

DECLARATION OF RESTRICTION
AND COVENANTS FOR
"WEATHERWOOD COURTS"

3325551

REGISTER'S OFFICE
WAUKESHA COUNTY, WI
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MICHAEL J. HASSLINGER
REGISTER OF DEEDS

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Name and Return Address:

ROBERT W. STACK
12765 W. JANESVILLE ROAD
MUSKEGO, WI 53150

MSKC 2257.999.003 &MSKC 2257.999.001

(Parcel Identification Number)

SEE ATTACHED "EXHIBIT A" FOR LEGAL DESCRIPTION

OK
49
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STATE OF WISCONSIN)
COUNTY OF WAUKESHA--REGISTER OF DEEDS)

CERTIFICATE NO. 019151

THE UNDERSIGNED HEREBY CERTIFIES THAT THIS IS A
TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE OR
RECORD IN THE REGISTER OF DEEDS OFFICE.

WITNESS MY HAND AND SEAL.

10-10-05

DATE

Michael Hasslinger
MICHAEL J. HASSLINGER
REGISTER OF DEEDS

DECLARATION OF RESTRICTION AND COVENANTS

FOR

"WEATHERWOOD COURTS"

THIS DECLARATION is made this 3rd day of October 2005, by North Cape L.L.C., a Wisconsin Limited Liability Company, 20711 Watertown Road, Suite A, Waukesha, Wisconsin 53186, hereinafter referred to as "**DEVELOPER**".

WHEREAS, DEVELOPER owns all the land which has been platted as "WEATHERWOOD COURTS", a subdivision located in the City of Muskego, Wisconsin, hereinafter referred to as "**City**", consisting of 20 platted lots, and 1 platted outlot; and,

WHEREAS, DEVELOPER desires to subject WEATHERWOOD COURTS to the conditions, covenants, restrictions, reservations and easements hereinafter set forth, for the benefit of the Subdivision and for the benefit of Lot Owners in the Subdivision; and,

WHEREAS, DEVELOPER hereby declares that the real property herein described shall be used, held, transferred, sold and conveyed subject to the conditions herein set forth, which shall inure to the benefit of and pass with said property and each and every parcel thereof as covenants running with the land and shall apply to and bind all successors in interest, users and owners thereof.

NOW, THEREFORE, this declaration of restrictions and covenants shall become effective immediately upon the recording hereof with respect to the property described in Article 1 following herewith.

0.01

DEFINITIONS

- (a) "**Architectural Control Committee**" ("**COMMITTEE**") shall mean the Committee referred to in Article III.
- (b) A "**Single Family Dwelling**" shall mean a dwelling Unit designed for one family.
- (c) "**Lot Owner**" shall mean the fee simple owner (s) of record title to the Lot, regardless of the type of tenancy or estate.
- (d) "**An Article**" shall mean all those provisions included under an Article heading, including all subsections (e.g. 0.00 (a)) and paragraphs (e.g. 0.00 (a) (1)).
- (e) "**The Subdivision**" or "**Subdivision**" shall mean that portion of WEATHERWOOD COURTS subject to this Declaration.

- (f) **"Association"** shall mean the WEATHERWOOD COURTS Homeowners Association, Inc. referred to in Article IV.

ARTICLE 1 – PROPERTY SUBJECT TO DECLARATION

1.01 PROPERTY SUBJECT TO DECLARATION

The following property shall be subject to this Declaration:

All platted lots within the recorded plat of "WEATHERWOOD COURTS" Subdivision, located in the Northeast ¼, of the Northeast ¼ of Section 25, T.5 N., R.20 E., in the City of Muskego, County of Waukesha, State of Wisconsin.

ARTICLE II – USE OF LOTS AND OUTLOTS

2.01 GENERAL PURPOSE

The general purpose of this Declaration is to assure that the **SUBDIVISION** will become and remain a highly desired, aesthetically pleasing residential community; and to that end to preserve and maintain the natural beauty of areas within the **SUBDIVISION**; to insure the best use and the most appropriate development of building sites, to guard against the erection of poorly designed or proportioned structures; to obtain harmonious use of materials and color schemes; to prevent haphazard and inharmonious improvements of building sites; structures and other improvements which may detract from residential values, and to otherwise secure mutual enjoyment of benefits for owners and occupants of the residential property within the **SUBDIVISION**.

