restrictions.

Section 3.13. Restriction on Animals, Etc. No animals, live-stock, or poultry of any kind, shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that such pets are not raised, bred or kept for any commercial purpose, or allowed to annoy neighbors.

Section 3.14. Sewage Disposal and Water Systems. Each dwelling in the Subdivision shall be connected to the municipal sewage disposal system and the Association water system (which water system will be transferred to the Association upon completion by the Developer), and no individual septic tank or sewage system, or individual water system shall be permitted.

Section 3.15. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such refuse shall be kept in a clean and sanitary condition and suitably screened from view from streets.

Section 3.16. Antenna. Except for one rooftop television antenna which extends not more than ten feet above the highest point in the roof line of any dwelling, no external antenna, towers or similar devices or structures shall be erected.

Section 3.17. Utility Wires. All exterior surface and utility wiring, including surface drops to dwellings, shall be installed underground, and no overhead wires shall be permitted within the Subdivision, except such overhead wires as may have been installed prior to the recording of this Declaration of Restrictions.

Section 3.18. Fences and Walls. No fences or walls shall be permitted to extend beyond minimum front building setback lines established under the Declaration of Restrictions. No cyclone fences and no fences or walls over 48 inches in total height shall be permitted on any Lot, except fences which enclose swimming pools and which are set back at least ten feet from each side Lot line and at least 15 feet from each rear Lot line. No fences or walls of any height shall be permitted on any Lot except upon written approval by the Approving Agent.

Section 3.19. Building Materials and Roof Colors. Every dwelling and other building erected in the Subdivision shall have all exterior exposed wall surfaces constructed of veneers of either stone, brick, or masonry, or siding of wood or metal, or any combination of the foregoing materials. No dwelling or structure on any Lot shall be permitted to have a roof of a color other than black, white, off-white or natural wood, except that the Approving Agent, in his discretion, may grant approvals of other colors harmonious with the foregoing.

Section 3.20. Sodding and Lawn Maintenance. The owner of each Lot (other than the Developer) shall promptly upon completion of construction of the dwelling on the Lot, seed or sod the Lot to the boundaries of the Lot lines. Each owner of a Lot shall cut his grass periodically to a reasonable height.

Section 3.21. Lots to be Promptly Developed. The purchaser of a Lot from the Developer shall enter into a contract, not later than twelve months after the date of conveyance of such Lot by the Developer to the purchaser, for the construction of a dwelling on the Lot, and shall cause such construction to be commenced with reasonable promptness after acquiring title and entering into such construction contract, taking into account weather and other conditions beyond the purchaser's control. In the event that the dwelling is not completed within the time limitations set forth in this section, the Board of Directors of the Association shall have the right to charge the purchaser an amount, not exceeding \$10 for each day that such construction is not completed within the time limitation set forth in this section through the date of completion of construction, in such total amount as determined by the Board of Directors of the Association. Any such amount so fixed and determined by the Board of Directors of the Association shall be due and payable within 30 days from the date of submission of an invoice to the purchaser for such amount. In the event that such amount is not paid within such 30 day period, the Association shall have such rights as set forth under Article VI to enforce collection of such charges.

Section 3.22. Restriction on Certain Motor Vehicles. No truck, trailer, motor home or similar vehicle shall be stored or kept in the front or side yards of any lot and in no event shall a semi type tractor or trailer be kept or stored on any lot. No motorized recreational vehicle, including snowmobiles and trailbikes shall be used or operated on any of the outlots.

#### ARTICLE IV

#### CERTAIN EASEMENTS AND SURFACE DRAINAGE

Section 4.01. Utility and Surface Drainage Easements. In addition to any easements shown on the recorded plat of the Subdivision, there is hereby reserved, for utility and ground water surface drainage, an easement ten feet in width extending along the rear ten feet of each Lot in the Subdivision, including each outlot. The Developer and/or the Association shall have the right to grant formal written easements to the area referred to in the preceding sentence, to utility companies furnishing such utilities, granting to the utility companies the right to construct, repair and maintain such utilities within the easement reserved under this section 4.01. Such utility easements may include the right of the utility companies to enter into the easement area to construct and maintain the utility services provided by the utility company.

