DECLARATION

TABLE OF CONTENTS

		Page No.
1.	STATEMENT OF DECLARATION	1
2.	DEFINITIONS	2
3.	NAME AND ADDRESS OF THE CONDOMINIUM	4
4.	DESCRIPTION AND LOCATION OF BUILDINGS AND UNITS	4
5.	IDENTIFICATION AND MODIFICATION OF UNITS	5
6.	COMMON ELEMENTS AND LIMITED COMMON ELEMENTS	6
	6.1 COMMON ELEMENTS	6
	6.2 LIMITED COMMON ELEMENTS	6
7.	USE OF COMMON ELEMENTS	7
8.	PERCENTAGE OWNERSHIP OF COMMON AND LIMITED COMMON ELEMENTS	8
9.	PURPOSE OF PROPERTY AND RESTRICTIONS OF USE OF UNITS	8
	9.1 GENERAL PURPOSE	8
	9.2 LEASING	8
	9.3 PETS	9
	9.4 NUISANCES	9
	9.5 LAWFUL USE	10
	9.6 PARKING	10
	9.7 REGULATIONS	10
10.	RESERVATIONS AND EASEMENTS OF DECLARANT	10
11.	ASSOCIATION OF UNIT OWNERS	11
	11.1 POWERS OF ASSOCIATION	11
	11.2 MEMBERSHIP, DUTIES AND OBLIGATIONS	11
	11.3 VOTING RIGHTS	12
	A. CLASS A	12
	B. CLASS B	12
	11.4 RIGHTS OF DECLARANT	13
	11.5 ASSOCIATION PERSONNEL	13
12.	REPAIRS AND MAINTENANCE	14
	12.1 INDIVIDUAL UNITS	14
	12.2 COMMON ELEMENTS AND LIMITED COMMON ELEMENTS	14

13. UNIT OWNERS RIGHTS WITH RESPECT TO INTERIORS 15

14. RIGHT OF DECLARANT TO MODIFY UNITS 15

14.1 DECLARANT'S RIGHT TO MODIFY UNITS 15
14.2 DECLARANT'S RIGHT TO DISPOSE OF UNITS 15

15. INSURANCE 16

16. DAMAGE OR DESTRUCTION 16

17. LIABILITY FOR COMMON EXPENSES 17

18. PARTITION OF COMMON ELEMENTS PROHIBITED 19

19. CONVEYANCE INCLUDES INTERESTS IN COMMON AND LIMITED COMMON ELEMENTS 19

20. EASEMENTS, RESERVATIONS AND ENCROACHMENTS 20

20.1 UTILITIES 20
20.2 DRIVEWAYS AND WALKWAYS 20
20.3 REPAIR EASEMENT 20
20.4 ENCROACHMENTS 21
20.5 BINDING EFFECT 21

21. FAILURE OF ASSOCIATION TO INSIST ON STRICT PERFORMANCE NOT WAIVER 21

22. AMENDMENTS TO THE DECLARATION 22

23. ADDITIONAL RIGHTS OF LENDERS 22

23.1 NOTICES 22
23.2 INSPECTION OF BOOKS 23
23.3 CONSENT TO AMEND 24
23.4 NO ABANDONMENT 24
23.5 NO AMENDMENT TO THIS SECTION 24

24. NOTICES 24

25. SERVICE OF PROCESS 25

26. NUMBER AND GENDER 25

27. RULES OF CONSTRUCTION 25

27.1 LIBERAL CONSTRUCTION 25
27.2 SEVERABILITY 26
27.3 CONFLICTS 26
27.4 INSTRUMENTS CONSTRUED TOGETHER 26

28. GOVERNING LAW 27

DECLARATION OF CONDOMINIUM 1637248

TURTLE CREEK I CONDOMINIUM

This Declaration is made pursuant to the Condominium Ownership Act of the State of Wisconsin (the "Act"), Wisconsin Statutes Chapter 703, by Turtle Creek Enterprises of Brookfield, Inc. (the "Declarant").

1. STATEMENT OF DECLARATION.

The purpose of this Declaration is to submit the real estate described in Exhibit A and the improvements constructed thereon to the condominium form of ownership in the manner provided by the Act and this Declaration.

