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REGISTER OF DEEDS
BROWN COUNTY

MAY 18 1995

DECLARATION OF COVENANTS AND RESTRICTIONS
FOR
THORNBERRY CREEK ESTATES

AT 2:01 O'CLOCK P.M.
CATHY WILLIQUETTE
REGISTER OF DEEDS
BROWN COUNTY, WIS.

5400

THIS DECLARATION OF COVENANTS AND RESTRICTIONS (the "Declaration") is hereby made and established as of the 17th day of May, 1995, by Trout Creek, L.L.C., a Wisconsin limited liability company (hereinafter the "Developer").

RECITALS

WHEREAS, Developer owns all those lands located in the Town of Hobart, Brown County, Wisconsin, as legally described on Exhibit A attached hereto (the "Land");

WHEREAS, Developer intends to develop the Land as a residential subdivision containing approximately one hundred (100) lots known as "THORNBERRY CREEK ESTATES" (the "Subdivision"); and

WHEREAS, Developer desires to subject all of the Land (except dedicated streets and utilities), to the conditions, restrictions, covenants, reservations and easements hereinafter set forth, for the benefit of the Subdivision as a whole and for the benefit of each Lot Owner.

DECLARATION

NOW, THEREFORE, DEVELOPER hereby declares that the real estate described on the attached Exhibit A (except for dedicated streets and utilities), shall be used, held, leased, transferred, sold, and conveyed subject to the conditions, restrictions, covenants, reservations and easements hereinafter set forth, which shall inure to the benefit of and shall pass with each Lot as covenants running with the land and shall apply to and bind all successors in interest, users and owners.

DEFINITIONS, PURPOSE AND USE RESTRICTIONS

1.01 DEFINITIONS

(a) "Association" shall mean the THORNBERRY CREEK HOMEOWNERS ASSOCIATION, an unincorporated association which may be created under this Declaration.

(b) "Developer" shall mean TROUT CREEK, L.L.C., as well as any Successor-Developer.

(c) "Family" shall mean one or more persons related by bond, marriage or adoption who are living, sleeping, cooking and eating on the premises as a single housekeeping unit and shall exclude any person or groups of persons where three or more are not so related or engaged as household employees.

(d) "Golf Course" shall mean the 18-hole golf course being constructed by Developer on land near or adjacent to the Subdivision, together with all buildings and other improvements which are or may hereafter be constructed or located thereon.

(e) "Home" shall mean a residential building designed and used as a dwelling for one family (which shall not include any attached garage).

(f) "Lot" shall mean a platted lot within the Subdivision identifiable by reference to a name and lot number, and which has been expressly made subject to this Declaration. The term "Lot" does not include any portion of the Golf Course.

(g) "Lot Owner," "Lot Owners" or "Co-Owners" shall mean the holder(s) of a legal or equitable ownership interest in fee simple record title to a lot, regardless of the type of tenancy or estate and shall include land contract vendees and vendors, but shall not include the holder of any leasehold interest or any mortgage or consensual lien prior to acquisition of legal or equitable title.

(h) "Property" shall include a Lot and all improvements thereon.

(i) "Section" shall mean all those provisions within a numbered heading of this Declaration.

(j) "Structure" and "improvement" shall be synonymous and shall both mean and include any and all of the following, regardless of whether temporary or permanent in character or intended use: building, outbuilding, shed, booth, garage, carport or aboveground storage facility; tent; exterior lighting or electric fixture, antennae, tower, pole or bug control device; antenna, tower, dish or other device, free-standing or attached, for the transmission or reception of electronic signals; fence, retaining or other wall, fountain or aboveground or inground swimming or wading pool; plantings; driveway, sidewalk or walkway; pet kennels or run line; screened or other type of porch, patio or gazebo, tree house or other exterior play equipment; berms and swales; and any other type of equipment or facility for any decorative, recreational or functional purpose of any kind (including, without limitation, additions or altera-

tions to or deletions from any of the foregoing) not located entirely within the exterior perimeter walls of the single family building constructed on the lot. Use of the phrase "structure or improvement" or any other use of such words shall not imply different meanings for such terms.

(k) "Subdivision" shall mean the lands described on the attached Exhibit "A," and such other portions of the Land as become subject to this Declaration pursuant to an amendment hereto, excluding lands now or hereafter dedicated to the Town.

(l) "Successor-Developer" shall mean any person, corporation, partnership or other entity to which Developer expressly assigns or otherwise transfers his rights and obligations hereunder, or any successor to the Developer by operation of law.

(m) "Town" shall mean the Town of Hobart, a municipal subdivision of Brown County, Wisconsin.

