DECLARATION OF LANDSCAPE PRESERVATION AND MAINTENANCE EASEMENT

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DECLARATION OF LANDSCAPE PRESERVATION
AND MAINTENANCE EASEMENT

This Declaration of Landscape Preservation and Maintenance Easement and Covenants (the "Agreement") is made as of____September,2007, by W.W. Lange L.L.C., a Wisconsin limited liability corporation ("Developer").

WHEREAS Developer owns certain real property situated in the City of Mequon, Ozaukee County, Wisconsin, described in Exhibit B, attached hereto and incorporated herein by reference (the River Birch Place Condominium"the Property"); and

WHEREAS, Developer has declared or will declare the Property a condominium pursuant to the Condominium Act of the State of Wisconsin, Chapter 703 of-the Wisconsin Statutes; and

WHEREAS, the City has, pursuant to its land division and zoning ordinances, and engineering standards regulating land development and design and performance standards associated therewith, imposed certain conditions relating to landscaping and its perpetual maintenance, upon plat and other approvals, and this declaration of covenants is intended to insure perpetual compliance with such requirements; and

WHEREAS, Developer desires to establish for the benefit of itself and the owners of the Units of the Property certain nonexclusive easements, in, to, over, and across a portion of the Property for landscaping and a perpetual easement for the maintenance of the landscaping; and

WHEREAS, Developer desires to reserve an easement on, over and through the Property along with the rights of ingress and egress for the purpose of installing, maintaining, repairing and replacing landscaping.

NOW THEREFORE, in consideration of the foregoing, and the covenants and declarations as hereinafter set forth, IT IS DECLARED as follows:

1. Declaration of a Perpetual Easement. Developer hereby declares and reserves for its successors and assigns, forever, a non-exclusive easement, over the areas depicted by crosshatching on the River Birch Place Condominium which is attached hereto as Exhibit A and incorporated herein ("Easement Area"), including the obligation, right and authority to enter upon the Easement Area solely to build, install, repair, replace, rebuild and maintain its private landscaping and the landscaping ("Landscaping") installed and maintained pursuant to the landscape plan and Stewardship Plan approved by the City of Mequon dated ("Landscape Plan") thereon and appurtenances thereto, and the right to trim, cut, top, replace or remove flowers, plants, trees and undergrowth pursuant to the requirements of the approved Landscape Plan and Stewardship Plan. The Developer shall build and install the Landscaping elements in strict compliance with the Landscape Plan, including but not limited to building and installing the entry features as depicted on sheet of the Landscape Plan; installing and maintaining the open space plantings identified in the Landscape Plan (not including the pond or the street trees). Thereafter the Developer and its successors and assigns shall maintain, repair, rebuild and replace such Landscaping at its sole expense in compliance with the Landscape Plan and the Stewardship Priority Management and Maintenance Plan contained in the Stewardship Plan. Upon reasonable prior notice,

Developer and its successors and assigns shall be permitted to use the Easement Area as it is reasonably necessary for access to and maintenance of the Landscaping. Developer hereby grants the City of Mequon the right to enter the Easement Area, in a reasonable manner and at reasonable times, for.the purpose of monitoring the building, installing, and maintenance of the Landscaping. If the Developer or its successors or assigns fails to build, install or maintain the Landscaping in compliance with the Landscape Plan and the Stewardship Plan, the City shall have the right to install or build the same according to' the Landscape Plan and the Stewardship Plan, and to charge the cost thereof, including administrative charges, to The River Birch Place Condominium Association, and all of the common elements and the Units pursuant to §66.027, Stats., including such charge as a lien and special tax on the property.

2. Construction Liens. In the event that any construction liens are filed against any Unit or any outlot, or any part thereof, in connection with any work performed by or on behalf of developer or in connection with any act or omission of Developer pursuant to the Agreement, Developer shall have the liens promptly discharged of record.

3. Repair. Developer, its successors and assigns, agree to keep and maintain the Easement Area and Landscaping in good order and repair, including the making of necessary replacements thereto, so that the Landscaping remains in full compliance with the Landscape Plan and the Stewardship Plan in perpetuity. Developer, its successors or assigns, will, at its sole cost and expense and promptly after completion of its work, replace the surface and subsurface of the soil as may be disturbed in the maintaining, inspecting, replacing and repairing the Landscaping (including reconstruction) as may be disturbed during any necessary activity within the Easement

Area or'which is a direct result of the exercise of the rights herein granted.

4. Nondisturbance. Developer will minimize its interference with the activities of the owner of the Easement Area and its respective agents, servants, employees, licensees, and invitees in connection with its operations.

5. Successor Obligation. Developer shall create or cause to be created an entity ("the River Birch Place Condominium Association") with a perpetual existence pursuant to Chapter 181 of the statutes of the State of Wisconsin, for the express purpose, inter alia, of assuming all responsibility for the perpetual maintenance, repair, reconstruction and replacement of the Landscaping pursuant to the Stewardship Priority Management and Maintenance Plan contained in the Stewardship Plan approved by the City of Mequon and filed with the City of Mequon Department of Community Development, so that the same remains compliant with the Landscape Plan and the Stewardship Plan in perpetuity, and including but not limited to the perpetual right to enter upon the real estate hereinafter described at any time that it may see fit, to build, repair, replace, rebuild and maintain the Landscaping thereon and appurtenances thereto, and the right to trim, cut, top, replace or remove flowers, plants, trees, and undergrowth for the appearance and

maintenance of the Easement Area.

