

DECLARATION FOR
CREEK SIDE

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THIS INSTRUMENT PREPARED
BY AND SHOULD BE RETURNED
TO:

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2/17/05

DECLARATION FOR CREEKSIDE

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DECLARATION FOR CREEKSIDE

This Declaration is made by MLG/West Bend LLC ("Declarant").

RECITALS

The Development Area is legally described in Exhibit A hereto. Some or all of the Development Area shall be the subject of a phased development called the Creekside Subdivision (the "Development"). The Development shall include single-family homes, duplex homes and certain common and easement areas.

Initially, the Declarant shall subject the real estate, which is legally described in Exhibit B hereto to the provisions of this Declaration as the Premises. From time to time the Declarant may subject additional portions of the Development Area to the provisions of this Declaration as Added Premises, as more fully described in Article Twelve. Nothing in this Declaration shall be construed to require the Declarant to subject additional portions of the Development Area to the provisions of this Declaration. Those portions of the Development Area which are not made subject to the provisions of this Declaration as Premises may be used for any purposes not prohibited by law.

Certain portions of the Premises shall be designated as common areas and easements for public utilities, landscaping and signage. In order to provide for the orderly and proper maintenance of such property, the Declarant has formed the Association under the Wisconsin General Not-For-Profit Corporation Act, and the Association shall adopt budgets and fix assessments to pay the expenses incurred in connection with such duties. Each Owner of a Single Family Detached Home or a Duplex Home shall be a member of the Association and shall be responsible for paying assessments with respect to the Dwelling Unit owned by such Owner.

During the construction and marketing of the Development, the Declarant shall retain certain rights set forth in this Declaration, which rights shall include, without limitation, the right, prior to the Turnover Date, to appoint all members of the Board, as more fully described in Article Nine, the right to come upon the Premises in connection with Declarant's efforts to sell the Dwelling Units and other rights reserved in Article Nine.

NOW, THEREFORE, the Declarant hereby declares as follows:

ARTICLE ONE

Definitions

For the purpose of brevity and clarity, certain words and terms used in this Declaration are defined as follows:

1.01 ASSOCIATION

The Creekside Homeowners Association, a Wisconsin not-for-profit corporation, its successors and assigns.

1.02 BOARD

The board of directors of the Association, as constituted at any time or from time to time, in accordance with the applicable provisions of Article Five.

1.03 BY-LAWS

The By-Laws of the Association.

1.04 CHARGES

The Community Assessment, any special assessment levied by the Association and/or any other charges or payments which an Owner is required to pay or for which an Owner is liable under this Declaration or the By-Laws.

1.05 COMMON AREA

Common Area includes those portions of the Premises that are designated on Exhibit B as Common Area, easements for public utilities, stormwater facilities and landscaping thereon and all outlots, including any outlots that are owned by the City of West Bend. The Common Area will generally consist of and include greenspace, detention basins, entry monuments and related landscaping and other facilities and improvements, which serve the Development.

1.06 COMMUNITY ASSESSMENT

The amounts which the Association shall assess and collect from the Owners to pay the Community Expenses and accumulate reserves for such expenses, as more fully described in Article Six.

1.07 COMMUNITY EXPENSES

The expenses of the administration (including management and professional services) of the Association; the expenses of the maintenance, repair and replacement of all landscaping and improvements on the Common Area and Easements; any expense which is designated as a Community Expense in this Declaration; and any other expenses lawfully incurred by the Association for the common benefit of all of the Owners.

1.08 COUNTY

Washington County, Wisconsin, or any political entity which may from time to time be empowered to perform the functions or exercise the powers vested in the County as of the Recording of this Declaration.

1.09 DECLARANT

MLG/West Bend LLC, Developer, its successors and assigns.

1.10 DECLARATION

This instrument with all Exhibits hereto, as amended or supplemented from time to time.

1.11 DETACHED HOME

A detached home on a subdivided lot which does not share an exterior wall with another Home.

1.12 DEVELOPER

MLG/West Bend LLC

1.13 DEVELOPMENT AREA

The real estate described in Exhibit A hereto with all improvements thereon and rights appurtenant thereto. Exhibit A is attached hereto for informational purposes only and no covenants, conditions, restrictions, easements, liens or changes shall attach to any part of the real estate described therein, except to the extent that portions thereof are described in Exhibit B and expressly made subject to the provisions of this Declaration as part of the Premises. Any portions of the Development Area which are not made subject to the provisions of this Declaration as part of the Premises may be developed and used for any purposes not prohibited by law, including, without limitation, as a residential development which is administered separate from the Development.

1.14 DWELLING UNIT

A portion of the Premises which is improved with a family residential unit for which a temporary, conditional or final certificate of occupancy has been issued by the Municipality. A Dwelling Unit shall be a subdivided lot which is improved with a detached single family or duplex home.

1.14(A) DUPLEX HOME

The portion of a Parcel which is improved with a two family residential unit and any decks and steps that serve the unit. A Duplex Home shares an exterior wall with an adjacent duplex and may be built on Lots 13, 14 and 15 of the Subdivision.

1.15 EASEMENTS

Any area of easement granted to the Association by Declarant, as indicated on the final plat of the Creekside Subdivision over portions of lands subject to this Declaration.

1.16 HOME

That portion of a Parcel which is improved with a single family detached residential unit and any decks and steps which serve the unit.

1.16 (A) LOT

A subdivided lot of record; also referred to as a Parcel.

1.17 MORTGAGEE

The holder of a bona fide first mortgage, first trust deed or equivalent security interest covering a Parcel.

1.18 MUNICIPALITY

The City of West Bend or its successors, or any political entity which may from time to time be empowered to perform the functions or exercise the powers vested in the Municipality as of the Recording of this Declaration.

1.19 NON-OWNER

A person other than an Owner or a Resident.

1.20 OWNER

A Record owner, whether one or more persons, of fee simple title to a Dwelling Unit, including a contract seller, but excluding those having such interest merely as security for the performance of an obligation. The Declarant shall be deemed to be an Owner with respect to each Dwelling Unit owned by the Declarant.

1.21 PARCEL

A subdivided lot of record; also referred to as a Lot.

1.22 PERSON

A natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

1.23 PREMISES

Those portions of the Development Area which are from time to time subject to this Declaration and which are legally described in Exhibit B hereto, with all improvements thereon and rights appurtenant thereto. Declarant shall have the right, but not the obligation, to make additional portions of the Development Area subject to this Declaration as part of the Premises as more fully provided in Article Twelve.

1.24 RECORD

To record in the office of the Recorder of Deeds for the County.

1.25 RESIDENT

An individual who legally resides in a home.

1.26 REVIEW BOARD

The term "Review Board" shall mean that board composed of three members initially appointed by the Developer to review and approve or disapprove of Plans and Specifications for construction of Dwelling Units and any other structures or improvements in the Subdivision.

1.27 TURNOVER DATE

The date on which the rights of the Declarant to designate the members of the Board are terminated under Section 9.05.

1.28 SUBDIVISION

The term "Subdivision" shall mean Creekside Subdivision, which means the residential lots numbered 1 – 15 inclusive as described in Exhibit A and as shown in Exhibit B attached hereto. The Subdivision Plat for Creekside is recorded with the Register of Deeds for Washington County, Wisconsin. The terms "Subdivision" and "Creekside" do not include Outlots that may be future phases of Creekside Subdivision.

1.29 UNADDED AREA

Those portions of the Development Area which from time to time have not been made subject to this Declaration as part of the Premises.

1.30 VOTING MEMBER

The individual who shall be entitled to vote in person or by proxy at meetings of the Owners, as more fully set forth in Article Five.

ARTICLE TWO

Scope of Declaration/Certain Easements

2.01 PROPERTY SUBJECT TO DECLARATION

Declarant, as the owner of fee simple title to the Premises, expressly intends to and by Recording this Declaration, does hereby subject the Premises to the provisions of this Declaration. Declarant shall have the right from time to time to subject additional portions of the Development Area to the provisions of this Declaration as added premises, as provided in Article Twelve hereof. Nothing in this Declaration shall be construed to obligate the Declarant to subject to this Declaration as Premises any portion of the Development Area other than those portions which are described in Exhibit B hereto or which are added to Exhibit B by Supplemental Declarations Recorded by Declarant pursuant to Article Twelve.

2.02 CONVEYANCES SUBJECT TO DECLARATION

All covenants, conditions, restrictions, easements, reservations, liens, charges, rights, benefits, and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant, running with the land and shall at all times inure to the benefit of and be binding on any Person having at any time any interest or estate in any part of the Premises, regardless of whether reference is made in any deed of conveyance, lease, mortgage, trust deed, other evidence of obligation, or other instrument to the provisions of this Declaration.

2.03 DURATION

Except as otherwise specifically provided herein the covenants, conditions, restrictions, easements, reservations, liens, and charges, which are granted, created, reserved or declared by this Declaration shall be appurtenant to and shall run with and bind the land for a period of forty (40) years from the date of Recording of this Declaration and for successive periods of ten (10) years each unless revoked, changed or amended as provided in Section 10.02.

2.04 PARCEL CONVEYANCE

Once a Parcel has been conveyed by the Declarant to a bona fide purchaser for value, then any subsequent conveyance or transfer of ownership of the Parcel shall be of the entire Parcel and there shall be no conveyance or transfer of a portion of the Parcel without the prior written consent of the Board.

2.05 ACCESS EASEMENT

The Association, its employees and agents, shall have the right of ingress to and egress from, all common areas and detention basins, and the right to store equipment on the common areas and easement areas for the purpose of furnishing any maintenance, repairs, or replacements of the common area and easement areas. The Municipality or any other governmental authority which has jurisdiction over the Premises shall have a non-exclusive easement of access over driveways located on the Premises for police, fire, ambulance, waste removal, snow removal, or for the purpose of furnishing municipal or emergency services to the Premises. Such access

easements shall run with the land, be appurtenant to and pass with title to each Dwelling Unit, and shall be subject to and governed by the laws, ordinances and statutes of jurisdiction, the provisions of this Declaration, the By-Laws, and the reasonable rules and regulations from time to time adopted by the Association.

2.06 RIGHT OF ENJOYMENT

Each Owner shall have the non-exclusive right to use and enjoy the Common Area identified as Outlot 1 and further described in Exhibit C. Such rights and easements shall run with the land, be appurtenant to and pass with title to each Dwelling Unit, and shall be subject to and governed by the laws, ordinances and statutes of jurisdiction, the provisions of this Declaration, the By-Laws, and the reasonable rules and regulations from time to time adopted by the Association.

2.07 (Intentionally omitted)

2.08 UTILITY EASEMENTS

The Municipality and all public and private utilities (including cable companies) serving the Premises are hereby granted the right to lay, construct, renew, operate, and maintain conduits, cables, pipes, wires, transformers, switching apparatus and other equipment, into and through the Subdivision for the purpose of providing utility services to the Premises or any other portion of the Development Area.

2.09 EASEMENTS, LEASES, LICENSES AND CONCESSIONS

The Association shall have the right and authority from time to time to lease or grant easements, licenses, or concessions with regard to any portions or all of the Common Areas and Easements and for such uses and purposes as the Board deems to be in the best interests of the Owners and which are not prohibited hereunder, including, without limitation, the right to grant easements for utilities or any other purpose which the Board deems to be in the best interests of the Owners and the right to grant public access to the Common Area and Easements. Any proceeds from leases, easements, licenses or concessions with respect to the Common Area shall be used to pay the Community Expenses. Also, the Association shall have the right and power to dedicate any part or all of Common Area and Easements to the Municipality, but only with the Municipality's approval. Each person, by acceptance of a deed, mortgage, trust deed, other evidence of obligation, or other instrument relating to a Dwelling Unit, shall be deemed to grant a power coupled with an interest to the Board, as attorney-in-fact, to grant, cancel, alter or otherwise change the easements provided for in this Section. Any instrument executed pursuant to the power granted herein shall be executed by the President and attested to by the Secretary of the Association and duly recorded.

2.10 ASSOCIATION'S ACCESS

The Association shall have the right and power to come onto any portion of the Premises for the purpose of furnishing the services required to be furnished hereunder or enforcing its rights and powers hereunder.

2.11 NO DEDICATION TO PUBLIC USE

Except for easements granted or dedications made as permitted in Section 2.09, nothing contained in this Declaration shall be construed or be deemed to constitute a dedication, express

or implied, of any part of the Common Area or Easements to or for any public use or purpose whatsoever.

2.12 OWNERSHIP OF COMMON AREA

The Common Area shall be conveyed to the Association free of mortgages no later than the Turnover Date; however Common Area which is made subject to this Declaration after the Turnover Date shall be conveyed to the Association free of mortgages no later than ninety (90) days after such Common Area is made subject to this Declaration.

2.13 GRANT OF EASEMENTS AND DEDICATIONS

Declarant shall have the right to dedicate portions of the Common Area and Easements to the Municipality or, to any municipality or other governmental authority which has jurisdiction over such portions. Declarant shall also have the right to reserve or grant easements over Common Area to any governmental authority, public utility or private utility for the installation and maintenance of electrical and telephone conduit and lines, gas, sewer or water lines, or any other utility services serving any Home.

ARTICLE THREE

Maintenance

The restrictions and limitations contained in this Article shall be subject to the rights of the Declarant set forth in Article Nine.

3.01 MAINTENANCE BY ASSOCIATION

(a) The following maintenance, repairs and replacements shall be furnished by the Association as a Community Expense:

(1) Maintenance of trees, shrubs, flowers, grass and all other landscaping on the Common Area and Easements;

(2) Maintenance, repair and replacement of all recreational facilities, monument signs and other improvements located on the Common Area and Easements; and

(3) Maintenance of portions of the Common Area, if any, which are designated as "wetlands" by the U.S. Army Corps of Engineers and Department of Natural Resources, which maintenance shall follow guidelines, terms and conditions of any applicable permit issued by the U.S. Army Corps of Engineers or any other governmental authority which has jurisdiction over maintenance of wetlands.

(4) Maintenance, repair and replacement of all stormwater facilities and associated structures located within designated Common Areas and easements.

(5) Snow and ice removal from all public sidewalks that are adjacent to any outlots in the Subdivision, including outlots that are owned by the City of West Bend.

3.02 MAINTENANCE OF WETLANDS

The Municipality and/or local regulatory agency may, from time to time, adopt a maintenance plan relating to those portions of the Community Area which are designated on the plan as being "Wetlands". Any portion of the Community Areas which is designated as such under any such plan shall be maintained exclusively without the prior written consent of the Board. The Board shall not permit, cause or authorize any modification, alteration or improvement to be made to any portion of the Wetlands without complying with applicable laws, rules and regulations governing such areas, including, without limitation, the plan referred to above.

ARTICLE FOUR

Insurance/Condemnation

4.01 ASSOCIATION INSURANCE

(a) The Association shall have the authority to and shall obtain comprehensive public liability insurance, including liability for injuries to and death of persons, and property damage, in such limits as it shall deem desirable, and workmen's compensation insurance and other liability insurance as it may deem desirable, insuring each Owner, the Association, its directors and officers, the Declarant, the managing agent, if any, and their respective employees and agents, as their interests may appear, from liability resulting from an occurrence on or in connection with the Common Area and Easements. The Board may, in its discretion, obtain any other insurance which it deems advisable including, without limitation, insurance covering the directors and officers from liability for good faith actions beyond the scope of their respective authorities and covering the indemnity set forth in Section 5.06. Such insurance coverage shall include cross liability claims of one or more insured parties.

(b) Fidelity bonds indemnifying the Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any employee of the Association or of any other person handling funds of the Association may be obtained by the Association in such amounts as the Board may deem desirable.

(c) The premiums for any insurance obtained under this Section shall be Community Expenses.

4.02 DETACHED HOME INSURANCE/DAMAGE

(a) Each Owner of a Dwelling Unit shall be responsible for and shall procure fire and all risk coverage insurance covering such Owner's Dwelling Unit and contents. Each Owner shall also be responsible for his own insurance on the contents of his Detached Home and furnishings and personal property therein.

(b) No Owner shall cause or permit anything to be done or kept on the Premises which will result in the cancellation of insurance on such Owner's Dwelling Unit, any other Dwelling Unit, Common Area or Easements.

(d) (Intentionally omitted)

(c) (Intentionally omitted)

4.03 (Intentionally omitted)

4.04 WAIVER OF SUBROGATION

The Association and each Owner hereby waives and releases any and all claims which it or he may have against any Owner, including relatives of an Owner, the Association, its directors and officers, Declarant, the managing agent, if any, and their respective employees and agents, for damage to the homes, the Common Area, the Easements or to any personal property located within the homes, the Common Area or the Easements by fire or other forms of casualty insurance, and to the extent this release is allowed by policies for such insurance. To the extent possible, all policies secured by the Board under Sections 4.01(a) and (b) and by each Owner under Section 4.02 shall contain waivers of the insurer's rights to subrogation against any Owner, relatives of an Owner, the Association, its directors and officers, the Declarant, the managing agent, if any, and their respective employees and agents.

4.05 CONDEMNATION

(a) In the case of a taking or condemnation by competent authority of any part of the Common Area, the proceeds awarded in such condemnation shall be paid to the Association and such proceeds, together with any Capital Reserve being held for such part of the Common Area, shall, in the discretion of the Board, either (i) be applied to pay the Community Expenses, (ii) be distributed to the Owners and their respective Mortgagees, as their interests may appear, in equal shares for each Dwelling Unit, or (iii) be used to acquire additional real estate to be used and maintained for the mutual benefit of all Owners, as Common Area under this Declaration. Any acquisition by the Association pursuant to this Section of real estate which shall become Common Area hereunder shall not become effective unless and until a supplement to this Declaration, which refers to this Section and legally describes the real estate affected, is executed by the President of the Association and Recorded.

ARTICLE FIVE

The Association

5.01 IN GENERAL

Declarant has caused or shall cause the Association to be incorporated as a not-for-profit corporation under Wisconsin law. The Association shall be the governing body for all of the Owners for the administration and operation of the Common Area and the Easements and to the maintenance repair and replacement of the Common Area and Easements, as provided herein.

5.02 MEMBERSHIP

Each Owner shall be a member of the Association. There shall be one membership per Dwelling Unit. Membership shall be appurtenant to and may not be separated from ownership of a Dwelling Unit. Ownership of a Dwelling Unit shall be the sole qualification for membership. The Association shall be given written notice of the change of ownership of a Dwelling Unit within ten (10) days after such change.

5.03 VOTING MEMBERS

Subject to the provisions of Section 9.05, voting rights of the members of the Association shall be vested exclusively in the Voting Members. One individual shall be designated as the "Voting Member" for each Dwelling Unit. The Voting Member or his proxy shall be the individual who shall be entitled to vote at meetings of the Owners. If the Record ownership of a Dwelling Unit shall be in more than one person, or if an Owner is a trustee, corporation, partnership or other legal entity, then the Voting Member for the Dwelling Unit shall be designated by such Owner or Owners in writing to the Board and if in the case of multiple individual Owners no designation is given, then the Board at its election may recognize an individual Owner of the Dwelling Unit as the Voting Member for such Dwelling Unit.

5.04 BOARD

Subject to the rights retained by the Declarant under Section 9.05, (a) the Board shall consist of five (5) members, each of whom shall be an Owner or Voting.

5.05 VOTING RIGHTS

Prior to the Turnover Date, all of the voting rights at each meeting of the Association shall be vested exclusively in the Declarant and the Owners shall have no voting rights. From and after the Turnover Date, all of the voting rights at any meeting of the Association shall be vested in the Voting Members, and each Voting Member shall have one vote for each Dwelling Unit which the Voting Member represents. From and after the Turnover Date any action may be taken by the Voting Members at any meeting at which a quorum is present (as provided in the By-Laws) upon an affirmative vote of a majority by the Voting Members present at such meeting, except as otherwise provided herein or in the By-Laws.

5.06 DIRECTOR AND OFFICER LIABILITY

None of the directors of the Association shall be personally liable to the Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such directors and officers except for any acts or omissions found by a court to constitute criminal conduct, gross negligence or fraud. The Association shall indemnify and hold harmless the Declarant and each of the directors, his heirs, executors or administrators, against all contractual and other liabilities to others arising out of contracts made by or other acts of the directors and officers on behalf of the Owners or the Association or arising out of their status as directors or officers unless any such contract or act shall have been made criminally, fraudulently or with gross negligence. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, counsel fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative, or other in which any such director may be involved by virtue of such person being or having been such director or officer; provided, however, that such indemnity shall not be operative with respect to (i) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for criminal conduct, gross negligence or fraud in the performance of his duties as such director or officer, or (ii) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such person being adjudged liable for criminal conduct, gross negligence or fraud in the performance of his duties as such director or officer.

5.07 MANAGING AGENT

Any management agreement entered into by the Association prior to the Turnover Date shall have a term of not more than two years and shall be terminable by the Association without payment of a termination fee on ninety (90) days written notice.

5.08 REPRESENTATION

The Association shall have the power and right to represent the interests of all of the Owners in connection with claims and disputes affecting the Common Area and Easement Areas.

Without limiting the foregoing, the Association shall have the power after the Turnover Date to settle warranty disputes or other disputes between the Association, the Owners, and the Declarant affecting the construction, use or enjoyment of the Common Area and any such settlement shall be final and shall bind all of the Owners.

5.09 DISSOLUTION

To the extent permissible under applicable law, in the event of the dissolution of the Association, any Common Area owned by the Association shall be conveyed to the Owners as tenants in common.

5.10 LITIGATION

No judicial or administrative proceedings shall be commenced or prosecuted by the Association without first holding a special meeting of the members and obtaining the affirmative vote of Voting Members representing at least seventy-five percent (75%) of the Dwelling Units to the commencement and prosecution of the proposed action. This Section shall not apply to (a) actions brought by the Association to enforce the provisions of this Declaration, the By-Laws or rules and regulations adopted by the Board (including, without limitation, an action to recover Charges or to foreclose a lien for unpaid Charges) or (b) counterclaims brought by the Association in proceedings instituted against it.

5.11 ATTENDANCE AT BOARD MEETINGS BY OWNERS

Owners may attend meetings of the Board only if, and to the extent, permitted by the Board in its discretion.

5.12 DEVELOPER CONTROL OF ASSOCIATION

The first and all subsequent Boards and Committees shall consist solely of three (3) persons from time to time designated by the Declarant, which persons may, but need not, be members under Section 5.02. Declarant's rights under this Section to designate the members of said Boards and Committees shall terminate on the first to occur of (i) such time as Declarant no longer holds or controls title to any part of the Premises or (ii) the giving of written notice by Declarant to the Association of Declarant's election to terminate such rights. The date on which the Declarant's rights under this Section shall terminate shall be referred to as the "Turnover Date". The Declarant may appoint Owners (other than representatives of the Declarant) from time to time to be and act as non-voting counselors to the Board. From and after the Turnover Date, the Board shall be constituted and elected as provided in the By-Laws. Prior to the Turnover Date all of the voting rights at each meeting of the Owners shall be vested exclusively in the Declarant and the Owners shall have no voting rights.

ARTICLE SIX

Assessments

6.01 PURPOSE OF ASSESSMENTS

The assessments levied by the Association shall be exclusively for the purposes of administering the affairs of the Association, paying the Community Expenses, and accumulating reserves for any such expenses.

6.02 ASSESSMENTS

Each year on or before December 1, the Board shall adopt and furnish each Owner with a budget for the ensuing capital year, which shall show the following with reasonable explanations and itemizations:

- (a) The estimated Community Expenses;
- (b) The estimated amount, if any, to maintain adequate reserves for Community Expenses;
- (c) The amount of the "Community Assessment" payable by the Owners of Dwelling Units, which is hereby defined as the amount determined in (e) above, plus the amount determined in (b) above;
- (d) That portion of the Community Assessment which shall be payable by the Owner of each Dwelling Unit each month until the next Community Assessment or revised Community Assessment becomes effective, which monthly amount shall be equal to the Community Assessment, divided by the number of Dwelling Units, divided by 12, so that each Owner shall pay equal Community Assessments for each Dwelling Unit owned.

Anything herein to the contrary notwithstanding the following provisions shall apply with respect to the period prior to the Turnover Date. Any budget prepared prior to the Turnover Date shall be based on the assumptions that (i) the Development has been fully constructed as shown on Declarant's then current plan for the Development and (ii) all proposed Dwelling Units have been sold and are occupied. The current plan for the Development shall be kept on file with the Association and may be modified from time to time by Declarant. Each Owner other than the Declarant shall pay as the Owner's monthly share of the Community Assessment an amount equal to the budgeted Community Expenses divided by the number of planned Dwelling Units, divided by 12. Declarant shall not be obligated to pay any Community Assessments to the Association prior to the Turnover Date. However, if with respect to the period commencing on the date of the Recording of this Declaration and ending on the Turnover Date, the amount of Community Assessments payable by Owners (other than Declarant) less the portions thereof which are to be added to Reserves is less than the Community Expenses actually incurred with respect to such period, then the Declarant shall pay the difference to the Association. From time to time prior to the Turnover Date, the Declarant shall deposit with the Association amounts which reasonably approximate Declarant's obligation hereunder as estimated by the Declarant. A final accounting and settlement of the amount, if any, owed by Declarant to the Association shall be made as soon as practicable after the Turnover Date.

6.03 PAYMENT OF ASSESSMENT

On or before the 1st day of January of the ensuing calendar year, and on the first day of each year thereafter until the effective date of the next annual or revised Community Assessment, each Owner of a Dwelling Unit which is subject to assessment shall pay to the Association, or as the Board may direct, that portion of the Community Assessment which is payable by each Owner of a Dwelling Unit under Section 6.02(d) and (h).

6.04 REVISED ASSESSMENT

If the Community Assessment proves inadequate for any reason (including nonpayment of any Owner's assessment) or proves to exceed funds reasonably needed, then the Board may increase or decrease the assessment payable under Section 6.02(d) and (h) by giving written notice thereof (together with a revised budget and explanation for the adjustment) to each Owner not less than ten (10) days prior to the effective date of the revised assessment.

