

**BY-LAWS
OF
THE NURSERY HOMEOWNERS ASSOCIATION, INC.**

ARTICLE 1

Name and Purpose

Pursuant to the Articles of Incorporation of The Nursery Homeowners Association, Inc., and the Declaration of Restrictions, Protective Covenants and Conditions for The Nursery recorded in the Office of the Register of Deeds for Waukesha County, Wisconsin (hereinafter "Protective Covenants"), the following are adopted as the By-Laws of the NURSERY HOMEOWNERS ASSOCIATION, INC. (hereinafter sometimes referred to as the "Association"), which is a non-profit nonstock corporation formed and organized to serve as an association of owners of real estate located in The Nursery, City of Muskego, County of Waukesha, State of Wisconsin (together, the "Property") subject to the terms and conditions of the Protective Covenants.

These By-Laws shall be deemed covenants running with the land and shall be binding on the Owners and their heirs, administrators, personal representatives, successors and assigns.

ARTICLE 2

Members, Voting and Meetings

2.A. Members. The rights and qualifications of the members are as follows:

(1) Defined. Members of the Association shall be all owners of every Building Site (as that term is defined in the Protective Covenants) located within the Property. Each Building Site Owner shall have one vote. If title to any Building Site is held by more than one Owner, the membership in the Association related to that Building Site shall be shared by such Owners in the same proportionate interests and by the same type of tenancy in which title to the Site is held. Every Owner upon acquiring title shall automatically become a member of the Association and shall remain a member thereof until such time as his or her ownership ceases for any reason, at which time his or her membership in the Association shall automatically cease.

(2) Membership List. The Association shall maintain a current Membership List showing the names of the Owners, the address to which notice of meetings of the Association shall be sent, any mortgagee of the Building Site, and the person designated to cast the vote. Only the person so designated shall be entitled to cast a vote in person or by proxy. A designation may be limited in time or may be changed by notice in writing to the Secretary of the Association signed by a majority of the persons having an ownership interest in the Building Site.

3.A. Initial Board of Directors. The initial Board of Directors shall consist of three persons appointed by the Incorporator of the Association (“Declarant”), who need not be members of the Association. The initial Board of Directors shall serve until such time as the members elect a Board of Directors pursuant to Section 3.D., below.

3.B. Number and Qualifications of Directors. After control of the Association passes to the Owners pursuant to the terms of the Protective Covenants, the Board of Directors shall consist of three persons, to be classified with respect to the terms for which they severally hold office as set forth in Section 3.D., below. Each member of the Board of Directors shall be a member of the Association or, in the event that such member of the Association is not a natural person, the appointee of such member of the Association.

3.C. Powers and Duties of the Board of Directors. The affairs of the Association including management and operation of the Property shall be governed by the Board of Directors. All powers and duties as shall be necessary for the administration of the affairs of the Association shall be exercised by the Board of Directors. Such powers and duties shall be exercised in accordance with the provisions of the Protective Covenants, the Articles of Incorporation, and these By-Laws.

3.D. Election and Term of Directors. At the first annual meeting of the Association after Association control passes to the Owners, the members shall elect five directors to be classified with respect to the terms for which they hold office by dividing them into two classes as follows:

(1) Two directors whose terms will expire after one year, at the next annual meeting of the Association (Class A Directors).

(2) Three directors whose terms will expire after two years, at the second annual meeting of the Association after their election (Class B Directors).

The successors to the class of directors whose terms expire as set forth above shall be elected to hold office for a term of two years or until their successors are duly elected and qualified, or until any of said directors shall have been removed in the manner hereinafter provided, so that the term of one class of directors shall expire in each year.

3.E. Vacancies on Board. Vacancies on the Board of Directors caused by any reason other than the removal of a director by a vote of the members shall be filled by a vote of the majority of the remaining directors, even though they may constitute less than a quorum, and each person so elected shall be a director until a successor is elected at the next annual meeting of members at which that class of directors is to be elected.

3.F. Removal of Directors. At any regular or special meeting duly called, an one or more of the directors may be removed with or without cause by a majority of the votes of the membership present or represented at such meeting, providing a quorum is in attendance, and a

consent.

ARTICLE 4

Officers

4.A. Designation, Election and Removal. The principal officers of the Association shall be a President, a Vice President, a Secretary and Treasurer, each of whom shall be elected annually by the Board of Directors. Upon the affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and his or her successor shall be elected at a regular meeting of the Board of Directors, or at any special meeting called for that purpose. Any two or more offices may be held by the same person, except a combination of the offices of President and Secretary and a combination of the offices of President and Vice President.