Section 4.02. Water System Easements. In addition to any easement shown on the recorded plat, there is further reserved the following easements:

- (i) An easement 15 feet in width extending along the east property line of Lot 36, (which is the common property line dividing Lots 36 and 37);

- (ii) An easement five feet in width extending along the west property line of Lot 80 (which is the common property line dividing Lots 80 and 81);
- (iii) An easement five feet in width extending along the east property line of Lot 81 (which is the common property line dividing Lots 81 and 80).

The easements reserved under subsections (i) through (iii) affecting Lots 36, 80 and 81, respectively, shall be for the purpose of constructing, inspecting, repairing and maintaining water mains used to provide water to the Subdivision. The Developer shall have the right to evidence the easements so reserved by a formal written easement to the Association affecting Lots 36, 80 and 81, but notwithstanding the failure to evidence the easements reserved, Lots 36, 80 and 81 shall be subject to the easement reserved and the Developer and/or the Association shall have the right to enter upon the easement area and to construct thereon water mains, and to inspect, repair, maintain and replace such mains and to bring equipment upon the property, excavate earth, shore such excavation and do all other acts and things necessary or desirable to effectuate the purpose of the reserved easements, provided that the Developer or the Association (after the Developer has conveyed the water system to the Association) shall either pave or fill in and sod or seed the easement area after completion of construction or of the repair, maintenance or replacement work.

Section 4.03. Surface Drainage. The rear ten feet of each Lot shall be graded and maintained so as to permit the unobstructed flow of surface water along the vicinity of the rear of the Lot to catch basins or to logical points of discharge into the street gutters, or into any water courses, provided, however, where typography does not permit a drainage swale within the rear ten foot easement as provided in this section, the easement and drainage shall be located as indicated on the master grading plan. Surface water drainage swales shall be created and maintained along all side Lot lines to prevent flow toward adjacent dwellings. Swales to carry surface water along rear and side Lot lines shall be mutually shared by adjacent owners of Lots. The centerline of the swale shall be on the common Lot line unless a variance is required under the master grading plan or is granted or approved in writing by the Approving Agent. The location of the proper course and method of drainage swales to provide for all surface drainage on each Lot shall be determined by the Approving Agent, on the basis of and substantially consistent with the approved master grading plan.

## ARTICLE V

### WATER SYSTEM

Section 5.01. Initial Construction of System. The Developer

reserves the right to construct wells and install pumping and storage facilities upon the outlots in the Subdivision, to cause water mains to be constructed to such wells and to install such water mains in roads or streets, outlots, and across Lots 36, 80 and 81 (as set forth in the easement reserved pursuant to section 4.02), all in such a manner as to cause water to be available for lateral connections to service Lots or recreational facilities. The foregoing water facilities are referred to as the water system. The Association is hereby granted the right and obligation to operate and inspect, maintain, repair and replace the water system for the owners of Lots in the Subdivision and for their common benefit, subject to the terms and restrictions set forth in the Declaration of Restrictions on and after completion of said system by the Developer. The Association shall have an easement to repair, maintain and replace all wells, pumping and storage facilities and water mains constructed in the Subdivision, and each Lot shall be held and owned subject to the terms and conditions of this Article V and the owners of such Lots shall have the right from time to time to take water from the water system.

Section 5.02. Ownership of Water System. Every owner of a Lot shall be the beneficial owner of an undivided interest in and to the water system on and after its completion by the Developer, which beneficial ownership shall run with the land. Beneficial ownership shall terminate upon any person ceasing to be an owner of a Lot. For purposes of this Article V, an owner shall include the holder of fee record title to a Lot, unless such holder is the vendor under a recorded land contract, in which event the owner shall be the vendee under the land contract. Where two or more persons are joint or co-owners of a Lot, the beneficial ownership of the undivided interest in the water system with respect to that Lot shall be joint.