Declarant hereby declares that it is the sole owner of the real property described in Exhibit A attached hereto and incorporated herein by reference, together with all buildings and improvements thereon (the "Property") which is hereby submitted to the condominium form of ownership as provided in the Act and this Declaration. The property shall be held, used, conveyed, encumbered, mortgaged, leased, occupied, improved and in any and all other respects affected subject to the provisions, conditions, covenants, restrictions and easements of this Declaration and the Act. All provisions hereof shall be deemed to run with the land and shall be binding upon the Declarant, its successors and assigns, and to all parties hereafter having an interest of any kind in the Property, their heirs, successors and assigns and all

provisions hereof shall inure to the benefit of the Declarant and said parties.

2. **DEFINITIONS**.

The terms used herein shall have the same meanings as set forth in the Act and as follows, unless the context otherwise requires.

(a) **"Association"** means TURTLE CREEK I CONDOMINIUM ASSOCIATION, INC., a non-stock, non-profit membership corporation organized pursuant to Wisconsin Statutes Chapter 181 whose membership is all of the condominium's unit owners acting as a group in accordance with its by-laws and this declaration to administer, manage, operate and control the Property.

(b) **"Common Elements"** means all of the condominium except its units.

(c) **"Common Expenses and Common Surpluses"** mean the expenses and surpluses of the Association.

(d) **"Condominium"** means the Property subject to this Declaration.

(e) **"Declarant"** means Turtle Creek Enterprises of Brookfield, Inc., the owner who subjected the Property to this Declaration.

(f) **"Limited Common Elements"** means those elements identified in this Declaration or on the condominium plat as reserved for the exclusive use of one or more but less than all of the unit owners.

(g) **"Majority"** or **"Majority of Unit Owners"** mean the condominium unit owners with more than 50% of the votes assigned to the units in this Declaration.

(h) **"Mortgagee"** means the holder of any recorded mortgage encumbering one or more of the units or a land contract vendor.

(i) **"Person"** means an individual, corporation, partnership, association, trustee or other legal entity.

(j) **"Unit"** means part of a condominium intended for any type of independent use, including one or more cubicles of air at one or more levels of space or one or more rooms or enclosed spaces located on one or more floors (or parts thereof) in a building with boundaries as follows:

> The vertical boundaries of each unit shall be the exterior surface of the drywall of the outside perimeter walls of the unit (and attached garage), the exterior surface of the drywall adjacent to the unit, of the common wall separating the units in each building, the plane of the inside faces of the doors and windows bounding a unit extended in each case to an intersection with the horizontal boundaries. The horizontal boundaries shall be the plane of the undersurface of the basement floor and the plane of the upper surface of the ceiling drywall.

(k) **"Unit Owner"** means a person, combination of persons, partnership or corporation who holds title to a condominium unit or has equitable ownership as a land contract vendee but the definition excludes those having an interest or lien in a condominium unit as security for the performance of an obligation.

(l) **"Unit Number"** means any number, letter or combination thereof, identifying a unit in this Declaration. Units are numbered by street address.

3. NAME AND ADDRESS OF THE CONDOMINIUM.

The Property shall hereafter be known as "Turtle Creek I Condominium". The address of the Condominium buildings is 4535, 4575, 4595, 4625, 4645, 4665, and 4685 Turtle Creek Drive, Brookfield, Wisconsin.

4. DESCRIPTION AND LOCATION OF BUILDINGS AND UNITS.

Turtle Creek I Condominium shall consist of seven (7) buildings located on the Property. Each building will contain two (2) units connected by a common wall between the units. There are two different basic unit designs in the buildings. Construction details may vary but the units are generally one and two stories in height, have full basements and are constructed as a wood frame building with brick and siding material exteriors, and with asphalt roof shingles. Each unit includes a private deck and attached two car garage. The units, floor plans, exterior building dimensions, common elements, and limited common elements are more fully described in the Condominium Plat as reprinted in Exhibit B attached hereto. Exhibit B depicts the layout, location, unit numbers and dimensions of the buildings, units and common elements. Any changes or variances in the "as built" construction shall be deemed an amendment to the condominium plat. Complete construction details of each building or unit therein is available for inspection at the office of the Declarant.

