passes to the Owners is hereinafter referred to as the "Turnover Date." If any of the following have not then already occurred, on the Turnover Date: (i) the Association shall accept the Common Areas which were dedicated on the Plat of Subdivision to the Association, and (ii) the Developer shall transfer responsibility to the Association, and the Association shall accept such responsibility, for the maintenance and other items described in the Subdivision Plat or elsewhere herein as being the responsibility of the Association's after such transfer of responsibility. After the Turnover Date the Developer shall no longer be liable under this Declaration except in its capacity as an Owner.

4.3 Membership. Each Owner shall be a Member of the Association. A Member's membership in the Association shall be appurtenant to and may not be separated from ownership of a Lot. Every Member of the Association shall have one vote in the Association for each Lot owned by the Member. When more than one person or entity holds an interest in a Lot, the vote shall be exercised as set forth in the Bylaws. Until the Turnover Date, the authority and functions of the Board of Directors and the Architectural Control Committee shall remain in and be exercised solely by Developer or its successors and assigns. Until the Turnover Date, the Developer may, from time to time, by written notice to the Association, elect to relinquish its right to appoint any one or more Directors and continue to exercise its right to appoint the remaining Directors of the Board. No later than forty-five (45) days after the Turnover Date, the Developer shall convene a meeting of the Members to elect a new Board of Directors. The Developer, shall be entitled to vote at such meeting, in its capacity as owner of any Lots; provided, however, that the Board of Directors elected at such meeting shall be comprised of a majority of Owners other than the Developer. If the Developer, after making reasonable effort to do so, is unable to convene a meeting of the Members at which a quorum is present, the Developer may resign as Developer after thirty (30) days notice to the other Owners. If the Developer fails to timely convene such meeting, the Owners holding ten percent (10%) of the interest in the Association may call a meeting of the Members to elect a new Board of Directors. After the election of a Board of Directors at the first annual meeting at which all of the Directors are elected by the Members, the Board of Directors shall be elected by the Members at each annual meeting of Members. No more than one member of such elected Board of Directors shall be a non-Owner; provided, however, that in any case where the Owner is an entity other than a natural person, an officer or employee of such Owner may be a Board Member, and shall not, for purposes of this Section 4.3, be considered to be a non-Owner. Each Board Member shall serve for one (1) year or until his or her successor has been duly elected. The members of the Board of Directors shall not be entitled to any compensation for their services as such members. Members shall vote in person or by proxy executed in writing by the Member. No proxy shall be valid after six (6) months from the date of its execution.

4.4 Liability of Directors and Officers. Neither the Directors nor the Officers shall be personally liable to the Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such Directors or Officers except for any acts or omissions found by a court to constitute gross negligence or fraud, or, with respect to any criminal action or proceeding, such Director or Officer had no reasonable cause to believe that his conduct was unlawful. The Association shall indemnify and hold

harmless the Directors and Officers, their heirs and legal representatives, against all contractual and other liabilities to others arising out of contracts made by or other acts of the Directors or Officers unless a court of competent jurisdiction shall have found such contract or act was made fraudulently or with willful malfeasance or gross negligence, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner that he reasonably believed to be in or not opposed to the best interests of the Association. Notwithstanding the foregoing, no indemnity shall be operative with respect to any matter settled or compromised, and, in the opinion of the independent counsel selected by or in a manner determined by the Board, there is clear and convincing evidence for such person being adjudged liable for gross negligence or fraud in the performance of his or her duties as such Director or Officer.

Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by the Association in advance of the final disposition of such action, suit, or proceeding, as authorized by the Board in the specific case, on receipt of an undertaking by or on behalf of the Director or the Officer to repay such amount, unless it shall ultimately be determined that he or she is entitled to be indemnified by the Association as authorized in this Article. The burden of the foregoing indemnity shall be borne by the Owners at the time such loss, damage, cost or expense is incurred in the same proportion as assessments are borne by the Owners as provided in Section 6.2.2 hereof. The sums necessary to discharge the obligations of the Association under this Article shall be Common Expenses.

The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any statute, agreement, vote of the Members or disinterested Directors, or otherwise, both as to action in his or her official capacity and as to action in other capacity while holding such office, and shall continue as to a person who has ceased to be a Director or an Officer. Directors appointed by the Developer, and Officers elected by Directors appointed by the Developer, shall be entitled to all the protections of this Article. Nothing in this Section 4.4 shall be construed as a limitation upon any right for indemnification contained in Sections 181.0855, 181.0871, 181.0872, 181.0873, 181.0877, 181.0879 or 181.0881 of the Wisconsin Statutes, and the directors, members and officers, their heirs and legal representatives shall be entitled to be indemnified against all claims and liabilities to the fullest extent permitted by Sections 181.0855, 181.0871, 181.0872, 181.0873, 181.0877, 181.0879 and 181.0881 of the Wisconsin Statutes.

4.5 Bylaws. The Developer has established Bylaws for the Association setting forth in greater specificity, among other things, various procedural requirements for election of members of the Board, voting by the Members and the creation of officers. These are set forth in Articles IX, X and XI herein.