Section 5.03. Lateral Connection to the Water System. Each Lot owner shall connect laterals to the water main for the purpose of supplying water to the Lot owned by such owner, in such manner as is directed by the Association. The construction and connection of any lateral shall be at the sole cost and expense of the owner of the Lot connecting to the water system.

Section 5.04. Use. The owner of each Lot shall have the right to the free and unobstructed use of the water system, subject to any rules and regulations created under section 5.06, and subject to the same rights as the owners of each other Lot, to the end that all of such owners may draw water from the water system. The water system shall be for domestic use only. The Association shall have the right to use, without charge, water from the water system to fill and maintain any swimming pool constructed in the subdivision, and to maintain all common areas.

Section 5.05. Municipality Use. The City of Muskego or any successor municipality shall have the right to draw water from the water system through fire hydrants, without charge to the municipality.

Section 5.06. Rules and Regulations. The Association shall have the power to adopt rules and regulations relating to the use of water and the allocation thereof, as may be established from time to time by the Board of Directors of the Association or the water system committee thereof. Such rules and regulations can include, but shall not be limited to, the right to allocate water usage during periods of drought, water shortage or otherwise.

Section 5.07. Charges. Owners of Lots connected to the water system shall pay the following amounts to the Association, which amounts shall be used for the inspection, repair, maintenance, replacement, taxes and any and all other expenses incident to the operation and maintenance of the water system:

- (i) Until such time as the Developer owns no further Lots in the Subdivision, the owner of each Lot which has been connected to the water system, shall pay to the Association the amount of \$30 for each calendar quarter, payable on the first day of each calendar quarter. An appropriate proration as of the first day of the month in which such connection is completed shall be made; and
- (ii) On and after the date that the Developer owns no further Lots in the Subdivision, the Association may charge an equal quarterly rate for each owner of a Lot in the Subdivision (which rate shall be established by the Association as required under Article VI in an amount representing an amount necessary to establish a reserve for inspection, repair, maintenance and replacement, plus the estimated annual operating expense of the system (including but not limited to minor repairs, service calls, electricity and the like) or the Association may require that each Lot owner pay an amount determined by each such Lot owner's usage, as reflected on water meters to measure each Lot owner's usage of water. The Association may require each Lot owner to install a water meter to measure such individual water usage. It is understood that any rates and service charges shall be formulated so as not to recoup, or produce any return on, the initial capital cost of installing the water system.

Section 5.08. Use of Funds. All funds received by the Association under this Article shall be utilized for inspection, repair, maintenance and replacement of the water system, except that in no event shall any replacement reserve exceed 50% of the estimated replacement costs of the water system as may be determined by the City of Muskego or its consulting engineers. All such reserve funds shall be maintained by the Association in a federally insured savings account.

Section 5.09. Additional Assessments. In the event that the funds received by the Association as set forth in this Article are inadequate to allow the Association to discharge its obligations under this Article, the Association shall have the power to increase its water charges or impose an assessment against its members.

Section 5.10. Default. If any owner of a Lot shall fail to pay the quarterly charges levied for the maintenance and repair of the water system within 15 days after the mailing of an invoice for such quarterly charge, then upon 5 days notice, and in addition to the Association's rights under Article VI, the water service to the Lot may, at the option of the Association, be discontinued, and for that purpose the Association is empowered to disconnect and sever any Lot from the water system. Water service may be reinstated upon payment of all charges in arrears, together with the cost of disconnecting and reconnecting the water service. Any unpaid water charges or assessments, in addition to being cause for termination of service, shall also constitute a lien on the Lot and may be foreclosed in the manner provided in Article VI.

Section 5.11. Books of Account. The Association shall keep true and correct accounts of all items of income and expense, which accounts shall be subject to the inspection of any owner of a Lot. Further, the Association shall furnish an annual accounting to each owner within 90 days after the end of any calendar year concerning all items of income, expense, repair, maintenance and capital improvement relating to the water system.

