

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS OF MATTHAEUS FARMS SUBDIVISION

THIS DECLARATION is made and established as of this the 5th day of August, 2022, by the Owners of the parcels comprising the real property identified herein.

RECITALS

A. The undersigned are the owners of the property described in **Exhibit A** located in the City of Port Washington, Ozaukee County, Wisconsin ("**Property**").

B. The undersigned desire to subject the Property to covenants, conditions, restrictions, reservations and easements as set forth in this Declaration for the benefit of the Property and each owner of the Property.

NOW THEREFORE, the undersigned declare that the Property shall be held, sold, conveyed, transferred, used, improved, operated and leased subject to the covenants, conditions, restrictions and easements set forth in this Declaration.

Article 1

STATEMENT OF PURPOSE AND GENERAL PROVISIONS.

1.1 Nature of Easements and Obligations. The easements and rights granted in this Declaration together with the obligations, covenants, conditions and restrictions imposed in this Declaration are, and shall be, irrevocable, perpetual and appurtenant to and run with the land and shall inure to the benefit of and be binding upon the owners of the Property and their respective successors and assigns.

1.2 Purpose and Intent. The purpose and intent of this Declaration is to ensure that the Property develops in an appropriate manner to achieve the following goals:

- (a) to protect and enhance the value of the Property and the improvements constructed on the Property through the encouragement of development which is well planned and maintained in a quality manner;
- (b) to create an attractive and efficient integrated residential community through sound land use, planning and design standards; and,
- (c) to insure the operation and maintenance of Common Elements as hereinafter defined, in a manner consistent with the purposes described above.

1.3 Definitions.

- (a) "Alterations" shall mean changes to the exterior appearance of a Building, as defined below, or to any additions, projections and extensions to a Building.
- (b) "Association" shall mean the nonstock, nonprofit Wisconsin company whose membership consists of Owners, as defined below, created for the purpose of implementing and enforcing the provisions of this Declaration and maintaining and protecting the Common Elements, as defined below.
- (c) "Board" shall mean the board of directors of the Association as appointed or elected in accordance with the bylaws of the Association.
- (d) "Building" shall mean any structure constructed on the Property, and all additions, projections and extensions thereto.
- (e) "Common Elements" shall mean all areas, improvements, structures, fixtures, landscaping, plantings, signs, and any other materials, equipment, property, items or services which are established, owned, acquired, constructed, utilized or maintained by the Association for the general or common benefit or enhancement of the Property consistent with the purposes and intent of this Declaration, including, without limitation, the Outlots as shown on the plat of Mattheaus Farms Subdivision a copy of which plat is attached hereto as **Exhibit B ("Plat")**, and all landscaping and plantings associated with the Outlots 1, 2, 3 and 4.
- (f) "Hazardous Materials" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, oil hydrocarbon, asbestos or similar item as defined in or pursuant to the Resource Conservation Recovery Act, as amended, the Comprehensive Environmental Response Compensation and Liability Act, as amended, the Federal Clean Water Act, as amended, the Safe Drinking Water Act, as amended, the Federal Water Pollution Control Act, as amended, or any other applicable Law, whether existing as of the date hereof, previously enforced, or subsequently enacted.
- (g) "Improvement" shall mean any grading, landscaping, structure, installation on, or other modification of, the Property other than a Building.
- (h) "Laws" shall mean any statutes, laws, codes, ordinances, rules and regulations of all government authorities having jurisdiction over a matter.
- (i) "Lot" shall mean any of the thirty-three (33) single-family residential lots shown on the Plat.
- (j) "Outlots" shall mean the outlots generally shown on the Plat.

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- (k) "Owners" shall mean any person or entity holding title to the fee interest in a Lot, or land contract purchasers or mortgagees in possession of the Lot.
- (l) "Ponds" shall mean the Ponds shown on the Plat and all pipes, equipment and drainage swales connecting the Ponds as set forth in the Drainage Plan.

Article 2 USES, RESTRICTIONS, AND DESIGN STANDARDS.

2.1 General. The Building and Improvements constructed or to be constructed on the portion of the Property comprising lots 1-33, within the area otherwise known as Mattheus Farms Subdivision, shall in each instance comply with each of the conditions, standards and restrictions set forth by the City of Port Washington and shall be in compliance with all applicable Ordinances and Zoning Laws. Additionally, Owners shall obtain at their cost all necessary government permits to develop, use and occupy their Lots.

2.2 Use. All Lots may only be used for residential purposes.

2.3 Obstructions. No Owner shall cause or permit the Common Elements to be used in a manner which denies or interferes with the full use of the Common Elements by others authorized to use the Common Elements.