ARTICLE V
PROPERTY RIGHTS IN THE COMMON AREAS

5.1 Owner's Easement of Enjoyment. Subject to the provisions herein, every Owner shall have a right and easement of benefit and/or enjoyment in and to Outlots 1,2 and 3 and any Common Areas acquired by the Association which shall be appurtenant to and shall pass with the title to every Lot.

5.2 Title to Common Areas. Title to Outlots 1, 2 and 3 and other Common Areas, if any, has been dedicated to the Association by Developer by virtue of the Subdivision Plat, and shall be hereby deemed to have been, granted, given and conveyed to and accepted by the Association. Members shall have the rights and obligations imposed by this Declaration with respect to such Common Areas. It is understood that the Entrance Monument may, in the discretion of Developer, be located on easements for the benefit of the Association, and the Entrance Monument shall be maintained, operated and administered by the Association.

5.3 Extent of Owner's Easements. The rights and easements of benefit and/or enjoyment created hereby shall be subject to the following:

5.3.1 The right of the Association to dedicate or transfer all or any part of any Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Board of Directors and the Village, provided that no such dedication or transfer, shall be effective unless instruments signed by Members entitled to cast fifty-one (51%) percent of the votes of the membership have been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed dedication or transfer is sent to every Member at least thirty (30) days in advance of such dedication or transfer; and

5.3.2 The right of the Association, but subject to the prior written approval of the Village, to mortgage any or all of the Common Areas and facilities constructed on the Common Areas for the purposes of constructing or maintaining improvements or repair to Association land or facilities pursuant to approval of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a regular meeting of the Members or at a meeting duly called for this purpose.

5.4 Damage or Destruction of Common Areas by Owner. In the event any Common Area or any portion of the water drainage system servicing the Property is damaged or destroyed by an Owner or any of his or her guests, tenants, licensees, agents or members of his family, such Owner hereby authorizes the Association to repair said damaged area; the Association shall repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association in the discretion of the Association. The amount necessary for such repairs shall be a special assessment upon the Lot of said Owner and shall accrue interest at the annual rate of five percent (5%) above the Prime Rate unless paid in full within fifteen (15) days after notice

6.2 Annual General Assessment.

6.2.1 Purpose of Assessment. The annual general assessment levied by the Association each year shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and, in particular, for the improvement, construction, maintenance, policing, preservation and operation of the Common Areas, the Entrance Monument and street light energy costs, all in accordance with the requirements set forth herein and those obligations and restrictive covenants set forth herein and on the Subdivision Plat, including but not limited to, the cost of labor, equipment, materials, insurance, management and supervision thereof and fees paid for auditing the books of the Association and for necessary legal services and counsel fees to the Board of Directors.

6.2.2 Determination of the Assessment. Commencing no later than the calendar year in which the first (1st) Lot is sold to an Owner other than an assignee of or a successor in interest to the Developer, the Board of Directors shall prepare and annually submit to the Members a budget of expenses for such calendar year (or remaining portion thereof) for payment of all costs contemplated within the purposes of the annual general assessment described in Section 6.2.1. Upon adoption and approval of the annual budget by a majority of the Members entitled to vote as established by the Articles of Incorporation of the Association, the Bylaws and by rules validly adopted by resolution of the Board, the Board shall determine the assessment by dividing the amount of the budget among all Lots equally. The rate of assessment shall not be limited by the amounts set forth in Wisconsin Statutes, Section 779.70.

6.2.3 Method of Assessment. The assessment for each Lot shall be levied at the same time once in each year. The Board shall declare the assessments so levied due and payable at any time after thirty (30) days from the date of such levy (with an option for payment in monthly installments if approved by the Board), and the Secretary or other officer shall notify the Owner of every Lot so assessed of the action taken by the Board, the amount of the assessment of each Lot owned by such Owner and the date such assessment becomes due and payable. Such notice shall be mailed to the Owner at last known post office address by United States mail, postage prepaid.

6.2.4 Date of Commencement of Annual General Assessments. Payment of annual general assessments by all Owners shall commence no later than the date of conveyance of the first Lot to an Owner other than a successor in interest to the Developer.

6.2.5 Working Capital Reserve. The Developer at the time of conveyance of each individual Lot to an Owner, reserves the right to collect as a working capital reserve for the Association, an amount up to fifty (50%) of the regular annual assessment then in existence at the time of conveyance. Said reserve shall remain the property of the Association and shall not be refunded to an Owner upon sale of his Lot. Said payment may be transferred between Owners.

6.3 Special Assessment for Capital Improvement and Repairs to Common Areas. In addition to the annual general assessments authorized above, the Association may levy in any assessment year a special assessment applicable to that year and not more than the next two (2) succeeding years for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements upon the Common Areas which are the responsibility of the Association, including fixtures and personal property related thereto, and extraordinary expenses incurred in the maintenance and operation of the Common Areas and facilities.

6.4 Special Assessment for Exterior Maintenance to Lots.

6.4.1 Exterior Maintenance to Lots. In addition to the maintenance upon the Common Areas described in Section 6.3, the Association may, in the event the Owner of any Lot fails to maintain the exterior of any buildings or improvements on the Lot or the Lot itself in reasonable condition, provide exterior maintenance upon each Lot as follows: (i) paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, driveways, walks, patios and other exterior improvements; and (ii) lawn cutting, shrub and tree trimming, driveway and walk shoveling and window cleaning. The Association, its agents, contractors and subcontractors, shall have all necessary rights of ingress and egress to and from such Lot, building or improvement with full right to do whatever may be necessary to perform any such maintenance, repair or replacement.