(n) "Water System" shall mean all improvements and facilities presently or hereafter erected or installed by Developer or its assigns, within or adjacent to the Subdivision for purpose of supplying fresh water to the Lots, including without limitation, all buildings, structures, towers, equipment, mains, laterals, hydrants and other facilities or improvements necessary or useful for the recovery, storage and distribution of fresh water to Lots in the Subdivision for consumption and fire protection services.

1.02 GENERAL PURPOSE

The general purpose of this Declaration is to help assure that the Subdivision will become and remain an attractive residential area and in furtherance of such purpose: to preserve and maintain high aesthetic standards for all improvements, as well as the natural beauty of open spaces; to help assure the best use and most appropriate development and improvement of each Lot; to protect owners of lots against use of surrounding Lots which may detract from the residential value or enjoyment of their Property; to guard against the erection or maintenance of garish or poorly designed or proportioned structures; to obtain a harmonious and aesthetically pleasing blend of materials, structures and color schemes; to insure a residential development of the Subdivision consistent with high aesthetic standards and the purposes for which each such Lot is platted; to encourage and secure the erection of attractive residential structures with appropriate locations on the Lots; to prevent installation of

improvements which may adversely affect the aesthetic appearance of a Lot or surrounding area; to ensure a proper and consistent set-back of structures and buildings for aesthetic appearance and to avoid blockage of views for other properties; 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.

1.03 SINGLE FAMILY USE: GENERAL RESTRICTIONS:

(a) Except for structures which are a part of the Water System, each Lot shall be used solely for residential purposes by one Family, except that business activities may be conducted in or from any Home if confined solely to the transaction of business by telephone. The term "residential purposes" shall include only those activities necessary for or normally associated with the use and enjoyment of a homesite as a place of residence and limited recreation. Notwithstanding the foregoing, (i) the Developer or any builders approved by the Developer shall have the right to construct model homes which may be used as temporary sales offices, and (ii) the Developer shall have the right to construct and operate improvements upon any Lot (owned by Developer) which are a part of the Water System.

(b) Only one Home may be constructed on each Lot and no garage, tent, or other improvement (except for the Home) shall be used for temporary or permanent living or sleeping for family or guests without the prior approval of the Developer.

(c) Each Lot and all front, side and rear yards shall be maintained by the Lot Owner so as to be neat in appearance when viewed from any street or other Lot and, if not properly maintained, the Developer may perform yard maintenance and charge the costs thereof to the Lot Owner and levy an assessment against the Lot with respect thereto.

(d) Specific lots are subject to floodplain, wetland, conservancy or environmental corridor restrictions.

(e) No Lot shall be used in whole or in part for conducting any unlawful activity or for any unlawful purpose. No noxious odors or loud noises shall be permitted to escape from any Home or Lot nor shall any activity be permitted or engaged in which constitutes a public or private nuisance.

1.04 USE OF GOLF COURSE.

(a) The Golf Course is private property owned by the Developer or its affiliates or assigns. No Lot Owner shall have access to or rights to use or enjoy the Golf Course or any part thereof by virtue of Lot ownership. Any and all use of the Golf Course shall be subject to the terms, requirements, fees and other conditions established from time to time by Developer in its sole and absolute discretion. No special privileges with respect to use of the Golf Course shall exist except as set forth in writing signed by the Developer or the owner of the Golf Course.

(b) Each Lot in the Subdivision which is located adjacent to any portion of the Golf Course shall be subject to a perpetual, non-exclusive easement hereby established by the Developer for the benefit of the Golf Course and its users, for purposes of permitting the flight, landing and retrieval (but not hitting) of errant golf balls. The Lot Owner hereby acknowledges that there shall be no recourse to and hereby waives any and all claims, actions, rights, damages or liabilities against the Developer, its members and affiliates, arising out of or related to any property damage or personal or bodily injuries, costs, expenses or other damages incurred or suffered within the Subdivision on account of use of the Golf Course.

1.05 RESTRICTIONS ON USE OF RECREATIONAL VEHICLES

Recreational vehicles (which shall include snowmobiles, boats and other watercraft, trail bikes, travel trailers and vans, motor homes and dune buggies and other off-street motorized vehicles of any kind) shall not be parked, kept or stored on any Lot outside an enclosed garage without the prior approval of the Developer (which may be withheld in its sole and absolute discretion, including aesthetic appearances), except for temporary storage for loading and unloading purposes for a period of not more than 48 hours. Such recreational vehicles shall also not be used or operated on any Lot or otherwise within the Subdivision, except on dedicated streets in accordance with applicable traffic laws.