Section 5.12. Termination. The operation of the water system under the management of the Association shall continue till such time as provision for water for the Subdivision shall have been made available by a public utility or municipality, at which time the provisions of this Article V shall terminate, and any asset pertaining to the water system shall be transferred to the municipality without consideration if required by the municipality, or distributed to the owners of Lots as determined by the Association. If such public utility or municipality orders the owners of Lots to disconnect from the wells and mains, and to connect to a water main provided by such utility or municipality, such Lot owners shall promptly comply with such order. If the public utility or municipality permits the continued operation of the water system for lawn or garden purposes, the Association shall continue to operate the same until such operation is terminated by the Association.

## ARTICLE VI

### MAINTENANCE AND ASSESSMENTS

Section 6.01. Maintenance Assessments. The owners of all Lots shall be subject to an annual maintenance assessment for the purpose of defraying the costs and expenses of the Association in carrying out its stated purposes and functions, including defraying the costs and expenses of maintaining and administering such properties as shall have been conveyed to the Association and accepted by it for the common use and enjoyment of all Association members (either before or after the date hereof), including, but not limited to, recreational facilities, outlots 1 through 4, paths, playgrounds, tennis courts, swimming pools and related facilities, and the water system. The Board of Directors of the Association shall prepare and annually submit to the association members a budget of the expenditures which it proposes to make for the ensuing calendar year, which budget shall be submitted at the annual meeting of the membership of the Association. Such budget shall include the expenses of maintaining the necessary organization of the Association, including salaries to officers (if any), fees paid for auditing books of the corporation and for necessary legal services and counsel fees to the Board of Directors or any committees thereof. The Board of Directors shall apportion the cost of operating the water system (including inspection, repair, maintenance and replacement) and separate such costs from the other expenses of the budget and shall include the expenses of the water system maintenance only in the levy against those Lots which may be improved with a dwelling on the date when the levy is ordered, and no portion of such costs shall be assessed against the vacant Lots or the owners of such vacant Lots. Prior to the date that the Developer owns no further Lots in the Subdivision, the cost of operating such system is fixed at \$30 per calendar quarter for each Lot owner connected to the system, and no further budget or approval by the Board of Directors or membership of the Association shall be necessary. Also, the levy for the water system shall be based upon estimated costs as determined under Article V.

Section 6.02. Approval of Budget. The annual budget shall be approved by a majority of the membership of the Association at its regular annual meeting or any adjournment thereof. Upon the adoption and approval of the annual budget, the Board of Directors of the Association shall levy an assessment against all of the Lots and the owners thereof for the ensuing calendar year, provided that the maximum assessment (exclusive of water charges and assessments) against each Lot owner thereof, shall not exceed \$150 per calendar year. Each owner of a Lot, or their predecessors in title, assume and agree to pay the costs of maintaining the property set forth in section 6.01 and in Article V hereof.

Section 6.03. Payment Dates. The Board of Directors of the Association shall declare the assessments so levied due and payable within 30 days from the date of such levy (except assessments for the water system

shall be due and payable on the first day of each calendar quarter), and the secretary of the Association shall notify the owner of every Lot so assessed of the action taken by the Board of Directors, the amount of the assessment for each Lot owned by him, and the date his assessment becomes due and payable. Such notice shall be mailed to the owner of the Lot at his last known post office address by the secretary of the Association by United States mail, with postage paid.

Section 6.04. Assessments to Enforce Compliance with Declaration of Restrictions. The owners of Lots who are in violation of this Declaration of Restrictions shall also be subject to any special assessments which the Board of Directors of the Association may impose for the purpose of defraying expenses incurred by the Association incident to the enforcement of the Declaration of Restrictions with respect to the condition of any Lot which is in violation of the Declaration, or for the purpose of removing weeds, grass and any other unsightly or undesirable objects from the Lot so assessed which is vacant, unimproved or unkempt. Such special assessments shall be due and payable within 90 days after the Board of Directors of the Association declares such assessments so levied, due and payable, and the secretary of the Association shall notify the owner assessed of the assessment, the amount thereof, and the date such assessment becomes due and payable. Such notice shall be mailed to the owner of the Lot at his last known post office address by the secretary of the Association by United States mail, postage prepaid.