6.4.2 Assessment of Cost. The cost of such exterior maintenance shall be assessed against the Lot upon which such maintenance is performed and if not paid within thirty (30) days of written notice of the amount of such assessment shall accrue interest at the annual rate of five percent (5%) above the Prime Rate. Such special assessment shall constitute a lien and obligation of the Owner and shall become due and payable in all respects as herein provided.

6.5 Method of Special Assessment. The Board of Directors of the Association may call a special meeting of the Members upon at least five (5) days prior written notice of the purpose of making a special assessment. The nature of the proposed special assessment shall be included in the notice. A majority of Members entitled to vote shall constitute a quorum for a special meeting, and a majority of Members entitled to vote who are present at the special meeting shall be required to approve the special assessment.

6.6 Subordination of the Lien to Mortgages. The lien of the Homeowner's Association assessments provided for herein shall be subordinated to the lien of any first mortgage on the Lot recorded prior to the making of the assessment.

6.7 Exempt Property. The following property subject to this Declaration shall be exempt from the assessments, charges and liens created herein: (i) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (ii) all Common Areas; and (iii) all properties exempted from taxation by state or local governments upon the terms and to the extent of

such legal exemption. Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from the assessments, charges or liens.

6.7 Joint and Several Liability of Grantor and Grantee. Upon any sale, transfer or conveyance, the grantee of a Lot shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor as provided in this Article up to the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amount paid by the grantee therefore. However, any such grantee shall be entitled to a statement from the Association setting forth the amount of such unpaid assessments and any such grantee shall not be liable for, nor shall the Lot be conveyed subject to a lien for, any unpaid assessment against the grantor pursuant to this Article in excess of the amount therein set forth. If the Association does not provide such a statement within fifteen (15) business days after the grantee's request, it is barred from claiming under any lien which was not filed prior to the request for the statement against the grantee.

6.8 Interest on Unpaid Assessment. Any assessment under this Article VI which is not paid when due shall thereafter until paid in full bear interest at the rate of five percent (5%) per annum above the Prime Rate or the highest interest rate permitted by law, whichever is lower. In addition to the interest charges, a late charge of up to $50.00 per day may be imposed by the Board of Directors against an Owner if any balance in common expenses remains unpaid more than thirty (30) days after payment is due.

6.9 Effect of Nonpayment of Assessments: Remedies of the Association.

No Owner may waive or otherwise escape liability for assessments by non-use of the Common Areas or abandonment of his or her Lot. If the Association has provided for collection of assessments in installments, upon default on the payment of any one or more installments, the Association may accelerate payment and declare the entire balance of said assessment due and payable in full. If the assessment levied against any Lot remains unpaid for a period of sixty (60) days from the date of levy, then the Board may, in its discretion, file a claim for maintenance lien against such Lot in the office of the Clerk of Circuit Court for Kenosha County within six months from the date of levy. Such claim for lien shall contain a reference to the resolution authorizing such levy and date thereof, the name of the claimant or assignee, the name of the person against whom the assessment is levied, a description of the Lot and a statement of the amount claimed and shall otherwise comply in form with the provisions of Wisconsin Statutes Section 779.70. Foreclosure of such lien shall be in the manner provided for foreclosure of maintenance liens in said statute or any successor statute.

6.10 Developer Not Responsible for Reserves. Except to the extent that Developer, as an Owner of Lots, is required to pay assessments and a portion of those assessments is used by the Association to fund one or more reserves for capital or other expenses, Developer shall have no responsibility for separately funding or contributing to any capital or other reserve account on behalf of the Association or the Property.

ARTICLE VII
ENFORCEMENT

7.1 Right to Enforce. This Declaration and the covenants contained herein and on the Subdivision Plat are enforceable only by Developer and/or the Association and/or the Village or such person or organization specifically designated by Developer, in a document recorded in the office of the Kenosha County Register of Deeds, as its assignee for the purpose thereof.

7.2 Manner of Enforcement. This Declaration and the covenants contained herein and on the Subdivision Plat shall be enforceable by Developer and its assigns and/or the Village in any manner provided by law or equity, including but not limited to one or more of the following:

(a) Injunctive relief;

(b) Action for specific performance;

(c) Action for money damages as set forth in this Declaration; and/or

(d) Performance of these covenants by Developer and/or the Village on behalf of any party in default thereof for more than thirty (30) days, after receipt by such party of notice from Developer or the Village describing such default. In such event the defaulting Owner shall be liable to Developer or the Village for the actual costs (plus fifteen percent (15%) for overhead) related to or in connection with performing these covenants.

7.3 Reimbursement. To the extent that any duty is assigned to the Association pursuant to the Subdivision Plat or this Declaration, and such duty is performed by Developer, Developer shall be entitled to reimbursement from the Association for any loss, cost or expense (including the cost of performance), and such costs may include, by means of illustration and not limitation, the cost of replacing plants during the warranty period which have not been properly maintained by the Association. Any amounts expended by Developer and/or the Village in enforcing these covenants, including reasonable attorney fees, and any amounts expended in curing a default on behalf of any Owner or other party, shall accrue interest at the annual rate of five percent (5%) above the Prime Rate unless paid in full within fifteen (15) days after notice to pay, and shall constitute a lien against the subject real property until such amounts are reimbursed to Developer and/or the Village, with such lien to be in the nature of a mortgage and enforceable pursuant to the procedures for foreclosure of a mortgage.

