Draft

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF QUIETWOOD

This Declaration of Covenants, Conditions and Restrictions of QuietWood, hereinafter known as "QuietWood" (this "Declaration") is made and entered into by QuietWood Development, LLC ("Declarant").

Recitals

Declarant owns certain real property, described on the attached Exhibit A, upon which Declarant intends to develop a subdivision for residences and other related improvements.

By this Declaration, Declarant intends to subject such property and improvements to certain easements, rights, restrictions and obligations with respect to the ownership, use and maintenance of such property and improvements and all components thereof.

Now, therefore, Declarant, as fee owner of such property, by this Declaration (1) establishes and imposes certain provisions, restrictions, conditions, easements and uses upon such real property; and (2) specifies that the provisions of this Declaration shall constitute covenants running with the land which shall be binding upon Declarant, its successors and assigns, and all subsequent owners and occupants of all or any part of such real property.

Although the Declarant is implementing this declaration with the intentions set forth above, the Declarant makes no assurance, representation or guaranty that the intentions of these covenants shall be achieved, or as to the ultimate value of lots in the Subdivision, or as to any stability or increase in value as a result of the imposition of this declaration.

ARTICLE 1: DEFINITIONS

The following terms shall have the assigned definitions:

1.1 **Association.** The "Association" shall mean QuietWood Homeowner's Association, Inc., the members of which shall be all Owners of Lots in the Subdivision.

1.2 **Association Insurance.** "Association Insurance" shall mean all policies of insurance as may be maintained by the Association under this Declaration.

1.3 **Board.** The "Board" or "Board of Directors" shall be the governing body of the Association, elected according to the Bylaws.

1.4 **Building.** A "Building" shall be any freestanding structure located in the Subdivision.

1.5 **Bylaws.** The "Bylaws" shall mean the Bylaws of the Association as adopted only by the Board.

1.6 **Common Areas.** The "Common Areas" shall consist of areas upon which Common Improvements are located including on Outlot 1 which Outlot is to be managed and controlled by the Owners Association, the entrance monument(s) and associated landscaping, and easement rights on individual lots upon which drainage easements, if any, are located. While a Common Area or Common Improvement is managed by the Association, it continues to be subject to the Owner responsibility and Association responsibility described in Sections 4.1 and 4.2. and all other terms and conditions of this Declaration applicable to Common Areas and Common Improvements.

1.7 **Common Improvements**. The "Common Improvements" consist of the following, some of which may be located in Common Areas and some of which may be located in public streets, individual lots or Outlot 1: all signs on the Property generally identifying the Subdivision as QuietWood Subdivision, and any non-dedicated drainageways or easements, detention ponds and landscaping or other improvements made by the Association or Declarant, in the Common Areas or elsewhere.

1.8 **Developer Agreement**. The "Developer Agreement" means the agreement between Developer and the Village governing responsibility for infrastructure improvement construction and maintenance.

1.9 **Declarant.** The "Declarant" shall mean Quiet Wood Development, LLC and the successors and assigns of Declarant pursuant to assignment in accordance with Section 14.7 of this Declaration.

1.10 **Declaration**. "Declaration" shall mean this Declaration as the same may be amended from time to time.

1.11 **Director**. A "Director" shall mean a member of the Board.

1.12 **Drawings**. The term "Drawings" is defined in Section 6.1.2.

1.13 **QuietWood Documents.** "QuietWood Documents" shall consist of this Declaration, Articles of Incorporation of the Association, the Bylaws of the Association, Storm Water Management Plan and Storm Water Maintenance Agreement, and Developer Agreement.

1.14 **In-Ground Pool.** "Pool" shall mean a concrete or vinyl lined pool built below grade and into the ground and surrounded by dirt.

1.15 **Lot**. "Lot" shall mean a platted lot intended for construction of a residence as shown on the Plat. The reference to a Lot by a number shall mean that particular Lot as shown on the Plat.

1.16 **Mortgage**. "Mortgage" shall mean a recorded first lien mortgage against a Lot or the vendor's interest under a recorded first lien land contract relating to a Lot.

1.17 **Mortgagee**. "Mortgagee" shall mean the holder of a Mortgage.

1.18 **Occupant**. "Occupant" shall mean the Owner and any other person residing on a Lot.

1.19 **Outlot**. "Outlot" shall mean any outlot as shown on the Plat. The reference to an Outlot by a number shall mean that particular Outlot as shown on the Plat.

1.20 **Owner**. "Owner" shall mean each fee simple owner of a Lot. The Declarant is an Owner with respect to Lots to which it holds title. The Village is not an Owner, however, for purposes of this Declaration notwithstanding its potential ownership of any Lot or Outlot.

1.21 **Pet**. A "Pet" is a domestic dog, cat, rabbit, ferret or similar or bird (other than large birds of prey) which are not maintained for breeding or commercial purposes. By virtue of this definition, no other animals are permitted to be on the Property as pets of any Occupant.

1.22 **Plat**. A "Plat" is the plat of the Property as recorded in the Register's Office.

1.23 **Property**. The "Property" shall mean the real estate subject to this Declaration, as described on Exhibit A and all Buildings and other improvements constructed or to be constructed thereon.

1.24 **Register's Office**. The "Register's Office" shall mean the office of the Register of Deeds for Waukesha County, Wisconsin.

1.25 **Rules**. The "Rules" shall mean rules established by the Association governing the administration of the Common Areas and Common Improvements.

1.26 **Subdivision.** "Subdivision" shall mean all of Lots and Outlots as shown on the Plat, as same may be amended.

1.27 **Village**. "Village" shall mean the Village of Menomonee Falls, Wisconsin, and its successors.

1.28 **Landscape Plan**. The "Landscape Plan" is identified in the Developer Agreement. Various trees and shrubs are located on Outlots, and easements areas depicted on the Plat. The Association shall have the responsibility to perform routine maintenance including any tree removal of diseased or dead trees subject to Declarant maintaining such shrubbery for a period of two (2) years from recording of the Plat. The Declarant's responsibility to maintain these landscape areas is a consideration of the Declarant being relieved of the responsibility to pay for any assessment for lots for a period of four (4) years from the time of recording of the final Plat and the subsequent conveyance of the first lot.

1.29 **Expansion Property**. Declarant reserves the right to expand the lands subject to this Declaration. Such lands are identified on the attached Exhibit ___. Expansion may occur in multiple phases by platting additional lots contained on the above land to be made subject to this Declaration; provided, however, this Declaration may be altered or modified with respect to such expansion lands in manners which change elements including but not limited to square footage requirements, building materials, shared responsibility, shared expenses, common elements and the like. Notwithstanding these changes on expansion areas, no expansion area modification through this Declaration shall materially alter the manner of allocation of expenses to be borne by any prior lot subject to this Declaration. It is the intension of expansion areas to identify areas which may be different types of housing, uses, common shared expenses and the like. For example, a portion of the expansion lands may

include lands that have common elements where expenses for snowplowing, grass cutting, clubhouse and pool may be specific to those lots. Those lots may stand alone on a separate and distinct basis and those areas while subject to the Declaration for purposes of certain aspects including stormwater discharge and integrated stormwater management but may be segregated for their separate and distinct aspect and features. Declarant reserves all rights to make such modifications in the Declaration.