1.06 ANIMALS AND PETS

No livestock, poultry, reptile or other animal of any kind shall be raised, bred or kept on any Lot except that dogs, cats and other normal household pets (as may be approved by the Developer from time to time) may be kept so long as not kept,

bred or maintained for any commercial purpose or in an unreasonable number (no more than two (2) dogs are permitted per Lot) or manner, or which may be contrary to applicable law. The right of any Lot Owner to keep such a pet on any Lot is subject to the condition that the pet is not allowed to unreasonably annoy any other Lot Owner and is not allowed to run at large. No exterior pet kennels or related structures shall be permitted at any time.

1.07 GARBAGE AND REFUSE

No Lot shall be used or maintained for dumping or storage of trash, garbage, or debris of any kind, except for temporary storage in sanitary covered containers suitably screened from view from streets and adjoining Lot. There shall be no burning or burial of any garbage, trash, or debris at any time other than or burning of leaves and light brush if approved by the Developer, and conducted in compliance with all applicable laws and ordinances.

1.08 ENVIRONMENTAL AREAS

No removal of vegetation, altering of natural terrain or construction of improvements shall occur within any wetlands, floodplains or environmental corridors. All other activities therein shall be in compliance with all applicable laws and ordinances.

1.09 PONDS

There shall be no fishing, swimming or wading within, or any floating or other navigation upon any ponds or stormwater detention/retention facilities located within or adjacent to the Subdivision.

1.10 MANUFACTURED OR RELOCATED HOMES

No Home shall consist of and there shall not be permitted upon any Lot, (i) any dwelling unit, a substantial portion of which was fabricated and assembled off-site, including without limitation, any mobile home, manufactured home or other dwelling unit constructed or fabricated at one location with intention for occupancy at another location, or (ii) any other dwelling unit which is constructed or located outside the Subdivision and thereafter sought to be moved into the Subdivision. This Section 1.10, however, shall not apply to

panelized or modular homes which are assembled on site, provided said structures are otherwise in conformance with this Declaration.

CONSTRUCTION OF IMPROVEMENTS

2.01 MINIMUM LIVING AREA AND HEIGHT REQUIREMENTS: GARAGES

(a) Each Home shall have a minimum living area (exclusive of basement, attic, garage, porches, patios and storage areas):

1. of not less than 2,300 square feet for a one-story home;
2. of not less than 3,000 square feet for a two-story home.
3. for any multi-level dwelling (having living areas on two or more levels other than a conventional 2-story dwelling plan), of no less than 2,700 square feet, and no less than 2,300 total square feet of which shall be on the upper two levels.

(b) Each Home shall have a basement with a finished floor area (exclusive of any crawl space) of not less than 60% of the area of the first floor.

(c) No Home shall exceed three stories (excluding the basement) or 40 feet in height above finished grade, whichever is less.

(d) The roofs shall be pitched to rise at least six inches vertically for each twelve horizontal inches.

(e) An attached enclosed garage (for at least two and not more than four cars) shall be constructed at the time of construction of the Home and all exterior portions of such garage shall be completed prior to occupancy of the Home.

2.02 SUITABILITY

(a) Developer makes no representation or warranty whatsoever, express or implied, regarding the physical condition of any Lot. Developer recommends that prospective buyers have their Lot inspected and tested by a qualified professional

regarding subsurface conditions or any other matter which may be of concern.

(b) Developer discloses that a portion of certain Lots may contain wetlands, floodplains, environmental corridors or other sensitive areas subject to laws and regulations further restricting use.

(c) Developer suggests, but does not require, that buyers utilize a properly licensed architect in any construction.

2.03 LOCATION AND SET-BACK

(a) All structures or improvements (including eaves, steps, overhangs, and attached porches, patios and other appurtenances) shall be located in conformance with applicable zoning and building codes. Each corner Lot shall be determined by the Developer to have one rear line one side Lot line, one front Lot line and a side street based on the proposed orientation of the Home and other improvements.

(b) Approval by the Plan Commission or Building Inspector of the Town with respect to set-backs or other matters shall not be binding on the Developer in any respect.

(c) Notwithstanding the set-back requirement specified above, the orientation and precise location of each Home and garage, as well as all other improvements on the Lot, must be approved in writing by the Developer prior to any construction, it being intended that the Developer may, in its discretion, impose greater set-back requirements than those specified above in order to achieve or maintain the aesthetic appearance for the Subdivision or any portions thereof which the Developer or the Developer deems advisable. Additionally, the approval of the exact location of the Home by the Developer may be for the purpose of ensuring a proper and consistent set-back of structures and buildings and to avoid blockage and views of other properties.

(d) The Developer may permit improvements (other than the Home and garage) to be constructed, installed and located within the set-back areas described above; provided, such permission must be in writing to be effective and can only be granted after notice to all adjoining and adjacent Lot owners advising them of the proposed improvement and affording them an opportunity to be heard with respect to the proposed improvement.

