

(RS-3)

DECLARATION OF RESTRICTION AND COVENANTS
FOR
"WOOD SIDE ESTATES"

THIS DECLARATION, made this 28th day of MARCH, 1990, by B.T. ENTERPRISES OF SOUTHEASTERN WISCONSIN, LTD., a Wisconsin corporation, located in Muskego, Wisconsin, hereinafter referred to as the "DEVELOPER."

WITNESSETH:

WHEREAS, the DEVELOPER owns all the land which has been platted as "WOOD SIDE ESTATES," a subdivision located in the City of Muskego, hereinafter referred to as the "CITY," consisting of 11 residential single family lots and

WHEREAS, the DEVELOPER desires to subject the Wood Side Estates subdivision to the conditions, covenants, restrictions, reservations and easements hereinafter set forth, for the benefit of the Subdivision and for the benefit of each Lot Owner in the Subdivision:

NOW, THEREFORE, THE DEVELOPER HEREBY DECLARES that the real property hereafter described shall be used, held, transferred, sold and conveyed subject to the conditions set forth, which shall inure to the benefit of a 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.

0.01

DEFINITIONS.

(a) "Architectural Control Committee" shall mean the Committee referred to in Article III.

(b) A "Dwelling" shall mean a building which contains one Unit and is limited solely to residential purposes.

(c) A "Single Family Dwelling" shall mean a dwelling with one Unit.

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

(e) "Lot Owner" shall mean the fee simple owner(s) of record title to the Lot, regardless of the type of tenancy or estate.

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

(g) The "Subdivision" shall mean that portion of Wood Side Estates subdivision subject to this Declaration:

- 1. Including thereto all 11 single family lots.

(h) A "Unit" shall mean a portion of a dwelling to be occupied by a single family.

ARTICLE I - PROPERTY SUBJECT TO DECLARATION

1.01 PROPERTY SUBJECT TO DECLARATION.

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

The East 1/2 of the South East 1/4 of the South East 1/4 of the South East 1/4 of Section 17, Township 5 North, Range 20 East, Town of Muskego, Waukesha County, Wisconsin.

ARTICLE II - USE OF LOTS

2.01 GENERAL PURPOSE.

The general purpose of this Declaration is to help assure that the Subdivision will become and remain an attractive residential community and in furtherance of such purpose: to preserve and maintain the natural beauty of certain areas within the Subdivision: to help assure the best use and most appropriate development and improvement of each building site: to protect owners of lots against such use of surrounding lots and buildings as will detract from the residential value of their property: to guard against the erection or maintenance of poorly designed or proportioned structures: to obtain harmonious use of materials and color schemes: to insure the highest and best residential development of lots in the Subdivision consistent with the purpose for which it is platted: to encourage and secure the erection of attractive residential structures with appropriate locations on the lots: to prevent haphazard and inharmonious improvements of building sites: to secure and maintain a proper spatial relationship of buildings, structures and other improvements: and to otherwise secure mutual enjoyment of benefits for owners and occupants of residential property within the Subdivision.

2.02 SINGLE FAMILY LOTS.

(a) The following lots shall be used solely and exclusively for single family residential purposes:

1. Lots 1 through 11, inclusive:

(b) No buildings shall be erected, altered, modified or permitted to remain on any said lots other than one single-Unit dwelling, not exceeding two and one-half stories in height, with an attached private enclosed garage for not less than two cars nor more than three.

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

2.03 ARCHITECTURAL APPROVAL REQUIRED FOR IMPROVEMENTS.

(a) No building, structure, wall, fence, swimming pool or other improvement shall be constructed, erected or placed on any lot or altered,

modified or changed (as to layout, location, exterior design, color or in any other way) until the plans, specifications, drawings and a written proposal therefore have been approved in writing by the Architectural Control Committee as to: Material, composition, and quality; external design, harmony and color coordination with existing and planned structures and improvements; location with respect to topography, setbacks, finished grade elevations, driveways and plantings; and compliance with other applicable restrictions contained in this Declaration.

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

(c) Construction of improvements shall be completed within one year after the last approval or permit has been obtained necessary for commencement thereof.

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

2.04

MINIMUM DWELLING LIVING AREAS.