ARTICLE 2: ASSOCIATION OF OWNERS

2.1 **Administration.** Declarant shall establish the Association, which shall be incorporated and shall adopt Bylaws for its governance and administration of the Common Areas and Common Improvements. The Board may, but need not, from time to time adopt and amend Rules that are binding on all Owners and Occupants. The Board shall administer and enforce the Common Areas, the provisions of this Declaration and the Bylaws, the Rules, and all other uses of and restrictions on the Property. The Board, on behalf and without prior approval of the Lot Owners, shall have the exclusive authority to enter into any dedication easement, restriction, or other recordable document with the Village of Menomonee Falls regarding any activity that may occur on or in the Common Areas. Until the establishment of the Association, all powers of the Association shall be exercised by Declarant.

2.2 **Membership and Voting.** Each Owner shall be a member of the Association. In the Association, the Owner(s) of each Lot shall be entitled to one vote for each Lot owned. If one or more Lots change their status to some other form of ownership, the votes appurtenant to each original Lot shall not be changed. No member shall be permitted to vote if such member is more than thirty (30) days delinquent in the payment of any amount due to the Association under Article 3 of this Declaration.

2.3 **Control of Association.** Declarant shall have the assignable right to appoint and remove Directors of the Association and to exercise any and all powers and responsibilities assigned or reserved to the Association, the Board, or its officers, by the Articles, Bylaws, this Declaration or the Wisconsin Nonstock Corporation Law (as amended from time to time), until the earliest of: (1) seven (7) years from the date that the first Lot is conveyed to any person other than Declarant; or (2) Ninety (90) days after the conveyance by Declarant to purchasers of all of the Lots; or (3) Declarant's election to waive its rights to control.

2.4 **Management.** The Association may employ a professional management agent or company to assist in carrying out its duties regarding the Common Areas, the Common Improvements, and this Declaration, with such experience and qualifications and on such terms and conditions as are acceptable to the Board. Any such agreement must be terminable by the Board, without cause, on not more than ninety (90) days notice without payment of any penalty.

2.5 **Approval.** Any proposal by an Owner requiring Board approval shall be submitted in writing in such detail and with such supporting documents as the Board may require to facilitate its understanding and review. The Board may approve or disapprove any proposal submitted by an Owner after considering one or more of the following concerns and any additional concerns as the Board deems prudent: (1) freedom and safety of access and convenience to other areas of the Property; (2) the costs to be paid by the Owner for restoration of Common Areas and Common Improvements to their prior physical condition upon the completion of work or

use contemplated by the proposal. and (3) a fair and reasonable monthly charge to be paid by the Owner to the Association for any encroachment on any Common Areas resulting from the proposal. The Board may at its discretion impose further conditions upon its consent to any proposal as it deems appropriate, including payment of out of pocket charges for professional advice and a standard review fee. Approval of a proposal shall be deemed given if the Association President indicates approval in writing. Proposals to affect the Common Areas or Common Improvements require approval of the Board, not the ACC. Approvals granted in this section cannot supersede any applicable Village Ordinance or relieve the requester from the need to obtain any approval/permit/license as required under Federal or State Law or Village Ordinance. If the result of a proposal would be to cause an encroachment on any public street or utility, or any easement area or would affect the storm water drainage system on the Property, the prior express written consent of the Village is required.

2.6 **Ownership of Common Areas**. Common Areas shall be owned in 1/30th fractional share by the individual Lot Owner or located in Village right of way if authorized by the Village. Ownership shall be reflected by the dedication of such areas on the recorded Plat subject to Declarant's responsibility to build and construct all improvements required to be built as identified in the Developer Agreement. Each Owner, on its own behalf and on behalf of its successors and assigns, by acceptance of a deed or other transfer of a Lot, waives any and all right that the Owner might now or hereafter have to maintain any action or petition for partition with respect to the Owner's interest in the Common Areas or to compel any sale by action at law or in equity. No Owner shall sever its interest in the Common Areas from its ownership of its Lot.

2.7 **Grading Plan**. Under the Development Agreement, Declarant is responsible to ensure that all lots are graded in accordance with the Grading Plan, stabilized and repaired if disturbed prior to acceptance by the Village Board of the dedication of the improvements as defined under the Development Agreement. Declarant reserves the right to access individual lots to perform this obligation provided, however, in the event that a lot owner commences construction, the lot owner shall be solely responsible for restoring the lot including the completion of initial improvements so as to comply with Declarant's responsibility to have lots graded in accordance with the Master Grading Plan including full stabilization thereof.

ARTICLE 3: ASSESSMENTS

3.1 **Budget and Assessments**. The Association shall annually adopt a budget of common expenses and levy assessments on the Lots allocating such assessments equally to each Lot, subject to the Declarant's lots being released from any assessment for the first four (4) years in consideration of Declarant undertaking all repair and replacement responsibility for the Landscaping Plan as installed for a period of two (2) years. The budget shall include amounts representing assessments that are bad debts, and include a replacement reserve, which in each case shall constitute part of the general assessments. The Association may also levy (a) special assessments on all Lots for any purpose for which a general assessment may be levied, or (b) fines on particular Owners for the Purpose of collecting any amounts due the Association or enforcing compliance by such Owners with any provision of this Declaration, the Bylaws or any Rules. The Board may adopt a Rule to impose uniform charges for services which the Association provides related to transfer of Lots, review of proposal under Section 2.5, and the like. The Board may adopt an initial budget showing the anticipated amounts necessary to cover common expenses.

3.2 **Installments: Late Payments.** General assessments shall be levied on an annual basis but shall be due and payable as determined by the Board from time to time. Special assessments shall be due and payable at such time and in such manner as the Board may determine. Any assessment or installment of an assessment not paid within ten (10) days of its due date may be subject to a late charge and/or interest as set forth in the Bylaws or in a Rule.

3.3 **Enforcement Liens.** If an Owner defaults in any payment, the Association shall take appropriate measures as permitted by law. The defaulting Owner shall be responsible for all costs incurred by the Association in seeking to enforce payment including the Association's reasonable attorney's fees. Owners shall be personally liable for assessments or fines and a lien shall be imposed against such Owner's Lot for any unpaid assessments. The lien shall be effective as of the recording of a notice thereof in the Register's Office, in the same manner as a condominium lien would be imposed. The lien shall be enforced generally in the manner in which condominium liens are enforced. Liens for unpaid assessments shall also extend to and secure interest, fines and reasonable costs of collection including attorneys' fees incurred by the Association incident to the collection of assessments or enforcement of liens. The Association may purchase a property upon the foreclosure of its lien. Under Section 2.2, an Owner delinquent in payments may in some cases not be permitted to vote on matters before the membership of the Association.

3.4 **Association Statements.** Within ten (10) business days of written request from an Owner or a Mortgagee, the Association shall provide a letter stating the existence and amount of outstanding general or special assessments against the Owner's property, if any. Notwithstanding anything to the contrary in the preceding sentence, all property conveyed by Declarant shall be deemed conveyed free from outstanding general, special or working capital assessments and no such letter shall be required or given as to such property.

3.5 **Common Expenses and Surpluses.** Common expenses and surpluses shall be allocated in the same manner as general assessments are allocated. All common surpluses for each fiscal year shall be retained for common expenses for the next succeeding fiscal year.

3.6 **Fees or Assessments.** No Fees or Assessments in Event of Tax Forfeiture. Neither Waukesha County nor the Village of Menomonee Falls shall be liable for any fees or special assessment in the event that Waukesha County or the Village of Menomonee Falls becomes the owner of one or more lots in the subdivision by reason of tax delinquency forfeiture.