INTERPRETATION

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

2.02

SINGLE FAMILY LOTS

- (a) All lots shall be used solely and exclusively for single family residential purposes:
 - (b) No building shall be erected, altered, modified or permitted to remain on any lot other than one single family dwelling, not to exceeding two and one-half stories in height, with an attached private enclosed garage for not less than two nor more than four automobiles.

2.03 **ARCHITECTURAL APPROVAL REQUIRED FOR IMPROVEMENTS**

(a) All buildings shall be designed by a home designer, registered architect or equally qualified individual or firm.

(b) No building, structure, wall, swimming pool or other improvement shall be constructed, erected or placed on any lot or altered, modified or changed (as to layout, location, exterior design, color or in any other way), until the plans, specifications, drawings and a written proposal have been approved in writing by the **COMMITTEE**.

(c) In passing upon the plans and specifications, the **COMMITTEE** may take into consideration the suitability of the proposed building, its design, elevation, color, construction materials, the harmony thereof with surrounding buildings, its proposed location, the view from other properties in the subdivision, and such other matters of terrain, environmental impact, aesthetics, and impact upon other Lots in the subdivision as the **COMMITTEE** may deem appropriate. The **COMMITTEE** shall have the right to waive minor infractions or deviations from these restrictions in the case of hardship and/or common sense. Any action by the **COMMITTEE** shall be final and conclusive as to all persons then or thereafter owning Lots covered by these restrictions. The **COMMITTEE** shall not be liable for actions taken or decisions made in good faith.

(d) In addition to the requirements of these restrictions, all construction shall comply with applicable zoning and building code requirements. Construction of all improvements shall be completed within one year after the last approval or permit has been obtained that is necessary for the commencement thereof; but in no event shall completion be later than 24 months following **COMMITTEE** approval.

(e) It is the intent of developer that no lots be purchased for speculative purposes, therefore, all prospective lot purchasers must submit complete plans and specifications of their proposed residence prior to closing on the lot and abide by provision (d) above.

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

2.04 **MINIMUM SINGLE FAMILY DWELLING LIVING AREAS**

Each and every single family dwelling to be constructed in the **SUBDIVISION** shall have no less than the following minimum living areas at or above grade, exclusive of porches, garages, patios, and similar additions:

- (a) Not less than 1,800 square feet total in the case of a one (1) story residence.
- (b) Not less than 2,200 square feet total in the case of a two (2) story residence with a minimum of 1,000 square feet on the first floor.
- (c) Not less than 2,100 square feet total in the case of a residence of one and one-half (1-1/2) stories, with a minimum of 1,400 square feet on the first floor.
- (d) Not less than 2,100 square feet total on the upper two levels of a split level residence.

2.05 **BUILDING SETBACK LINES**

No building, garage or other structures (excluding eaves, steps, overhangs, patios, or other appurtenances not built on a foundation or frost-footings) shall

be located on any lot so that the front, side and rear yard distances are less than the minimums required by the Building and Zoning Code for **City**.

The Committee may further impose modifications or restrictions to harmonize and coordinate building placement. All front yard setbacks shall comply with the recorded plat.

2.06 **GARAGES: PARKING**

- (a) Each lot shall have a private enclosed garage for the on-site storage of not less than 2 nor more than 4 automobiles, to be connected to the street by a hard surface/concrete or asphalt driveway (which driveway shall be installed and completed within one year from the date of occupancy of the dwelling).
- (b) The garage shall be located in compliance with the building setback lines as specified in Section 2.05 hereof, and shall be attached to the building.
- (c) The garage shall harmonize with the residential structure as to design, materials and finished floor elevation.
- (d) There shall not be any outside storage of boats, trailers, buses, trucks, RV campers or other vehicles or items deemed unacceptable by the **COMMITTEE**.