6.05 SPECIAL ASSESSMENT

The Board may levy a special assessment as provided in this Section (i) to pay (or build up reserves to pay) expenses other than Community Expenses incurred (or to be incurred) by the Association from time to time for a specific purpose including, without limitation, to make alterations, additions or improvements to the Common Area and Easements, or any other property owned or maintained by the Association; or (ii) to cover an unanticipated deficit under the prior year's budget. Any special assessment shall be levied against all of Dwelling Units in equal shares. No special assessment shall be adopted without the affirmative vote of Voting Members representing at least two-thirds (2/3) of the votes cast on the question and only those Owners of Dwelling Units against which the proposed special assessment shall be levied may vote on the question. The Board shall serve notice of a special assessment on all Owners by a statement in writing giving the specific purpose and reasons therefor in reasonable detail, and the special assessment shall be payable in such manner and on such terms as shall be fixed by the Board. Any assessments collected pursuant to this Section (other than those to cover an unanticipated deficit under the prior year's budget) shall be segregated in a special account and used only for the specific purpose set forth in the notice of assessment.

6.06 CAPITAL RESERVE

The Association shall segregate and maintain special reserve accounts to be used solely for making capital expenditures in connection with the Common Area and Easements granted to the Association. The Board shall determine the appropriate level of the Capital Reserve based on a periodic review of the useful life of improvements to the Common Area and Easements granted to the Association and other property owned by the Association and periodic projections of the cost of anticipated major repairs or replacements to the Common Area and Easements granted to the Association and the purchase of other property to be used by the Association in connection with its duties. Each budget shall disclose that percentage of the Community Assessment, as applicable, which shall be added to the Capital Reserve and each Owner shall be deemed to make a capital contribution to the Association equal to such percentages multiplied by each installment of the Community Assessment, as applicable, paid by such Owner.

6.07 INITIAL CAPITAL CONTRIBUTION

6.08 PAYMENT OF ASSESSMENTS

Assessments levied by the Association shall be collected from each Owner by the Association and shall be a lien on the Owner's Dwelling Unit and also shall be a personal obligation of the Owner in favor of the Association, all as more fully set forth in Article Seven.

ARTICLE SEVEN

Collection of Charges and Remedies for Breach or Violation

7.01 CREATION OF LIEN AND PERSONAL OBLIGATION

The Declarant hereby covenants, and each Owner of a Dwelling Unit by acceptance of a deed therefor (whether or not it shall be so expressed in any such deed or other conveyance) shall be and is deemed to covenant and hereby agrees to pay to the Association all Charges made with respect to the Owner or the Owner's Dwelling Unit. Each Charge, together with interest thereon and reasonable costs of collection, if any, as hereinafter provided, shall be a continuing lien upon the Dwelling Unit against which such Charge is made and also shall be the personal obligation of the Owner of the Dwelling Unit at the time when the Charge becomes due. The lien or personal obligation created under this Section shall be in favor of and shall be enforceable by the Association.

7.02 COLLECTION OF CHARGES

The Association shall collect from each Owner all Charges payable by such Owner under this Declaration.

7.03 NON-PAYMENT OF CHARGES

Any Charge which is not paid to the Association when due shall be deemed delinquent. Any Charge which is delinquent for thirty (30) days or more shall bear interest at the rate of eighteen percent (18%) per annum or the maximum rate permitted by law, whichever is less, from the due date to the date when paid. The Association may (i) bring an action against the Owner personally obligated to pay the Charge to recover the Charge (together with interest, costs and reasonable attorney's fees for any such action, which shall be added to the amount of the Charge and included in any judgment rendered in such action), and (ii) enforce and foreclose any lien which it has or which may exist for its benefit. In addition, the Board may add a reasonable late fee to any installment of an assessment which is not paid within thirty (30) days of its due date. No Owner may waive or otherwise escape personal liability for the Charges hereunder by nonuse of the Community or by abandonment or transfer of his Dwelling Unit.

7.04 LIEN FOR CHARGES SUBORDINATED TO MORTGAGES

The lien for Charges, provided for in Section 7.01, shall be subordinate to the Mortgagee's mortgage on the Dwelling Unit which was Recorded prior to the date that any such Charge became due. Except as hereinafter provided, the lien for Charges, provided for in Section 7.01, shall not be affected by any sale or transfer of a Dwelling Unit. Where title to a Dwelling Unit is transferred pursuant to a decree of foreclosure of the Mortgagee's mortgage or by deed or assignment in lieu of foreclosure of the Mortgagee's mortgage, such transfer of title shall extinguish the lien for unpaid Charges which became due prior to the date of the transfer of title.

However, the transferee of the Dwelling Unit shall be personally liable for his share of the Charges with respect to which a lien against his Dwelling Unit has been extinguished pursuant to the preceding sentence where such Charges are reallocated among all the Owners pursuant to a

subsequently adopted annual or revised Community Assessment or special assessment, and non-payment thereof shall result in a lien against the transferee's Dwelling Unit, as provided in this Article.

7.05 SELF-HELP BY BOARD

In the event of a violation or breach by an Owner of the provisions, covenants or restrictions of the Declaration, the By-Laws, or rules or regulations of the Board, where such violation or breach may be cured or abated by affirmative action, then the Board, upon not less than ten (10) days' prior written notice to the Owner, shall have the right to enter upon that part of the Premises where the violation or breach exists to remove or rectify the violation or breach; provided, that, if the violation or breach exists within a Dwelling Unit, judicial proceedings must be instituted before any items of construction can be altered or demolished.

7.06 OTHER REMEDIES OF THE BOARD

In addition to or in conjunction with the remedies set forth above, enforcement of any of the provisions contained in this Declaration or any rules and regulations adopted hereunder the Board may levy a fine or the Board may bring an action at law or in equity in the name of the Association against any person or persons violating or attempting to violate any such provision, either to restrain such violation, require performance thereof, to recover sums due or payable (including fines) or to recover damages, and against the Dwelling Unit to enforce any lien created hereunder; and failure by the Association to enforce any provision shall in no event be deemed a waiver of the right to do so thereafter.

7.07 COSTS AND EXPENSES

All costs and expenses incurred by the Board in connection with any action, proceedings or self-help in connection with exercise of its rights and remedies under this Article, including, without limitation, court costs, attorneys' fees and all other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the rate of eighteen percent (18%) per annum or the maximum rate permitted by law, whichever is less, until paid, shall be charged to and assessed against the defaulting Owner, and the Association shall have a lien for all the same, upon his Dwelling Unit as provided in Section 7.01.

7.08 ENFORCEMENT BY OWNERS

Enforcement of the provisions contained in this Declaration and the rules and regulations adopted hereunder may be by any proceeding at law or in equity by any aggrieved Owner against any person or persons violating or attempting to violate any such provisions, either to restrain such violation or to recover damages, and against a Dwelling Unit to enforce any lien created hereunder.

ARTICLE EIGHT ***Subdivision Standards***

8.01 GENERAL

All Lots in the Subdivision shall be subject to the standards set forth herein. Dwelling Units that are too similar in appearance will not be permitted to be constructed in close proximity to one another.

8.02 UNIT SIZE

The total minimum finished living area of Dwelling Units shall depend on the size of the and type of dwelling unit on the Parcel. The requirements are as follows:

8,000 square foot lots:	Ranch 1,300 square feet Two Story 1, 500 square feet
10,000 square foot lots:	Ranch 1,400 square feet Two Story 1,600 square feet
12,000 square foot lots:	Ranch 1,600 square feet Two Story 1,800 square feet

8.03 UNIT MEASUREMENT

The square footage of a dwelling unit shall be measured along the perimeter of the Dwelling Unit at and above the grade (measured along the exterior walls exclusive of garages, porches, patios, breezeways and similar additions). For purposes of calculating total area, the Review Board, in its sole discretion, shall determine what constitutes a one-story or multi-level Dwelling Unit.

8.04 WINDOWS

Windows that do not open and are for appearances only shall not be permitted. False closed-shuttered windows and windows that are visible from the exterior only shall not be permitted. The Review Board may require the location of certain windows to be moved. Trim of at least four (4) inches in width must be used on all windows without shutters and on all doors, vents, louvers and corners. The Review Board may require the placement of windows in walls that would otherwise be blank or featureless and shall place more importance on an attractive, balanced exterior design than over concerns about the design or placement of interior features.

8.05 ROOF PITCH

The primary roof on all Dwelling Units must have a minimum pitch of six (6) feet in height for each twelve (12) feet in length (6/12). All roofs must have dimensional shingles.

8.06 SETBACKS

The required minimum single-family home building setbacks are as follows:

Single-Family RS-3 zoning

Front Yard	30 feet
Side Yard	18 feet total (minimum 8' on one side)
Corner Lot Side Yard	30 Feet
Rear Yard	30 Feet

Single-Family RS-4 zoning

Front Yard	25 feet local, 30 feet collector/arterial
Side Yard	14 feet total (minimum 6' on one side)
Corner Lot Side Yard	30 Feet

The required minimum for duplex homes are as follows:

1. The minimum building setback for all structures from the street right-of-way local streets shall be 25 feet and from collector and arterial streets shall be 30 feet.
2. The minimum side yard on each side of a principal structure shall be 8 feet and the total of both side yards shall be a minimum of 16 feet.
3. The minimum rear yard of a principal structure shall be 25 feet.
4. The minimum side yard and rear yard setback for all accessory structures shall be 5 feet.

8.07 DRIVEWAYS

Driveways shall be approved in advance by the Review Board and shall be located at least three (3) feet from all side and rear Lot lines. Within twelve (12) months from the issuance of an occupancy permit by the City of West Bend for any Dwelling Unit, all driveways on the Lot must be paved with concrete, asphalt, or other hard and impervious paving substance. All driveways shall be installed in accordance with the City of West Bend specifications.

8.08 WALKWAYS

Within twelve (12) months of the issuance of an occupancy permit by the City of West Bend for any Dwelling Unit, all walkways on the Lot shall be paved with concrete, brick or other hard and impervious paving substance approved in advance by the Review Board.

8.09 GARAGE

The maximum size of the garage must conform to the City of West Bend ordinances. Garage entrances must be on the side of the Dwelling Unit facing away from the street entrance. All garages must be constructed on the high side of the Lot unless otherwise approved in writing by the Developer.

8.10 LANDSCAPING

All homeowners will be required to submit a landscaping plan for approval prior to landscaping. Before a Lot Owner builds a house and/or completes landscaping, the Lot Owner shall be responsible for maintaining the Lot by trimming weeds and grass to a height not exceeding twelve (12) inches. If the Owner fails to maintain the Parcel the Developer may do so and charge the Owner the reasonable cost of each maintenance.

8.11 OUTBUILDINGS AND TEMPORARY STRUCTURES

Other than Dwelling Units and other structures and improvements approved in advance by the Review Board, no structure of any kind, including, but not limited to, any shed, storage bins, gazebo, skateboard ramp, stable, barn or kennel shall be moved onto or constructed upon any Lot within the Subdivision.

8.12 SWIMMING POOLS/SPAS

Swimming pools, hot tubs or spas may be erected, altered or modified only with the prior written approval of the Review Board. No above ground swimming pools shall be permitted.

8.13 FENCES AND WALLS

No fences or walls of any height or for any purpose, including for decorative purposes, shall be permitted on any Lot except in the case of in ground swimming pools. All fencing must be approved in advance by the Review Board. With in-ground swimming pools, the fence shall be decorative and placed around the pool area.

8.14 MOTORIZED VEHICLES

Only automobiles and other four-wheel passenger vehicles may be parked on a Lot outside of a garage in the Subdivision, and they may be parked only on driveways that have been approved in advance by the Review Board. No lawn or farm vehicle or equipment, recreational vehicle, trailer, boat, boat trailer or similar vehicle or equipment shall be parked or stored on any Lot other than in a garage. No commercial vehicles, including semi-trailer tractors, dump trucks, delivery trucks, and similar vehicles, irrespective of ownership, may be parked or stored on a Lot other than temporarily for the delivery of materials or merchandise, and other than during temporary periods of construction or remodeling upon the Lot. Motorcycles, snowmobiles, trail bikes, dune buggys, off-street motorized vehicles and recreation vehicles of any kind shall not be operated on any Lot or parking area within the Subdivision.

8.15 ANTENNAS/MICROWAVE DISHES

External antennas, satellite or microwave dishes and solar panels of any type or for any purpose may be installed and maintained on a Lot in the Subdivision only with the prior written approval of the Review Board. In no event may any satellite or microwave dish be larger than two (2) feet in diameter. In no event may any antenna, satellite or microwave dish or solar panels be visible from the street in front of the Dwelling Unit. Any proposal for any such installation shall be submitted to the Review Board for approval, and shall show the size, location and appearance of such installation, prior to any such installation in the Subdivision.

8.16 SIGNS

No sign of any kind shall be displayed to the public view on any Lot except as follows:

(a) A sign placed on the Lot by a Lot Owner or the real estate agent of the Lot Owner advertising the property for sale. No such sign shall exceed six (6) square feet in size.

(b) A sign erected by a building/contractor of a Dwelling Unit in the Subdivision during the time the Dwelling Unit is under construction. No such sign shall exceed 6 square feet in size.

(c) Signs by an owner/contractor advertising a Dwelling Unit as a "model home." No such sign shall exceed twenty-four (24) square feet in size.

All of the foregoing signs shall be professional, unlit signs installed so that the bottom of the sign shall be no more than three (3) feet above the ground. All signs shall be removed promptly upon sale or occupancy of the Dwelling Unit on the Lot. Any signs other than those listed above must receive prior written approval of the Review Board before installation. Nothing contained in this Section shall be deemed to prohibit the Developer from placing such

signs as it may deem necessary or desirable within the Subdivision until all Lots within the Subdivision are sold.

8.17 ANIMALS

No animals, livestock, poultry or pigs of any kind shall be raised, bred or kept on any Lot nor shall animals of any kind be maintained for any commercial purposes, except that dogs, cats or other small household pets may be kept in a manner that will not disturb the quality of life and the environment of the Subdivision and provided that no more than two dogs or two cats shall be maintained in any household. Lot owners shall be responsible for promptly cleaning up all pet refuse. Any pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Premises upon three (3) days written notice from the Board to the Owner of the Dwelling Unit containing such pet and the decision of the Board shall be final.

8.18 GARBAGE AND REFUSE STORAGE AND DISPOSAL

Except as permitted by the Board, there shall be no obstruction of the Community Area or Easements, and nothing shall be stored in the Community Area or Easements without the prior written consent of the Board. No Lot shall be used in whole or in part for the storage of rubbish in any form whatsoever, nor shall any portion of a Lot or Dwelling Unit be used for the storage of any property or thing that will cause such Lot and Dwelling Unit to appear in an unclean or untidy condition or that will be offensive to community standards. All trash, garbage or waste materials shall be kept in sanitary containers either inside a garage or, when outside, in sanitary containers adjacent to the Dwelling Unit, suitably screened from view from streets and adjoining Lots. Outside incinerators are not permitted. No building or construction material shall be stored on any Lot outside of a Dwelling Unit or garage, other than during periods of actual construction or remodeling, and then only for as long as may be reasonably necessary. Each Lot Owner may store up to a maximum of one cord of wood behind and adjacent to the Dwelling Unit in a manner consistent with the other provisions of this Section.

8.19 NUISANCES

No noxious or offensive odor, activities or conditions shall be created, conducted or permitted to exist in, on or about any Dwelling Unit or Lot, which may be, or may become, an annoyance or nuisance to the neighborhood or which may cause any noise which disturbs or might disturb the peace, quiet, comfort or serenity of the occupants of surrounding property.

8.20 RESIDENTIAL USE ONLY

Each Dwelling Unit shall be used only as a residence.

ARTICLE NINE

Design Control

9.1 PLANS AND SPECIFICATIONS

No building, sign, driveway, walkway, swimming pool, deck, patio, play equipment or other structure or improvement shall be erected, constructed or maintained upon any Lot, nor shall any change or alteration be made thereto, unless complete plans and specifications have been submitted in duplicate to, and approved in writing by, the Review Board. The plans and specifications submitted shall include, in addition to detailed construction plans, a site plan showing the exact size and location of each building or other structure, the elevation thereof, the

grade of the Lot, grades adjacent to the Lot, the proposed finished grade and garage floor grade for the building, sump pump discharge locations, a building elevation or rendering of the building or structure to be constructed, a detailed landscaping plan, and detailed specifications as to materials, colors (including samples) and equipment to be installed in the structure (collectively the "Plans and Specifications"). The address and telephone number of the Lot Owner and other person designated to receive the response of the Review Board shall be included with any submission of Plans and Specifications. Each Lot Owner must strictly adhere to and finish grade its lot in accordance with the Master Site Grading Plan or any amendment thereto approved by the City Engineer on file at the office of the City Clerk and in accordance with the provisions of this Declaration, including but not limited to Section 9.9. The Developer and/or the City and/or their agents, employees or independent contractors, upon written notice to the owner of a Lot, shall have the right to enter upon any Lot, at any time, for the purpose of inspection, maintenance, correction of any drainage condition, and the Lot Owner is responsible for the cost of the same.

9.2 REVIEW BOARD

The decision of a majority of the members of the Review Board shall be the decision of the Review Board and shall be final and binding upon all interested parties. The Review Board shall meet in closed sessions. Members of the Review Board shall not be entitled to any compensation from Parcel Owners for services performed pursuant to these Protective Covenants. In the event of death, resignation, or refusal to act by any member of the Review Board, or vacancy on the Review Board for any reason, while any Parcel remains vacant without a Dwelling Unit in the Subdivision, the successor to such member shall be appointed to the Review Board by the Developer or by its successors or assigns. When all the Parcels in the Subdivision have been sold by the Developer, or its successors or assigns, and Homes have been built on all the Parcels in the Subdivision (or at such earlier time determined by the Developer) the Review Board shall thereafter consist of five (5) persons, who shall be the persons appointed or elected as directors of the Association as described in these Protective Covenants.

9.3 SUBMISSION OF PLANS

A Lot Owner shall submit Plans and Specifications to the Review Board at the earlier of (i) at least fifteen (15) days prior to the time that such Plans and Specifications are submitted to the Building Inspector of the Municipality for approval, or (ii) thirty (30) days prior to commencement of construction of the Dwelling Unit or any other improvement. Plans and Specifications must comply with the standards set forth herein and must be approved by the Review Board in writing prior to any application for a building permit to the Municipality, and before any construction or alteration of any improvement may be commenced on any Lot. Plans and Specifications shall be submitted in duplicate to the Review Board at the following address, which address may be changed by notice in writing to the purchaser of a Lot at the time of purchase:

MLG/West Bend LLC/Creekside Subdivision
13400 Bishop's Lane, Suite 100
Brookfield, WI 53005
Attention: Creekside Project Coordinator
(262) 797-9400

Upon request by a Lot Owner, the Review Board shall issue a written receipt for the Plans and Specifications submitted by or on behalf of the Lot Owner, showing the date of the submission.

9.4 REVIEW

The Review Board shall review and approve such Plans or Specifications, or disapprove those which in its judgment are not in conformity with these Protective Covenants or are inconsistent with the purposes set forth in this Article. The Review Board may require enhanced architectural treatment on all building elevations. In reviewing the Plans and Specifications, the Review Board may take into consideration, among other things, the following:

- The suitability of the proposed House or other structure in the Subdivision;
- The design, layout, elevation and the materials of which the home or improvement is to be constructed;
- The location of the improvements upon the Lot and within the Subdivision;
- The exterior appearance of the home including roofing materials and the color scheme;
- and
- The compliance of the home or other structure with the standards set forth in these Protective Covenants.

The decision of the Review Board shall be final and binding with regard to approval or disapproval of the Plans and Specifications. The Review Board does not review nor is responsible for the technical, engineering, mechanical or structural nature of the design or components of the building plans, Dwelling Unit, functional layout of the Lot, drainage plan, home elevation or other non-aesthetic features.

9.5 APPROVAL

The Review Board shall approve Plans and Specifications by letter sent to the Lot Owner at the address included in the Plans and Specifications.

9.6 DISAPPROVAL

If the Review Board disapproves of Plans and Specifications, the Review Board shall specify the reasons for such disapproval to the Lot Owner in writing. The Lot Owner shall then be entitled to submit revised Plans and Specifications for review by the Review Board, in which event another receipt shall be issued by the Review Board.

9.7 WAIVER

The Review Board shall be entitled to waive or grant a variance from the requirements of these Protective Covenants and the standards set forth herein upon written application therefor to the Review Board as a part of a submission of Plans and Specifications to the Review Board, or otherwise, for reasons deemed adequate and reasonable to the Review Board, and in consideration of the purposes of these Protective Covenants as set forth in this Article. The decision of the Review Board shall be final and binding with regard to any waiver or variance, whether or not such waiver or variance is specifically granted by the Review Board in writing, or is a part of or necessitated by Plans and Specifications approved by the Review Board; provided, however, that the waiver shall not be effective until written approval for the specific variance request is granted by the Municipality.

9.8 EROSION CONTROL AND SURFACE DRAINAGE

During construction of a Dwelling Unit on a Lot, adequate measures shall be undertaken to comply with applicable City erosion control ordinances. The topography and ground elevation of each Lot shall be finished as required by the Plans and Specifications approved by the Review Board for the efficient discharge and drainage of surface groundwater and sump pump discharge throughout the Subdivision. Final grading of a Lot shall be completed within two (2) months following the date of occupancy of a Dwelling Unit thereon, weather and seasonal considerations permitting.

9.9 GROUND FILL ON BUILDING SITE

The Lot Owner shall be responsible for providing any necessary ground fill for a Lot and for hauling away and properly disposing of excess ground fill from a Lot. Where ground fill is necessary on any Lot to obtain the proper topography and finished ground elevation, the Lot Owner shall ensure that the ground fill shall be free of waste and noxious materials. The Lot Owner shall level all fill materials immediately upon completion of the dwelling unit and shall grade and contour the Lot consistent with the Master Grading Plan and any applicable municipal ordinance. Upon completion of the final grading and upon request of the Developer and/or City, the Lot Owner shall at the Lot Owner's sole cost and expense, submit to the Review Board a grading recertification prepared by a qualified land surveyor or professional engineer certifying that the finished ground elevation and drainage patterns of the Lot comply with this Section.

9.10 BUILDING MATERIALS

All exterior walls shall be constructed with vinyl, aluminum or Hardiplank or natural materials such as brick, stone, stucco or wood the Review Board approves. Windows may be vinyl or aluminum clad. Garage and service doors must have a raised panel or similar design. Any exposed basement or foundation walls must be covered with masonry veneer, plaster or siding materials used on exterior walls. All trim and cornerboards are to be of a natural material.

9.11 MASONRY

Although there is no minimum masonry requirement, if masonry material is used on the exterior walls, the masonry should terminate at an inside or outside corner.

9.12 CONSTRUCTION

During construction of a Dwelling Unit or any other improvement, the construction site shall be kept free of refuse and litter. Rubbish and construction materials shall be stored on the site only as long as necessary under the circumstances. Any natural vegetation and tree debris removed during the stripping of the building pad shall be removed immediately. Construction sites shall remain as organized and neat in appearance as possible throughout the construction period.

9.13 COMPLETION; OCCUPANCY

Any Dwelling Unit constructed on any Lot in the Subdivision shall be enclosed and under roof with the finished exterior material in place within twelve (12) months after the commencement of construction. No Dwelling Unit shall be occupied until the exterior surfacing of the Dwelling unit is completed and the Lot is finished to rough grade

ARTICLE TEN

Amendment

10.01 SPECIAL AMENDMENTS

Anything herein to the contrary notwithstanding, Declarant reserves the right and power to Record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of Fannie Mae, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure, guarantee or otherwise deal with first mortgages covering Parcels, (iii) to correct errors, ambiguities or inconsistencies in the Declaration or any Exhibit, or (iv) to bring the Declaration into compliance with applicable laws, ordinances or governmental regulations. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to make or consent to a Special Amendment on behalf of each Owner. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Parcel and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to make, execute and Record Special Amendments. The right and power to make Special Amendments hereunder shall terminate at such time as Declarant no longer holds or controls title to a portion of the Development Area.

10.02 AMENDMENT

Subject to Section 10.01 and Article Eleven, the provisions of this Declaration may be amended, abolished, modified, enlarged, or otherwise changed in whole or in part by the affirmative vote of Voting Members representing at least Seventy-Five percent of the total votes or by an instrument executed by Owners of at least Seventy-Five Percent (75%) of the Dwelling Units; except, that (i) the provisions of this Section 10.02 may be amended only by an instrument executed by all of the Owners and all Mortgagees, (ii) Article Nine, Article Twelve or any other provisions relating to the rights of Declarant may be amended only with the written consent of the Declarant and (iii) any provisions relating to the rights of the Municipality may be amended only with the written consent of the Municipality. No amendment which removes Premises from the provisions of this Declaration shall be effective if as a result of such removal, an Owner of a Dwelling Unit shall no longer have the legal access to a public way from his Dwelling Unit. No amendment shall become effective until properly recorded.

ARTICLE ELEVEN

Annexing Additional Property

11.01 POWER TO AMEND

Declarant hereby retains the right and power to Record a Supplemental Declaration, at any time and from time to time as provided in Section 12.01, which amends or supplements Exhibit B. Exhibit B may only be amended or supplemented pursuant to this Article to add portions of the Development Area to Exhibit B and shall not be amended to reduce or remove any real estate which is described in Exhibit B immediately prior to the Recording of such Supplemental Declaration. A Supplemental Declaration may contain such additional provisions affecting the use of the Added Premises or the rights and obligations of owners of any part or

parts of the Added Premises as the Declarant deems necessary or appropriate.

11.02 EFFECT OF SUPPLEMENTAL DECLARATION

Upon the Recording of a Supplemental Declaration by Declarant which annexes and subjects Added Premises, Added Common Area, Easements or Added Dwelling Units to this Declaration, as provided in this Article, then:

(a) The easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges set forth and described herein shall run with and bind the Added Premises and inure to the benefit of and be binding on any Person having at any time any interest or estate in the Added Premises in the same manner, to the same extent and with the same force and effect that this Declaration applies to the Premises, and Persons having an interest or estate in the Premises, subjected to this Declaration prior to the date of the Recording of the Supplemental Declaration;

(b) Every Owner of an Added Dwelling Unit shall be a member of the Association on the same terms and subject to the same qualifications and limitations as those members who are Owners of Dwelling Units immediately prior to the Recording of such Supplemental Declaration;

(c) In all other respects, all of the provisions of this Declaration shall include and apply to the Added Premises (including the Added Common Area, Easements or the Added Dwelling Units, if any) made subject to this Declaration by any such Supplemental Declaration and the Owners, mortgagees, and lessees thereof, with equal meaning and of like force and effect and the same as if such Added Premises were subjected to this Declaration at the time of the Recording hereof;

(d) The Recording of each Supplemental Declaration shall not alter the amount of the lien for any Charges made to a Dwelling Unit or its Owner prior to such Recording;

(e) The Declarant shall have and enjoy with respect to the Added Premises all rights, powers and easements reserved by the Declarant in this Declaration, plus any additional rights, powers and easements set forth in the Supplemental Declaration; and

(f) Each Owner of an Added Dwelling Unit which is subject to assessment hereunder shall be responsible for the payment of the Community Assessment pursuant to Section 6.02, as applicable, but shall not be responsible for the payment of any special assessment which was levied prior to the time that the Added Dwelling Unit became subject to assessment hereunder.

ARTICLE TWELVE

Miscellaneous

12.01 NOTICES

Any notice required to be sent to any Owner under the provisions of this Declaration or the By-Laws shall be deemed to have been properly sent when (i) mailed, postage prepaid, to his or its last known address as it appears on the records of the Association at the time of such

mailing or (ii) when delivered personally to his Dwelling Unit.

12.02 CAPTIONS

The Article and Section headings are intended for convenience only and shall not be construed with any substantive effect in this Declaration. In the event of any conflict between statements made in recitals to this Declaration and the provisions contained in the body of this Declaration, the provisions in the body of this Declaration shall govern.

12.03 SEVERABILITY

Invalidation of all or any portion of any of the easements, restrictions, covenants, conditions, or reservations, by legislation, judgment or court order shall in no way affect any other provisions of this Declaration which shall, and all other provisions, remain in full force and effect.

12.04 PERPETUITIES AND OTHER INVALIDITY

If any of the options, privileges, covenants or rights created by this Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provisions shall continue only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of the President of the United States at the time this Declaration is Recorded.

12.05 TITLE HOLDING LAND TRUST

In the event title to any Dwelling Unit is held by a title holding trust, under the terms of which all powers of management, operation and control of the Dwelling Unit remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder from time to time shall be responsible for payment of all Charges and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Dwelling Unit. No claim shall be made against any such title holding trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon the Dwelling Unit and the beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to such Dwelling Unit.

(Signature appear on the following page)

Dated: February 17th, 2005

DECLARANT:

MLG/West Bend LLC

By: MLG Real Estate 2002 LLC

By: MLG Residential Fund LLC

By: MLGRE Principals LLC

By:

Timothy J. Wallen, #

Its:

President

ATTEST:

Michael S. Zimmer
Its: Executive Vice-President

STATE OF WISCONSIN)
)SS
COUNTY OF WAUKESHA)

I, NANCY J. PFEIFER, a Notary Public in and for said County and State, do hereby certify that TIMOTHY J. WALLEN and MICHAEL S. ZIMMER PRESIDENT and EXEC. V.P., respectively, of MLGRE PRINCIPALS LLC (the "Declarant") and, as such PRESIDENT and EXEC. V.P. appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act, and as the free and voluntary act of the Declarant for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 17th day of FEBRUARY, 2005

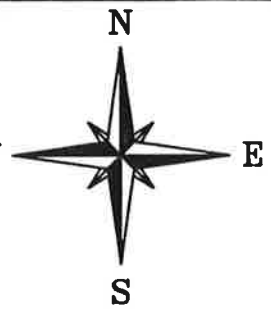


Nancy J. Pfeifer
Notary Public
NANCY J. PFEIFER
EXPIRES 11-13-05

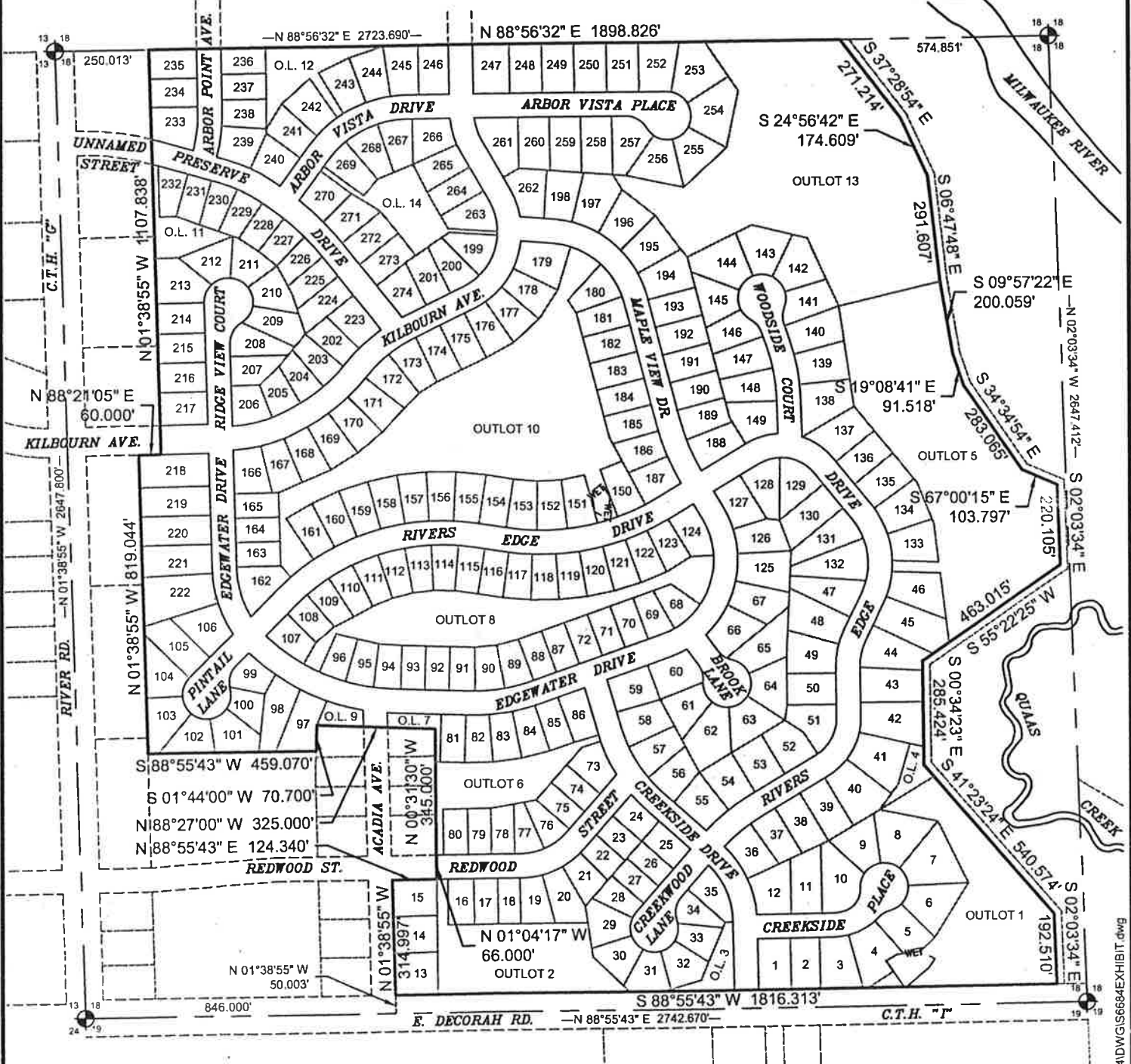
JAHNKE & JAHNKE ASSOC. INC.

CREEKSIDE OVERALL DEVELOPMENT PLAN

EXHIBIT-A



SCALE: 1" = 400'



JAHNKE & JAHNKE ASSOCIATES INC.

CONSULTANTS IN
ENGINEERING, PLANNING, SUBDIVISIONS AND SURVEYING

711 W. Moreland Blvd.
Waukesha, WI 53188-2479

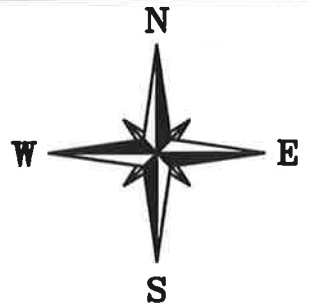
Telephone: 262-542-5797
Fax: 262-542-7698
E-Mail: jstigler@jahnkeandjahnke.com

LEGAL DESCRIPTION: Overall Development

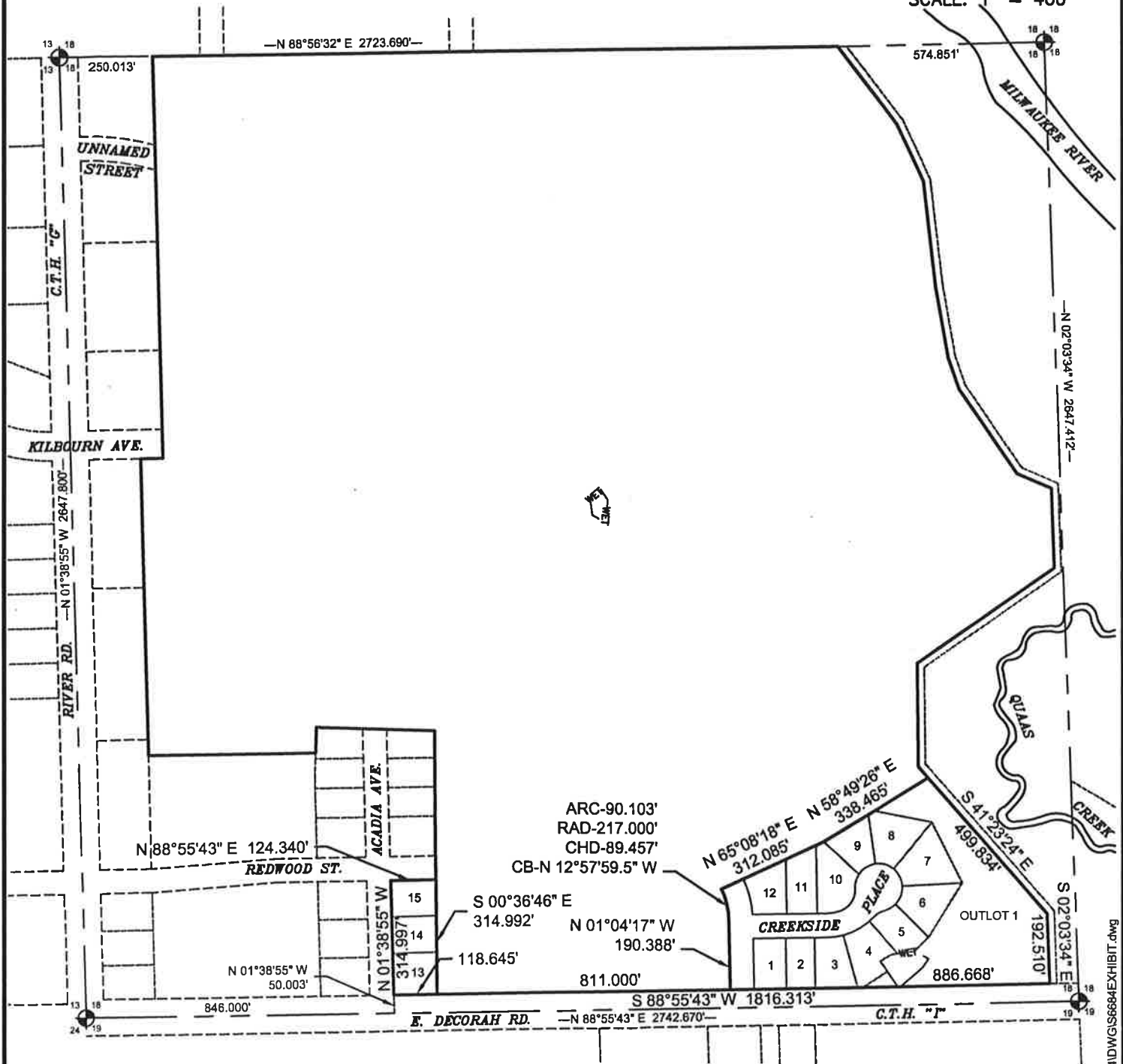
All that part of the Southwest Quarter (SW ¼) A Fractional Quarter Section of 18, Town 11 North, Range 20 East, City of West Bend, Washington County, Wisconsin, bounded and described as follows: Commencing at the southwest corner of the Southwest Quarter (SW ¼) of said Section 18; thence North 88°55'43" East along the south line of said Southwest Quarter (SW ¼) 846.000 feet to the east line of Acadia Avenue and the Plat of Schoenen Hof as recorded in Document No. 666102 of the Washington County Registry; thence North 01°38'55" West along the east line extended of above said Acadia Avenue to the north right of way line of E. Decorah Road (CTH "I") 50.003 feet to the place of beginning of the lands hereinafter described; thence continuing North 01°38'55" West 314.997 feet to the south right of way line of Redwood Street; thence North 88°55'43" East along said south line 124.340 feet; thence North 01°04'17" West along the east line of aforesaid Plat of Schoenen Hof; 66.000 feet; thence North 00°31'30" West along aforesaid east line 345.000 feet; thence North 88°27'00" West along the north line of the Plat of Schoenen Hof 325.000 feet; thence South 01°44'00" West along the west line of aforesaid Plat 70.700 feet; thence South 88°55'43" West along the north of Decorah Valley Condominiums 459.070 feet; thence North 01°38'55" West 819.044 feet along the east line of Certified Survey Map No. 1246; to the south right of way line of Kilbourn Avenue; thence North 88°21'05" East along said south right of way line 60.000 feet; thence North 01°38'55" West along the east line of Certified Survey Map No. 3656, 1107.838 feet to the north line of the Southwest Quarter (SW ¼) of Section 18; thence North 88°56'32" East along said North line 1898.826 feet; thence South 37°28'54" East along the City of West Bend Corporate Limits 271.214 feet; thence South 06°47'48" East along said Corporate Limits 291.607 feet; thence South 09°57'22" East along said Corporate Limits 200.059 feet; thence South 19°08'41" East along said Corporate Limits 91.518 feet; thence South 34°34'54" East along said Corporate Limits 283.065 feet; thence South 67°00'15" East along said Corporate Limits 103.797 feet; thence South 02°03'34" East along said Corporate Limits 220.105 feet; thence South 55°22'25" West along said Corporate Limits 463.015 feet; thence South 00°34'23" East along said Corporate Limits 285.424 feet; thence South 41°23'24" East along said Corporate Limits 540.574 feet; thence South 02°03'34" East along said Corporate Limits 192.510 feet to the north right of way line of E. Decorah Road (CTH "I"); thence South 88°55'43" West along said north right of way line 1816.313 feet to the place of beginning. Containing a net area of 122.349 acres of land.

Prepared by John R. Stigler
Wis. Reg. No. S-1820
Dated: February 16, 2005

JAHNKE & JAHNKE ASSOC. INC. **CREEKSIDE** **EXHIBIT-B**



SCALE: 1" = 400'



JAHNKE & JAHNKE ASSOCIATES INC.

CONSULTANTS IN
ENGINEERING, PLANNING, SUBDIVISIONS AND SURVEYING

711 W. Moreland Blvd.
Waukesha, WI 53188-2479

Telephone: 262-542-5797
Fax: 262-542-7698
E-Mail: jstigler@jahnkeandjahnke.com

LEGAL DESCRIPTION: 15 Lots (First Phase)

All that part of the Southeast Quarter (SE $\frac{1}{4}$) and Southwest Quarter (SW $\frac{1}{4}$) A Fractional Quarter-Quarter Section of the Southwest Quarter (SW $\frac{1}{4}$) A Fractional Quarter Section of 18, Town 11 North, Range 20 East, City of West Bend, Washington County, Wisconsin, bounded and described as follows: Commencing at the southwest corner of the Southwest Quarter (SW $\frac{1}{4}$) of said Section 18; thence North $88^{\circ}55'43''$ East along the south line of said Southwest Quarter (SW $\frac{1}{4}$) 846.000 feet to the east line of Acadia Avenue and the Plat of Schoenen Hof as recorded in Document No. 666102 of the Washington County Registry; thence North $01^{\circ}38'55''$ West along the east line extended of above said Acadia Avenue to the north right of way line of E. Decorah Road (CTH "I") 50.003 feet being the place of beginning of the lands hereinafter described; thence continuing North $01^{\circ}38'55''$ West 314.997 feet to the south right of way line of Redwood Street; thence North $88^{\circ}55'43''$ East along said south line 124.340 feet; thence South $00^{\circ}36'46''$ East 314.992 feet; thence North $88^{\circ}55'43''$ East along the north line of E. Decorah Road (CTH "I") 811.000 feet; thence North $01^{\circ}04'17''$ West 190.388 feet; thence Northerly 90.103 feet along the arc of a curve of radius 217.000 feet; center lies to the west, chord bears North $12^{\circ}57'59.5''$ West 89.457 feet; thence North $65^{\circ}08'18''$ East 312.085 feet; thence North $58^{\circ}49'26''$ East 338.465 feet; thence South $41^{\circ}23'24''$ East 499.834 feet; thence South $02^{\circ}03'34''$ East 192.510 feet to the north right of way line of E. Decorah Road (CTH "I"); thence South $88^{\circ}55'43''$ West along said north right of way line 1816.313 feet to the place of beginning. Containing a net area of 343.033 square feet or 7.8750 acres of land.

Prepared by John R. Stigler
Wis. Reg. No. S-1820
Dated: February 16, 2005