A set of floor plans for each building showing the layout, location, unit number, dimensions of the units, stating the name of the building or designation and bearing the verified statement of the architect or professional engineer certifying that it is an accurate copy of the portions of the plans of the building is attached hereto as Exhibit "C".

The physical boundaries of any unit or common elements constructed or reconstructed in substantial conformity with the condominium plat shall be conclusively presumed to be its boundaries, regardless of shifting, settlement or lateral movement of any building and regardless of minor variations between the physical boundaries as described in Exhibit B or shown on the condominium plat and existing physical boundaries of any such unit or common element.

5. IDENTIFICATION AND MODIFICATION OF UNITS.

5.1 Identification. The buildings and units are designated in numerical order by unit number. The unit numbers and street addresses are set forth on Exhibit "B" attached hereto.

5.2 Modification. A unit owner may make any improvements or alterations within the Unit owned by said unit owner that do not impair the structural integrity or lessen the support of the condominium. A unit owner may not change the exterior appearance of a building, unit or any other portion of the Condominium without the prior written approval of the Design Review Committee appointed by the Board of Directors of the Association , which approval may

be given upon such terms and conditions as the Design Review Committee and the Board of Directors of the Association deem appropriate. If any owners of adjoining units within one building desire to relocate the mutual boundaries, those boundaries may be relocated in accordance with the Act, subject to the prior written approval of the Association which approval may be given upon such terms and conditions as the Association deems appropriate.

6. COMMON ELEMENTS and LIMITED COMMON ELEMENTS.

6.1 Common Elements. The "Common Elements" are defined in paragraph 2(b) of this Declaration and consist of all Condominium and all improvements and appurtenances thereon, except the Units and the fixtures and equipment located in the Units and the Common Elements include, without limitation, the land on which the buildings are located, building exteriors, fences, utility services, public utility lines, water and sewer laterals, water systems, outside walls, and the walks driveways and landscaping.

6.2 Limited Common Elements.

A portion of the Common Elements are designated "Limited Common Elements", and exist as shown with lined areas on Exhibit "B". Such Limited Common elements shall be reserved for the exclusive use of the owner or occupant of the Unit or Units to which the Limited Common Element appertains.

The Limited Common Elements shall include all lawn and gardens if landscaped or planted by a Unit Owner, and the deck area appurtenant to an individual unit, individual unit utility equipment, including air conditioning equipment located outside

the boundaries of the Unit which the equipment services and an area twenty (20) feet deep immediately around each building measured at right angles to the outside walls of each building, except where such reservation includes public walkways, in which event such public walkway shall be excluded from said reservation.

A Unit's Limited Common Elements shall also include the driveway to the garage (private drive to the Unit) with the outer limit determined by the extension of the edge of the roadway curb and the private walkway to unit entrances.

7. USE OF COMMON ELEMENTS.

The Common elements may be used only for the purposes for which they were intended and except as provided in this Declaration or the Association by-laws, the common elements are subject to mutual rights of support, access, use and enjoyment by all unit owners. However, any portion of the common elements designated as limited common elements may be used only by the unit owner of the unit to which the use is limited in this Declaration and the Association by-laws.

The manner of user of the Limited Common elements shall be governed by the Association by-laws and such rules and regulations as may be established thereunder, and no unit owner shall alter, remove, repair, maintain, decorate, landscape or adorn any Limited Common element, or permit such, in any manner contrary to the by-laws, rules and regulations of the Association. No major structural changes shall be made by any unit owner to any of the

Limited Common Elements without the prior written approval of the Association, which approval may be given upon such terms and conditions as the Association deems appropriate.

8. PERCENTAGE OWNERSHIP OF COMMON AND LIMITED COMMON ELEMENTS.

Each unit owner shall own an equal undivided percentage interest in the common elements as a tenant in common with all other unit owners and, except as otherwise provided in the Act, all common elements shall remain undivided. Except as limited by this Declaration, the Association by-laws, or the Act, each unit owner shall have the right to use and occupy the common elements for any purposes incident to the use and occupancy of his Unit as a place of residence in accordance with the provisions of Sections 6 and 7 herein, which rights shall be appurtenant to and run with the Units.