7.4 Failure to Enforce Not a Waiver. Failure of Developer or assigns and/or the Village to enforce any provision contained herein shall not be deemed a waiver of the right to enforce these covenants in the event of a subsequent default.

7.5 Right to Enter. Developer and/or the Village shall have the right to enter upon any Lot for the purpose of ascertaining whether the Owner of said Lot is complying with these covenants, and, if Developer and/or the Village so elects under Section 7.2(d), for the purpose of performing obligations hereunder on behalf of a party in default hereof.

7.6 Village Authority. In the event the obligations contained herein and as contained in the Subdivision Plat are not being performed to the satisfaction of the Village, ~~the~~ Village shall have the right, but not the obligation to perform such function and may assess any charges incurred in the performance of such covenants against the Association and/or the Owners, as their respective obligations shall render them liable. Any amounts expended by the Village in enforcing these obligations, including reasonable attorney fees, and any amounts expended in curing a default on behalf of the Association shall be paid by the Association. Any amounts expended by the Village in enforcing these obligations, including reasonable attorney fees, and any amounts expended in curing a default on behalf of any Owner or other party acting by through or under Owner, shall be paid by the Owner. In the event such amounts are not paid, the charges may be levied as a special assessment by the Village in accordance with Wisconsin Statutes.

7.7 Protection of Trees in Dedicated Woodland Protection and Preservation Easement Areas on Adjacent Property. In the event that any Lot Owner or its invitee removes by human tampering (and not by a so called "Act of God") any tree within the Dedicated Woodland Protection and Preservation Easement Areas on Outlots 1, 2 or 3 and Lots 1, 39 and 40 as shown on the Subdivision Plat in violation of Section 3.21 hereof, the Lot Owner shall be responsible for the cost of replacing such tree as follows:

(a) All replacement trees shall have at least equal shade potential and other comparable characteristics to those of the tree cut or removed.

(b) All replacement trees shall be a minimum of eight (8) feet in height when planted.

(c) No replacement tree shall have a diameter of less than two (2) inches measured six (6) inches above grade.

(d) The diameter of the replacement tree or trees shall be calculated as follows:

(i) if there is a single replacement tree, it shall have one-half (1/2) inch of diameter for each inch of diameter of the tree that was cut or removed.

(ii) if there is more than one replacement tree, the diameters of the replacement trees shall have, in the aggregate, one-half (1/2) inch

of diameter for each inch of diameter of the tree that was cut or removed. (By way of example, if the cut or removed tree had a diameter of sixteen (16) inches, then the maximum number of replacement trees shall be four (4) trees, each with a diameter of two (2) inches.)

The Association shall be responsible for the selection, acquisition, transporting and planting of all replacement trees pursuant to this Section 7, and shall have the right to charge back to the Lot Owner in violation of this Section 7 for the Association's actual costs (plus fifteen percent (15%) overhead).

ARTICLE VIII
GENERAL PROVISIONS

8.1 Term. Unless amended as herein provided, this Declaration shall run with the Property and be binding upon all persons claiming under Developer for a period of fifty (50) years from the date this Declaration is recorded and shall automatically be extended for successive periods of ten (10) years unless, subject to the approval of the Village, an instrument signed by the greater of (i) the Owners of at least seventy-five percent (75%) of the Lots, or (ii) sixty-six and two-thirds percent (66-2/3%) of the Owners, has been recorded, agreeing to terminate this Declaration in whole or in part.

8.2 Amendment. This Declaration may be amended, modified or supplemented at any time by written declaration, executed in such manner as to be recordable, setting forth such change, modification or amendment in the following manner:

(a) The Developer may unilaterally amend, modify or supplement all or any provision of this Declaration by instrument executed solely by Developer until such time as Developer (including any successor Developer) conveys the first (1st) Lot to another Owner other than an assignee of or successor in interest to the Developer and subject to the Village's approval; or

(b) The Association may amend, modify or supplement all or any provision of this Declaration by an affirmative vote of the greater of: (i) the Owners of at least sixty-six and two-thirds percent (66-2/3%) of all the Lots, or (ii) sixty-six and two-thirds percent (66-2/3%) of the Owners and subject to the Village's approval;

provided however, that in either case:

(i) no amendment which would materially and adversely affect: (A) the manner in which any Owner's assessment is determined; (B) any approvals or consents already given to any Owner; or affect

the right of any mortgage holder, shall be made without the consent of that Owner or mortgage holder;

(ii) all amendments, supplements and modifications must be approved in writing by the Village;

(iii) all amendments, modifications and supplements shall be consistent with the general plan of development embodied in this Declaration; and

(iv) until such time as Developer (including any successor Developer) conveys all but the last Lot to other Owners, all amendments, supplements and modifications must be approved and executed by Developer.

Any amendment, modification or supplement shall become effective only if set forth in writing and executed and acknowledged by each of the consenting Owners and the Developer (if the Developer owns any Lots) and recorded in the Office of the Recorder of Kenosha County, Wisconsin; provided, however, the execution and acknowledgment by each of the consenting Owners shall not be required if the written amendment, modification or supplement contains the signature and acknowledgment of an authorized officer of the Association which states that such amendment, modification, supplement or revocation was approved by the affirmative vote of the greater of (i) Owners of at least sixty-six and two-thirds percent (66-2/3%) of all the Lots, or (ii) sixty-six and two-thirds percent (66-2/3%) of the Owners.

8.3 Notices. Each Owner shall file its correct mailing address with the Association and shall notify the Association promptly in writing of any subsequent change of address. The Association shall maintain a file of Owners' addresses and make it available to appropriate parties. A written or printed notice delivered in person or deposited in the United States Post Office, postage prepaid, and addressed to an Owner at the last address filed by the Owner with the Association shall be sufficient notice to the Owner wherever notices are required in this Declaration, and shall be deemed effective when delivered: (i) in person; (ii) three (3) days after mailing; (iii) by email, where an Owner has consented to e-mail notice in writing (including consent communicated by e-mail).

8.4 Contracts. The Association or the Developer, on behalf of the Association, may enter into agreements with the owners of real estate in the vicinity of the Property (including other real estate owned by the Developer) or condominium associations or homeowners associations of owners of such properties for sharing responsibility, costs and decision-making authority for the maintenance and repair of the Common Areas and any publicly dedicated right-of-way used now or in future by the Owners and the owners of other real estate. Any such agreement shall be in writing and recorded in the Office of the Recorder of Kenosha County, Wisconsin.

8.5. Assignment, Resignation by Developer. For purposes of this Declaration, the conveyance by the Developer of legal title to a portion of the Property to a different entity which shall hold legal title for the benefit of the Developer or in which the Developer is the sole general partner or managing member shall not constitute a sale. Notwithstanding anything herein to the contrary, Developer in its sole discretion may determine, hereby reserve the right to transfer, assign, mortgage or pledge any and all of its privileges, rights, title and interests hereunder, or in the Property, by means of recording an assignment of such with the Office of the Recorder of Deeds of Kenosha County, Wisconsin. Upon such assignment, the assignee shall become the new Developer, and the original assigning Developer shall be relieved from any liability arising from the performance or non-performance of such rights and obligations accruing from and after the recording of such assignment. No such successor assignee of the rights of Developer shall have or incur any liability for the obligations or acts of any predecessor in interest. If the Developer ceases to exist or resigns and has not made an assignment, the Owners may appoint a successor to the Developer in an instrument signed by the Owners of at least sixty-six and two-thirds percent (66-2/3%) of the Lots. The instrument shall be signed by the successor Developer and shall become effective upon recording in the Office of the Recorder of Deeds of Kenosha County, Wisconsin.

8.6 Provisions to be Liberally Construed. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for development for the Property.

8.7 Enforcement. Upon the occurrence of a violation of the covenants, conditions and restrictions set forth in this Declaration, the Association shall give the Owner written notice of the violation and if such violation is not remedied within five days after notice, or if a second occurrence of such violation shall occur within six months of the original notice of such violation from the Association, the Association may levy a fine in the amount of $500 and an additional fine of $100 for each day thereafter the violation continues. All fines levied by the Association shall constitute a special assessment and a lien on the Lot of the Owner who caused the violation and if a fine is not paid within 15 days after written notice of such fine, the amount due shall accrue interest at the rate of 12% annually. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or recover damages, and against the land to enforce any lien created by these covenants. Failure of the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

8.8 Severability. Invalidation of any one of the covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

8.9 Restriction on Certain Provisions. No provision, covenant, condition or restriction contained in this Declaration, the Bylaws or any rules and regulations adopted pursuant hereto may impair any rights guaranteed by the First Amendment to the

Constitution of the United States, the Constitution of the State of Wisconsin or may be applied to discriminate against an individual in a manner described in Section 106.50 of the Wisconsin Statutes.

ARTICLE IX
BY-LAWS OF ASSOCIATION

9. The provisions of the following Articles X and XI shall constitute the By-Laws of the Association.

ARTICLE X
BOARD OF DIRECTORS

10.1 In General. The direction and administration of the property prior to vesting control in the Owners shall be vested in a Board of Directors of the Association which shall consist of three (3) persons who shall be selected and appointed by Developer. Except for the Directors so designated and selected by Developer (i) each member of the Board shall be one of the Owners. If a Owner is a corporation, partnership, trust or designated agent of such corporation, partnership, trust or other legal entity or any beneficiary of any such trust shall be eligible to serve as a member of the Board so long as such agent or beneficiary is designated by the legal titleholder as its agent, and notice given to the Association; and (ii) if a member of the Board fails such qualification during his or her term, such member shall thereupon cease to be a member of the Board and his or her place on the Board shall be deemed vacant.