For each and every dwelling proposed to be constructed in Wood Side Estates, the following minimum living areas shall apply:

(a) All dwellings shall have no less than the following minimum living areas:

(i) 2,000 square feet for two-story structures, with 1,100 square feet minimum required on the first floor.

(ii) 2,000 square feet minimum for tri-level, with a minimum of 1,400 square feet in the upper two levels.

(iii) 2,000 square feet minimum for a bi-level, with a minimum of 1,000 square feet on the upper level.

(iv) 1,700 square feet for one story structure.

All residences shall have full basements with the exception of split-level or bi-level homes.

2.05

BUILDING SETBACK LINES.

(a) No buildings, garage or other structure (excluding eaves, steps, overhangs, patios, or other appurtenances not built on a foundation or frost-footings) shall be located on any lot so that the front, side and rear yard distances are less than minimums as required in the Building and Zoning Code for the City of Muskego, and as further modified and required by the Architectural Control Committee, the intention and purpose of the Committee to further impose said modifications is to harmonize and coordinate adjacent building placements.

2.06

GARAGES: PARKING.

(a) Each lot shall have a private enclosed garage for the on-site storage of not less than two and no more than, three automobiles for each one family dwelling built or to be built upon that lot, to be connected to the street by a properly surfaced asphalt or concrete 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 within the building setback lines as specified in Section 2.05 and shall be attached to the building.

(c) The garage shall harmonize with the residential structure as to design, materials and finished floor elevations.

2.07

ROOFING MATERIAL AND CONSTRUCTION.

(a) Architectural Control Committee reserves the right to approve any type of roofing if it determines such materials are in keeping with the architecture of the dwellings as proposed.

(b) All roof designs shall be subject to the approval of the Architectural Control Committee.

2.08

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 Architectural Control Committee and the construction shall be carried out in accordance with the Material(s) as approved by the Architectural Control Committee.

(b) The design, layout and exterior appearances of each dwelling proposed to be erected, altered or modified shall be such that, in the opinion of the Architectural Control Committee at the time of approving of the building plans, the dwelling will be of a high quality and will have no substantial adverse effect upon property values.

(c) The proposed color schemes for the Dwelling to be erected, altered or modified shall be submitted to the Architectural Control Committee for approval prior to painting and staining. It shall be the aim of the Committee to harmonize colors for not only the dwelling proposed, but to consider the effect of these colors and materials as they relate to other Dwellings.

2.09

ELECTRIC YARD LIGHTS.

(a) For purposes of safety, the DEVELOPER shall require the installation of an electric yard light on each platted residential lot. Each such light shall be of a reasonably uniform design throughout the Subdivision and placed on the lot at the time of finish grading of the yard by the homeowner within ten (10) feet of the access street right-of-way and aligned with the front entrance walkway to the residence.

(b) If the yard light is not so installed within nine (9) months from the date the residence is occupied, the \bar{C} may, after notice, either install the yard light and charge the full cost of such installation to the owner of the lot; or, install the yard light and place a lien on the property for the full cost of such installation plus interest at the rate of seven percent (7%) per annum.

2.10

PRESERVATION OF TREES.

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

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 ground fill free of waste material, and shall not contain noxious materials that may emit odors or produce health hazards of any kind. All dumping of fill materials shall be leveled immediately upon completion of the Dwelling and shall be graded and contoured in accordance with the Master Site Grading Plan approved by and on file with the CITY.

2.12

SURFACE DRAINAGE.

The topography and ground elevation of each lot shall be finished as required by the Architectural Control Committee for the efficient discharge and drainage of surface ground water throughout the property. Final grading of a lot shall be completed within two months following the date of occupancy of a Dwelling thereon.

2.13

LANDSCAPING

No plantings shall be permitted in the existing or proposed drainage swales, and no grading shall be carried out in the rear 20 feet of any lot without the written approval of the CITY.

2.14

SWIMMING POOLS

All swimming pools proposed to be erected, altered or modified in the Subdivision shall require the approval of the Architectural Control Committee and the City of Muskego. Plans, of a nature and content as acceptable to the Committee, shall be submitted to the Committee for approval. All plans shall denote offsets, landscape treatment and fencing proposed.

2.15

LOT GRADING AND DRAINAGE

(a) Each lot grading and drainage shall have grades that conform to the Subdivision's Master Site and Grading Plan, which is on file at the City Hall.