2.07 **CONCRETE CURB AND DRIVEWAY APPROACH**

- (a) In conjunction with the paved streets for the **SUBDIVISION** the **DEVELOPER** has caused to be installed roll-face concrete curbing to abut to the outside edges of the pavement.
- (b) Lot Owners shall integrate the installation of their driveway and approach to match and abut such concrete curbing. All Drive Approaches shall be in accordance with **CITY** standards.
- (c) Prior to closing, an inspection of the concrete curb abutting the entire lot shall be made by the developer and the prospective lot owner to determine the condition of the curb at closing. Any cracks or damage to the curb shall be duly noted and it shall be the developer's obligation and expense to correct or replace said curbing if required by the **CITY** of Muskego Inspection Department. If no cracks or other damage are found, **any future cracks or damage to the curbing shall be the owner's sole obligation and expense.**

2.08 ROOFING MATERIAL AND CONSTRUCTION

- (a) The **COMMITTEE** reserves the right to approve only such types of roofing material as it determines to be in keeping with the architecture of the dwelling as proposed. All roofs shall consist minimally of 30 year asphalt or fiberglass dimensional shingles.
- (b) All roof designs shall be subject to the approval of the **COMMITTEE**. Roof pitch, relating to the major portion of the dwelling structure, shall slope not less the seven (8) feet vertically to twelve (12) feet horizontally (ie; 8/12 pitch) except on a rear dormer on 1 ½ story homes.

2.09 EXTERIOR BUILDING MATERIALS AND DWELLING QUALITY

- (a) All dwellings proposed to be erected, altered or modified shall, on the construction plans, denote materials acceptable to the **COMMITTEE** and the construction shall be carried out in accordance with material (s) as approved by the **COMMITTEE**.
- (b) The design, layout and exterior appearance of each dwelling proposed to be erected, altered or modified shall be such that, in the opinion of the **COMMITTEE** at the time of the approving of building plans, the dwelling will be of high quality; however it shall be understood that **COMMITTEE** approval does not guarantee or warrant the suitability or quality of any plans or of any material, product, installation procedure or of work approved or performed.
- (c) Exterior walls of all residences shall be brick, stone, stucco, wood, hardiplank or a combination thereof with the approval of the **COMMITTEE**. Other materials may be approved at the discretion of the **COMMITTEE**. The proposed color schemes for the dwelling to be erected, altered or modified shall be submitted to the **COMMITTEE** for written approval prior to painting or staining. Exterior chimneys shall have masonry foundations. No "hung" chimney chases shall be allowed. Brick or stone is required for all exterior chimney surfaces. Window treatments (grids, shutters, window casings/trim) shall be consistent on all sides of the residence. Corner boards and window casings/trim shall be a minimum of 5 ½" wide.
- (d) The **COMMITTEE** encourages extensive use of brick or stone, roof overhangs, and a consistent design and exterior appearance of all elevations of each dwelling. The **COMMITTEE** shall have the right to

waive minor infractions or other deviations from these requirements it deems most suitable in the general design of the dwelling.

2.10 **PRESERVATION OF TREES**

No tree, with a diameter of six inches or more (at a height of four feet from the ground) beyond six feet from the approved Dwelling location, shall be moved, removed, damaged or destroyed in any way, other than upon prior approval of the **COMMITTEE**, and all existing trees shall be protected during the periods of construction and grading as may be required by the **COMMITTEE**.

2.11 **GROUND FILL ON BUILDING SITE**

Where ground fill is necessary on any lot to obtain the proper topography and finished ground elevation, it shall be free of waste material, and shall not contain noxious materials. All fill sites shall be leveled immediately upon completion of the dwelling and shall be graded and contoured in accordance with the Master Site Plan approved by and on file with **City**.