9. PURPOSE OF PROPERTY and RESTRICTIONS OF USE OF UNITS.

9.1 General Purpose. All buildings,units, common elements, and limited common elements are intended for and restricted exclusively to residential housing and parking for unit owners, their respective families, lessees and.or guests as covered by the terms and conditions contained in this Declaration, the Association by-laws and the rules and regulations established thereunder.

9.2 Leasing. Units may be leased, but any lease or rent agreement must be in writing and shall be leased for a minimum initial term of no less than six (6) months and the lease agreement

shall be subject to the by-laws of the Association and the rules and regulations established thereunder.

9.3 Pets. No cat, dog, bird, reptile or animal of any kind shall be permitted, kept or harbored in the Condominium unless the same, in each instance, be permitted in writing by the Board of Directors of the Association, and such consent, given, may be revoked at any time by the Board of directors in their sole discretion. Any permitted pet taken from a unit shall be carried or leashed while on the Common areas of the Condominium. No pet or animal shall create or cause any disturbance or nuisance of any kind. Each owner of any animal shall be responsible for the immediate removal of any excrement, droppings or waste material left by their animal. Unit owners who violate the provisions of this paragraph shall be subject to additional special assessments by the Board of Directors. These special assessments shall be in addition to the other enforcement provisions provided for in this Declaration, the Act or the Association by-laws.

9.4 Nuisances. No nuisance shall be allowed on the Condominium, nor any use or practice which is a source of annoyance to residents, or which interferes with the peaceful possession and proper use of the property by its residents. All parts of the Condominium shall be kept in a clean and sanitary condition and no rubbish, refuse or garbage shall be allowed to accumulate, nor any fire hazard be allowed to exist. No unit owner shall permit any

use of his Unit, or make any use of the Common Elements that will increase the cost of the insurance upon the Condominium property.

9.5 Lawful Use. No immoral, improper, offensive or unlawful use shall be made of the Condominium property, nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed.

9.6 Parking. No outside parking of boats, trucks, vans, campers, or other recreational vehicles shall be allowed on or about the Common Elements or Limited Common Elements. Nothing contained herein shall prevent the Board of Directors of the Association, in accordance with its by-laws, adopting rules and regulations or otherwise providing for an exception to this rule to accommodate temporary or overnight guests.

9.7 Regulations. Reasonable regulations concerning the use of the Condominium property may be made and amended from time to time by the Association in the manner provided by its Articles of Incorporation and By-laws. Copies of the regulations and amendments shall be furnished by the Association to all unit owners and residents of the Condominium upon request.

10. RESERVATIONS AND EASEMENTS OF DECLARANT.

a. Declarant and Declarant's duly authorized agents, representatives, employees shall have the right to maintain model units on the property and to use those model units, and the building in which said model unit is located. Declarant shall have the right to use signs, flags, or other types of devices to promote

the construction and sale of the units. Declarants and persons it may select shall have the right of ingress and egress in, over and across the Common Elements and Limited Common Elements, and the right to store materials thereon, and make such other use thereof as may be reasonably necessary incident to construction, development, sales and operation of the condominium, units, common elements and limited common elements. thereof.

b. Common Elements of the Condominium are subject to easements for electrical utilities, sanitary sewer, storm sewer and pedestrian pathways. These easements are shown on the Condominium Plat and on Certified Survey Map 6344.

11. **ASSOCIATION OF UNIT OWNERS**.

11.1 Powers of Association. The affairs of the Condominium shall be governed by Turtle Creek I Condominium Association, Inc., a non-stock, non-profit, membership corporation organized pursuant to the Wisconsin Statutes 181 and the powers of the Association, absolute and conditional, are enumerated in the Act, Chapter 703 of the Wisconsin Statutes, as amended. The Association is authorized to establish rules and regulations for the use of the buildings, units, common elements, and limited common elements in furtherance of the purpose of the condominium and prescribe fines, penalties, and/or special assessments for any violation thereof and shall furnish such rules and regulations in writing to the unit owners who shall be bound thereby.