(b) Minor changes from said Master Site Grading Plan, where these changes do not violate the purposes, spirit and intent of said Master Site Grading Plan, shall be reviewed and, if for good and sufficient reasons, may be approved by the Architectural Control Committee.

(c) The proposed elevation of the first floor shall be shown on the building stake-out survey and approved by the Architectural Control Committee and the CITY.

2.16

NUISANCES

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

(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 only for as long as may be necessary therefore.

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

2.17

TEMPORARY STRUCTURES, VEHICLES PROHIBITED.

No temporary structure or vehicles herein defined, including without limitation, any trailer, motor home, truck, boat, mobile home, tent, shack, garage, barn, dog houses, gazebo or other out-building shall be used on any lot for temporary or permanent housing, sleeping or other residential purposes, nor parked, kept or stored on said lot outside the garage for any purpose.

2.18

SIGNS.

No sign of any kind shall be placed or displayed to the public view on any lot, except one sign of not more than six square feet advertising the residence for sale or sign approved by City Code.

2.19

ANIMALS AND PETS.

No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats and other normal household pets may be kept so long as not kept, bred or maintained for any commercial purpose nor in any unreasonable number.

2.20

WATER SUPPLY.

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

2.21

SEWAGE DISPOSAL.

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 dumping ground for trash, garbage, refuse or debris of any kind. All trash, garbage or waste materials shall be in sanitary containers either inside the garage or, when outside, in sanitary containers adjacent to the Dwelling, and suitable screened from view from streets and adjoining lots.

(a) Outside incinerators are not permitted.

2.23

WIRES AND ANTENNAS.

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

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

(b) No external television, cable television, ham or radio antennas, dishes or other similar devices shall be erected upon, atop or on any dwelling or lot, without the prior approval of the Architectural Control Committee.

2.24

FENCES AND WALLS.

No fence or wall of any height shall be permitted on any lot except upon the prior approval of the Architectural Control Committee, provided, however,

that in no event, shall any proposed fence or wall be permitted to extend into the minimum front setback line specified in paragraph 2.05.

2.25

MOTORIZED VEHICLES.

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

2.26

VIOLATION OF DECLARATION: NO REVERSION OF TITLE.

No violation or breach of an 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 3 or more lots within the Subdivision, the DEVELOPER shall designate the person or persons (not less than three nor more than five in number) who shall from time to time comprise the membership of the Architectural Control Committee. Thereafter, upon sale by the DEVELOPER of 8 lots within the Subdivision, the DEVELOPER shall surrender authority of the Architectural Control Committee to the lot owners, its members.

3.02

SUBMISSION FOR APPROVAL: PROCEDURE.

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

(b) In the event the Architectural Control 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, specification 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.

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

ARTICLE IV - MISCELLANEOUS

4.01 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 any other persons claiming under or through the DEVELOPER. After the expiration of such initial twenty-five (25) year period, this Declaration shall be automatically renewed for successive period of ten (10) years, unless there is recorded an instrument terminating this Declaration, executed by the owners of at least seventy-five percent (75%) 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 recording of such instrument of termination.

4.02 AMENDMENTS TO DECLARATION.

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

(a) By the DEVELOPER and the Lot Owners of at least sixty percent (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 percent (75%) of the lots in the Subdivision, following the initial conveyance by the DEVELOPER of all lots in the Subdivision.

4.03 ENFORCEMENT OF DECLARATION.

(a) The DEVELOPER shall have the sole right to initially enforce the provisions of this Declaration by proceedings at law and/or in equity to restrain and/or recover damages and including, by way of explanation and not limitation, reasonable attorney fees, for any violation or threatened violation of any provision hereof.

(b) If any Lot Owner shall file a written petition with the DEVELOPER for commencement of legal proceedings to restrain and/or recover damages for any violation or threatened violation of this Declaration and the DEVELOPER thereafter fails to act upon or refuses to act in accordance with such petition within a period of thirty (30) days after filing, then such petition may commence any action or proceeding within a period of six (6) months after filing such petition, to restrain and/or to recover damages for any violation or threatened violation of this Declaration as described in such petition.

(c) Neither DEVELOPER nor its designated representative shall be entitled to compensation for services performed pursuant to this covenant.