(e) Each Lot Owner acknowledges and agrees that notwithstanding the reviews and approvals made or required under this Declaration, each Lot Owner has the responsibility for selecting and hiring its own architect or other design professional, construction contractor, subcontractors, material suppliers, inspection professionals and parties associated with the design and construction of the applicable Home, and the Developer have no responsibility whatsoever for such parties or for the quality or suitability of any design, materials, workmanship or foundation location, it being understood that the function of the Developer pursuant to the reviews and approvals required hereunder is solely to attempt to ensure compliance with the covenants and restrictions in this Declaration and the intent thereof, and that no Lot Owner shall be entitled to rely upon any such reviews or approvals other than as expressly provided under Section 2.05(e).

2.04 ARCHITECTURAL STYLES AND BUILDING MATERIALS

Traditional styles including Colonial, Williamsburg, American Gothic, Cape Cod, French Country, Georgian, and English Country are encouraged. Modern, Mediterranean and Spanish styles may be restricted. Natural materials such as timbers, fieldstone, and brick are encouraged for the exterior of buildings. No less than twenty-five percent (25%) of the exterior of the Home (not including roofs, doors and windows) shall be constructed of stone, brick or other masonry materials. Minimum roof pitch as stated in Section 2.01(d) will be required. Garage doors should be placed on side elevation of Homes unless written approval of the Developer or ACC is obtained. Minimal use of aluminum or vinyl siding may be accepted if, in the opinion of the Developer, it does not detract from the architectural appearance of the Home. Roofing must be architectural type, textured fiberglass or asphalt shingle or wood shakers. Fiberglass shingles shall be two hundred twenty (220) pound weight or greater. Standard three-in-one shingles are not permitted. All chimneys shall be constructed of stone, brick or other masonry materials.

2.05 ARCHITECTURAL CONTROL.

(a) The Developer shall have the sole and exclusive right to grant approvals, enforce and determine compliance with the standards and restrictions established herein, and to grant variances therefrom, as set forth in this Declaration. The Developer shall retain such right and authority until Developer no longer holds title to any Lot in the Subdivision.

(b) No Home, garage or other structure or improvement of any kind shall be installed, erected, constructed or placed on any Lot (or altered or changed with respect to layout, location or exterior design, appearance, elevation, color or material composition) without: (1) prior submission of detailed plans and specifications to the Developer for its review; and (2) acquisition of prior written approval by the Developer with respect thereto. Plans to be considered appropriate for review by the Developer must include the following (unless the Developer advises a Lot Owner in writing to the contrary): construction drawings, plans and specifications (prepared by a qualified home designer or architect if the improvement involves construction of a Home, garage or addition or change to either) showing dimensions, composition and color of exterior materials and equipment, if any; and a plot plan showing the location of the improvement with respect to set-backs from Lot lines and other buildings and improvements, finish grade elevations, topography, drives, existing plantings and other data pertinent to such review by the Developer as it may reasonably request. The Developer may deny or withhold approval of any proposed improvement based upon any one or more of the following factors: in the Developer's sole judgment, any one or more of the general purposes specified in Section 1.02 will not be satisfied; material composition and quality; exterior design, appearance and color; coordination with other existing or contemplated improvements; location with respect to topography and existing surroundings; set-backs; finished grade elevations; access; drainage or landscaping; and general aesthetics. ANY LOT OWNER WHO CAUSES OR ALLOWS ANY IMPROVEMENTS TO BE CONSTRUCTED, INSTALLED, PLACED OR ALTERED ON THE LOT WITHOUT PRIOR WRITTEN APPROVAL OF THE DEVELOPER SHALL BE REQUIRED TO REMOVE SUCH IMPROVEMENT (OR RESTORE SUCH ALTERATION) IN ITS ENTIRETY AT THE LOT OWNER'S EXPENSE. Without intending to limit the generality of the foregoing, it is intended that the exterior color or appearance of any portion of a Home, garage or other improvement may not be changed in any significant respect without the prior written approval of the Developer.

(c) Construction of all Homes shall be in conformance with the established grade.

(d) Upon approval by the Developer of the plans for the proposed improvement and upon receipt of any necessary Town and other governmental approvals or permits, construction or installation of the improvement may commence and, once commenced, shall be substantially completed within twelve (12) months following either acquisition of Developer approval or issuance of any required building permit by the Town, whichever is later. The exterior finish, including installation of all doors and

windows shall be substantially completed within six (6) months of issuance of a building permit for the Home. The Developer may, in its discretion, extend such completion deadline up to an additional six (6) months in the event the delay has been caused primarily by factors beyond the control of the Lot Owner and his/her contractors. For its own benefit to ensure compliance, the Developer may, at its discretion, require performance bonds from the contractors responsible for construction of the improvements.