Section 6.05. Collection and Enforcement. The owners of Lots, shall be personally obligated to pay the assessments and special assessments set forth in this Article for the Lots owned by him. All such assessments and special assessments levied by the Association pursuant to this Article VI which are unpaid when due shall bear interest from such due date at the rate of 8% per annum, and such assessment, special assessment and interest from that time on shall become and remain a lien upon the Lot until paid. The Association shall have the exclusive right and power to collect or enforce the collection of all assessments and special assessments and shall have the exclusive right to bring any and all actions and proceedings for the collection thereof and for the enforcement of liens arising therefrom. Any such liens securing unpaid assessments or special assessments arising by virtue of Article V or Article VI shall be subject and subordinate to the lien of any mortgage, whether the mortgage is executed or recorded prior to or after the creation of such lien. Nothing contained in this Article VI shall prevent or impede the collection of lawful charges, assessments, special assessments and similar taxes by any governmental taxing authority.

Section 6.06. Filing of Lien. In the event that the assessment levied against any Lot remains unpaid for a period of 60 days from the date of levy (including the failure to pay for water charges under Article V), then the Board of Directors of the Association may, in its sole discretion, file a claim for such lien against such Lot at any time within six months of the date of the levy, such claim to be filed in the office of the clerk of the circuit court for Waukesha County, Wisconsin. Such claim for lien shall contain a reference to the resolution authorizing such levy and date thereof, the name of the claimant or assignee, the name of the person against whom the assessment is levied, a description of the property affected thereby and a statement of the amount claimed. The claim shall be signed by the claimant by its attorney, and need not be verified and may be amended, in case of action brought, by order of the court, as pleadings may be.

Section 6.07. Foreclosure of Lien. If the Association has so filed its claim for lien upon a Lot as provided in section 6.06, the Association may foreclose the lien upon the Lot by action in the Circuit Court or any other court having jurisdiction thereof and chapter 289, Wisconsin Statutes, shall apply to proceedings undertaken for the enforcement and collection of such lien. If the Association retains an attorney to collect any such delinquent charge or foreclosure the lien, reasonable attorney fees or any court costs incurred shall be added to and become a part of such charge.

Section 6.08. Failure to Maintain Outlots (the "open space") or the Water System. If at any time the Association, or its corporate successor or successors in title, shall fail to maintain the open space in a clean, orderly manner and so as to avoid the open space from becoming a public nuisance or hazard to frequenters or if the water system shall not be maintained in such manner as is acceptable to the City of Muskego, and such condition shall continue unremedied for more than 90 days after delivery by the City to the then owner of the open space or the water system of written notice specifying the condition to be remedied, the municipality may serve written notice upon such organization or upon the residents and owners of Lots setting forth the manner in which the organization has failed to maintain the open space or the water system. The notice shall include a demand that such specified deficiencies be cured within 30 days thereof, and shall further state the date and place of a hearing thereon, which hearing shall be held within 14 days from the date of the notice. At such hearing the City may modify the terms of the original notice as to specified deficiencies, and may give an extension of time within which they shall be cured. If the deficiencies set forth in the original notice or in the modifications thereof shall not be cured within said 30 days or any extension thereof, the municipality, in order to preserve the taxable values of the properties within the planned unit development and to prevent the common open space or the water system from becom-