2.4 Alteration of Common Elements. No person or entity shall alter, construct, or remove the Common Elements, or any portion thereof, or place any Buildings, or make any permanent alterations in the Common Elements without the prior written consent of the Board.

2.5 Detention Ponds. No Owner or occupant of a Lot or any guest of any Owner or occupant of a Lot shall be allowed to swim, wade, boat, fish or in any manner whatsoever use the Ponds serving the Property other than for storm water management pursuant to the Drainage Plan. The Association shall not be held liable for any injury or death arising out of or related to the Ponds. Each Owner hereby releases, waives and forever discharges the Association from any and all claims such Owner(s), and its/their respective tenants and guests, may now or may in the future have against the Association arising out of and related to the Ponds, except for those arising out of the intentional wrongdoing of the Association. Each Owner hereby agrees to defend, indemnify, and hold the Association harmless from and against any and all claims, actions, causes of action, costs and costs of action, including attorneys' fees for settlement or negotiation, or at trial and appellate levels, arising out of or related in any manner whatsoever to the failure of the Owner or the Owner's tenants or their respective guests, to comply with the terms of this paragraph.

2.6 Enforcement. The provisions of this Article 2 and for the purpose and intent of this Declaration from time to time, shall be enforced by the Board by such means that are necessary and appropriate, including recourse to the City of Port Washington, civil authorities, or court action, if necessary. Monetary fines shall be uniformly levied and shall be charged and assessed against the subject Owner and Lot and may be enforced and collected in the same

manner as an assessment for Common Expenses, as defined in Section 7.1, including the foreclosure of a lien therefor. In the event of a conflict between any rules adopted by the Board or this Declaration, the terms of this Declaration shall control. The Board shall have the right to seek and enforce strict conformance with the terms of this Declaration and the rules and regulations established by the Board pursuant to this Declaration and the bylaws of the Association.

Article 3 ASSOCIATION OF OWNERS.

3.1 Membership, Duties and Obligations. All Owners shall be entitled and required to be a member of the Association known as the Matthaueus Farms Home Owners Association, Inc., which shall be responsible for carrying out the purposes of this Declaration, including the exclusive management and control of the Common Elements and facilities. Such Association shall be incorporated as a non-stock corporation under the laws of the State of Wisconsin. Each Owner and the occupants and guests of the Lots shall abide by and be subject to all of the rules, regulations, duties, and obligations of this Declaration and the bylaws, and rules and regulations of the Association. Any actions required or permitted to be taken by the Association pursuant to this Declaration shall be taken by the Board on behalf of the Association in accordance with the Association bylaws.

3.2 Votes Per Owner. Subject to the provisions of Section 3.3 below, each Owner shall be entitled to one vote for each Lot owned by the Owner in any matters brought before the Owners for vote, regardless of the number of individual owners on title for each Lot.

3.3 Multiple Owners and Votes. If title to a Lot is held by more than one person or entity, the membership related to that Lot shall be shared by such Owners in the same proportionate interests and by the same type of tenancy in which title to the Lot is held; however, the voting rights may not be split, and shared membership interests must be voted as a whole pursuant to, and by the person identified in, the designation contained in the membership list maintained by the Board pursuant to the bylaws of the Association, or the duly authorized proxy for such person. Additional rights, qualifications and obligations of the members shall be as set forth in the bylaws of the Association.

3.4 Board of Directors. The Association shall be governed by a board of three directors. The duties and qualifications of the directors shall be as set forth in the bylaws of the Association. At the first annual meeting, one director shall be elected to a one year term, and two directors shall be elected to two-year terms each, to create staggered terms by the Directors.

3.5 Association Personnel and Contracts. The Board on behalf of the Association may obtain and pay for the services of any person or entity to manage its affairs to the extent it deems advisable, and may hire such other personnel or contract with such other persons or entities as it shall determine to be necessary or advisable for the proper operation and maintenance of the Common Elements.

3.6 Association Records. The Board shall have current copies of this Declaration, the Articles of Incorporation, and the bylaws of the Association, any rules or regulations affecting

the Property and the Association's books, records and financial statements available for inspection during normal business hours by Owners. Within 30 days of a written request, the Board shall provide a written financial statement for the preceding fiscal year to any Owner.

Article 4 **REPAIRS, MAINTENANCE and ALTERATIONS.**

4.1 Common Elements and Facilities. The Association through the Board shall be responsible for the management and control of the Common Elements and facilities, and shall cause the same to be kept in good condition, order and repair.