(e) Notwithstanding anything to the contrary contained in this Declaration, the Home shall be constructed and substantially completed within thirty (30) months following the date the Lot is conveyed by the Developer, time being of the essence. The term "substantial" completion shall mean issuance of an occupancy permit for the Home by the Town.

(f) In the event the Developer fails to act upon proposed plans within 30 days following written acknowledgment by the Developer that it has received such plans and that they are adequate for purposes of its review or in the event no suit to enjoin the erection, installation or change of the improvement or to require removal thereof has been commenced within one (1) year following final completion thereof, no right shall exist to thereafter enforce these restrictions insofar as approval by the Developer is required as to such particular matter.

(g) Any approval or permission of the Developer under this Section, to be binding or effective, MUST BE IN WRITING signed by an authorized representative. No oral statements, representations or approvals of the Developer or any of its members or agents shall be binding on the Developer under any circumstances, regardless of any reliance thereon by any Lot Owner.

(h) Within 90 days following construction or installation of any improvement, the Lot Owner shall furnish an as-built certified survey showing the location of the improvement, if requested by the Developer.

2.06 LANDSCAPING, GRADING AND DRAINAGE

(a) Landscaping plans, including mature shrubbery, must be submitted for approval in conjunction with building plans.

(b) All landscaping shall be performed in accordance with the plan approved by the Developer and shall be completed

within eighteen (18) months following the issuance of the building permit for the Home. For its own benefit to be sure of compliance, the Developer may, at its discretion, require performance bonds from the applicable contractors.

(c) All grading and excavation activities shall be conducted in conformance with the then most current version of the Wisconsin Construction Site Handbook, published by the Wisconsin Department of Natural Resources. Except as may be expressly approved in writing by the Developer prior to the commencement of any work, there shall be no grading, excavation, cut and fill work or other alteration to the surface of any portion of the Lot (together "Surface Alterations"). All Surface Alterations shall be conducted in conformance with the master grading plan for the Subdivision (on file with the Town or the Developer's engineer). No Surface Alterations shall be conducted in a manner which causes erosion or instability of soils within an adjacent Lot or alters the patterns of storm and surface water drainage in a manner which has a material adverse effect on another Lot. The Owner proposing the work shall have the burden of demonstrating conformance with the foregoing. No consent shall be deemed given hereunder except in reference to a detailed grading plan specifically disclosing all aspects of the work for which approval is requested.

(d) No fence, wall, hedge, or screen planting shall be installed unless in accordance with landscaping or other plans approved in advance by the Developer under Section 2.05. In general, fencing will be discouraged other than for protection of swimming pools. No swimming pools shall be installed above the surface grade.

(e) Front yards, including side yards on common lot lines, shall be maintained as clipped lawns and only back and side yards of wooded lots may be left natural, subject to approval by the Developer.

2.07 DRIVEWAY

Each Lot shall be improved by the Lot Owner with an asphalt, brick or concrete driveway extending from the street to the garage within six (6) months following issuance of an occupancy permit for the Home. A plot plan showing the location of the drive shall be submitted to the Developer for its prior approval under Section 2.05 above.

2.08 CONSTRUCTION MATERIALS - STORAGE

No building or construction materials shall be stored on any Lot outside of the Home or garage, other than during periods of actual construction or remodeling and then only for so long as may be necessary. Excess excavated material shall not be stored on any Lot during or after construction without the prior approval of the Developer, unless required for back filling, finish grading, or landscaping.

2.09 WATER SUPPLY

Each Home shall be connected to the Water System and no individual wells shall be used or permitted. Until such time as the Water System is dedicated to the Town or becomes part of a public utility, the Water System shall be privately owned by the Developer or its affiliates or assigns. The Developer contemplates and shall have the unqualified right and authority to establish and place of public record a Water Distribution Declaration (the "Water Declaration") governing the use, funding and operation of the Water System and the distribution and supply of fresh water to Lots in the Subdivision, including without limitation, the assessment of an initial connection fee and periodic service charges. The terms, fees, assessments, conditions and obligations of the Water Declaration shall be prior and superior to all mortgages, judgments, liens, claims and encumbrances accruing, arising or coming of record after the recording of this Declaration ("Subsequent Liens") regardless of when the Water Declaration comes of record, this Section serving as public notice thereof, and all of the Subsequent Liens shall be subject and subordinate to the Water Declaration. The Lot Owner agrees to execute or obtain any documentation requested by Developer to confirm said subordination with respect to any Subsequent Liens, including purchase money mortgages.

2.10 SEWERAGE DISPOSAL

Each Home shall be connected with the Town municipal sewer system and no septic tank or other individual sewerage system shall be used or permitted.