4.B. Vacancies; Temporary Inability to Act. A vacancy in any principal office because of death, resignation, removal, disqualification, or otherwise shall be filled by the Board of Directors for the unexpired portion of the term. If both the President and Vice President are unable to act, the Board of Directors shall appoint some other member of the Board to act on an interim basis.

4.C. President. The president shall be the selected from among the members of the Board of Directors and shall be the chief executive officer of the Association. The president shall preside at all meetings of the Association and of the Board of Directors. The president shall have all the general powers and duties which are usually vested in the office of president, including, but not limited to, the power to sign, together with any other officer designated by the Board, any contracts, checks, drafts or other instruments that are necessary or proper to be executed on behalf of the Association in accordance with the provisions herein. The president shall in general perform all duties incident to the office of president and such other duties and responsibilities and have such other authority as may be prescribed by the Board of Directors from time to time.

4.D. Vice President. In the absence of the president, or in the event of the president's death or inability to act, the vice-president shall perform the president's duties, and when so acting, shall have all the powers of and be subject to all the restrictions upon the president. The vice president shall perform such other duties and have such other powers as the Board of Directors or president may from time to time prescribe.

4.E. Secretary. The secretary shall:

(1) Keep the minutes of the Board of Directors meetings in one or more books provided for that purpose;

(2) See that all notices are duly given in accordance with the provisions of these

or required by Sections 181.0871 to 181.0889, inclusive, of the Wisconsin Nonstock Corporation Law ("Statute"), including any amendments thereto (but in the case of any such amendment, only to the extent such amendment permits or requires the Association to provide broader indemnification

rights than prior to such amendment), indemnify its Directors and Officers against any and all Liabilities, and advance any and all reasonable Expenses, incurred thereby in any Proceeding to which any Director or Officer is a Party because such Director or Officer is a Director or Officer of the Association. The Association may indemnify its employees and authorized agents, acting within the scope of their duties as such, to the same extent as Directors or Officers hereunder. The rights to indemnification granted hereunder shall not be deemed exclusive of any other rights to indemnification against Liabilities or the advancement of Expenses which such Director or Officer may be entitled under any written agreement, board resolution, vote of the Members, the Statute or otherwise. All capitalized terms used in this Article 5 and not otherwise defined herein shall have the meaning set forth in Section 181.0871 of the Statute.

5.B. Permissive Supplementary Benefits. The Association may, but shall not be required to, supplement the foregoing right to indemnification against Liabilities and advancement of Expenses under Section 5.A. above by (1) the purchase of insurance on behalf of any one or more of such Directors or Officers whether or not the Association would be obligated to indemnify or advance expenses to such Director or Officer under Section 5.A. of this Article, and (2) entering into individual or group indemnification agreements with any one or more of such Directors or Officers.

5.C. Private Association Limitations. Notwithstanding the foregoing, no indemnification will be permitted to the extent such indemnification would constitute an act of "self-dealing" or is otherwise subject to excise taxes under Chapter 42 of the United States Internal Revenue Code of 1986, or prohibited under Section 181.0320 of the Wisconsin Statutes or any similar successor provisions thereto.

operating fund shall be used for all common expenses which occur annually or more frequently, such as amounts required for real estate taxes on the outlots, the cost of maintenance and repair of the outlots and any vacant, unimproved or unkempt land, lots or Building Sites; management services, insurance, common services and utilities, administration, materials and supplies. The reserve fund shall be used for contingencies and periodic expenses such as landscape replacement. In the event the Association incurs extraordinary expenditures not originally included in the annual budget, then such sums as may be required in addition to the operating fund may be charged against the reserve fund. In the event that both funds prove inadequate to meet the necessary common expenses, or at the discretion of the Board of Directors, the directors may levy further assessment(s) against the Owners.

The reserve fund may also be used to discharge mechanic's liens or other encumbrances levied against the entire Property, or against each Building Site, if resulting from action by the Association. The Owner or Owners responsible for any lien which is paid by the Association but not the obligation of the Association shall be specially assessed for the full amount thereof. The directors may also use the reserve fund for the maintenance and repair of any Building Site if such maintenance and repair, although the obligation of the Owner, is necessary to protect the Common Areas. The full amount of the cost of any such maintenance or repair shall be specially assessed to the Owner responsible therefore. Any charges against the reserve fund in accordance with the foregoing paragraphs which are not otherwise repaid to the fund shall be replenished by additional assessments against the Owners in subsequent years.

The annual budget shall be prepared and determined by December 30 of each calendar year. The Board of Directors shall advise all members of the Association in writing of the amount of common assessments payable on behalf of each Building Site on or before March 1 of each year and shall furnish copies of the budget on which such common assessments are based to each member.

6.E. Default and Liens. All annual and special assessments, until paid, together with interest and actual costs of collection, constitute a lien for the benefit of the Association on the Building Sites on which they are assessed. If a member of the Association is in default in payment of any charges or assessments for a period of more than thirty (30) days, the Board of Directors, in the name of the Association, may file liens therefore and bring suit for and on behalf of the Association, as representative of all members, to enforce collection of such delinquencies or to foreclose the lien therefore, as provided by law and the Protective Covenants, and there shall be added to the amount due the costs of collection and interest, together with attorney fees. Liens shall be signed and verified on behalf of the Association by any officer of the Association. The owners of a Building Site against which a lien has been filed shall not be entitled to vote at Association meetings until the lien has been paid in full.

ARTICLE 7

Repairs and Maintenance

on the first annual tax return filed by the Association.

9.B. Address. The mailing address of the Association shall be c/o James D. Schilling, 1130 Schneider Lane, Burlington Wisconsin 53105, until such time as control of the Association passes to the Owners pursuant to the terms of the Protective Covenants, at which time a new mailing address may be designated by the Association.

9.C. Seal. The Association shall have no corporate seal.

ARTICLE 10

Amendments

10.A. By Members. These By-Laws may be altered, amended or repealed and new ByLaws may be adopted by the members, at any meeting called for such purpose, by the affirmative vote of Owners having sixty-seven percent (67%) or more of the votes in the Association.

10.B. Rights of Developer. No amendment of these By-Laws shall alter or abrogate the rights of Declarant as contained in these By-Laws or the Protective Covenants.

ARTICLE 11

Miscellaneous

11.A. Record of Ownership. Every Owner shall promptly cause to be duly recorded or filed of record the deed, assignment or other conveyance of such Building Site or other evidence of such Owner's title thereto, and shall present such evidence of title and file any lease with the Board of Directors, and the Secretary shall maintain all such information in the Membership List of the Association.

11.B. Statement of Assessments. The Board of Directors or Treasurer of the Association, at the request of any mortgagee or any prospective purchaser of any Building Site or interest therein, shall provide a statement to such person as to the amount of any assessments against such Building Site then due and unpaid, within ten (10) business days after such request is received.

11.C. Subordination. These By-Laws are subordinate and subject to all provisions of the Wisconsin Nonstock Corporation Law, and the Protective Covenants and any amendments thereto, which shall control in case of any conflict.

11.D. Definition of Terms. All terms herein (except where specifically defined herein or clearly repugnant to the context) shall have the same meanings as in the Protective Covenants

**DECLARATION OF
RESTRICTIONS FOR
THE NURSERY**

Document No.

Document Title

Recording Data
Name and Return Address

Parcel Identification Nos.

- 2.2 Land Use and Building Type. No further division of any Lot or Outlot as described herein shall be allowed as shown on the plat of the development. No building shall be erected, altered, placed or permitted to remain on any Building Site other than one single family dwelling, not exceeding two and one-half stories in height and a private garage for not more than three cars, and other improvements incidental to residential use. No outbuildings shall be allowed except one garden shed, which shall match the architecture of the primary building and shall be no greater than one story and no greater than 200 square feet. The location shall be approved by the Committee.
- 2.3 Architectural Control. All structures shall be designed by a registered architect, designer, or a registered professional engineer who is experienced in residential design. No building or other improvement shall be erected, placed or altered on any Building Site until the appropriate plans, specifications, landscaping plan, and plot plan showing existing and proposed contour topography, the location of all proposed and existing buildings and other improvements, and the location and elevation of all buildings and other improvements on adjacent Building Sites, have been approved in writing as to quality, materials, external design, color, location, finish grade elevations and driveways (all in relation to existing and planned buildings and other improvements, topography and general subdivision development), by the Committee, or by a representative designated by a majority of the members of the Committee. In the event the Committee or its designated representative fails to approve or disapprove such design and location within thirty days after said plans, specifications, landscaping plan, and plot plan have been submitted to it, or, in any event, if no suit to enjoin the erection or placing of such building or the making of such alterations has been commenced within one year from the completion thereof, such approval will not be required and this covenant shall be deemed to have been fully complied with.
- 2.4 Lawn. A grass lawn over front, back and side yards shall be established within twelve months after occupancy of the residence.
- 2.5 Main Building Quality and Size. (A) The floor area (excluding bay windows, unheated breezeways and garages) of the main building erected or placed on any Building Site shall be at least as follows:
- (1) One-Story Buildings - not less than 1600 square feet;
 - (2) Buildings Having More Than One Story - not less than 1200 square feet on the first floor (defined as the lowest floor of which 50% or more in area is approximately equal to or above front established grade elevation) and not less than 2000 square feet total;
 - (3) Split-Level Buildings - not less than 1800 square feet of floor area on all levels approximately equal to or above front established grade elevation.