6. Indemnitv. To the fullest extent permitted by law, Developer, its successors or assigns, shall defend, indemnify and save harmless the Easement Area owners, its officers, agents and employees, and any Easement Area mortgagee, against all suits, demands, causes of actions, liabilities or claims thereof for injury or damages of whatever nature, including death, or damage to property (i) directly arising out of or proximately resulting from any activity of Developer, its agents, employees, licensees or contractors, their agent or employees, or (ii) directly arising out of any defaults hereunder,or(Hi)directlyarisingoutoforproximatelyresulting fromlandscape maintenance and repair, or (iv) directly arising out or proximately resulting of construction lien claims for work performed by Developer or at Developer's request. It is further agreed that Developer, or its successors or assigns, shall be solely responsible for any and all expenses involved in the removal, relocation, maintenance or repair to the Landscaping and related improvements and waives all rights to reimbursement for such expensesfrom City, its officers, employeesor contractors,including.such work undertaken by City as a result of the failure of Developer or its successors or assigns to do so.

7. Notices. Notices in demand required or permitted to be given hereunder shall be given by certified mail,.return receipt requested, or by a national express service such as FedEx, in the case of Developer, addressed to it at 533 E. Cedar Lane, Mequon, WI 53902, or at such other address as specified in writing by Developer.

8. Exhibits. All exhibits refereed to herein and attached hereto shall be deemed part of the Agreement.

9. Recording. The Agreement shall be recorded in the records of Ozaukee County,Wisconsin.

10. Governing law. The laws of the state of Wisconsin shall apply to the Agreement.

11. Severabilitv. If any term, provision or condition contained in the .Agreement shall, to any extent, be invalid or unenforceable, the remainder of the Agreement (or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision or condition of the Agreement shall be valid and enforceable to the fullest extent permitted bylaw.

12. Binding on Future Parties. The perpetual easement and all covenants and easements herein shall run with the land and shall inure to the benefit of and be binding upon the parties, their successors and assigns.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands this _ day of ,2007.

W.W. Lange L.L.C.

By: W W Lange
Waldemar W. Lange, President

STATE OF WISCONSIN)
)
OZAUKEE COUNTY)

Personally came before me this 6 day of SEPT, 2007, the above-named Waldemar W. Lange, President of W.W.Lange L.L.C., to me known to be such officer and acknowledged that he executed the foregoing instrument as such officer as the deed of said corporation by its authority.

Gay-Anne L Straub
2/13/2011

GAY-ANNE L STRAUB NOTARY PUBLIC STATE WISCONSIN

H-6

EXHIBIT

RIVER BIRCH LEGAL DESCRIPTION

Parcels 1 & 2 of Certified Survey Map No. 946 and lands, being a part of the Southwest ¼ of the Southeast ¼ of Section 22, Township 9 North, Range 21 East, in the City of Mequon, Ozaukee County, Wisconsin, bounded and described as follows:

Commencing at the Southwest corner of the Southeast ¼ of said Section 22; thence N1°06'50"W (also rec. as N1°06'51"W) along the West line of said ¼ Section, 455.30 feet to the point of beginning of the land to be described; thence continuing N1°06'50"W (also rec. as N1°06'51"W) along the West line of said ¼ Section and the West line of Certified Survey Map No. 946, 558.62 feet to Northwest corner of Parcel 2 of Certified Survey Map No. 946; thence N89°38'32"E (also rec. as N89°38'31"E) along the North line of said Parcel 2, 525.87 (also rec. as 535.97) feet to a point in the West line of Certified Survey Map No. 3366; thence S1°31'15"E (also rec. as S0°36'29"E) along the West line of said Certified Survey Map No. 3366, 209.75 (also rec. as 210.64) feet to the Southwest corner of said Certified Survey Map No. 3366; thence N88°38'32"E (also rec. as N88°38'31"E) along the South line of said Certified Survey Map No. 3366, 174.30 (also rec. as 168.00) feet to a point in the East line of Parcel 2 of Certified Survey Map No. 946 and the West line of Lot 5, Block 1, Assessor's Plat; thence S0°36'28"E (also rec. as S0°36'29"E) along the East line of said Parcel 2 of Certified Survey Map No. 946 and the West line of Lot 5, Block 1 Assessor's Plat, 622.14 (also rec. as 621.10) feet to the Northeast corner of Lot 6, Block 1, Assessor's Plat; thence S88°38'32"W (also rec. as S88°38'31"W) along the North line of Lot 6, Block 1, Assessor's Plat, 73.90 feet to a point in the East line of Lot 7, Block 1, Assessor's Plat; thence N1°36'17"W (also rec. as N0°36'29"W) along the East line of said Lot 7, 1.85 feet to the Northeast corner of said Lot 7; thence S88°38'32"W (also rec. as S88°38'31"W) along the North line of said Lot 7 and Lot 8, Block 1, Assessor's Plat, 120.70 (also rec. as 118.15) feet to the Northwest corner of said Lot 8; thence S1°36'17"E (also rec. as S0°36'29"E) along the West line of said Lot 8, 141.68 to a point in the North right of way line of W. Mequon Rd. (S.T.H. "167"); thence N85°22'39"W along said North right of way line, 258.49 feet to a point in the West line of Parcel 1 of certified Survey Map No. 946; thence N1°06'50"W (also rec. as N1°06'51"W) along the West line of said Parcel 1, 248.00 feet; thence S88°38'32"W, 145.52 feet; thence N1°06'50"W, 147.30 feet; thence S88°38'32"W, 100.00 feet to the point of beginning.

Said lands containing 12.211 acres of land, more or less.