2.11 WIRES, ANTENNA, AND SOLAR PANELS

(a) All utility lines and wiring for gas, electric, telephone, and cable television service to a Home, garage or other improvement shall be installed underground, unless

otherwise permitted by the Developer in writing prior to installation.

(b) No roof-top, tower-mounted or other external antenna or satellite dish for television or radio reception or transmission, or for other electronic transmission or reception or solar heating panels shall be erected or used without the prior written approval of the Developer, which approval may be denied in the Developer's sole and absolute discretion.

2.12 SIGNS AND MAILBOXES

(a) No sign or banner of any kind shall be placed or displayed to public view on any Lot, except: (1) one sign of not more than six square feet advertising the Property for sale; and (2) one standard sign (showing the Lot Owner's name) as may be approved by the Developer for uniform use in terms of size, design, appearance and location for each Lot in the Subdivision.

(b) No mailbox or other delivery receptacle shall be installed unless the location, size, materials and appearance are approved in writing by the Developer in accordance with Section 2.05. All mailboxes used in the Subdivision shall be purchased from the Developer, the design and cost of which shall be determined by the Developer.

THE ASSOCIATION

3.01 CREATION

(a) The Developer shall have the right at any time after the tenth (10th) anniversary of the date of this Declaration, to create and establish a non-profit unincorporated homeowner's association to be known as "THORNBERRY CREEK HOMEOWNER'S ASSOCIATION," for the sole and exclusive purpose of accepting and assuming all of the rights, powers, privileges and obligations of the Developer under the Water Declaration.

(b) The Association shall exist upon formation by Developer and shall automatically terminate upon termination of the Water Declaration. The affairs of the Association shall be governed by the Board of Directors of the Association (the "Board"), as set forth under Section 3.05, below.

3.02 MEMBERSHIP

(a) Each Lot Owner shall automatically be a member of the Association and shall be entitled to one membership and one vote for each Lot owned, with ownership of a Lot being the sole qualification for membership. The membership in the Association appurtenant to a Lot shall be owned jointly and severally by all co-Owners of the Lot, regardless of the form of tenancy, estate, or interest in the Lot.

(b) Association membership and voting rights shall be appurtenant to each Lot and shall not be assigned, conveyed or transferred in any way except upon transfer of an ownership interest in the Lot and then only to the transferee, nor shall membership or voting rights be retained except upon retention of an ownership interest in the Lot. Any attempt to make a prohibited transfer or retention of such rights shall be null and void.

(c) Notwithstanding any provision in this Declaration to the contrary, the Developer shall be entitled to one membership and one vote for each Lot owned by the Developer.

3.03 VOTING

(a) The vote appurtenant to each Lot shall be cast as a whole (in person or by proxy) by the Lot Owner or any co-Owner.

Fractional votes will not be allowed; and if co-Owners of a Lot do not agree on how the vote shall be cast or if a fractional vote is attempted, the right to vote on the matter in question shall be forfeited by such Owners. The Association may treat any co-Owner of a Lot or the proxy of any such co-Owner as duly authorized to vote for all co-Owners of that Lot.

(b) A quorum for voting purposes shall consist of fifty percent (50%) or more of the votes entitled to be cast.

(c) There shall be no cumulative voting for election of Board members or on any other matters. All decisions and actions of the Association, except as otherwise specifically provided for in this Declaration, shall be by a majority of the votes present and entitled to be cast.

3.04 ASSOCIATION MEETINGS

(a) The annual meeting of the Association shall be held in June of each year for the purpose of electing members of the Board (subject to Section 3.05) and transacting any other business authorized to be transacted by the Association. The Board shall select the specific date, time and place of the annual meeting for a given year and shall furnish written notice to each Lot Owner.

(b) A quorum for meetings necessary to conduct Association business shall consist of Lot Owners, present in person or by proxy, representing a majority of all votes entitled to be cast. The act of a majority of the votes at any meeting at which a quorum is present shall be the act of the Association, unless a greater percentage is required under this Declaration. Written notice of all meetings of the Association stating the time, place, and purpose for which the meeting is called shall be given to each Lot Owner not less than four (4) nor more than 30 days prior to the date of such meeting; provided, however, that notice of any meeting may be waived in writing before or after the meeting.

3.05 MANAGEMENT OF ASSOCIATION BY THE BOARD

(a) The Association and its business, activities and affairs shall be managed by the Board. The initial Board shall be appointed by the Developer; thereafter, so long as fifty percent (50%) or more of the Lots are owned by Developer, all three members of the Board shall be appointed by Developer. So long as twenty percent (20%) or more but less than fifty percent (50%) of the Lots are owned by Developer, two members of the Board shall be appointed by Developer and one member shall be elected as provided herein. So long the Developer owns at least one (1) Lot on the Subdivision but less than twenty percent (20%) of the Lots, one member of the Board shall be appointed by Developer and two members shall be elected as provided herein. If none of the Lots are owned by Developer, all of the members of the Board shall be elected as provided herein. Board members shall serve for a term of one (1) year.