10.2 Election of Board Members at the Initial Meeting. At the initial meeting of the Voting Members, the Voting Members shall elect the Board consisting of five (5) members. In all elections for the members of the Board, each Voting Member shall be entitled to vote on a non-cumulative voting basis and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected. Members of the Board elected at the initial meeting of the Voting Members shall serve until the first annual meeting of the Voting Members but in no event shall they serve for a term less than one (1) year or for the term to which they were elected at the initial meeting. The election and term of office as between candidates receiving the same number of votes shall be determined by lot. At the initial meeting and at all annual meetings thereafter, the three (3) parties receiving the highest number of votes shall be elected for a term of two (2) years and the other parties for a term of one (1) year. The Voting Members having at least two-thirds (2/3) of the total votes may from time to time increase or decrease such number of persons on the Board or may increase or decrease the term of office of Board members at any annual or special meeting, provided that (i) such number shall not be less than three (3), (ii) the terms of at least one-third (1/3) of the persons on the Board shall expire annually and (iii) no Board member or officer shall be elected for a term of more than two (2) years (although Board members or officers may succeed themselves). All candidates for election to the Board or their designated

representative, shall have the right to be present at the time of counting the election ballots.

Members of the Board (including without limitation those members designated by Developer) shall receive no compensation for their services. Vacancies on the Board, including vacancies due to any increase in the number of persons on the Board, shall be filled by a 2/3 majority vote of the remaining members thereof, except that a vacant position on the Board last filled by a person appointed by the Developer shall be filled by a person appointed by the Developer. Any director elected or appointed to fill a vacancy shall hold office for a term equal to the unexpired term of the director he succeeds. Except as otherwise provided in this Declaration or these By-Laws, the Property shall be managed by the Board and the Board shall act by a majority vote of those present at its meetings when a quorum exists. Meetings of the Board shall be held and conducted in accordance with such regulations as the Board may adopt provided, however, that (i) each Owner shall be entitled to notice in the same manner as provided in these By-Laws of any meeting of the Board called for the purpose of considering the adoption of the proposed annual budget or any increase or establishment of an assessment and (ii) the Board shall meet not less than four (4) times each year. A majority of the total number of members of the Board shall constitute a quorum.

10.3 Officers. The Board shall elect from among its members for the term of one (1) year (i) a President who shall preside over both of its meetings and those of the Voting Members and who shall be the chief executive officer of the Board and the Association and who shall be designated to mail and receive all notices and execute all amendments hereto on behalf of the Board or the Association as provided herein; (ii) a Secretary who shall keep the minutes of all meetings of the Board and Voting Members and who shall, in general, perform all the duties incident to the office of the Secretary; (iii) a Treasurer to keep the financial records and books of account and (iv) such additional officers as the Board shall see fit to elect. Vacancies in any office shall be filled by the Board by a majority vote of the remaining members thereof at a special meeting of the Board. Any director elected to fill a vacancy shall hold office for a term equal to the unexpired term of the officer he succeeds. Any officer may be removed for cause at any time by a vote of two-thirds (2/3) of the total membership of the Board at a special meeting thereof.

10.4 Removal. Except for directors designated by Developer, any Board member may be removed from office at any time after the election of directors at the initial meeting of the Voting Members by affirmative vote of the Voting Members having at least two-thirds (2/3) of the total votes at any special meeting called for that purpose. A successor to fill the unexpired term of a Board member removed may be elected by the Voting Members at the same meeting, any subsequent annual meeting or any subsequent special meeting called for that purpose.

10.5 Notice to Members of Board Meeting. Written notice stating the place, date and hour of any meeting of the Board shall be delivered to each member of the Board not less than five (5) days prior to the date of such meeting. The purpose for

which the meeting is called shall be stated in the notice. The Board shall meet at least four (4) times annually on the first Mondays of February, May, August, November and at such other times as the Board deems necessary.

10.6 Notice to Owners. All meetings of the Board, except those specified herein shall be open to attendance by any Owner and notices of such meetings shall be posted not less than forty-eight (48) hours prior to such meeting unless a written waiver of such notice is signed by the Owner entitled to such notice prior to the convening of such meeting.

The Board may exclude Owners and/or members of the Association from a meeting or portions of meetings held for the following purposes: (i) to discuss litigation when an action against or on behalf of the Association has been filed and is pending in a court or administrative tribunal or when the Board finds that such an action is probable or imminent; or, (ii) to consider information regarding appointment, employment or dismissal of an employee; or (iii) to discuss violations of rules and regulations of the Association or a Owner's unpaid share of Common Expenses; provided, however, that any vote taken on those matters shall be taken at a meeting or portion thereof open to any Owner.

10.7 Delivery f Documents by Declarant. Within sixty (60) days following the election of a majority of members of the Board other than those members designated by Developer, the Developer shall deliver to the Board the following:

(a) All original documents pertaining to the Property and its administration, such as this Declaration, the Articles of Incorporation for the Association, a minute book containing the minutes of any meetings held by the Association and any rules and regulations governing the Property;

(b) A detailed accounting by the Developer setting forth the source and nature of receipts and expenditures in connection with the management, maintenance and operation of the Property;

(c) Any Association funds on hand which shall at all times be segregated from any other funds of the Developer; and

(d) A schedule of all personal property, equipment and fixtures owned by the Association, including documents such as invoices or bills of sale, if available, evidencing transfer of title to such property.