2.12 **STORM WATER DRAINAGE**

- (a) **PUBLIC STORM WATER EASEMENTS.** Lots 5, 6, 19 and 20; and Outlot 1, are subject to public storm water easements as depicted on the final plat. These easements are used by the **City** for the above ground and underground conveyance of storm water. No building, structure or planting shall be placed within these easements, without the consent of the **City**, and the cost of corrective work, together with the actual and necessary cost of administration of such work, may be charged to the property upon which the work is carried out, and against the responsible lot owner (s) pursuant to Section 66.0627 of the Wisconsin Statutes. This covenant is created for the benefit of the owners of Lots in the Subdivision and the public, and shall be fully enforceable by the City, including via enforcement proceedings and remedies seeking injunctive relief, damages, and/or cost recovery. Such remedies shall be in addition to any other remedy or manner of collection provided by law.
- (b) **PRIVATE DRAINAGE EASEMENT.** The rear and side yard private drainage easements depicted on the final plat, whether 10 or 20 feet wide, are established to accommodate the flow of surface water drainage from one lot to another throughout the **SUBDIVISION**. These easements shall be maintained in accordance with the Master Site and Grading Plan approved by and on file with the **City**. Accordingly, these easements shall not be filled nor shall any building or structure be placed within these easements. Planting may occur within these easements provided that the flow of surface water is not obstructed by such planting. Any violation of this

provision may be corrected by the **City**, and the cost of such corrective work plus an administrative fee of equal amount may be charged to the responsible lot owner (s).

- (c) **OUTLOT 1 STORM WATER DETENTION POND.** A storm water detention facility has been created within Outlot 1, as depicted on the final plat of WEATHERWOOD COURTS. This facility is designed to protect the natural down-stream storm flow convergence capacity as well as to enhance the water quality of the storm flows being discharged.. This Outlot 1 shall not be filled, graded, excavated, or otherwise altered or obstructed in any manner which will reduce or modify the capacity or function of this facility. No building or structure shall be located within this Outlot 1 without prior approval of **CITY**.
- (d) **OUTLOT 1 OWNERSHIP AND MAINTENANCE.** Outlot 1 of the plat for WEATHERWOOD COURTS Subdivision, will be owned by the lot owners of WEATHERWOOD COURTS Subdivision. Each lot owner in the WEATHERWOOD COURTS development will own an one twentieth (1/20) undivided interest in Outlot 1. Maintenance of Outlot 1 including, (but not limited to) water quality and turf maintenance shall be the responsibility of the **ASSOCIATION**.

2.13 **LANDSCAPE EASEMENTS ABUTTING NORTH CAPE ROAD AND RYAN ROAD**

The 30 foot wide landscape easement abutting North Cape Road and Ryan Road has been created for the beatification of the subdivision. Maintenance of the easement plantings, including (but not limited to) lawn mowing within the easement area shall be the responsibility of the **ASSOCIATION**.

2.14 **OUTLOT AND DETENTION FACILITY MAINTENANCE**

(a) General Maintenance. The **ASSOCIATION** shall be responsible to maintain the areas within all landscape easements as well as Outlot 1.

(b) Detention/Retention facility Maintenance. In accordance with the development agreement between the Developer of the Subdivision and the **City**, the **ASSOCIATION** will be responsible for the perpetual maintenance of all storm water drainage and detention and retention facilities, including but not limited to the periodic removal of sedimentation from, and other maintenance and repairs to the detention/retention facility which shall be necessary to maintain the capacity and function of the facility to the same standards to which they

were constructed pursuant to the Muskego Municipal Code, namely such that they accommodate the maximum potential volumes of flow through and within the **SUBDIVISION**, and meet applicable performance standards for storage and release. Any violation of this provision may be corrected by the **City**. This covenant is created for the benefit of the owners of lots in the **SUBDIVISION**, and the public, and shall be fully enforceable by the **City** or any resident citizen of the **City** including via enforcement proceedings, and remedies seeking injunctive relief, damages and/or cost recovery; and such remedies shall be in addition to any other remedy or manner of collection provided for herein or by law.