ARTICLE 4: MAINTENANCE AND ALTERATIONS

4.1 **Owner Responsibility.** Each Owner shall reimburse the Association for the cost of the Association's repair and/or replacement of any portion of the Common Areas or Common Improvements damaged through the fault or negligence of such Owner or such Owner's family, guests, invitees or tenants. Each Owner shall, at the Owner's cost, even if no residence has been constructed by such Owner, maintain the yard, including the cutting of grass and snow removal from driveways and, if any, sidewalks, in an orderly and neat manner and shall maintain all structures on the Lot in good repair and condition.

4.2 **Association Responsibility**. The Association shall maintain in good condition and repair, replace and operate all of the Common Areas and Common Improvements, including landscaping, trees and plantings in the Common Areas and trimming of such trees for sight lines. The Association may, in its discretion, install additional Common Improvements in the Common Areas. For avoidance of doubt, such responsibility shall include, by example and not limitation, the responsibility to maintain certain landscape elements on Outlot 1 as well as the landscaping located within public right-of-way or entrance monument including in areas depicted in QuietWood's Documents.

4.3 **Village Right to Maintain**. The Village may, but is not obligated to, remedy any maintenance deficiency. Should it become necessary for the Village to maintain Common Areas and Common Improvements, the Village may assess a special charge. Prior to the Village undertaking any corrective action, the Village must first determine that a deficiency exists under these Declarations concerning the maintenance of Common Areas and Common Improvements and that the public interest requires compliance. Thereafter, the Village shall give written notice of the deficiency to the effected Owner(s) and the Association. The notice shall specify the time in which to rectify the deficiency and if the deficiency or deficiencies are not rectified within the time period, the Village shall have the right to enter upon such property using its own employees and equipment or contracting with others for such work to rectify the condition(s). The cost of such work or services shall be billed to the Association for all deficiencies (subject to the Association's right to such reimbursement under Article 11). The Village shall have the right to enforce collection of such amounts by extending the same on the current or next succeeding tax bill as an unpaid special charge in accordance with Chapter 66 of the Wisconsin Statutes, as amended from time to time, against the responsible Owner(s) and the Association. The Owner(s) do hereby consent to the levying of such special charges and hereby waive any and all notices and hearings which might otherwise be required by State statute for the levying of special charges.

4.4 **Maintenance of Paved Paths, Trails, Drainage Easements, Ponds, Common Areas, Subdivision Signage and Monuments**. The Association has the responsibility to properly landscape and maintain all Common Areas, including but not limited to street scape, paved paths, pedestrian trails (if any) and subdivision entrance signage within the subdivision, all portions of any entrance signs, entrance monuments, fencing and the landscaping associated with same which are located in whole or in part within any Village of Menomonee Falls right-of-way, and all non-standard street signs. Said maintenance includes repair or replacement resulting from damage caused by any reason including snowplowing operations as well as the duties and responsibilities outlined in the Open Space Management Plan. Further, the Association without regard to reason, shall indemnify and hold the Village harmless for any claim of liability or damage, regarding the signs, monuments, fencing or associated landscaping located within Village right-of-ways. The responsibilities of maintaining all drainage easement areas located within the individual lots which are subject to this Declaration of Restrictions are with both the Association and the individual Lot Owners as detailed below.

4.5 **Day-to-Day Maintenance of Drainage Easement Areas (if any).** The day-to-day maintenance of any drainage easement area located on an individual lot shall be the responsibility of the owners of such lot. Day to day maintenance refers to such items as cutting grass, raking leaves, removing fallen trees and branches, removing silt and removing other minor obstructions to allow for proper flow of storm water. This paragraph shall not limit the Village's authority of enforcement against the Association, as described in Section 4.3, above, nor the

right to take corrective action in the event an individual Lot owner or the Association, if it has the responsibility, fails to maintain the drainage easement area.

ARTICLE 5: RESTRICTIONS ON USE AND OCCUPANCY

5.1 **Permitted Uses**. Each Lot shall be occupied and used only for single family residential purposes and for no other purpose. No trade or business shall be carried on anywhere in the Subdivision, except for (1) the incidental use of a Lot for personal business conducted by mail and telecommunications which does not burden the use of the Subdivision by frequent visits by business service providers or customers, subject to any Rules relating to such burdens, or (2) the sale of Lots, subject to the other provisions hereof and any Rules related thereto, or (3) the establishment of offices by Declarant or its agents for sales of Lots, model or spec homes or by the Association for conducting its affairs. The term "residential purposes" includes only those activities necessary for or normally associated with the use and enjoyment of a home site as a place of residence and limited home office or recreation. No garage or other mobile or accessory structure shall be used for temporary or permanent living or sleeping for family or guests without prior approval of the ACC.

5.2 **Pets**. The Owner or Occupant may keep no more than the number of Pets allowed under local ordinance, as amended from time to time. Such Pets shall:

5.2.1 Not be permitted on any of the Common Areas while unattended or unleashed;

5.2.2 The individual attending the Pet shall immediately dispose of any and all of the Pet's solid waste in the manner prescribed by the Board;

5.2.3 The Owner of the Pet shall comply with such further rules of Pet ownership as may be promulgated by the Board;

5.2.4 The Pet is licensed by the Village or appropriate licensing authority, if required under applicable ordinances;

5.2.5 No chickens, roosters, uncaged reptiles or uncaged birds shall be permitted; and

5.2.6 The Pet must immediately and permanently be removed from the Property if, in the sole judgment of the Board, the Pet is or becomes offensive, a nuisance or harmful in any way to the Property or any Owner or Occupant, or otherwise violates the terms of this Section 5.2 or any Rules adopted relating to Pets.

All costs of repairing damage caused by a Pet or an unauthorized animal of an Occupant shall be borne by its Owner and, if different, the Owner of the Lot where the pet or other animal is housed. Any Owner failing to comply with this Section or any part thereof shall, absent unusual circumstances under which the Board determines that some lesser or other remedial action is appropriate, be assessed a monthly pet fee in an amount of Two Hundred Fifty dollars ($250.00) per month or part thereof until the Owner has complied, in addition to any other remedy including the revocation of the license to maintain a pet. Such pet fee shall be a special

assessment and may be collected in the same manner as assessments under Article 3. Notwithstanding anything to the contrary herein, possession of pets shall not be considered a property right.

5.3 **Vehicles**. (a) No outdoor parking of vehicles shall be permitted on the non-paved surface of any Lot, without the express prior consent of the Board, and, except for parking as necessary in connection with the construction or reconstruction of a residence on a Lot. No person shall occupy, park or otherwise use a vehicle so as to block access to a Lot. The uninterrupted long term or permanent storage of trailers, campers, camping trucks, boats or other marine craft, horse or boat trailers, motorcycles, mopeds, motorized bicycles, vehicles licensed as recreational vehicles, snowmobiles, all-terrain vehicles, inoperative or unlicensed vehicles or the like shall not be permitted on a Lot, except in a garage. Each residence on a Lot will restrict parking of vehicles on driveways in an excessive manner as may be determined by the Rules of the Association from time to time.