10.8 General Powers of the Board. The powers and duties of the Board may or shall include, but shall not be limited to, the following matters:

(a) Maintaining the dedicated storm water drainage, maintenance and access easement areas located on identified Lots 2-7, 11-13, 14, 16, 21-22, 28, and 31-35 on the Plat in a functional, neat and nuisance free condition to handle storm water and drainage in the Subdivision, which maintenance

shall include, as needed, seeding or sodding, removing of trash, debris, leaves and brush, mowing and weeding to prevent nuisance conditions. No driveways, fences, or structures shall be erected within the drainage easement which blocks, diverts or reroutes the drainage flow or which might interfere with the Village's rights, unless express written approval is granted by the Village and subject to any such conditions as the Village may impose and as approved by the Village.

(b) Maintaining: the one (1) cul-de-sac landscaped island in the Dedicated Public Street at the intersection of 107th Place and 44th Avenue and the landscaped island area at the main entry on 108th Street in a clean, mowed, maintained and weed-free condition. Such maintenance shall include without limitation and as needed, seeding, mowing, weeding, planting, watering and the removing of trash, debris, leaves and brush in order to prevent a nuisance condition. No driveways, signage, parking areas, structures or fences shall be erected within the cul-de-sac and boulevard islands which might interfere with the Village's rights, unless express written approval is granted by the Village and subject to any such conditions as the Village may impose and as approved by the Village.

(c) Maintaining the dedicated storm water drainage, retention basin, access and maintenance easement areas in Outlot 2 in a functional, neat and nuisance free condition to handle storm water and drainage in or on the Property. Such maintenance shall include, without limitation and as needed, grading, topsoiling, seeding or sodding, maintaining erosion control methods to protect the drainageways; ditching to reestablish design capacity; removing of trash, debris, leaves and brush; mowing; and weeding to prevent nuisance conditions. No driveways, fences, signage, lighting or structures shall be erected within the outlet drainage easement which blocks, diverts or re-routes the drainage flow or which might interfere with the Village's rights, unless express written approval is granted by the Village and subject to any such conditions as the Village may impose and as approved by the Village.

(d) Maintaining the Dedicated Woodland Protection and Preservation Easement Areas located on Lots 1, 4 through 11, 39, 40 and Outlot 3 as shown on the Plat. No trees larger than eight (8) inches shall be cut or removed unless they are decayed and no digging, dredging, filling, grading, dumping or other land disturbance shall be permitted in such area, without the prior approval of the Village and subject to any such conditions as the Village may impose and as approved by the Village.

(e) Maintaining the Dedicated Wetland Protection and Preservation Easement Areas on Outlots 1, 2 and 3 shown on the Plat. The Wetland Protection Areas shall be protected and maintained as a wetland and no digging, dredging, filling, grading, dumping or other land disturbance shall be

permitted in such area, without the prior approval of the Village and the Wisconsin Department of Natural Resources (WI DNR) and subject to any conditions as may be imposed by the Village or the WI DNR.

(f) Clearing , maintaining, repairing or replacing any sidewalks if required by the Village within the non-roadway areas of the Dedicated Public Streets in accordance with Village approved plans and specifications; clearing, maintaining, repairing and replacing the concrete pedestrian walkway located between Lots 6 and 7 shown on Plat; constructing, installing, repairing, altering, replacing and maintaining the mailboxes located in one ore more of the Dedicated Public Street areas; and paying for the costs of electricity for street lights (but not the repair, maintenance or replacement thereof or the cost thereof, which will be the responsibility of the Village after the public street improvements required by the Village to be constructed by Developer have been constructed by it and inspected by, dedicated to and accepted by the Village).

(g) Maintaining, repairing and replacing the 10-foot wide concrete walkway installed by the Developer between Lots 6 and 7 in accordance with the Village approved plans and specifications.

(h) Maintaining, repairing and replacing the Entrance Monument and its related landscaping located adjacent to said monument.

(i) Maintaining and replacing the lighting, furniture and equipment, if any, planting and installing landscape elements and otherwise maintaining open space on the Plat, in a neat and nuisance free condition. Such maintenance shall include, without limitation and as needed, replacement and maintenance as necessary or required by the Village.

(j) Enforcing of all provisions of the Declaration including Architectural Control.

(k) Preparing, adopting and distributing of the annual budget for the Property;

(l) Levying of assessments;

(m) Collecting of assessments from Owners;

(n) Employing and dismissing of personnel necessary or advisable for the maintenance and operation of the Common Area;

(o) Obtaining adequate and appropriate kinds of insurance;

(p) Adopting and amending of rules and regulations covering the details of the operation and use of the Property;

(q) Paying for water, waste removal, other operating expenses, electricity, telephone, and other necessary utility services for the Common Areas;

(r) Paying any amount necessary to discharge any mechanic's lien or other encumbrance against the Common Area or any part thereof which first arises after the date of this Declaration and which may in the opinion of the Board constitute a lien against the Common Area rather than merely against the interests therein of particular Owners. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Board by reason of said lien or liens shall be specially assessed to said Owners;

(s) All agreements, contracts, deeds, leases, vouchers for payment of expenditures and other instrument shall be signed by the officer or officers, or agent or agents, of the Board in such manner as from time to time shall be determined by written resolution of the Board. In the absence of designation by the Board, such documents shall be signed by the President and countersigned by the Secretary of the Board;

(t) The Board may adopt such reasonable rules and regulations which are not inconsistent with this Declaration and which the Board deems advisable for the routine maintenance, administration, management, operation, use, conservation and beautification of the Common Area and for the health, comfort, safety and general welfare of the Owners and Occupants. Written notice of rules and regulations shall be given to all Owners and Occupants and all Owners and Occupants shall at all times be subject to and comply with, and the entire Property shall at all times be maintained subject to such rules and regulations;

(u) The Board may engage the services of an agent to manage the Property to the extent deemed advisable by the Board and the Board may retain the services of an accountant and attorney as required for Association business; and

(v) Nothing contained herein shall be construed to give the Board, the Association or the Owners authority to conduct an active business for profit on behalf of all the Owners or any of them.