(c) **CORRECTION COSTS.** The cost of any corrective work undertaken by the **City**, together with the actual and necessary cost of administration of such work may be charged to the **ASSOCIATION** and against the individual lots of the **SUBDIVISION**, pursuant to Section 66.0627, Wisconsin Statutes, and shall be placed upon the tax roll as special charges in accordance with sec. 66.0627 Wisconsin Statutes. The Developer, for itself and the successor owners of **SUBDIVISION** lots, hereby waives all notices of hearings and the conducting of hearings otherwise required by sec. 66.0627, Wis. Stats.

2.15 **SWIMMING POOLS**

All swimming pools proposed to be erected, altered or modified in the **SUBDIVISION**, approved by the City of Muskego, shall also require the written approval of the **COMMITTEE**. Plans, acceptable to the City of Muskego, shall be submitted to the **COMMITTEE** for approval. All plans shall denote the offsets, landscaping treatment and fencing proposed. No above ground pools will be permitted on any lot in the subdivision.

2.16 **LOT GRADING**

- (a) Within each set of building construction plans submitted to the **COMMITTEE** for that body's approval, shall be a Plat of Survey, prepared by a Land Surveyor licensed by the State of Wisconsin. Such Plat shall thereon indicate the size and location of the Dwelling, including the proposed finished ground grade or garage floor grade as well as other grades adjacent to the Lot.
- (b) The Plat of Survey shall have grades that conform to the **SUBDIVISION'S** Master Site Grading Plan, which is on file at the **City**.

- (c) Minor grade changes from the Master Site Grading Plan, which changes do not violate the purpose, spirit and intent of the Master Site Grading Plan, may be reviewed and, if for good and sufficient reasons, may be approved by the **COMMITTEE**.
- (d) Upon the receipt of the approval of said building grade, the applicant shall file such approved grade with the **City** for its review and approval.
- (e) Final grading of a lot shall be completed within two months following the first date of occupancy of a dwelling thereon.

2.17 **NUISANCES**

- (a) No noxious or offensive weeds, things, odors, activities or conditions shall be permitted to exist in, on or about any Dwelling or Lot.
- (b) No building or construction material shall be stored on any lot outside of a Dwelling or garage, other than during periods of actual construction or remodeling and then only for as long as may be reasonable necessary therefor, but in no event to exceed 12 months.
- (c) Each Lot Owner shall perform such periodic maintenance as may be necessary to keep the lot neat and clean in appearance, including without limitation, the mowing of grass and removal of weeds, leaves and unsightly debris.

2.18 **TEMPORARY STRUCTURES AND OUTBUILDINGS**

No Structure of a temporary nature, including with limitation, any trailer, tent or shack, shall be permitted on any Lot. No barn, shed, or outbuilding shall be permitted, except with the written approval of the **COMMITTEE**.

2.19 **SIGNS**

No sign of any kind shall be placed or displayed to public view on any Lot, except one sign of not more than six square feet. This restriction shall not apply to the initial marketing of any phase of the **SUBDIVISION**, for 12 months following the completion of such phase.

2.20 **ANIMALS AND PETS**

No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that healthy dogs and cats, permitted by governmental authorities may be kept so long as not kept, bred or maintained for any commercial purpose nor in any unreasonable manner.

2.21 **WATER SUPPLY AND SEWAGE DISPOSAL**

Each dwelling shall be connected to the water supply mains of the **City**. No individual wells shall be permitted. Each dwelling shall be connected to the **City's** sewer system and no septic tank or individual sewage system shall be permitted.

2.22 **GARBAGE AND REFUSE DISPOSAL**

No Lot shall be used or maintained as a depository for trash, garbage, refuse or debris of any kind. All trash, garbage or waste materials shall be kept in sanitary containers either inside the garage or when outside in sanitary containers adjacent to the dwelling, suitably screened from view from streets and adjoining lots. No incineration of trash or garbage or refuse is permitted.