5.4 **Waste**. Accumulations of waste, litter, excess or unused building materials or trash other than in appropriate receptacles is prohibited, and garbage containers shall be situated only in locations designated by the Association. No incineration of waste is permitted on the Property. Lots shall be kept free of debris during construction of improvements thereon by maintenance of a dumpster on-site. The refuse and garbage receptacles for each occupied home shall be stored in the residence or garage, except for a period of 12 hours prior to and following the scheduled garbage pickup. Each Lot Owner shall observe any and all statutes, laws, ordinances or other rules or regulations of governmental entities with jurisdiction over the subdivision respecting the separation and disposal of all rubbish, garbage and waste.

5.5 **Temporary Structures**. No structure, trailer, tent, shack or barn, temporary or otherwise, shall be placed or maintained on any portion of a Lot or Common Area without written approval of the Board, except for construction trailers maintained by Declarant and its successors and assigns, or the Association.

5.6 **Quiet Enjoyment**. Each Owner shall have the right to use its property in accordance with this Declaration and applicable law, free from unreasonable interference from any other Owner, Occupant and other invitee. No person shall cause or permit the Common Areas to be used so as to deny any Owner or Occupant the full use of the Common Areas except as permitted by the Association under Section 2.6.

5.7 **Noxious Activity**. No use or practice shall be allowed in the Subdivision or the Common Areas which is immoral, improper or offensive in the opinion of the Board or which is in violation of the QuietWood Documents. By way of example and not limitation, offensive activity shall include excessive amplification of musical instruments and/or audio or audio visual equipment.

5.8 **Patios and Balconies**. Patios, decks and balconies of Buildings on Lots shall not be used for (a) storage of any kind, including, but not limited to, the storage of motorcycles, baby carriages, bicycles or wagons, or (b) the drying or airing of laundry, carpets, rugs or clothing.

5.9 **Signs**. No Owner or Occupant may erect, post or display posters, signs or advertising material on the Common Areas or at locations within a Building or Lot which are viewable from the public streets or Common Areas without the prior written consent of the Board, except (a) Declarant may do so without such approval and (b) an Owner may erect or post a temporary sign of customary and reasonable dimension relating to the sale of a Lot

or as otherwise authorized by law. The Board may at its discretion, in particular circumstances or in general, delegate its right to consent under this Section to the ACC described in Article 6. Where Board consent is sought and obtained, the permitted signs will be erected and maintained in accordance with all ordinances, rules, regulations and conditions applicable thereto. "Signs" as used herein shall be construed and interpreted in the broadest possible sense and shall include any placard, posters or other such devices as may be affixed to the interior of any exterior windows so as to be visible from the exterior of the Building.

5.10 **Environmental Matters.** Each Owner and Occupant shall comply with all applicable governmental or Association statutes, ordinances, regulations or rules relating to the storage, transport and release to, from, on or in such Lot of any substance or compound governed by any one or more of Wis. Stats. Chap. 292 (as the same may be renumbered from time to time); Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"); Toxic Substances Control Act ("TOCSA"); Resource Conservation and Recovery Act ("RCRA"); Village ordinances; and similar laws relating to the storage, transport or release of substances, compounds or recyclable materials, all as in effect from time to time.

5.11 **Building Setbacks.** No improvements shall be located on any lot in a manner which violates any area or setback restrictions required under the approved Planned Unit Development which can vary based on the location of various lots.

Currently Lots 19 – 30 are:

Lot Width	110'
Front Setback	30'
Rear Setback	30'
Side Setback	15'

and Lots 1 – 18 are:

Lot Width	90'
Front Setback	30'
Rear Setback	30'
Side Setback	12.5'

The committee may impose further modifications or restrictions to harmonize and coordinate improvement placements as a condition to approval of submissions.

5.12 **Water Supply.** Each Dwelling shall be connected to the Village municipal water system constructed and maintained by the Village.

5.13 **Sewage Disposal.** Each Dwelling shall be connected to the Village of Menomonee Falls sanitary sewer system and no septic tank or individual sewage system shall be permitted within the Subdivision.

5.14 **Fences and Walls.** Except as otherwise provided in Section 6.5.8 no fence or wall of any height shall be permitted on any Lot except as a non-continuous Landscape feature or as otherwise approved at the discretion of the ACC. Buried electric or invisible fencing for Pet containment is deemed approved.

5.15 **Pond Liability**. Storm water pond(s) located on Outlot 1 has been created and are required by the Village to assist in the removal of sediment and detention of storm water in the subdivision. The storm water retention pond(s) are not intended to be used for swimming or recreational facilities, and any use of the storm water retention ponds for such use is strictly prohibited. Any person entering into or using the storm water retention pond for such use is strictly prohibited. Any person entering into or using the storm water retention pond(s) either intentionally or accidentally do so at their own risk. By purchase of a Lot in the Subdivision, each Owner and its respective successors, assigns, heirs and personal representatives hereby waives, to the fullest extent permitted by law, any and all claims for liability against the Village, the Declarant, the Association, the other Lot Owners and their respective agents, contractors, attorneys, employees, officers, directors and shareholders, for injury or damage to person or property sustained in or about or resulting from the use or existence of the storm water retention pond(s). In addition, each Owner to the extent of insurance coverage provided (and its successors, assigns, heirs and personal representatives) agrees to indemnify, defend and hold harmless the Village, the Declarant, the Association, and the other Lot Owners and their respective agents, attorneys, contractors, employees, officers, directors and shareholders, from and against any and all liabilities, claims, demands, costs and expenses of every kind and nature (including attorney's fees), from those arising from any injury or damage to any person (including death) or property sustained in or about or resulting from their use or existence of the storm water retention pond.

ARTICLE 6: ARCHITECTURAL CONTROL

6.1 **Architectural Controls: Restrictions on Development**.

6.1.1 **Architectural Control Committee**. Declarant shall establish an Architectural Control Committee ("ACC"), related to the Association as provided herein, consisting of up to three (3) members who shall have the duties as set forth in this Article. The initial ACC, which may be less than three (3) members, shall be appointed by Declarant. One or more Committee members may delegate their Committee duties to any one or more of the other Committee members. After Declarant conveys to purchasers all of the Lots, then at the Declarant's sole discretion the initial members of the ACC shall resign and the Board shall elect the three (3) members from the group of Owners of Lots to serve on the ACC; provided, however, that if selected by the Board, a representative of Declarant may serve on the ACC. Notwithstanding the above, the Declarant selected initial members of the ACC shall exercise exclusive control in approving the initial home construction and design on each Lot, unless such right is assigned by Declarant.

6.1.2 **No Development (Home Construction) Without Prior Approval**. Prior to:

a) Commencement of construction of any Building or other improvements on any Lot, or
b) The reconstruction of any Building or other improvements on any portion or portions of such property following a casualty loss thereto, or
c) The demolition of any Building or other improvements on any portion or portions of such property, or

d) The painting, decoration or alteration of the exterior of any Building or other improvement on such property, or
e) The installation of an awning, enclosure, screen porch, gazebo, ground mounted flagpole, hot tub, deck, shuffleboard court, children's play set, garden, swimming pool, grading, mailboxes, fixed grill, fences or other landscape features on any such property.

The Owner(s) of such property shall submit to the ACC for consideration as described below three copies of written information, which shall include a stake out survey of such property prepared by, and bearing the seal of, a licensed surveyor, ("Drawings") showing:

(A) The location, size elevations and type of Building(s) and other improvements, including, but not limited to, homes, garages, retaining walls and fences or other matters proposed to be erected or reconstructed on such property;
(B) Detailed plans and specifications for construction or reconstruction, including building material, type and color samples;
(C) The proposed landscaping; and
(D) The proposed location and specifications for utilities servicing such improvements.

