DECLARATION OF COVENANTS AND RESTRICTIONS
RESIDENTIAL PORTION OF WESTERN HILLS WEST SUBDIVISION

Know all persons by these presents; that Western Land Development, LLC is a limited liability company duly organized and existing under and by virtue of the laws of the State of Wisconsin, located at Waukesha, Wisconsin, (herein referred to as "Developer," which term shall also include the duly authorized agent of Developer). Developer is the owner of Western Hills West Subdivision, being a subdivision with the following legal description:

LEGAL DESCRIPTION: *Western Hill West Subdivision,* Being a part of Parcel 1, CSM 4746 and a part of the SW ¼ of Section 20 and a part of the SE ¼ of Section 19 and a part of the NW ¼ of Section 29, all in T.10N., R.18E., City if Hartford, Washington County, Wisconsin.

Beginning at the Northwest corner of said Section 29; thence S.00°33'00" E. along the west line of the Northwest ¼ of said Section 29, 33.00 feet; thence S.89°56'46"W., 33.38 feet; thence N.00°06'34"E., 1,352.36 feet; thence N.89°58'48"E. along the north line of the Southeast ¼ of the Southeast ¼ of said Section 19, 33.00 feet; thence N.89°44'09"E. along the north line of said Parcel 1, 850.74 feet; thence S.00°15'52"E., 66.35 feet; thence East, 132.58 feet; thence S.00°15'52"E., 174.00 feet; thence S.05°40'13"E., 99.98 feet; thence N.89°44'09"E., along the south line of said Parcel 1, 661.30 feet; thence S.00°00'44"W., along the west line of Western Hills Central, 978.36 feet; thence S.89°43'11"W. along the north line of the Northwest ¼ of said Section 29, 331.58 feet; thence S.00°25'29"E. along the east line of the Northwest ¼ of the Northwest ¼ if said Section 29, 1,318.28 feet; thence S.89°44'43"W. along the south line of the Northwest ¼ of the northwest ¼ of said Section 29, 1,323.46 feet; thence N.00°33'00"W. along the west line of the Northwest ¼ of said Section 29, 881.60 feet; thence 401.01 feet along the arc of a curve to the right, whose radius is 840.00 feet and whose chord bears N.30°52'44"E., 397.21 feet; thence N. 47°13'13" E., 80.78 feet; thence 240.57 feet along the arc of a curve to the left, whose radius is 340.00 feet and whose chord bears N.70°00'36"W., 235.58 feet; thence S.89°43'11"W., 45.87 feet; thence S.00°06'34"W., along the west line of the SW ¼ of said Section 20, 40.00 feet to the point of beginning. Said lands contain 3,681,327 square feet (84.51 acres).

It is the intent to establish a general plan for the use, occupancy and enjoyment of said lots in order to develop the above described property as a quality conscious residential development. After the development of said lots are completed, any and all trees as far as practicable are to be preserved.

A. BUILDING RESTRICTIONS.

All of the property described above and constituting the Western Hill West subdivision shall be held, sold and conveyed subject to the covenants, conditions and restrictions set forth below.

1. **LOTS:** All lots shall be known and described as single-family residential lots.

2. **DEFINITIONS OF RESIDENCE CLASSIFICATIONS:** The following definitions shall determine the classification of single family residences in establishing minimum allowable above front yard grade floor area requirements as set forth herein, except that garages, porches and breeze way entrances shall not be considered in determining such classifications:

One story minimum:	1, 600 sq. ft
Two story minimum:	1, 800 sq. ft.
Multi or Bi-Level:	1, 500 sq. ft above front yard grade

3. **ARCHITECTURAL REVIEW:**

a. Each Owner shall submit two sets of ¼ " scale building plans showing all four exterior elevations and a list of exterior materials and colors to Western Land Development, LLC or their designee for review of consistency with the design criteria indicated herein prior to submitting such plans to the City of Hartford for a building permit. The City of Hartford is aware of the Western Hills West architectural review process and will expect to see evidence of the Developer's approval on all building plans submitted to the Hartford Building Inspection Department.

b. **STRUCTURE ALTERATION/CHANGES:** In order to preserve the value of the WESTERN HILL WEST SUBDIVISION, any building, garage, fence, deck, swimming pool, change or alteration, or other structure shall be subject to approval in writing by the Developers. This approval shall be required prior to any construction as long as the Developers own any lots in the WESTERN HILL WEST SUBDIVISION.

c. Western Land Development, LLC or their designee will approve or disapprove the plans.

d. No structure shall be built in the WESTERN HILL WEST SUBDIVISION without such approval, endorsed on said plans in writing for submittal to the City of Hartford simultaneous with a request for a building permit.