2.23 **WIRES AND ANTENNAS**

- (a) All utility wiring (including without limitation, service lines to individual dwellings) shall be installed underground unless otherwise permitted in writing by the **COMMITTEE** prior to such installation.
- (b) No external television or radio antennae, satellite dish exceeding one meter (39.37 inches), or other similar devices shall be erected without the prior written approval of the **COMMITTEE**.

2.24 **MOTORIZED VEHICLES**

All motorcycles, snowmobiles, trail bikes, dune buggies, off-street motorized vehicles, watercraft, recreational or commercial vehicles of any

kind shall be stored only in enclosed garages on the Lot, and shall not be operated on any Lot, driveway, parking area or open space within the **SUBDIVISION**.

2.25 **VIOLATION OF DECLARATION: NO REVERSION OF TITLE**

No violation or breach of any covenant, condition, restriction or other term or provision of this Declaration shall under any circumstances cause a reversion of title.

ARTICLE III – ARCHITECTURAL CONTROL COMMITTEE

3.01 **MEMBERSHIP**

So long as the developer owns any lot or lots within the **SUBDIVISION**, **DEVELOPER** shall designate the persons (three in number) who shall from time to time comprise the membership of the **COMMITTEE**. Thereafter, upon sale by **DEVELOPER** of all lots within the **SUBDIVISION**, the **COMMITTEE** shall be elected by a majority of the lot owners of improved lots subject to these restrictions.

3.02 **SUBMISSION FOR APPROVAL: PROCEDURE**

- (a) Any approval required by this Declaration from the **COMMITTEE**, shall be in writing, with the request therefor submitted in writing.
- (b) In the event the **COMMITTEE**, or its' designated representative, fails to act upon any plans, specification or other written request for approval within 30 days after submission of all plans, specifications and other documents as may be requested by said **COMMITTEE**, the requested approval shall thereby automatically be granted, such that no right shall thereafter exist to enforce these Declarations in so far as any such approval is required hereunder.

3.03 **COMMITTEE LIABILITY**

It is expressly understood and agreed that any standards established by, or any review or approval by **COMMITTEE** shall not be construed as a

warranty or endorsement or representation by **COMMITTEE** of the fitness, suitability, or adequacy of any approved plans or standards for any particular use or purpose. It is understood (and agreed by any submitter to **COMMITTEE**) that **COMMITTEE'S** members are unpaid volunteers, who shall not – in any event – be liable to any Lot Owner or other party for any act or thing or omission of or by **COMMITTEE**.

ARTICLE IV – HOMEOWNERS' ASSOCIATION

4.01 HOMEOWNERS' ASSOCIATION – GENERAL

An owners association (herein referred to as **ASSOCIATION**) of the owners of land in **SUBDIVISION** shall be created for the purposes of maintaining any detention ponds, public areas, and entrance monuments and for purposes of performing such other functions and duties as may be appropriate for the common benefit of the Owners. The name of the **ASSOCIATION** shall be WEATHERWOOD COURTS Homeowners' Association, Inc.

4.02 BOARD OF DIRECTORS

- (a) **ASSOCIATION** shall be governed by a three member Board of directors, hereinafter referred to as the **BOARD** which shall be solely responsible for the activities of **ASSOCIATION**. The initial members of the **BOARD** shall be Roger W. Johnson, Robert G. Fox and Robert W. Stack.
- (b) To qualify as a member of the **BOARD**, a person must be either an owner of a lot within **SUBDIVISION**, or a duly designated officer or representative of an Owner.
- (c) Lot Owners shall be entitled to a total of one vote per lot owned; and may vote in person or by proxy in elections for selecting member of **BOARD**.
- (d) The term of office of members of the **BOARD** shall be for two calendar years. If any member of **BOARD** shall die, resign, be unable to act or cease to be qualified to be a member, the unexpired term of such member shall be filled by a special election, (or appointment by **DEVELOPER**, if applicable).

4.03 MEETINGS

All meetings of **BOARD** shall be open to all Owners and shall be held upon not less than three days prior written notice to all Owners. Two

members of the **BOARD** shall constitute a quorum. Actions of the **BOARD** shall be by majority vote.