The survey shall reflect the proposals in A through D, which are appropriate to be shown on the survey. Any of the actions described in clauses (a) through I above may be taken (subject to subsection 6.1.3 following) on or after the date on which the ACC approves or does not object or is deemed to have done so as provided in subsection 6.1.3 following, unless such time periods are waived by ACC in its sole discretion where the ACC believes that such earlier commencement is consistent with the purposes of this Declaration. No action described in paragraphs (a) through I above shall take place without the approval by the ACC of the Drawings for such action, except if the action is the repair or replacement of previously approved exterior features with features that are identical or if the action is the repainting of an exterior surface with paint of the same color.

6.1.3 **Standards and Procedural Matters of Consideration**. The ACC shall not unreasonably refuse to consider submitted Drawings provided that any fees imposed for review have been paid. In considering any Drawings, the ACC shall consider among other factors, whether all of the improvements and the lighting, exterior finishes (such as materials, decorations, and paint color), landscaping (including the timetable thereof), the placement and protection of trees as provided in Section 6.6.2, similarity of design to adjacent homes or similarity of color combinations with a goal of providing diversity in style and design, and such other matters proposed in such Drawings for compliance with the terms of this Declaration and otherwise are, in the ACC's sole opinion, in keeping with and do not detract from or depreciate any portion of the Property, whether then undeveloped, developed or in the process of development, even if the Drawings otherwise do not breach any other standard set forth in this Declaration. The ACC may approve Drawings (absolutely or conditionally), may object to Drawings (absolutely or conditionally), or may state that it has no objection to Drawings (absolutely or conditionally). Approval must be express and in writing. The failure of the ACC to approve, object or acquiesce conditionally as above within twenty (20) business days after submittal of the complete Drawings and payment of any review fees shall be deemed as if the ACC stated that it has

no objection to the Drawings as submitted. If the ACC objects to Drawings in whole or in part for any reason, the submitting Owner shall thereafter resubmit Drawings to the ACC with such revisions as are required. Each time an Owner so submits the Drawings, the ACC shall have the right to approve, acquiesce conditionally or object to the Drawings as described above in the time periods as measured from the last submittal. Following the ACC's approval of the Drawings, the improvements described therein shall be developed strictly in accordance with the approved Drawings.

6.1.4 **Prior Approval for Changes.** If after the completion of the improvements to an affected property, the Owner thereof desires to construct any additional improvements or to substantially alter the then existing improvements or the grade of the affected property, the Owner shall comply with the provisions of subsection 6.1.2 above. A proposed alteration will be deemed substantial if it materially affects the location or exterior appearance of the approved improvements.

6.1.5 **Procedures and Budget.** The ACC may set its own operating procedures consistent with this Declaration and any limitations hereafter imposed by the Board. The costs of operating the ACC shall be assessed by the Association as common expenses, except as permitted below. The ACC may but need not require the payment of a review fee in connection with the submittal of any Drawings pursuant to a written policy. The ACC may engage consultants (e.g., architects, engineers or attorneys) either on a general or on a case-by-case basis, and the costs thereof may be charged to an applicant. The members of the ACC shall not draw any compensation for serving thereon but may be reimbursed for expenses incurred in performing their duties. All funds relating to the ACC shall be handled by the treasurer of the Association.

6.1.6 **Separate Village Approval.** Matters which require approval of the ACC may also require approval of the Village. All matters requiring Village approval shall first be submitted to the ACC. Obtaining approval from the ACC and from the Village is solely the responsibility of the Owner desiring approval. Approval of Drawings by the ACC shall not be deemed approval by the Village and approval by the Village shall not be deemed approval by the ACC.

6.1.7 **Uniformity Standards: Waiver.** Certain standards of architectural control are set forth in Sections 6.2 through 6.6 below. The ACC may adopt additional written standards of uniformity, setback, grading, landscaping, basements, roofing, or exterior, whether generally or for certain types of improvements. The ACC may waive any such standard which it has adopted or may waive any standard in Sections 6.1, 6.2, 6.4, 6.5 and 6.6. Any waiver under this Section shall only be permitted if the ACC determines that the proposal enhances the attractiveness of the subdivision and Lot that is the subject of such proposal. The ACC may in its discretion also permit comparable or superior construction materials as substitutes for those required in this Declaration. Any such approval must be express and in writing. The ACC may enforce any standard even if it has, expressly or by acquiescence, permitted previous deviations from such standard. Any variance granted hereunder may be conditioned, and may be permanent or time-limited (and if not expressly time-limited will be deemed to be effective for so long as the use of such property is not materially altered). The ACC may waive any standard as above even in the absence of an "unnecessary hardship"; those judicially

determined standards for granting variances under zoning regulations shall not govern nor be construed to constitute the standards which may be applied by the ACC.

6.1.8 **Indemnification.** Each member or former member of the ACC, together with the personal representatives and heirs of each such person, shall be indemnified by the Association against all loss, costs, damages and expenses, including reasonable attorney's fees, asserted against, incurred by, or imposed in connection with or resulting from any claim, action suit or proceeding, including criminal proceedings to which such person is made or threatened to be made a party by reason or service as a member thereof, except as to matters resulting in a final determination of negligence or willful misconduct on the part of such member. In the event of settlement of such proceeding, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Association is advised by counsel that the person to be indemnified has not been guilty of negligence or willful misconduct in the performance of such person as a member in the matter involved. This right of indemnification shall be in addition to all other rights and defenses. All liability, loss, damage, costs and expense incurred or suffered by the Association in connection with this indemnification shall be a common expense. Nothing in this subsection shall be deemed an indemnification of such person with respect to such person's status as an Owner, Occupant or otherwise.

6.2 **Antennas.** Subject to any right or limitation imposed by state or federal law, no antenna, aerial, satellite dish or cable for television or radio reception which is greater than 24" in diameter shall be erected or installed on or in any roof or any other portion of a Building on any Lot or on the unimproved portions of such properties, except as erected or installed by Declarant, the Association, or any individual Owner with written approval of the ACC, and, in each case, in compliance with Village ordinances.

6.3 **Minimum/Maximum Home Size Requirements.**

6.3.1 Only one single-family home may be constructed on each Lot. The following types of homes on Lots shall have the following minimum sizes:

Residence Type	**Minimum Size**
Lots 1 – 18	
One story	2300 square feet
More than one story	2700 square feet
Lots 19 – 30	
One story	2600 square feet
More than one story	3000 square feet

6.3.2 For purposes hereof, "more than one story" includes any home that exceeds one story (not including the basement). The type of residence and the number of square feet shall be determined on a uniform basis by the ACC and shall not include basement, exposed basement, attic, garage, porch or patio areas

in the computation, unless the porch is completed enclosed by exterior walls, windows or screens and is under the roof.

6.4 **Garage.**

6.4.1 An attached, enclosed garage for at least two and not more than four cars shall be constructed with the home. Side entry garages are encouraged but not required for Lots 19 – 30. If the owner seeks approval for a front entry garage, special architectural treatment may be required by The Architectural Control Committee (ACC).

6.4.2 Driveway. Driveways shall be constructed with a hard surface material acceptable to the ACC and installed within one year of occupancy permit issuance. Concrete and Asphalt are acceptable hard surface materials. Gravel driveways are prohibited.