ARTICLE XI
MEMBERS
(OWNERS)

11.1 Voting Rights. There shall be one person with respect to each Lot entitled to vote at any meeting of the Owners. Such Voting Member shall be the Owner

or some person (who need not be a Owner) designated by the Owner to act as proxy on behalf of the Owner. Such designations shall be made in writing to the Board and shall be revocable at any time by annual notice to the Board of the death or judicially declared incompetence of any designator, or by written notice to the Board by the Owner. Any or all of the persons included in the ownership may vote or take any other action as a Voting Member either in person or by proxy. Each Owner shall be entitled to one (1) vote. The Developer shall designate the Voting Member with respect to any Lot owned by the Developer.

11.2 Quorum. Meetings of the Voting Members shall be held at the Property or at such other place in Pleasant Prairie, Wisconsin, as may be designated in any notice of meeting. The presence in person or by proxy at any meeting of the Voting Members having at least 25% of the total votes shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the Voting Members having a majority of the total votes represented at such meeting.

11.3 Initial and Annual Meetings. The initial meeting of the Voting Members shall be held upon not less than ten (10) or more than thirty (30) days written notice given by the Developer, but in any event, the initial meeting of the Voting Members shall be held not later than sixty (60) days after a conveyance by the Developer of seventy-five (75%) percent of the Lots or five (5) years after the recording of this Declaration, whichever is earlier. After the initial meeting of the Voting Members, there shall be an annual meeting of the Voting Members on the first Wednesday of November following the initial meeting and on the first Wednesday of each succeeding November thereafter at 7:00 P.M. or at such other reasonable time or date as may be designated by written notice of the Board delivered to the Voting Members not less than ten (10) days or more than thirty (30) days prior to the date fixed for said meeting.

11.4 Special Meeting. Special meetings of the Voting Members may be called at any time for the purpose of considering matters which by the terms of this Declaration require the approval of all or some of the Voting Members or for any other reasonable purpose. Special meetings shall be called by written notice, authorized by the president of the Board, a majority of the Board, or by the Voting Members having 20% of the total votes and delivered not less than ten (10) days or more than thirty (30) days prior to the date filed for said meeting. The notices shall specify the date, time and place of the meeting and the matters to be considered. Matters to be submitted at special meetings of the Voting Members shall first be submitted to the Board at least ten (10) days prior to the special meeting who shall then submit the matters to the Voting Members.

11.5 Notice of Meetings. Notices of meetings required to be given under this Declaration may be delivered either personally or by mail to the person entitled to vote, addressed to each person at the address given by such person to the Board for the purpose of service of such notice or to the Lot or Owner with respect to which such voting rights appertains.

IN WITNESS WHEREOF, the said **WHISPERING KNOLL LLC, an Illinois Limited Liability Company,** has caused its name to be signed to this Declaration of Covenants, Conditions, Easements and Restrictions this 29th **day of March, 2005.**

WHISPERING KNOLL LLC, an Illinois Limited Liability Company
NMDB, INC. (Manager)

BY: _____
President

STATE OF ILLINOIS)
)
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, **DO HEREBY CERTIFY,** that **JOHN H. BARCELONA,** President of **NMDB, INC.,** an Illinois Corporation, the Manager of **WHISPERING KNOLL LLC,** an Illinois Limited Liability Company, to me know to be such person who executed the foregoing instrument and acknowledged that he executed the same on behalf of said Limited Liability Company, by its authority.

GIVEN under my hand and notarial seal this 31st **day of March, 2005.**

_____
Notary Public

AFFIX SEAL:

Official Seal
Dorothy J. Bellfuss
Notary Public State of Illinois
My Commission Expires 03/19/07

EXHIBIT "A"
LEGAL DESCRIPTIONS

LEGAL DESCRIPTION OF THE LOTS:

LOTS 1 - 40 (BOTH INCLUSIVE) IN WHISPERING KNOLL, BEING A REDIVISION OF LOT 4 OF CERTIFIED SURVEY MAP NUMBER 1789, BEING A PART OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 26, TOWNSHIP 1 NORTH, RANGE 22 EAST, IN THE VILLAGE OF PLEASANT PRAIRIE, KENOSHA COUNTY, WISCONSIN.

LEGAL DESCRIPTION OF THE COMMON AREAS:

OUTLOTS 1, 2 AND 3 IN WHISPERING KNOLL, BEING A REDIVISION OF LOT 4 OF CERTIFIED SURVEY MAP NUMBER 1789, BEING A PART OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 26, TOWNSHIP 1 NORTH, RANGE 22 EAST, IN THE VILLAGE OF PLEASANT PRAIRIE, KENOSHA COUNTY, WISCONSIN.