4. **TEMPORARY STRUCTURES:** No temporary structure of any kind shall be moved on to any lot, and no living quarters of temporary character shall be permitted at any time.

5. **SIDING:** The exterior surface of all structures shall be natural sidings of brick, stone, wood, aluminum or vinyl. No T111 or Masonite siding or similar type product will be allowed and shall protrude no more than six (6) inches to the weather. All windows, gutters and downspouts shall be maintenance free. A minimum of 20% of the primary front elevation shall consist of a masonry product similar to brick or stone.

6. **ROOF PITCH:**

Ranch minimum: 8/12

Two story minimum: 6/12

Porch minimum: 4/12

7. **GARAGE:** All homes shall have an attached minimum 440 sq. ft. two car garage. All garage doors shall be maintenance free.

8. **LANDSCAPING AND STREET TREES:**

a. Within 90 days of occupancy permit date or the following May 15th in the event of winter construction (October 1st thru March 30th), the entire lot is to be landscaped, seeded to the point of having an established lawn, or sodded. Each Owner shall maintain their entire landscaped lot from the rear boundary line to the front lot line and the area between the sidewalk and the streets.

b. For all lots with up to eighty feet (80') of street frontage, a minimum of two street trees per lot shall be planted and maintained by the purchaser of each lot in Western Hill West Subdivision. On a lot with more than eighty feet (80') at the setback line, a minimum of three street trees is required. Owners of corner lots shall install at least 4 street trees along their lot within the terrace. All street trees must conform to the Western Hills West Subdivision Master Tree Plan available at the Hartford City Hall.

c. The Western Land Development, LLC shall install street trees at 60-foot intervals abutting Outlot 1 no later than October 15, 2005. Installation may be deferred during the months of December-March, but for deferred lots installation shall occur no later than June 1 of the year following occupancy.

d. The owners of Lots 138-141 may not remove trees from the easternmost thirty feet (30') of their lots, the owners of Lots 112-116 and 133-137 may not remove trees from the southernmost thirty feet (30') of their lots and the owners of Lots 128-132 shall not remove trees from the northernmost thirty feet (30') of their lots. These Lot Owners shall as necessary replace dead and diseased trees and landscaping to maintain the Upland Conservancy nature of that portion of their lots.

9. **WACKER DRIVE:** All lot owners abutting future Wacker Drive shall have their rear yards facing future Wacker Drive and no driveway entrances shall be permitted from future Wacker Drive directly to any of such lots.

10. **POND ROAD:** No driveway access or entrances shall be permitted from Pond Road directly to any lots.

11. **WEST MONROE AVENUE:** All corner lots abutting on West Monroe Avenue shall have driveways accessing the alternate street with the exception of CSM #5813. The driveways of lots 1, 2, and 3 must access to Durango Drive.

12. **GRADING AND SITEWORK:** All Owners must maintain a pad grade next to the foundation within three inches of the foundation pad grade based on the approved Grading Plan for Western Hills. Any and all earth, gravel, dirt, and/or other material dug out, moved about or placed on any lot for the purpose of backfilling a basement shall be leveled off or backfilled within six (6) months from the first day of excavation, moving or

placing of such material on said lot. In addition, requirements of the City's Standard Building Specifications, especially Section 7, sub-section 4, g, k and n, shall be met.

Each lot owner must strictly adhere to and finish grade its lot in accordance with the Master Lot Grading Plan or any amendment thereto approved by the CITY Engineer on file in the office of the CITY Clerk. The DEVELOPER and/or the CITY and/or their agents, employees or independent contractors 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 property owner is responsible for cost of the same.