6.4.3 Buyer or Buyer's Builder is responsible to secure approval from the Village for a driveway curb opening. The Village will inspect the curb opening, sidewalk (if any) and curb and gutter adjacent to the entire lot width for damage. Buyer at Buyers sole expense will be responsible to replace any damaged sidewalk (if any) or curb and gutter. Any existing sidewalk adjacent to the driveway width will also need to be removed and re-poured at a thickness of 5" or as specified by the Village.

Driveways to have a minimum of a 3' side yard setback.

6.5 **Certain Exterior Features.** With respect to the construction of a Building on a Lot or other improvement to a Lot:

6.5.1 If shutters, window casings or window grids and trim features are used on windows or divided-lite windows are used, in any case on the front of a residence, then they shall also be used in similar proportion on the side and rear windows.

6.5.2 A residence shall have a roof made of dimensional shingles, with a minimum pitch ratio of 10:12 for ranch and 8:12 for two-story, or such other material, color or pitch as is specifically approved by the ACC. Exceptions to roof pitch will be made to homes on a case by case basis.

6.5.3 Exterior walls of residences shall be constructed of brick, stone, cedar, stucco, cement siding, LP Smart Siding or combinations thereof. No aluminum, metal or vinyl siding shall be permitted. Aluminum soffit and fascia behind gutters shall be permitted. Poured basement or foundations block walls shall not be exposed. Trim material must be constructed with natural cedar, douglas fir, textured concrete fiber board or approved composite trim.

6.5.4 The front exterior elevation of the house and attached garage must consist of approximately 25% or more of brick or stone terminating at an inside corner or wrapped around a corner for Lots 1-18 and 40% or more for Lots 19 - 30.

6.5.5 No two adjacent homes shall be the same color or contain substantially the same architecture. The ACC shall be acting reasonably if it disapproves the Drawings for a residence because such residence would be similar in appearance to other residences in close proximity.

6.5.6 Direct Vent fireplaces are allowed as long as the vent is located on the side or rear elevations of the house. On each side of a residence, exterior materials shall be consistent on all levels. Color selections, for paint, stone, brick, stucco or other finish must be approved by the ACC. Class B-flue cannot be visible from the front elevation without enclosing with a chimney.

6.5.7 The ACC shall be acting reasonably if it requires that, on Lots with significant grades as determined by the ACC, portions of basement walls be exposed to allow for a more natural transition between residences. Any such exposed basement or foundation walls shall be covered with suitable material, approved by the ACC, consistent with the overall architecture of the residence.

6.5.8 No above-ground pools shall be installed. In-ground pools may be installed on a Lot only with approval of the ACC, which will be acting reasonably if it does not approve an in-ground pool which is not completely enclosed by a secure ornamental iron or aluminum fence, minimum 50% open to meet CPSC code and a minimum of 4 foot elevation, with a self-closing and self-latching gate or door (at the top of such gate or door). There must be an unobstructed area of at least 10 feet between the fence and the pool. The pool enclosure cannot be located less than 5 feet from the nearest Lot boundary. Additional or more restrictive conditions may be imposed by the Village.

6.5.9 Subject to any postal requirement for the grouping of cluster mailboxes which shall be maintained by the Association, each Owner(s) shall install, keep and maintain its mailbox and mailbox post in good condition and working order. Without limiting the authority of the Association generally, the costs of enforcing the covenants in this subsection may be assessed to an offending Owner as a special assessment on such Lot under Article 3. Mailbox location and style are identified in the mailbox location plan created by Declarant and subject to Postmaster requirements.

6.5.10 If Declarant in its discretion, installs any mailbox or mailbox post, or performs or pays for any other matter required herein on behalf of any Owner, it shall not be deemed a waiver of any of the requirements herein as to any other Lot or Owner and shall not obligate Declarant to perform the same action on any other Lot, for any other Owner, or on any subsequent occasion.

6.5.11 All utilities shall be installed underground.

6.5.12 No exterior active solar collectors shall be erected, installed or used unless presented in the Drawings and approved by the ACC, which may condition its approval on adequate screening from the front street.

6.5.13 Sheds. No exterior sheds shall be permitted on any lot. Residents are directed to provide storage in their garage.

6.6 **Grading and Landscaping.**

6.6.1 Declarant and the Village have agreed to a certain Storm Water Management Plan. In the event of a conflict between any Drawings and such Storm Water Management Plan, the Storm Water Management Plan shall control. Declarant and the Association shall each have the right to enter upon any Lot at any time for the purpose of inspection, maintenance, correction of any drainage condition governed by such Storm Water Management Plan, and the Owner is responsible for the cost thereof. The Village of Menomonee Falls also has certain rights concerning storm water management pursuant to a recorded Storm Water Maintenance Agreement.

6.6.2 Except as necessary to construct a home, no existing live non-invasive species of tree with a diameter of three inches or more, at a height of four feet above the ground shall, without approval of the ACC, be cut down, destroyed, mutilated, moved or disfigured. All such existing trees shall be protected during construction and preserved by wells or islands and proper grading.

6.6.3 Following the ACC's review of proposed setbacks, buildings and yard grades, the applicant shall submit the certified plat of survey to the Village for its approval or denial.

6.6.4 Final grading of a Lot shall be completed within two months following the date of occupancy permit issuance, weather permitting. 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 Village Engineer on filed in the office of the Village Clerk. The Declarant and/or the Village 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 the cost of same.

6.6.5 No soil shall be removed by any Lot Owner, nor excess soil stored on any Lot (except for prompt use for backfilling, finish grading or landscaping) unless in either case contemplated by the approved Drawings. Even if so approved, the final grades (sometimes called a "finish grade") of a Lot must conform to the Master Grading Plan approved by the Village.

6.6.6 All exterior landscaping should be completed within one year following occupancy permit issuance.

6.7 **Construction Matters.**

6.7.1 No building or construction materials shall be stored on any Lot outside of Buildings on the Lot, except during periods of actual construction or remodeling, and then only for so long as reasonably necessary and only if kept in a neat manner. Neither Declarant nor the Association is responsible for the security of materials stored on a Lot.

6.7.2 During grading, the Owner of the Lot is solely responsible for compliance with all erosion control requirements.

6.7.3 During any construction or re-construction, all debris must be stored in containers.

6.8 **Impact Fees**. The Village imposes impact or other fees which are due at the time of Building Permit issuance. The actual amounts may change. Owners are solely responsible for all such charges.

ARTICLE 7. INTENTIONALLY DELETED

ARTICLE 8. INSURANCE

8.1 **Association Insurance**. The Association shall obtain and maintain comprehensive general public liability and property casualty insurance for occurrences on the Common Areas naming the Declarant and the Association as additional insureds (including areas which are included in such definition by virtue of easements granted herein) and with respect to Common Improvements, and such other policies and/or coverages as the Board deems necessary or advisable.

8.2 **Coverage of Association Insurance**. The casualty insurance coverage shall be in an amount equal to the maximum insurable replacement value, with an "agreed amount" and a "replacement cost" endorsement, without deduction or allowance for depreciation. This coverage amount shall be annually reviewed and shall insure against loss or damage by fire and other hazards as commonly covered by a standard extended coverage endorsement and such other hazards as customarily covered with respect to buildings similar in construction, location and use. Commercial general liability coverage shall be in such amounts as the Board determines annually, but not less than $1,000,000 per occurrence.