4.04 **DUTIES AND POWERS OF BOARD**

- (a) The **BOARD** shall have the following duties:
- (1) To provide for the maintenance of detention ponds, public areas herein designated, and entrance areas, within the **SUBDIVISION**, and for purposes of performing such other functions and duties as may be appropriate for the common benefit of the Owners.
 - (2) To levy and enforce collection of assessments and fees for the purposes herein set forth.
 - (3) To conduct meetings and establish procedures for the election of members of the **BOARD**;
 - (4) To establish operating procedures for the conduct of the **ASSOCIATION** and **BOARD'S** affairs; and
 - (5) To do all acts and things necessary to fulfill its duties and objectives; and
 - (6) To enforce the provisions hereof.
- (b) The **BOARD** shall have the power to take such actions as may be necessary to cause the features and areas under **ASSOCIATION'S** jurisdictions to be maintained, repaired, landscaped and kept in good, clean and attractive condition;

4.05 **ASSESSMENTS**

The Owner of each lot shall be subject to a general annual charge of assessment equal to his pro rata share of the costs incurred or anticipated to be incurred by the **ASSOCIATION** in performing its duties and discharging its obligation. The pro rata share of an Owner of a lot shall be fraction, the numerator of which shall be one and the denominator of which shall be the total number of lots subject to this Declaration at the time of the assessment. Said cost shall include, but not be limited to: taxes, insurance, repair, replacement and additions to the improvements made to the Common area; equipment; materials; labor, management and supervision thereof, and all cost for the **ASSOCIATION** reasonably incurred in conducting its affairs and enforcing the provisions hereof.

- (a) All assessments shall be approved at a duly convened meeting of the **BOARD**.
- (b) Written notice of an assessment shall be personally delivered to each Owner subject thereto, or be delivered by regular mail addressed to the last known address of such Owner.
- (c) Assessments shall become due and payable 30 days after the mailing or personal delivery of the notice of Assessment.
- (d) Assessments not paid when due shall bear interest at the rate of twelve percent (12%) per annum from the date due until paid; and such unpaid assessments and the interest thereon shall constitute a continuing lien on the real estate against which it was assessed until all such sums have been paid in full. The assessments and interest thereon shall also be the personal obligation of any current or subsequent Owner of the lot against which the assessment was made.
- (e) The **BOARD** may record a document with the Register of Deeds in Milwaukee County, Wisconsin, giving notice of a lien for any such unpaid assessment, and upon payment or satisfaction of the amount due, the **BOARD** may record a document canceling or releasing any such lien. The failure to file any such notice shall not impair the validity of the lien. All recording and attorney fees relating to any such document shall be borne by the affected Owner.
- (f) Upon application by Owner, the **BOARD** shall provide to such Owner a statement in recordable form certifying (1) that the signer is a duly elected or appointed member of the **BOARD** and (2) as to the existence of any unpaid assessments or other amounts due to the **ASSOCIATION**.
- (g) Any lien for assessment may be foreclosed by a suit brought by the **BOARD**, acting on behalf of the **ASSOCIATION** in a like manner as the foreclosure of a mortgage on real property.
- (h) Notwithstanding any contrary provision hereof; the **DEVELOPER** must consent to any assessment so long as the **DEVELOPER** owns any lot or lots subject to such assessments.

4.06 **LIABILITY OF BOARD MEMBERS**

- (a) Members of the **BOARD** shall not be liable for any action taken by them in good faith in discharging their duties hereunder, even if such action involved a mistake in judgment or negligence by the member or agents or

employees of the **BOARD. ASSOCIATION** shall indemnify and hold the members of the **BOARD** harmless from and against any and all cost or expenses, including reasonable attorney's fees, in connection with any suit or other action relating to the performance of their duties hereunder.

- (b) Failure of the **ASSOCIATION** or the **BOARD** to enforce any provisions contained in this section, upon the violation thereof, shall not be deemed to be a waiver of the rights to do so, or an acquiescence in any subsequent violation.
- (c) If the **BOARD** shall fail to discharge its duties under this Section, within 60 days of written demand by the **City** the **City** may take necessary action; and all charges incurred in connection therewith shall be charged to the Owners by the **City** by adding to each Owner's real estate tax statement a charge equal to such Owner's pro rata share of such costs.