- 2.11 Temporary Residence. No structure of a temporary character, and no trailer, basement, tent, shack, garage, barn or other outbuilding shall be used within the Subdivision at any time as a residence, either temporarily or permanently.
- 2.12 Animals and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept within the Subdivision except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose, or allowed to annoy neighbors.
- 2.13 Garbage and Refuse Disposal. No part of the Subdivision shall be used or maintained as a dumping ground for rubbish. Trash, garbage, and other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and suitably screened from view within building areas.
- 2.14 Fences and Walls. Plans showing exact location and construction details of fences, walls, hedges, or mass plantings shall be submitted to the Committee and be approved before they may be constructed. Such facilities constructed on property lines shall not exceed 42" in height, but may be higher if located within the building area of a Building Site, shall not include wire fencing and shall maintain the natural ambiance of the Subdivision.
- 2.15 Satellite Receivers. Satellite dishes with a larger than three-foot diameter will not be allowed unless the location is approved by the Committee. Installation of any satellite receiver will require placement so as to maintain the natural ambiance of the Subdivision.
- 2.16 Sight Distances at Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner Building Site within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of said property lines. The same sight line limitations shall apply within ten feet from the intersection of a street property line with the edge of a driveway. No trees shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.
- 2.17 Driveways. Each Building Site shall have one driveway properly surfaced with asphalt, concrete, brick, or cobblestone, not less than 10'0" in width, to connect the garage with a public street, with installation completed within one year of occupancy. One additional driveway opening may be requested by an owner and permitted at the discretion of the Committee.
- 2.18 No Overhead Wires. All Subdivision electric and telephone service and distribution lines, including service and distribution lines to individual Building Sites, and building(s) and improvements thereon, shall be underground. No overhead wires shall be permitted.

members to fill all vacancies on the Committee. All members of the Committee except those designated by the Developer shall be Building Site owners, owning and residing upon a Building Site subject to this Declaration. Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this Declaration. A meeting of the Building Site owners to elect any Committee member shall be scheduled, noticed, and conducted in accordance with the bylaws of the homeowners foundation as described in Article IV hereof.

ARTICLE IV

- 4.1 Term and Amendment. Unless amended as herein provided, this Declaration shall continue for a period of 25 years from the initial recording of this Declaration excepting section 7.1 which may only be amended with prior approval of the City of Muskego. During a period of three years from the date of such recording, or until all of the Building Sites subject to this Declaration have been sold by Developer, whichever occurs first, this Declaration may be amended by the recording of a written instrument executed by or on behalf of all of the following: (a) James Schilling and Shelly Schilling or their successor in interest; and (b) the owners of two-thirds of those Building Sites subject to this Declaration.

Thereafter, until the expiration of such 25-year period, this Declaration may be amended by the recording of an instrument executed by the owners of two-thirds of the Building Sites subject hereto. All amendments made during such 25-year period shall be consistent with the general plan of development embodied in this Declaration. After the expiration of such 25-year period, this Declaration (as presently written or as so amended) shall be automatically extended for successive periods of ten years, unless an instrument executed by the owners of a majority of the Building Sites subject hereto has been recorded to abolish or change the same in whole or in part. In ascertaining the number of owners assenting to any such amendatory instrument, persons having the power to convey the fee simple on a given Building Site shall constitute a unit having a single vote.

- 4.2 Severability. Invalidation of any one of these covenants by judgment or court order shall in no way affect any other provisions, which other provisions shall remain in full force and effect.

ARTICLE V

- 5.1 Enforcement. The restrictions and covenants contained herein may be enforced by proceedings at law or in equity against any person or persons violating or attempting to violate the same, or by any Building Site owner, and the judgment in any such proceedings, in addition to providing for the removal of any building or structure erected, built, or placed in violation of the foregoing restrictions and covenants shall provide that the party found guilty of such breach shall pay to the party or parties prosecuting such