13. **BUILDING SETBACKS:** Building setbacks and building height shall conform, at a minimum, to the requirements of the City of Hartford Zoning Ordinance.

    a. Front yard or street side twenty-five feet (25') minimum.

    b. Back or rear yard twenty-five feet (25') minimum.

    c. Side yard ten feet (10') minimum.

14. **DRIVEWAYS:** All driveways, and other parking areas shall be paved with asphalt, concrete, or brick not to exceed twenty feet (20') at the property line prior to the granting of a Conditional Occupancy Permit, following application to the City for a driveway approach permit. In the event that a Conditional Occupancy Permit is sought between November 15 and March 1 of the following year, the applicant shall place in an escrow account an amount as determined by the City Engineer sufficient to cover the expense of installing the proposed driveway. In this event, the applicant shall install the driveway by May 15 of the following year. No permanent gravel drives will be permitted. All driveways will be constructed in accordance with City of Hartford ordinances. It is recommended, where practicable, driveways are to be placed on the side of the lot that allows for the most adequate flow of water towards the street. See also Addendum B to the Vacant Land Offer to Purchase.

15. **SIDEWALKS/APPROACH:** All Owners will be responsible for the installation of a concrete driveway approach, not to exceed twenty-five feet (25') in width at the curb line and twenty feet (20') in width at the lot line. Owners will construct a sidewalk at the front (and street side for a corner lot) setback along the entire lot line, the sidewalk width to be five feet (5'). The Developer shall be responsible for the placement of sidewalks on both sides of South Wacker Drive from the Eastern-most property line of the development to West Monroe Avenue. The Developer will be responsible for the placement of sidewalks on the East side of Wacker Drive from West Monroe Avenue to the Southern-most point of CSM #5813. Sidewalk and approach are to be constructed meeting the City of Hartford specifications prior to applying for a Conditional Occupancy Permit.

16. **CONSTRUCTION STANDARDS:** Each Owner must maintain the lot on which a home is being constructed so as to prevent runoff of silt onto adjoining properties. This requires silt fencing along all downhill lot lines. Each Owner shall maintain a dumpster or refuse bin on site during construction and endeavor to maintain a clean job site. No burning of construction materials will be allowed.

17. **SPECIFIC EXCLUSIONS OR PROHIBITIONS:**

a. **SIGNS:** No sign of any kind shall be displayed to the public view on any lot except one "For Sale" sign of not more than six (6) square feet.

b. **FENCES:** Fences shall not be permitted on any lot except swimming pool fences covered by ordinance or law and dog run fences as hereinafter set forth, all fences to be compliant with current City of Hartford codes:

1. Swimming Pool fences provided they are located no closer than ten feet from any lot line and no more than six feet in height. They shall be constructed of non-chain link material, and require a building permit.

2. Dog run fences provided that they do not exceed seventy-two (72) square feet in area and five (5) feet in height. Dog run fences must be attached to the structure behind the building and not located in the front or side areas.

c. **OUTDOOR STORING/PARKING:** All recreational vehicles, boats, campers, motor homes, snowmobiles, snowmobile trailers, and motorcycle trailers present at any residence must be stored inside.

1. Parking or storage of semi-tractor cabs or trailers is prohibited in Western Hill West.

d. **ADDITIONAL BUILDING:**

1. No building or Structure shall be erected, constructed or maintained on any lot, except only a private single-family dwelling.

2. No sheds are allowed.

f. **PETS:** No poultry or livestock of any kind (other than standard house pets) shall be kept or raised on the premises.

g. **SUMP PUMPS:**

1. Lots 20 through 29 on Tahoe Lane must have sump pump discharges facing the detention pond.

2. Lots 74, 85, 86, 91, 91, 98, and 99 must have sump pump discharges connected to the main storm system.

h. **SANITARY LATERALS:**

1. Lots 26 through 33 on Tahoe Lane have to be installed at the minimum slope of 1/8" per foot.

2. Lots 43 through 49 on Boyd Lane have to be installed at the minimum slope of 1/8" per foot.

18. **MISCELLANEOUS:**

a. **BINDING COVENANTS:** The covenants and restrictions contained herein shall run with the land and shall be binding upon and inure to the benefit of all persons having any right, title or interest in said property or any part thereof, and shall be binding on their respective heirs, legatees, representatives, successors and assigns. In any case of conflict between these covenants, conditions and restrictions and the ordinances of the City of Hartford, the ordinances of the City of Hartford shall prevail.