ing a public nuisance, may enter upon said open space or the water system and maintain the same for a period of 1 year. Said entry and maintenance shall not vest in the public any rights to use the common open space or the water system except when the same is voluntarily dedicated to the public by the residents and owners. Before the expiration of said year, the municipality shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the common open space or the water system, call a public hearing upon notice to such organization, or to the residents and owners of the planned unit development, to be held by the municipal authority, at which hearing such organization or the residents and owners of the planned unit development shall show cause why such maintenance by the municipality shall not, at the election of the municipality, continue for a succeeding year. If the municipal authority shall determine that such organization is ready and able to maintain said common open space or the water system in reasonable condition, the municipality shall cease to maintain said common open space or the water system at the end of said year. If the municipal authority shall determine such organization is not ready and able to maintain said common open space or the water system in a reasonable condition, the municipality may, in its discretion, continue to maintain said common open space or the water system during the next succeeding year and subject to a similar hearing and determination, in each year thereafter. The decision of the municipal authority in any such case shall constitute a final administrative decision subject to judicial review. The cost of such maintenance by the municipality shall be assessed ratably against the properties within the planned unit development that have a right of enjoyment of the common open space or the water system, and shall become a tax lien on said premises. The municipality, at the time of entering upon said common open space or the water system, for the purpose of maintenance, shall file a notice of such lien in the office of the county clerk upon the properties affected by such lien within the planned unit development.

## ARTICLE VII

### THE ASSOCIATION

Section 7.01. Membership. Every person or entity who is a record owner of fee title to a Lot in the Subdivision, or who is the vendee under a recorded land contract with respect to such Lot, shall be a member of the Association. No person or entity who holds an interest merely as security for the performance of an obligation shall be a member of the Association.

Section 7.02. Management. The Association shall be managed by a board of directors of such number of directors as may from time to time be designated in the Articles of Incorporation or the By-Laws of the Association, but not less than three. The directors shall be those initially designated in the Articles of Incorporation.

Section 7.03. Voting Rights. Members of the Association shall have an aggregate of 83 membership votes consisting of one vote for the owner of each Lot, (except in the case of the sale of such Lot under a recorded con-

tract, in which case the vendee under such recorded contract shall have a vote). No tenant or occupant of the dwelling, as such, shall be a member of the Association or entitled to vote at its meetings. Lots held in joint or co-ownership shall vote as a unit, as determined by all of the joint or co-owners, but in the absence of notice to the contrary, the Association may treat any owner as authorized to vote such membership.

Section 7.04. Articles and By-Laws. Additional restrictions and provisions relating to the organization and operation of the Association are set forth in the Articles of Incorporation and By-Laws of the Association.

## ARTICLE VIII

### MISCELLANEOUS

Section 8.01. Term of Declaration of Restrictions. The conditions, restrictions, covenants, reservations and easements contained in this Declaration of Restrictions shall run with the land and be binding upon all persons claiming under the Developer for a period of ten years from the date this Declaration is recorded. After the expiration of such ten year period, the Declaration of Restrictions shall be automatically renewed for successive periods of ten years, unless there is recorded an instrument executed by the owners of at least 60% of all Lots subject hereto, in which case this Declaration shall terminate at the end of the initial or renewed term which next expires following the recording of an instrument of termination. However, none of the provisions of articles 4, 5 and 6 hereof may be amended without the express written consent of the City of Muskego as evidenced by an amendment hereto or approved by resolution of the common counsel.

Section 8.02. Amendment. This Declaration of Restrictions may be amended at any time and in any respect by the recording of an instrument executed as follows:

(a) So long as the Developer owns any Lots in the Subdivision, an instrument of amendment shall be executed by the Developer and the owners of at least 60% of the Lots not owned by the Developer; thereafter, such instrument of amendment shall be executed by the owners of at least 75% in the Subdivision.

Section 8.03. Enforcement. Initially, the Association shall have the sole right to enforce the provisions of this Declaration of Restrictions, which it may do by proceedings at law or in equity, either to restrain or to recover damages for any violation or attempted violation of any provision of this Declaration of Restrictions or for both such remedies. However, if any member of the Association in good standing shall file with the Association a