(b) The Board may appoint committees consisting of one or more Lot Owners to make recommendations to the Board or the Association on any matter.

(c) No person shall receive any payment for services rendered as a member of the Board or the Committee or as an officer of the Association or as a member of any committee unless

specifically authorized by the Water Declaration or by prior resolution of the Association. The Committee may reimburse out-of-pocket expenses incurred by an officer or committee member in the performance of his/her duties.

(d) No member of any board or committee or officer of the Association shall be liable to any Lot Owner or to any other party, including the Association, for any loss or damage suffered or claimed on account of any act, omission, error or negligence of such board or committee member or officer, provide such person acted in good faith, without willful or intentional misconduct.

3.06 LOT OWNER'S LACK OF AUTHORITY TO BIND ASSOCIATION

No Lot Owner (other than members of the Board) shall have any authority to act for the Association or the other Lot Owners, as agent or otherwise, nor to bind the Association or the other Lot Owners to contracts, negotiate instruments or other obligations or undertakings of any kind.

3.07 TRANSFER OF WATER SYSTEM

Upon formation of the Association and appointment of the initial Board, the Developer shall have the right to convey, assign, grant and otherwise transfer to the Association, all of the Developer's right, title and interest in and to the Water System, and the Association shall accept title and ownership thereto and assume all of the obligations and responsibilities with respect to the use, operation and maintenance thereof under the Water Declaration, and the Developer shall be released from said liabilities and obligations as of the date of conveyance.

MISCELLANEOUS

4.01 RESERVATION BY DEVELOPER OF RIGHT TO GRANT EASEMENTS

Developer hereby reserves the right to grant, convey or establish easements to the Town and/or to any public or private utility company (including the entity operating the Water System) upon, over, through or across those portions of any Lot in the Subdivision within a reasonable distance from any Lot line for purposes of allowing the provision of gas, electric, water, sewer, cable television or other service to any Lot(s) or through any portions of the Subdivision or for purposes of facilitating drainage of storm or surface water within or through the

Subdivision. Such easements may be granted by Developer, in its own name and without the consent or approval of any Lot Owner, until such time as Developer has conveyed legal title to all Lots platted or to be platted in the Subdivision to persons other than a Successor/Developer.

4.02 SEVERABILITY

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

4.03 COVENANTS RUN WITH LAND

All terms, conditions and provisions of this Declaration (and as may be amended) shall constitute covenants running with the land.

4.04 AMENDMENTS TO DECLARATION

This Declaration may be amended by recording in the Office of the Register of Deeds for Brown County, Wisconsin, a document to that effect executed by the Owners of at least 67% of all Lots in the Subdivision and their mortgagees, with all signatures duly notarized. Notwithstanding the foregoing, Developer shall have the absolute and unqualified right, without consent from any party, so long as Developer may own any Lot in the Subdivision, at any time and from time to time, to amend this Declaration to cause additional lands in the Town of Hobart which are or may become owned by Developer, to become subject to this Declaration, and upon recording of said amendment, any residential lots contained therein shall be deemed a part of the Lots within the Subdivision for all purposes contained herein. The Developer contemplates, but is not limited by or obligated to, adding approximately one hundred seventy (170) additional lots to the Subdivision. Such amendments shall become effective only upon recording.

4.05 TERM OF DECLARATION

This Declaration (and any amendments) shall be binding for a period of 20 years (from the date the Declaration is recorded) upon all Lot Owners and any other persons claiming

under or through the Developer. Upon the expiration date of such initial 20-year period, this Declaration shall be automatically renewed for a successive period of ten (10) years and thereafter for successive periods of ten (10) years upon the expiration date of the prior renewal period, unless there is recorded an instrument, (executed by the Owners of at least 75% of all Lots in the Subdivision and their mortgagees) terminating this Declaration, in which event this Declaration shall terminate upon the recording of such instrument of termination or expiration of the initial 20-year term, whichever occurs later.

4.06 DISCLAIMER

Notwithstanding any other provision(s) of this Declaration, Developer is under no obligation to any Lot Owner to develop or plat at any time any portion(s) of the Subdivision not already platted as of the date of recording this Declaration.

4.07 ENFORCEMENT

(a) Upon the violation of any one or all of any provisions of this Declaration, the Developer shall have the sole and exclusive right to proceed at law or in equity against the person or persons violating or attempting to violate any such covenant or restrictions, and shall be entitled to both equitable and legal relief, including reasonable attorneys fees. Any failure of such enforcement shall not be deemed a waiver of the right to do so or the acquiescence of any violation, subsequent or otherwise.

(b) The Developer shall have the right to levy and collect an assessment (which is due upon receipt of notice) against any Lot for any costs and expenses incurred by the Developer in the enforcement of the provisions of this Declaration with respect to such Lot, including without limitation, costs incurred under Section 1.03(c) hereof, and the cost of consultants and actual attorneys' fees, and whether or not litigation is commenced with respect thereto. The Developer shall further have the right to levy and collect an assessment against all Lots in the Subdivision for reimbursement of costs and attorneys' fees incurred by Developer in the enforcement of this Declaration, provided that (i) said assessment shall be equally allocated to all platted Lots in the Subdivision, including those owned by Developer, and (ii) any enforcement costs recovered from the violating Lot Owner shall be credited or refunded to Owners of Lots against which the assessments were

made. Any assessments not paid when due shall bear interest at 12% per annum until paid in full, and such unpaid assessment, together with the interest thereon, shall constitute a continuing lien against the real estate for which the assessment is made. Said lien may be foreclosed in the same manner as real estate mortgages under Wisconsin law, provided that such liens shall be subordinate to any purchase money or construction mortgage. The assessment and interest thereon shall further be the personal obligation of the applicable Lot Owner.

(c) In the event of a default under Section 2.05(e) hereof for any reason, then in addition to all of the other rights and remedies available under this Declaration, the Developer shall have the right and option upon written notice to the applicable Lot Owner (the "Option Notice"), to repurchase said Lot for the amount of the purchase price received by the Developer at the time of original conveyance by Developer (the "Repurchase Price"). In the event Developer exercises said option, then within thirty (30) days following issuance of the Option Notice a closing of the repurchase transaction shall take place at the Developer's offices at which time, Developer shall be responsible for payment of the Repurchase Price (subject to proration for real estate taxes and assessments as of the closing date), and the Lot Owner shall convey to Developer the Lot (together with all improvements thereon not removed by Lot Owner) in fee simple, by good and sufficient warranty deed, free and clear of all liens, claims, and encumbrances, except those which existed immediately prior to Developer's initial conveyance of the Lot to Lot Owner. At said closing, the Lot Owner shall further provide to Developer a commitment to issue a title insurance policy (with all premiums prepaid) in the amount of the Repurchase Price insuring Developer's title to the Lot in the condition required herein.

(d) Each remedy set forth in this Declaration shall be in addition to all other rights and remedies available at law or in equity. All such remedies shall be cumulative and the election of one shall not constitute a waiver of any other. Any forbearance or failure of the Developer to exercise any such right or remedy for any violation (including, without limitation, violations of Section 2.05(e)) shall not be a waiver of such right or remedy under any circumstances (except as provided in Section 2.05(c)) unless a written waiver is obtained from the Developer.

4.08 NO LIABILITY

All decisions of the Developer or the Board on any matter (including, without limitation, decisions under Section 2.05) shall be enforceable against any Lot Owner if made in a good faith exercise of the judgment or discretion of its members so long as such decision is not clearly in conflict with the express provisions of this Declaration. Any Lot Owner or other person seeking to avoid, set aside or challenge any such decision of the Developer or the Board shall have the burden of proof to establish that such standards were not met at the time the decision was made.

4.09 WAVIER OF IMMUNITY

In furtherance and not in limitation of any of the terms of this Declaration, the Developer intends that this Declaration shall be and remain at all times until expiration hereof, fully enforceable against all Lots and any person, entity, trust, organization, governmental unit or sovereign nation which may become a Lot Owner. Accordingly, any such person, entity, trust, organization, governmental unit or sovereign nation which becomes a Lot Owner, whether by virtue of conveyance, operation of the law or otherwise, shall be conclusively deemed to have waived any and all defenses to and immunity from enforcement of this Declaration based upon the legal or ethnic status of such Lot Owner, including without limitation sovereign immunity, this Declaration serving as full and adequate public notice of said waiver. Said waiver shall apply to the terms, conditions and encumbrances established in this Declaration, together with any future liens, claims, easements or encumbrances expressly permitted hereunder, including without limitation (i) the Water Declaration under Section 2.09, (ii) the liens for assessments under Section 4.07, (iii) the easements under Section 4.01 and (iv) the right of repurchase under Section 4.07.

4.10 INTERPRETATION

These Declarations shall be construed and interpreted in favor of restricting the use of each Lot consistent with the purposes hereof and any ambiguity shall be resolved against any Lot Owner who installs any structure or engages in any activity not clearly authorized under these Declaration or approved in writing by the Developer. This Declaration shall be interpreted and construed in accordance with the laws of the State of Wisconsin.