b. **ENFORCEMENT.** Enforcement hereof will be vested with the Western Hills West Homeowners Association (WHWHA) or by proceeding by the WHWHA at law or in equity to redress violations or to recover damages. Enforcement may also be had by a private right of action by any lot owner subject to the terms herein. Invalidation of anyone of these covenants by judgment or court order shall in no way affect any of the other provisions of these Declarations, all of which shall remain in full force and effect.

B. <u>OWNERS ASSOCIATION.</u>

1. An unincorporated association, the Western Hills West Homeowners Association (herein referred to as the "Association" or WHWHA), of the owners of lands in Western Hills West, is hereby created for purposes of managing and controlling subdivision common areas (as defined below) and performing other duties as set forth herein for the common benefit of the Owners (common area lands will be owned in fractional ownership by the owners of lands in Western Hills West). Owners are defined as including single-family lot owners; where more than one person owns an interest in the property, as reflected by the deed conveying ownership, those individuals collectively are deemed to be a single Owner for the purposes of participating in the Association.

2. The term common area shall include the following areas:

a. All outlets, conservancy areas, detention basins, wetlands and common areas shown on the plats or certified survey maps of the lands subject to this Declaration.

b. The area of easements granted to the Association by the Developer over portions of the lands subject to this Declaration for the purposes of installing entryway monuments and landscaping.

c. The grass area and any fencing and landscaping contained within the public right-of-way of any public roadway within the lands subject to this Declaration and any grass area designated as future streets.

d. All sidewalks abutting Wacker Drive from the Eastern most property line of the development to Monroe Street will be considered common area and maintained by the WHWHA.

e. In the event that future Wacker Drive from Monroe to the Southern property line is constructed during a time frame not to exceed ten (10) years beyond June 30th, 2006, a sidewalk on the East side of the street from West Monroe Avenue to the Southern end of CSM #5813 will be built at the Developers expense using funds escrowed by the Developer with the City. Said sidewalk will be considered a common area and maintained by WHWHA.

3. The association shall be governed by a five-member Committee, hereinafter referred to as the "Committee" which shall be solely responsible for the activities of the Association. The initial members of the Committee shall be appointed by the Developer after all single family lots have been sold. Prior to then, governance shall be vested solely with the Developer. To maintain good communication, the Developer shall hold a meeting of the Association after 20 % of the single-family houses in the Subdivision are occupied (to which a City representative will be invited), and such other meetings as the Developer shall determine, until the Committee is appointed.

4. To qualify as a member of the Committee, a person must be an Owner in Western Hills West.

5. Each Owner shall be entitled to vote in person or by proxy in elections for selecting members of the Committee, Owners of single-family lots shall have one (1) vote for each lot owned.

6. The term of office of the initial members of the Committee shall be for two (2) calendar years. If any member of the Committee shall die, resign, be unable to act or cease to be qualified to be a member, the un-expired term of such member shall be filled by a special election.

7. All meetings of the Committee shall be open to Owners and held upon not less than ten (10) days prior written notice to all of the Owners. Three (3) members of the Committee shall constitute a quorum. Actions of the Committee shall be taken by majority vote.

8. The Committee shall have the following duties:

   a. Provide for the control and maintenance of the lands and improvements in the Common Areas.

   b. Establish dates and procedures for the election of members of the Committee.

   c. Promulgate operating procedures for the conduct of the Association and Committee affairs.

   d. Enforcement of the provisions of these covenants.

9. The Committee shall have the following powers:

   a. Cause the Common Area to be maintained, repaired, landscaped (where appropriate), and kept in good clean and attractive condition.

b. Enter into contracts and employ agents, attorneys or other for purposes of discharging its duties and responsibilities hereunder.

c. Levy and collect assessments in accordance with the provisions of the following Paragraph 10.