ARTICLE V – MISCELLANEOUS

5.01 TERM OF DECLARATION

- (a) This Declaration shall constitute a covenant running with the land and shall be binding for a period of twenty-five (25) years (from the date the Declaration is recorded) upon all Lot Owners and all other persons claiming under or through **DEVELOPER**. After the expiration of such initial twenty-five (25) year period, this Declaration shall be automatically renewed for successive periods of ten (10) years, unless there is recorded an instrument terminating this Declaration, executed by the owners of at least seventy-five (75%) per cent of all lots subject hereto, in which event the Declaration shall terminate upon the expiration of the initial or renewal term then in effect at the time of the recording of such instrument of termination.

5.02 AMENDMENT TO DECLARATION

This Declaration may be amended at any time and in any respect by recording an instrument to that effect executed as follows:

- (a) By the **DEVELOPER** and the Owners of at least sixty per cent (60%) of the lots in the **SUBDIVISION** not owned by the **DEVELOPER**, so long as the **DEVELOPER** continues to own any lot (s) in the **SUBDIVISION**;
or

- (b) By the Lot Owners of at least seventy-five per cent (75%) of the lots subject to these restrictions, following the initial conveyance by **DEVELOPER** of all lots subject to these restrictions.
- (c) Notwithstanding the foregoing, no amendment may be made that would be contrary to **City** ordinances without approval of **City**. No amendments of 2.10, 2.12, 2.13, or 2.14 may be made without permission of **City**.

5.03 **ENFORCEMENT OF DECLARATION**

DEVELOPER, City or any one or more lot owners, shall have the right to enforce the provisions of this Declaration by proceedings at law and/or in equity to restrain and/or recover damages for any violation or threatened violation of any provision hereof.

5.04 **SEVERABILITY**

The invalidity or unenforceability of any term, condition or provision of this Declaration for any reason, shall in no way affect the validity or enforceability of any other term, condition or provision hereof, all of which shall remain in full force and effect for the term of this Declaration.

"EXHIBIT A"

Case No.: WA251632

LOTS 1 THROUGH 20 INCLUSIVE AND OUTLOT 1, WEATHERWOOD COURTS, BEING A RE-DIVISION OF LOT 3 CERTIFIED SURVEY MAP NO. 9616 AND CERTIFIED SURVEY MAP NO. 195, LOCATED IN THE NORTHEAST 1/4 OF SECTION 25, TOWNSHIP 5 NORTH, RANGE 20 EAST, IN THE CITY OF MUSKEGO, WAUKESHA COUNTY, WISCONSIN.

PARCEL 1:

LOT 3 CERTIFIED SURVEY MAP NO. 9616, RECORDED AUGUST 5, 2003, IN VOLUME 88 OF CERTIFIED SURVEY MAPS FOR WAUKESHA COUNTY, AT PAGES 197 TO 201 INCLUSIVE, AS DOCUMENT NO. 3037856, LOCATED IN THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 25, TOWNSHIP 5 NORTH, RANGE 20 EAST, IN THE CITY OF MUSKEGO, WAUKESHA COUNTY, WISCONSIN.

PARCEL NO.: MSKC 2257.999.003

PARCEL 2:

CERTIFIED SURVEY MAP NO. 195, RECORDED AUGUST 26, 1964, IN VOLUME 1 OF CERTIFIED SURVEY MAPS FOR WAUKESHA COUNTY, AT PAGE 282, AS DOCUMENT NO. 618428, BEING A PART OF THE NORTHEAST 1/4 OF SECTION 25, TOWNSHIP 5 NORTH, RANGE 20 EAST, IN THE CITY OF MUSKEGO, WAUKESHA COUNTY, WISCONSIN.

PARCEL NO.: MSKC 2257.999.001