8.3 **Proceeds**. Association Insurance proceeds for casualty loss shall be for the benefit of the Association in order to finance construction of damaged Common Areas or Common Improvements. Liability coverage and other insurance proceeds shall be applied as the Association determines by the Board.

8.4 **Cost**. All premiums for Association Insurance and other insurance obtained by the Association shall be a common expense.

8.5 **Waiver**. The Association and, by acceptance of a conveyance to a Lot or Outlot or the use thereof, or any portion thereof or interest therein, each Owner or Occupant acting both for themselves and for their respective insurers, waive any claim it or they may have against the other for any loss insured under any policy obtained by either to the extent of insurance proceeds actually received, however the loss is caused, including such losses as may be due to the negligence of the other party, its agents or employees. All policies of insurance shall contain a provision that they are not invalidated by the foregoing waiver, but such waiver shall cease to be effective if the existence thereof precludes the Association from obtaining any policy of insurance at a reasonable and customary rate

8.6 **Acts Affecting Insurance**. No Owner or Occupant shall commit or permit any violation of covenants or agreements contained in any of the Association Insurance, or do or permit anything to be done, or keep or permit anything to be kept, or permit any condition to exist, which might (a) result in termination of any such policies, (b) adversely affect the right of recovery thereunder, (c) result in reputable insurance companies refusing to provide such insurance, or (d) result in an increase in the insurance rate or premium over the premium which would have been

charged in the absence of such violation or condition, unless, in the case of such increase, the Owner or Occupant responsible for such increase shall pay the same. If the rate of premium payable with respect to the Association Insurance shall be increased by reason of, (1) the size, design or composition of a Building, (2) anything done or kept in a property subject to this Declaration, or (3) the failure of an Owner or Occupant to comply with Association Insurance requirements, or (4) the failure of any such Owner or Occupant to comply with this Declaration or the Bylaws, then the particular Owner or Occupant shall reimburse the Associations for the resulting additional premiums. The Association reimbursement right is without prejudice to any other Association remedy, and may be enforced by special assessment against the particular property involved.

8.7 **Exclusions From Coverage.** Association Insurance coverage shall exclude (a) coverage on any residence or personal property located within or pertaining to the exclusive use of an Owner except to the extent included as a standard coverage in the policy of Association Insurance; and (b) liability coverage on an Owner or Occupant, its guests, invitee, employees or tenants, arising out of any occurrences within a Lot and/or relating in any way to an Owner's or Occupant's personal property. It is the sole responsibility of each Owner or Occupant to obtain such insurance coverages including as are excluded from Association Insurance.

ARTICLE 9: AMENDMENT OF DECLARATION

9.1 **General.** Except as otherwise provided herein, this Declaration may be amended only by the Declarant in its discretion, and following the conveyance of all Lots in the Subdivision, then by at least fifty-one percent (51%) or more of the total votes of the Association then entitled to vote. Regardless of the manner of adoption, no amendment shall adversely affect a special right or easement reserved (including the right of Expansion described in Section 1.29) to Declarant under this Declaration without the express written consent of Declarant.

9.2 **Procedures.** Declarant shall prepare and execute amendments until all Lots in the Subdivision are conveyed, and shall become effective when recorded in the Register's office. Following the conveyance of all lots in the Subdivision, amendments shall be prepared and executed by the president of the Association and shall become effective when recorded in the Register's Office, but only after first obtaining the consent of the Village to such amendment. The Village shall be deemed to have consented if it fails to act on a written request within one hundred twenty (120) days of submission. No action to challenge the validity or enforceability of an amendment shall be commenced more than one (1) year after the amendment is recorded.

ARTICLE 10. RIGHTS OF DECLARANT

10.1 **Reserved Rights.** Prior to the sale of all Lots by Declarant to Third Parties, Declarant:

10.1.1 May use the Outlot, and any unsold Lots in any manner as may facilitate the sale of Lots including, but not limited to, maintaining a sales and/or rental office or offices, models and signs and/or showing the Lots. Declarant may from time to time also delegate such rights (on a non-exclusive basis and subject to such conditions as Declarant may impose) to persons desiring to construct Buildings on particular Lots as model homes. In delegating such rights to other persons, Declarant's delegates shall not have the right, without Declarant's express written consent, to locate a general office operation in any such model home, although use of a model home to facilitate sale of Lots or sales of Buildings on Lots may

be permitted for a period not to exceed 24 months from the date of issuance of the certificate of occupancy therefore, provided, however, that (a) once a model home is used as a residence for an Occupant, it may not thereafter be used as a "model home"; and (b) construction materials shall not be delivered to or stored at a model home, except for construction of such model home.

Shall have the right to (a) grant easements upon, over, through and across the Lots (limited to the 15 foot area adjacent to each Lot line), which rights shall expire one year after conveyance of a Lot by Declarant, and the Outlot as may be required in Declarant's opinion for furnishing any kind of utility services, and maintenance and replacement thereof, or for drainage or other public purposes including, but not limited to, cable television or master antenna service, which easements may be granted to itself or its nominee and as may be necessary for excavation and construction of any Buildings, and (b) grant easements upon, over, through or across the Common Areas for ingress and egress and maintenance and replacement thereof, to and from, and within, the Property and other real property adjacent to it.

10.1.3 Shall have the right to veto any proposed amendment to this Declaration for any reason or no reason, in which case it shall not be deemed approved or effective.

10.1.4 Declarant reserves the right to place the Property into and as a participant in the Metropolitan Builders Association Parade of Homes. In connection with any such Parade of Homes participation, all unsold Lots may be made available for purposes of ingress, access, parking, and other participation requirements in the parade.

10.1.5 Declarant reserves and creates an easement for the benefit of Declarant and the Association, over individual Lots for purposes of maintaining, repairing and replacing Common Improvements consisting of fencing or landscaped features.

ARTICLE 11: REMEDIES FOR VIOLATION BY OWNER

11.1 **General Remedies**. If any Owner or Occupant fails to comply with this Declaration, the Bylaws, or the Rules, such Owner or Occupant shall be liable for damages, subject to injunctive relief including an order requiring the removal at the Owner's expense of Buildings constructed without ACC approval, subject to any other remedy provided by the Bylaws, or all of the above, as a result of such noncompliance. The Association or, in a proper case, an aggrieved Owner, may bring an action because of such noncompliance.

11.2 **Owner or Occupant Violation: Association Right to Cure**. In addition to any other remedies provided herein, if any Owner or Occupant fails to comply with the Declaration, the Bylaws or the Rules, which failure continues for a period of fifteen (15) days following written notice from the Association, the Association shall have the right, but not the obligation, to perform or cause to be performed such maintenance, replacement, restoration or other action as the Association deems necessary or appropriate. Expenses incurred therefore by the Association shall be assessed against the Owner or Occupant and shall be subject to all rights and remedies reserved under this Declaration with respect to collection, expense, late payment penalties or interest, filing of a lien and/or foreclosure as reserved at Article 3 of this Declaration. Once the Association has taken such an

action, it shall not be obligated to take any other or further action with respect to the same, similar or subsequent failure by the same or a different Owner or Occupant.

11.3.1 **Nonexclusive Remedies.** The remedies of this Article 11 are not exclusive. Nothing in this article or in this Declaration shall be interpreted to limit the authority of the Village.