10. The Committee shall levy and collect assessments in accordance with the following:

a. The owner of each single family lot shall be subject to a general annual charge or assessment for the purpose of defraying the costs of maintaining and administering the common area and other WHWHA activities. Such annual assessment shall be a pro-rata share (one (1) share per lot for each single family lot) of the costs incurred or to be incurred by the Association in performing its duties. Said assessments shall be used to insure the maintenance of the improvement made to the common area the cost of labor, equipment, materials, management, and supervision thereof, and all costs of the Association reasonably incurred in conducting its affairs, and enforcing the provisions of these Sections.

b. Assessments must be approved at a duly convened meeting of the Committee.

c. Written notice of an assessment shall be personally delivered to each Owner subject to the assessment or delivered by certified mail, addressed to the last known address of such owner.

d. Assessments shall become due and payable thirty (30) days after the mailing or personal delivery of the notice, as the case may be.

e. Assessments not paid when due shall bear interest at the rate of twelve percent (12%) per annum until paid, and such unpaid assessment and the interest thereon shall constitute a continuing lien against the real estate against which it was assessed until it has been paid in full. The assessment and interest thereon shall also be the personal obligation of the Owner of the real estate against which the assessment was made.

f. The Committee may record a document with the Register of Deeds in Washington County, Wisconsin, giving notice of a lien for any such unpaid assessment and upon payment or satisfaction of the amount due record a document canceling or releasing any such lien. The failure to file any such notice shall not impair the validity of the lien. All recording and attorney fees relating to any such document shall be borne by the affected Owner.

g. Upon application by any Owner, any member of the Committee may, without calling a meeting of the Committee, provide to such owner a statement in recordable form certifying (1) that the signer is a duly elected member of the Committee and (2) as to the existence of any unpaid assessments or other amounts due to the Association. Such statement shall be binding upon the committee and shall be conclusive evidence to any party relying thereon of the

payment of any and all outstanding assessments or other amounts due to the Association.

h. Any lien for assessment may be foreclosed by a suit brought by the Committee, acting on behalf of the Association, in a like manner as to the foreclosure of a mortgage on real property.

11. Members of the Committee shall not be liable for any action taken by them in good faith in discharging their duties hereunder, even if such action involved a mistaken judgment or negligence by the member, or agents, or employees of the Committee. The association shall indemnify and hold the members of the Committee harmless from and against any and all costs and expenses, including reasonable attorney fees, in connection with any suit or other action relating to the performance of their duties hereunder.

12. Failure of the association or the Committee to enforce any provisions contained in these covenants, upon the violation thereof, shall not be deemed to be a waiver of the rights to do so, or an acquiescence in any subsequent violation.

13. In the event the property owners do not properly maintain any storm water retention basins, drainage easements or outlots, the City may send written notice to the WHWHA indicating that the City has determined that the same are not being properly maintained and further indicating that the City will perform such maintenance if not properly done by the property owners or the WHWHA. The above mentioned notice shall give the owners and/or WHWHA a minimum of seven days to correct the problem unless an emergency exists, in which case less than seven days may be allowed for correction of the problem. If maintenance is not properly performed within the time granted by the above-referenced notice, the City shall then have the authority to perform the maintenance referred to in said notice and shall have the right to charge the owners or WHWHA on a pro rata basis for any costs incurred by the City as a result of such maintenance. Said costs shall be assessed as special charges pursuant to Section 66.0627(16) Wisconsin Statutes. If such charges are not paid by the owners or WHWHA within the period fixed by the City, the charges shall become a lien upon the lots within the subdivision as provided in Section 66.6027, Wisconsin Statutes, and shall be extended upon the tax rolls as a delinquent tax against the lots within the subdivision as provided in Section 66.6027, Wisconsin Statutes Overall, if the Committee shall fail to discharge its duties under this Section within sixty (60) days of written demand by the City, the City may discharge the duties of the Committee. The costs of the City incurred in connection therewith shall be charged to the Owners of the properties affected by such actions of the City by adding to each Owner's real estate tax statement incurred a charge equal to such Owner's pro rata share, of such costs.