4.2 Individual Lots. Each Owner shall be responsible for keeping, at all times, the Owner's Lot and all of its Buildings, Improvements, equipment, fixtures and appurtenances in good order, condition and repair, and in an attractive, clean and sanitary condition.

4.3 Prohibition Against Structural Changes by Owner. An Owner shall not perform, or allow to be performed, any act or work which would impair any easement, or interfere with the use and enjoyment of another Lot or the Common Elements.

4.4 Entry for Repairs. The Board through one or more of its designees may enter any Lot at reasonable times and under reasonable conditions when necessary in connection with any maintenance, construction, or repair of the Common Elements. Such entry shall be made with prior notice to the Owners, and with as little inconvenience to the Owners as practical, and any damage caused thereby shall be repaired by the Association and treated as a Common Expense under Article 7. The Association through one or more of its designees shall be granted an immediate right of entry upon a Lot to effect emergency repairs.

4.5 Repair and Replacement Standards. All repairs and replacements by the Owners or the Association shall, to the extent reasonably possible, be done in a manner which is substantially similar to the quality and appearance of original construction and installation.

Article 5 **DESTRUCTION AND RECONSTRUCTION.**

5.1 Damages to Common Elements. In the event of a partial or total destruction or damage affecting the Common Elements, the Board on behalf of the Association shall promptly undertake to repair or reconstruct the Common Elements to a condition compatible with the remainder of the Property. Expenses incurred by the Association pursuant to this Section 5.1 shall be Common Expenses under Section 7.1.

Article 6 **INSURANCE.**

6.1 Owners. Owners shall provide hazard and liability insurance for their respective Lots and all Buildings, Improvements, fixtures and equipment contained thereon. Premiums for such insurance shall be an individual expense of the respective Owners.

6.2 Association Hazard Insurance. The Association may, but shall not be obligated to, obtain and continue in effect hazard insurance coverage on the Common Elements as well as personal and real property belonging to the Association in an amount determined by the Board to be appropriate. All insurance acquired, if any, pursuant to this Section 6.2 shall be for the benefit of the Association and all proceeds payable by reason of said insurance shall be paid to the Association for the express purpose of reconstruction and repair or as otherwise determined by the Board.

6.3 Association Liability Insurance. The Association shall obtain and continue in effect public liability insurance covering the Common Elements and facilities with respect to all claims commonly insured against in such amounts as may be determined at the discretion of the Board from time to time. The Association shall also provide workman's compensation insurance, directors' and officers' liability insurance and fidelity bonds on such officers and employees in such amounts and with such coverage as is determined by the Board to be necessary or advisable from time to time.

Article 7

LIABILITY FOR COMMON EXPENSES.

7.1 Common Expenses. The costs of administration of the Association, insurance, repair, maintenance, replacement and other expenses related to the Common Elements and facilities (collectively, "Common Expenses") shall be paid for by the Association. The Association shall make assessments against the Owners, as well as the Lots themselves, for such Common Expenses and for the creation of reserves for the payment of future Common Expenses.

7.2 Nonwaiver. No Owner may exempt itself or its Lot from liability for contribution toward the Common Expenses by waiver of the use or enjoyment of any Common Elements and facilities or related services or by the abandonment of a Lot.

7.3 Personal Obligation. All Common Expenses and assessments, when due, shall (i) immediately become a personal debt of the Owner and (ii) may also become a lien, against the Lot until paid, if a statement of lien is filed in accordance with Section 7.8.

7.4 Annual Assessments. Each Lot and each Owner shall be subject to an annual assessment, determined and levied by the Board for the purpose of paying costs and expenses incurred and to be incurred by the Board, including an allocation for reserves for future expenses, related to the Common Elements and Common Expenses and the performance by the Association of its obligations under this Declaration and the bylaws of the Association ("Annual Assessment"). The Board, by December 1 of each year, shall prepare an annual budget and shall determine an Annual Assessment to meet the reasonably estimated costs and expenses of the Association for the ensuing year and any applicable reserves. The annual budget and Annual Assessment shall be delivered in writing to the Owners within thirty (30) days after the Board's approval of the budget.

7.5 Special Assessments. Each Lot shall be subject to special assessments determined and levied by the Board to cover all or any part of any extraordinary expenses incurred by the Association or expenses incurred but not covered by the Annual Assessment, related to the

Common Elements, Common Expenses and the obligations of the Association under this Declaration and the bylaws of the Association (“**Special Assessment**”).

7.6 Payment and Allocation. The pro rata share of an Owner of a Lot for Annual Assessments and Special Assessments shall be a fraction, the numerator of which shall be one and the denominator of which shall be 33 (the total number of Lots subject to this Declaration).