ARTICLE 12: EASEMENTS

12.1 **Right of Entry.** A right of entry to each Lot, Common Area or Outlot is reserved to the Association to service utility installations and fence improvements located on, in or under such Lot, Common Area or Outlot provided request for entry is made in advance and such entry is limited in scope so as to extend only as is reasonably necessary to service such utility installations or fence improvements. In case of emergency, entry by the Association onto any such Lot, Common Area or Outlot may be made immediately, whether the Owner or Occupant of such Lot, Common Area or Outlot is or is not present and without liability of the Association or its agents if such entry is necessary for the safety or welfare of persons or property. Any damage or loss caused as a result of such emergency entry shall be the sole expense of the Owner or Occupant if, in the reasonable judgment of those authorizing the entry, such entry was for emergency purposes.

12.2 **Drainage.** An easement is reserved to Declarant, the Association and the Village over Lots and Outlots for the installation of drainage tile (French drainage), swales, streams or other storm sewer and drainage system elements as shown on the Plat, in any master site grading plan, any development construction drawing or in the Storm Water Management Plan approved by the Village.

ARTICLE 13: TERMINATION

13.1 **Termination.** This Declaration shall be in effect for a period of 25 years and automatically renewed for successive periods of 10 years each, unless terminated at the end of the original or any extended term by: (a) Declarant (if during the period of Declarant control of the Association), or (b) the written consent of the owners of at least 90% of the aggregate Lots provided that no vote shall effect an amendment to or termination of any provision hereof conferring on or reserving a special right or easement to Declarant without the express written consent of Declarant, as appropriate. Voluntary termination of this Declaration must be express and shall be effective upon recording a written instrument to such effect in the Register's Office. This Section does not terminate, and shall not be interpreted to authorize termination of, any drainage easements, pond maintenance requirements, or other restriction herein that affects an interest in real estate while the record title to the real estate or an interest in the real estate remains in the State of Wisconsin or a political subdivision or municipal corporation of the State of Wisconsin, including the Village and the duration of any such restriction shall be unlimited and perpetual, unless terminated by the benefitted political subdivision by recorded document.

ARTICLE 14: CONSTRUCTION AND EFFECT

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

14.2 **Including**. Whenever used herein, the term "including" preceding a list of one or more items shall indicate that the list contains examples of a general principle and is not intended as an exhaustive listing.

14.3 **Captions**. The captions and article and section headings in this Declaration are intended for convenience and reference only and in no way define or limit the scope or intent of the various provisions hereof.

14.4 **Severability**. If any portion of this Declaration, or its application to any person or circumstance is held to be invalid or unenforceable, the remainder of this Declaration, or the application of such provision, or any part thereof, to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby. The remainder of this Declaration shall be valid, and enforced, to the fullest extent permitted by law.

14.5 **Remedies**. All remedies herein are cumulative.

14.6 **Waivers**. Whenever a waiver, consent or approval is required or permitted herein, it must be express and in writing; unless expressly provided to the contrary, no waiver, consent or approval shall be implied. A waiver, consent or approval to any one matter shall not be deemed a waiver, consent or approval to any subsequent matter whether similar or not.

14.7 **Assignment of Declarant's Rights**. Declarant may from time to time assign any or all of the rights and benefits conferred on or reserved herein for Declarant in its status as such (as opposed to those rights or benefits conferred on or reserved for all Owners or groups thereof), by an instrument in writing specifically identifying the rights and benefits so assigned which is recorded in the Register's Office.

14.8 **Other Regulation**. Nothing herein shall preclude or restrict Declarant recording other covenants, conditions or restrictions which further regulate portions of the Subdivision which Declarant owns at the time of recordation.

14.9 **Applicable Laws**. The Declarant, 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 Village of Menomonee Falls, Waukesha 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 Village, County, State or federal law or regulation, the more restrictive provisions shall apply.

ARTICLE 15: CONSTRUCTION DEPOSIT

At the time of closing on a Lot a Construction Deposit in the amount of Two Thousand Dollars ($2,000.00) shall be collected from the Lot owner and held by the Declarant. These funds are transferable to subsequent buyers of a Lot after the initial sale by Declarant. These funds are to ensure compliance with these covenants and restrictions dealing with contractor cleanup, proper use of the approved driveway and repair of damage to pavement, completion of lot grading consisting with Master Grading Plan, sidewalks, curbs and gutters, to ensure compliance with the landscaping set forth in this Declaration, and to assure compliance with the architectural covenants, restrictions and requirements contained herein and as approved by the Architectural Control Committee. In the event the Lot owner and/or his or her contractors fail to comply with the cleanup requirements and/or the use of the approved driveway, and/or repair of any damaged sidewalks, curbs and/or gutters and/or the landscaping and tree planting requirements set forth in this Declaration, and in the event the Declarant or Owner's Association, as a result of such noncompliance, undertakes any cleanup or repair, installation of street trees and/or is charged or assessed by the Village of Menomonee Falls for same, the Declarant or Owner's Association shall be entitled to deduct and retain from the Construction Deposit a sum sufficient to reimburse Declarant or Owner's Association for all costs and expenses incurred by Declarant or Owner's Association for such cleanup and/or repair. In the event the Lot owner and/or the Lot owner's contractors fail to comply with the architectural or other requirements or provisions of the Declaration, and in the event Declarant or Owner's Association retains an attorney to pursue enforcement of said requirements and/or provisions, the Declarant or Owner's Association shall be entitled to deduct and retain from the deposit a sum sufficient to reimburse Declarant or Owner's Association for all costs and expenses, including but not limited to a reasonable actual attorney's fees, incurred by Declarant or Owner's Association with respect to such enforcement. In the event the deposit amount is not sufficient to fully reimburse Declarant or Owner's Association for cleanup and/or repair expenses, charges and/or assessments, and/or for costs, expenses and reasonable attorney's fees relating to enforcement of the requirements detailed herein, the owners of the lot shall be jointly and severally liable to Declarant or Owner's Association for any excess and shall constitute a lien on the Lot. In the event that no deductions are made, or in the event there is a balance remaining after all deductions, upon the owner's request, the balance in the escrow account shall be returned to the current owner so long as the surface course of asphalt has been completed in the Subdivision. In order for such request to be valid, said request must be submitted in writing to Declarant within three (3) years of the lot purchase from the Declarant, home construction must be complete, and a lawn must be established; failure to do so will result in forfeiture of said deposit.

ARTICLE 16: TRAIL SYSTEMS

Declarant has installed public sidewalks throughout the platted subdivision. Those sidewalks will be dedicated to the Village of Menomonee Falls and will be public in nature. The Declarant has also on the Plat identified a dedicated access easement for the benefit of the Village of Menomonee Falls which will contain an asphalt path. This path will be maintained by the Association and is intended to be available for public use. It shall be clearly marked and shall have a width of eight (8) feet.

[Signature On Following Page]

Executed at _____, Wisconsin, on the ____ of _____, 2024.

QuietWood Development, LLC

By:_____
Manager

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) SS.
COUNTY OF WAUKESHA)

Personally came before me this _____ day of _____, 2024, the above named _____, Manager, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Subscribed and sworn to before me

this ____ day of _____, 2024.

_____
Notary Public-State of Wisconsin

My Commission _____

DRAFTED BY AND AFTER RECORDING RETURN TO:
George B. Erwin, III
2600 North Mayfair Road, Suite 1000
Milwaukee, WI 53226

EXHIBIT A

PHASE I

DRAFT

EXHIBIT B

EXPANSION LAND

DRAFT