C. DRAINAGE AREAS.

1. Each owner of the lands upon which a permanent drainage easement is located is required to maintain their permanent drainage area, including mowing and maintaining the grass. Each owner of lands upon which a permanent drainage easement is located is required to make repairs that may be required to permit the drainage of the surface water received on their property from the Western Hill West Subdivision in accordance

with the approved plans and specifications as part of the Master Drainage Plan on file with the City of Hartford.

2. The City of Hartford, and its employees and agents, are authorized to access the drainage areas to conduct inspections of storm water practices as the City of Hartford deems necessary to ascertain that the practices are being maintained and repaired as necessary to permit the proper drainage of surface water through the Western Hill West subdivision. In the event the owner of lands upon which a drainage easement is located does not properly maintain or repair any drainage easement area, the City of Hartford may send written notice to the affected owner indicating that the City has determined that the drainage easement area is not being properly maintained or repaired, and further indicating that the City of Hartford has the right to perform such maintenance or repair if not properly done by the lot owner. The above-referenced notice shall give the lot owner a minimum of seven (7) days to correct the problem. If the drainage easement area is not properly maintained or repaired within the time granted by the above-referenced notice, the City of Hartford shall then have the authority to maintain or repair any such drainage easement area referred to in said notice and shall have the right to charge the lot owner for any costs incurred by the City as a result of said maintenance or repair. Said costs shall be assessed as special charges pursuant to Section 66.0627(1), Wis. Stats. If such charges are not paid by any lot owner within the period fixed by the City of Hartford, charges shall become a lien upon the lot owner's lot as provided in Section 66.0627(I), Wis. Stats. and shall be extended upon the tax rolls as a delinquent tax against the lot owner's lot as provided in Section 66.0627(1), Wis. Stats.

3. The Developers, for good and valuable consideration, do hereby sell, assign and convey on the City of Hartford an easement, right-of-way' and license over, across, and upon the property described on Plat of Subdivision as drainage areas, for the drainage of surface water from lands elsewhere within the City of Hartford, and to authorize, but not obligate the City of Hartford to maintain and repair the drainage easement areas if not properly done by the Home Owners Association on which the storm water detention basin areas are located, as described in this section. This easement shall run with the land and shall be binding on and shall be to the benefit of the Association, the City and their heirs, successors and assigns.

D. AMENDMENT PROVISIONS.

After the Developer has sold all lots in Western Hill West, any of the provisions of this Declaration may be annulled, waived, changed, modified, or amended at any time by written document setting forth such annulment, waiver, change, modification or amendment, executed by the Owners of lands having at least ninety percent (90%) of the votes in the Association; provided however, that any such action must also be approved in writing by the City of Hartford. This declaration and all amendments shall be executed as required by law so as to entitle it to be recorded, and shall be effective upon recording in the *Office* of the Register of Deeds for Washington County, Wisconsin.

E. DURATION OF RESTRICTIONS.

These restrictions shall be in force for a period of Thirty-five (35) years from the date of this declaration being recorded, after which time this declaration shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the buyers of all the lots

affected by this declaration has been recorded changing the covenants established in this declaration in whole or in part or reducing the term, and shall be deemed to run with the land and shall bind the owners and their heirs, successors and assigns and be enforceable by any Owner.

The Developer, its successors and assigns, and all parties hereafter having an interest in the property, are subject to all rules, codes, regulations, and ordinances of the City of Hartford, Washington County, the State of Wisconsin and the federal government, and the same may be more restrictive than these Restrictions. In the event there is a conflict between the requirements of these Restrictions and any provision of the City, County, State or federal law or regulation, the more restrictive provisions shall apply.

In witness whereof, the undersigned; being a Member Western Land Development, LLC has executed this Declaration of Covenants and Restrictions this _____ day of _____, 2004.

_____

Ronald N. Ryman
Western Land Development, LLC

State of Wisconsin
County of Waukesha

The foregoing instrument was acknowledged and executed before me this_____day of _____, 2004, by Ronald N. Ryman, who is personally known to me or who produced identification.

_____
Notary Public
My commission expires: