

**ASHLAND HEIGHTS
Restated Declaration of
Covenants, Conditions and Restrictions**

Town of Ashford, Fond du Lac County, Wisconsin

This **RESTATED DECLARATION OF COVENANTS, CONDITIONS and RESTRICTIONS** for Ashland Heights Subdivision, Town of Ashford, Fond du Lac County, Wisconsin is made this 14th day of April, 2003, by MJR Investments, LLC, a Wisconsin limited liability company ("Developer").

WHEREAS, Developer is the owner of certain real property in Fond du Lac County, Wisconsin, that will be developed as a residential subdivision, described as follows:

Lots 1-25, and Outlots 1, 2 and 3, of Ashland Heights, as recorded April 1, 2003 in Vol. 15 of Plats on page 45, as Document No. 778703.

This above described property, which includes the **Common Area** described in section 22 below, shall hereafter be referred to as "Ashland Heights." The term "**Association**" as used herein is the Ashland Heights Property Owners' Association referred to (in section 23 and other places) below.

NOW, THEREFORE, Developer declares that all of the property described in this instrument shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions. The easements, restrictions, covenants and conditions shall run with the real property and be binding on all parties having any right, title or interest in it, their heirs, successors and assigns, and shall inure to benefit each owner.

1. Purpose.

a. The purpose of these restrictions is to provide for the use of the property for attractive residential purposes only, to prevent nuisances, to prevent the impairment of the attractiveness of the property, and to maintain the desired tone of the community.

b. These restrictions thereby provide to each site owner the full benefit and enjoyment of his or her home, with no greater restriction on the free and undisturbed use of the site than is necessary to insure the same advantages to the other site owners.

2. Land Use and Buildings

- a. All lots will be used for single family dwellings only. No building shall be erected, altered, placed or permitted to remain on any lot other than one single-family dwelling. The previous sentence does not prohibit development of facilities in the Common Area as approved by the Association.
- b. All homes shall not exceed two and one-half stories in height.
- c. All homes shall have at a minimum an attached two-car garage but not more than a four-car garage, with not more than three garage doors visible from the front.
- d. All homes must have a roof with a minimum of 6/12 pitch.
- e. No building shall be moved onto any lot.
- f. All exposed concrete on porches must have a brick or stone veneer face. The front of any home must consist of at least twenty percent (20%) brick or stone veneer face.
- g. Landscaping shall be completed within one year of occupancy. Vacant lots must have the grass cut not less than twice a year.

h. All building plans shall require the prior written approval of the Developer.

3. Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No property owner may introduce or allow any noxious or diseased plant, animal, or insect which would threaten existing vegetation or diminish any person's proper and lawful enjoyment of Ashland Heights or its amenities.

4. Signs. No sign of any kind shall be displayed to the public view on any lot except;

- a. One (1) sign of not more than five square feet for advertising or professional use.
- b. One (1) sign of not more than ten square feet used by a builder to advertise the property during the construction and sales period. Developer shall have the right to erect larger signs when advertising the subdivision.

5. Set-Backs. All buildings must be set back a minimum of 50 feet from the public road right-of-way line and 50 feet from each side of the side lot line.

6. Basement and Garage Concrete. All homes shall have basements and for the garage standard four-foot masonry frost walls.

7. Commencement and Completion of Construction. Construction on any undeveloped lot not owned by Developer must commence within three (3) years of the purchase of the lot.

Construction of all building structures must be completed within nine months of initiation of construction. Construction initiates when building materials arrive on site or excavating begins. All homes and garages shall be completed before the home is occupied, and in accordance with Town ordinances.

8. **Used Buildings.** No used building shall be moved on to any lot.

9. **Minimum Floor Plan Size.** The following shall be the minimum floor areas for homes to be constructed.

a. The ground floor of a one-story house shall be a minimum of 1,700 square feet, exclusive of the garage.

b. The ground floor of a one and a half, two or two and one half-story house shall be a minimum of 1,100 square feet, exclusive of the garage. Total square footage of both floors shall be a minimum of 2,100 square feet.

c. The ground floor of a split level, tri-level or quad shall be a minimum of 700 square feet. Above ground floor area shall be a minimum of 700 square feet and below ground floor area shall be a minimum of 700 square feet. The total square footage of these levels shall be a minimum of 2,100 square feet.

d. For a raised ranch, the floor area of the main structure shall be a minimum of 1,700 square feet.

e. No house will be less than 1,700 square feet.

f. Finished basements, garages, sun porches and open porches are not included in computing floor areas.

10. **Fences and Walls.** Any fence erected or placed facing any street within the subdivision, or extended along the side of the lot toward the front or street side beyond the front wall of the residence, will not exceed four (4) feet in height and will be constructed of wood. Foliage or hedge fences are permitted facing any street to a maximum height of four (4) feet, and on the side of lot to a maximum height of four (4) feet. No metal yard fences are allowed. Any fence will need prior approval from the Developer. The Developer will take into consideration the type of fence and the other property owners concerns. The restrictions of this paragraph do not apply to fences used for an approved animal shelter which is allowed as stated in section 12 below.

11. **Pets, Livestock and Poultry.** No animals, livestock, poultry fowl, reptiles, or pigeons of any kind shall be raised, or bred, or kept on any lot with the exception of a dog or a cat, which shall be limited in number to a total of two in any one household, or goldfish, a parakeet, or a hamster, provided that said pets are not kept, bred, or maintained for any commercial purpose. However, nothing contained herein shall be construed to permit the keeping of any dog, cat or other pet which shall in any way constitute a nuisance.

12. **Accessory Buildings.** No more than one accessory building shall be allowed. All accessory buildings must have at least 100 square feet of floor area and shall not exceed 1,200 square feet of floor area. Buildings must have a concrete floor. The buildings shall be constructed of 2 x 4 construction, or equal, shingled roof with a minimum 4/12 pitch or of gambrel type design, with harmonious siding. Side walls shall not exceed twelve (12) feet in height. *In addition to this accessory building,* an animal shelter is allowed, with specifications and location to be approved by the Developer.

13. **Campers, Recreational Vehicles, Boats, Trailers and Garden Tractors.** All of the aforementioned vehicles must be stored inside. No school buses, semi-tractors and/or trailers shall be parked anywhere within the boundaries of Ashland Heights.

14. **Division of Lots.** No lots shall be re-subdivided to create a larger number of lots and not more than one residence shall be erected or constructed upon any lot.

15. **Excess Material.** No excess material shall be removed from the subdivision without the consent of the Developer.

16. **Camping.** No overnight camping is permitted on any undeveloped residential lot or in the Common Area.

17. **Firearms.** No firearms may be discharged within Ashland Heights, and hunting is prohibited.

18. **Abandoned Vehicles.** No stripped, partially wrecked, abandoned, or junked vehicle, trailer, boat, or vehicle of any kind shall be permitted to be parked, kept, or stored on any street, driveway, or lot at any time. If rendered immobile for more than 24 hours, no vehicle shall be disassembled, repaired, painted, or constructed in driveways or outside of any garage.

19. **Surface Drainage and Sanitary Facilities.**

a. Storm water runoff. The natural surface drainage patterns of any lot shall not be changed by grading, damming, filling, or installation of conduits. The topography and ground elevation of each lot shall be finished so as to provide sufficient drainage of surface groundwater throughout Ashland Heights. Final grading of a lot shall be completed within two (2) months following the date of occupancy of the dwelling on the same lot.

b. Water and sanitary systems. No dwelling shall be occupied until it has been connected to a private water system and an individual sanitary disposal system. No sewage disposal system shall be operated or maintained within Ashland Heights except as permitted by this Declaration, as follows: The owner shall own, operate, and maintain an individual sanitary disposal system for each lot, as approved by the appropriate government authorities. No holding tanks shall be installed on any lot in Ashland Heights.

c. Storm water management system. The Association shall be responsible to

manage, operate, maintain, repair, replace, upgrade, and assume all costs and liabilities for the storm water management system, including: (1) grass swale; (2) storm water retention ponds; and (3) pond outflow areas.

20. Maintenance.

a. Refuse removal. All lots, whether occupied or unoccupied, shall be well maintained and no unattractive growth or accumulation of refuse, ashes, or other debris is permitted.

b. Damaged structures. Any dwelling or associated structure destroyed in whole or in part by fire, windstorm, or any other cause or act of God, must be rebuilt or all debris removed within a reasonable period of time, but in no case shall remain unrestored longer than six (6) months. Should such debris remain for longer than this period, the Association shall arrange to remove the debris at the owner's expense.

21. Easements – Utilities – Drainage Areas. A permanent easement is hereby created over, under, and through the Common Area and any lot where there is a utility area shown on the plat of Ashland Heights for utility purposes, including utilities for gas, electric and telephone; these easement rights for utility purposes are a detriment to the owner(s) of the Common Area where the utilities are located and these easement rights for utility purposes are also a detriment to the owner(s) of any lot where such utilities are located. A permanent easement is also hereby created over, under, and through the Common Area and any lot for purposes of drainage or storm water management, on those locations as shown on the plat of Ashland Heights; this permanent easement is a detriment to the Common Area and to any lot where such drainage or storm water management system areas are located or affected.

22. Common Area – Outlots 1, 2 and 3. "Common Area" refers to lands being Outlots 1, 2 and 3, shown on the above recorded plat of Ashland Heights that are not residential lots or private property and are meant to be devoted to the common use and enjoyment of all lot owners. With respect to the Common Area, the following provisions shall apply:

a. All rights and easements of the members of the Association (as described in section 23 below) to the use, enjoyment, and benefit of the Common Area shall apply to and transfer with the title to and may not be separated from each and every residential lot parcel.

b. **Members' use of common properties and facilities.** Every member shall have a right and easement of use and enjoyment of the Common Area subject to the following provisions and limitations. Persons in a member's immediate family who reside with the member in one of the homes in Ashland Heights shall have the same right and easement of use as the member. Minors having the right to use of the Common Area shall be supervised at all times by a member or an adult in the member's family who resides with the member in a home in Ashland Heights. The guests of a member shall have the same right and easement of use and enjoyment as does the member, provided the guest is accompanied by a member or a person in a member's family who resides with the member as described above.

c. Suspension of rights and easement. The Association may suspend the right of a member or the member's family and guests to use the Common Area for any periods during which any assessment against the member's residential parcel remains unpaid and delinquent.

d. The Association may adopt and publish rules governing the use of, and the conduct upon, the Common Area. The Association may suspend for a reasonable period of time a person's right to use such areas and facilities for material infraction of the rules considering the circumstances of the case.

e. Use of any picnic area developed by the Association and any shelter facilities provided thereon shall be on a first-come, first-served basis. For large picnics or other gatherings held by members, the member(s) involved must use reasonable logic as to the impact on the rights of other members.

f. No motor vehicles shall be allowed in the Common Area.

g. The Association may make decisions regarding the cutting and disposal of wood in the Common Area.

h. Expenses for liability and other appropriate property insurance and for maintenance and upkeep of the Common Area shall be borne equally by the lot owners (one equal share of such expenses per lot). The Association shall make decisions regarding annual dues for these expenses for insurance, maintenance and upkeep of the Common Area, as provided in section 24 below. Expenses for property taxes will be part of each lot owner's property tax bill, and will not be part of any Association assessment.

23. Association. The owner or owners of each lot in Ashland Heights shall be members of the Association. The owner or owners of each lot shall be entitled to one membership unit per lot owned in Ashland Heights.

a. The Association shall have two classes of voting membership: The owner or owners of each lot in the Community shall be entitled to one vote in the matters involving the Association (**one vote per lot**).

b. For each lot owned by the Developer, Developer shall be entitled to two votes in matters involving the Association (**two votes per lot**).

c. As to any power or authority other than voting which is reserved or granted to Developer as provided in this Declaration, such power or authority shall be transferred to the Association 1) when the Developer delegates such power or authority to the Association by a writing submitted to the Association, or 2) at the point in time when Developer no longer owns any lots in Ashland Heights.

d. The Association shall establish a Property Owner's Committee ("the Committee") in order to protect and preserve, to the extent possible, the values and amenities of Ashland Heights. The Committee shall be composed of three (3) individuals. Eligible individuals include

any person who is an owner of any lot, or who has an ownership interest in an entity (such as a limited liability company or corporation) which owns any lot. The Committee shall be elected by a majority vote of the Association; Committee members shall be elected for terms of not more than three (3) years; however, Committee members may be elected to consecutive terms. Two (2) members of the Committee shall constitute a quorum for exercise of the Committee's business. The Committee shall have the powers and functions which the Association may by vote confer upon it from time to time, and may include those powers transferred to the Association as provided in the previous paragraph (section 23 c) above.

e. The Association's Right of Entry. Persons may be appointed or engaged by the Association or the Committee to exercise the powers, duties, or functions of the Association. The persons appointed by the Association or the Committee shall have the right to come upon any lot in Ashland Heights, at any reasonable hour and in a reasonable manner, for the purpose of exercising the powers, duties, or functions set forth herein, as deemed necessary.

24. Fees and Assessments. Each owner of a lot shall agree to pay to the Association a maintenance assessment, at a uniform rate for each lot, to be fixed from time to time as provided below, and collected on an established periodic basis.

a. The maintenance assessment payable to the Association shall be set at an amount determined by the Association, and such amount shall cover each successive twelve (12) month period for each individual lot, the first such period beginning July 1, 2004 and ending June 30, 2005. For lot purchases from Developer, the portion of the annual maintenance assessment owed by the purchaser shall be proportional to the number of days remaining in such annual period on the day of closing of title on the property, and shall be due to the Association on the day of closing. The maintenance assessment may be established or amended by a majority vote of the Association. The annual maintenance assessment fee shall be reviewed by the Association on or before May 1 of each year, and any change shall be communicated to the lot owners no later than June 1 of that year, to take effect on July 1 of the same year, which is the first day of the next twelve (12) month period.

b. The purpose of the maintenance assessment is to provide funding for 1) for the operation, maintenance, and improvement of the Common Area, including but not limited to grounds, trails, signage, lighting and picnic facilities if any, together with any liability or other property insurance thereon and 2) also to provide funding for the operation, maintenance, and improvement of the stormwater management system referred to in section 19c above, together with any liability or other property insurance thereon.

c. Effect of nonpayment of maintenance assessment. Any assessment not paid by the due date indicated above shall become delinquent and, together with interest and cost of collection, shall become a continuing lien on the property against the owner, the owner's heirs and successors.

d. Any assessment not paid within thirty (30) days after the delinquency date shall bear interest from the date of delinquency at the rate of eight percent (8%) per annum.

The Association may bring action for a judgment against the owner for the delinquent amount, including applicable interest, the cost of preparing and filing the action, and a reasonable attorney's fee.

25. Terms. The covenants and restrictions herein contained shall be in effect until January 1, 2013, after which time they shall be automatically extended for successive periods of ten (10) years unless an instrument terminating or reducing the term shall be executed and recorded in accordance with the requirements and procedures set forth in the following paragraph.

26. Amendment. These covenants and restrictions may be removed, modified, annulled, waived, changed and/or amended at any time and in any manner by a written declaration setting forth such amendment or changes, which has been executed by vote of at least 50% of the lots (one vote per lot) in said Plat, in such form as to entitle it to be recorded in the Register of Deeds Office for Fond du Lac County, Wisconsin; provided, however, that such amendment or changes to be effective shall require the written approval in recordable form of the Developer, so long as Developer owns any of the lots in the Plat.

27. Enforcement. Enforcement of these covenants and restrictions shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, to restrain a violation or to recover damages.

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

29. Liability. Neither Developer, the Association, or the Committee, or any members, agents or affiliates of them or any of them, shall be held liable to any lot owner for a mistake in judgment or for any other acts or omissions of any nature whatsoever while acting in their official capacity, except for any acts or omissions found by a court to constitute gross negligence.

30. Binding on Successors. These covenants, conditions and restrictions, and any easements herein, shall run with the land and are binding on any current owner(s) and on subsequent owners, and their successors and assigns.

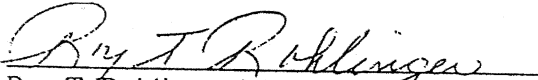
31. Ordinances. In addition to the provisions herein, lot owners are advised to review all

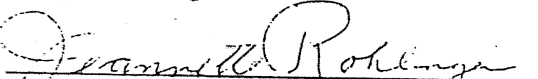
applicable town and county ordinances which may affect the use and development of their property.

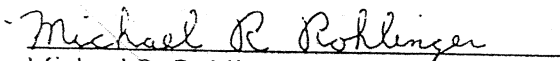
32. Restatement of Previous Declaration. This Restated Declaration of Covenants, Conditions and Restrictions ("Restated Declaration") is an amendment, by the owner of all of the property or lots involved, of the previously recorded Declaration of Covenants, Conditions and Restrictions ("previous Declaration") which was recorded in the Office of Register of Deeds as Document No. 779201, and this is as a complete restatement of such previous Declaration. The previous Declaration is hereby rendered void, and this Restated Declaration now takes its place. This Restated Declaration shall take effect upon its recording in the Office of Register of Deeds.

This RESTATED DECLARATION OF COVENANTS, CONDITIONS and RESTRICTIONS is executed by Developer, MJR Investments, LLC, a Wisconsin limited liability company, by its members, this 14~~th~~ day of April, 2003.

MJR Investments, LLC


Roy T. Rohlinger, Member


Jeannette A. Rohlinger, Member


Michael R. Rohlinger, Member

Authentication

Signatures of Roy T. Rohlinger, Member, Jeannette A. Rohlinger, Member, and Michael R. Rohlinger, Member, authenticated this 14th day of April, 2003.


Thomas A. Schuessler
Member, State Bar of Wisconsin

This document drafted by
Atty. Thomas A. Schuessler