7.7 Collection and Enforcement. The right to collect or enforce the collection of the Annual Assessments, Special Assessments or any other charges arising under this Declaration is delegated exclusively to the Board. The Owners shall be obligated to pay the Annual Assessments and Special Assessments and other charges arising under this Declaration when due and the Annual Assessments and Special Assessments and other charges arising under this Declaration shall also be and constitute a lien on the Owners Lot until paid. All Annual Assessments, Special Assessments and charges under this Declaration levied by the Board which are unpaid when due shall bear interest at the rate of 12% per annum. A lien of the Association shall be for the unpaid amounts of the Annual Assessments, Special Assessments or other charges arising under this Declaration including the interest and cost of collection including, but not limited to, reasonable attorneys’ fees.

7.8 Lien. In the event any Annual Assessments, Special Assessments or other charges arising under this Declaration which are levied against an Owner and a Lot remain unpaid for a period of sixty (60) days from the date due, the Board may, in its discretion, on behalf of the Association (i) file an action to collect the amount due, (ii) file a claim for lien against the Lot pursuant to Section 779.70(4) of the Wis. Statutes and enforce such lien in accordance with Section 779.70(6) of the Wis. Statutes, or (iii) pursue both remedies under (i) and (ii) until all amounts due the Association are paid in full. Any claim for lien shall be filed within six months from the date of the levy of the unpaid Annual Assessment, Special Assessment or other charge.

7.9 Sales and Subsequent Owners. On the sale or conveyance of a Lot, all unpaid amounts owed by an Owner to the Association shall be paid in full at or prior to such sale or conveyance; provided, however, that if these unpaid amounts are not paid or collected at or prior to the time of a sale or conveyance of a Lot, the grantee of the Lot will be jointly and severally liable with the selling Owner for all unpaid assessments against the selling Owner to the time of the sale or conveyance, without prejudice to the grantee's right to recover from the selling Owner the amounts paid by the grantee to the Association. Any person who has entered into a written agreement to purchase a Lot will be entitled, upon written request, to a statement from the Board setting forth all such unpaid amounts against the selling Owner and that grantee will not be liable for, nor will the Lot conveyed be subject to, a lien for any unpaid amounts owed to the Association by the selling Owner in excess of the amount set forth in the statement; provided, however, that the former Owner will remain liable for all unpaid amounts.

Article 8

EMINENT DOMAIN.

8.1 Notice. Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury or destruction of all or part of the Common Elements by the exercise of the power of, or power in the nature of, eminent domain or by an action or conveyance in lieu of

condemnation, the Board shall be entitled to notice. The Board shall participate in the proceedings.

8.2 Common Elements. With respect to Common Elements, any damages or awards shall be paid to the Association. The Board may restore the Common Elements so taken on the remaining land within the Property owned by the Association or, pursuant to authorization by a majority of the members of the Association, on other land to be acquired by the Association, provided that this Declaration is amended to reflect its applicability to any acquired land.

Article 9

EASEMENTS AND RESERVATIONS.

9.1 Service Easements. The Association shall have a nonexclusive right, to grant easements upon, over, though, and across the Common Elements for furnishing any kind of utility service or storm water control, including, but not limited to, the right to install, lay, maintain, repair and replace water mains and pipes, storm sewer lines, sanitary sewer lines, gas mains, computer and telephone wires and equipment, master computer or television cable or antenna system wires and equipment, and electrical conduits and wires and equipment, including power transformers, over, under, along, and on any part of the Common Elements and facilities to service the Property or adjoining property, or both.

9.2 Pond Use. The Ponds are intended to provide a storm water drainage system for the Property in accordance with the Drainage Plan. There is hereby created, granted and conveyed to the Association easements over all portions of the Property reasonably necessary to permit the functioning of the storm water drainage system on the Property in accordance with the Drainage Plan including, but not limited to, drainage swales and drainage pipes. These easements shall be nonexclusive and perpetual. No Owner or occupant of a Lot shall interfere with the functioning of any portion of the Ponds or the storm water drainage system under the Drainage Plan.

9.3 Binding Effect. All easements and rights described in this Article 9 shall run with the land. All easements and rights described herein are granted and reserved to, and shall inure to the benefit of and be binding on, the Association, and on all Owners, and their heirs, personal representatives, successors and assigns. Each Owner by accepting a deed to a Lot hereby irrevocably appoints the Association, as its attorney-in-fact for the execution of any and all documents necessary to carry out the intent of this Article 9 and the implementation of the rights of the Association under this Article 9. The Association shall have the authority to execute and record all documents necessary to carry out the intent of this Article 9.

Article 10

RIGHTS OF ACTION; FAILURE OF ASSOCIATION TO INSIST ON STRICT PERFORMANCE NOT WAIVER.

10.1 Rights of Action. If any Owner fails to comply with this Declaration or the bylaws of the Association or decisions made by the Board or the Association, the Association through the Board or any other Owner may sue such Owner for damages caused by the failure or for

injunctive relief, and such noncompliant Owner shall be responsible for any and all attorneys' fees incurred by the Association or the Owner seeking enforcement.

10.2 No Waiver. The failure of the Association to insist, in any one or more instances, upon the strict performance of any of the terms, covenants, conditions, or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction, but such term, covenant, condition or restriction shall remain in full force and effect. The receipt by the Association of payment of any assessment from an Owner, with knowledge of the breach of any covenant hereof, shall not be deemed as a waiver of such breach, and no waiver by the Association of any provision hereof shall be deemed to have been made unless expressed in writing and signed on behalf of the Association with Board approval.

Article 11

AMENDMENTS TO DECLARATION.

11.1 Amendments. This Declaration may be amended with the written consent of Owners of a minimum of fifty-one percent (51%) of the Lots (excluding the Outlots). Copies of amendments shall be certified by the President and Secretary of the Association in a form suitable for recording. A copy of the amendment shall be recorded with the Office of the Register of Deeds for Ozaukee County, Wisconsin and a copy of the amendment shall also be mailed or personally delivered to each Owner at the address on file with the Association.

Article 12

TERM.

12.1 Term. This Declaration shall be perpetual. The Association, through the Board, may record against the Property, from time to time, any such document as the Board shall deem to be appropriate to provide continuing notice of this Declaration in the records of the Register of Deeds office for Ozaukee County, Wisconsin.

Article 13

NOTICES.

13.1 Notices. All notices and other documents required to be given by this Declaration or the bylaws of the Association shall be sufficient if given to one (1) registered Owner of a Lot regardless of the number of owners who have an interest therein. All Owners shall provide the Secretary of the Association with an address for the mailing or service of any notice or other documents and the Secretary shall be deemed to have discharged his duty with respect to the giving of notice by mailing it or having it delivered personally to such address as is on file with him. Notices shall be in writing and given by certified mail, return receipt requested, overnight delivery, or hand delivery. All such notices shall be deemed to be received at the earlier of (i) three (3) days after mailing, if notice is by certified mail return receipt requested, (ii) one (1) day after the use of an overnight delivery service or (iii) when the notice is actually received by the receiving party. Notices to the Association shall be delivered to such person at such address as designated by the Board from time to time.

Article 14
MISCELLANEOUS.

14.1 Number and Gender. Whenever used herein, unless the context shall otherwise require, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

14.2 Captions. The captions and section headings herein are inserted only as matters of convenience and for reference, and in no way define nor limit the scope or intent of the various provisions hereof.

14.3 Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of the remaining portion of said provision, or of any other provision hereof.

14.4 Waiver. The failure of the Association to enforce any provision of this Declaration or any provision of the bylaws of the Association or any rules or regulations adopted by the Board or to exercise any other right or option or to serve any notice or to institute any action, shall not be construed as a waiver by the Association.

14.5 Binding Effect. These restrictions shall be deemed to be covenants running with the land and shall be binding on all parties and persons having an interest in any Lot affected hereby. These restrictions shall be effective upon execution by all Owners of all Lots comprising Matthaeus Farms Subdivision and recording with the Ozaukee County Register of Deeds Office.

14.6 Incorporation By Reference. Every exhibit, schedule, and other appendix attached to this Declaration and referred to herein is incorporated in this Declaration by reference unless this Declaration expressly otherwise provides.

EXHIBIT A

PROPERTY

Lots 1 through 33, and Outlots 1, 2, 3, and 4 of Matthaesus Farms, located in the Southwest 1/4 of the Southeast 1/4 and the Southeast 1/4 of the Southeast 1/4 of Section 31, Township 11 North, Range 22 East, in the City of Port Washington, County of Ozaukee, State of Wisconsin.

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THE SW 1/4 OF THE SE 1/4 AND
THE SE 1/4 OF THE SE 1/4 OF SECTION 31,
TOWNSHIP 11 NORTH, RANGE 22 EAST,
CITY OF PORT WASHINGTON, OZAUKEE COUNTY,
WISCONSIN.

RECORDED ON
04/25/2017
2:39PM



1-10-74
MICHAEL G. McEARTY
5-22-80
STURGEON BAY
WI
LAND SURVEY

Certified MARCH 17TH, 2017
Rene M. Dore
 Department of Administration

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