11.2 Membership, Duties and Obligations. All unit owners shall be entitled and required to be members of the Association. The Association shall maintain a current roster of names and addresses of every unit owner. Every unit owner shall furnish the Association with his or her name and current mailing address. No unit owner shall vote at meetings of the Association until this information is furnished. Each unit owner and the occupants of the Units shall abide by and be subject to all of the rules and regulations of the Condominium set forth in this Declaration, the Association by-laws or the rules and regulations adopted thereunder.

11.3 Voting Rights. The Association shall have two (2) classes of voting membership as follows:

a. Class A Class A members shall be all unit owners, with the exception of the Declarant. One (1) vote shall be allowed for each unit regardless of the number of unit owners thereof. If title to a unit is held by more than one person, the membership related to that unit shall be shared by such owners in the same proportionate interests and by the same type of tenancy in which title to the unit is held; however, such unit owners shall designate one person to cast the vote appurtenant to such unit. Voting rights may not be split, and shared membership interests must be voted pursuant to said designation.

b. Class B The Declarant and its successors and assigns shall be Class B members and subject to the limitations of the Act, shall be entitled to two (2) votes for each of the 14 units owned by or to be built by Declarant. The respective rights and qualifications of the two classes of members shall be set forth in the Association by-laws.

11.4 Rights of Declarant. Notwithstanding any other provisions herein contained, Declarant, its successors and assigns, shall have the right at its option to appoint and remove the officers of the Association and to exercise the powers and responsibilities otherwise assigned by this Declaration or the Act to the Association or its officers. However, prior to the conveyance of 25% of the Common Element interest to purchasers the Association shall hold a meeting and the unit owners, other than the Declarant, shall elect at least 25% of the Directors of the Board of the Association. Prior to the conveyance of 50% of the Common Element interest to purchasers, the Association shall hold a meeting and unit owners, other than the Declarant, shall elect at least 33.3% of the Directors of the Board of the Association. The Declarant may not control the Board of Directors for a period of three (3) years after the sale of the first unit or for a period of thirty (30) days after the sale of 75% of the units, whichever occurs first. All present and future owners, mortgagees, leases, and occupants of Units in the Condominium shall be deemed, by acceptance of any deed, mortgage, land contract or lease affecting

a unit or by the occupancy of a unit, to agree, approve and consent to the right of the Declarant to so control the Association.

11.5 Association Personnel. The Association may obtain and pay for the services of any person or entity to manage its affairs to the extent it deems advisable, and may hire such other personnel as it shall determine to be necessary or advisable for the proper operation of the Condominium. The Association may contract for such services as may be required for the units, buildings, common elements and/or limited common elements.

12. **REPAIRS AND MAINTENANCE.**

12.1 Individual Units. Each unit owner shall be responsible for keeping the interior of his Unit and all its equipment, fixtures and appurtenances including, but not limited to, pipes, ducts, electrical wiring and conduits, plumbing, heating and air conditioning units (including any portions thereof located in a Limited Common Element) in good order, condition and repair and in a clean and sanitary condition, and shall be responsible for such maintenance and repair with respect to his Unit and certain or its appurtenant Limited Common Elements as is more fully set forth in the Association by-laws.

12.2 Common Elements and Limited Common Elements. The Association shall be responsible for the management and control of the Common Elements and Limited Common Elements and shall cause the same to be maintained, repaired and kept in good, clean, attractive and sanitary condition, order and repair, except to the

extent individual unit owners are responsible therefor with respect to certain Limited Common Elements, all as is more fully set forth in the Association by-laws.

13. UNIT OWNERS RIGHTS WITH RESPECT TO INTERIORS.

Each unit owner shall have the exclusive right to paint, repaint, tile, panel, paper, or otherwise decorate, refurbish, or refinish the interior surfaces of any walls, ceilings, floors and doors within the boundaries of a unit and to erect partition walls of non-structural nature. A unit owner may not make any improvements of alterations within a unit that impairs the structural integrity or lessen the support of any portion of the Condominium.

14. RIGHT OF DECLARANT TO MODIFY UNITS.

14.1 Declarant's Right to Modify Units. Declarant reserves the right to increase and/or modify or alter the size, location and floor plan of a unit during construction of such unit, provided however, the Declarant may not cause the unit to be located outside or to exceed the boundaries of the limited common elements surrounding the basic unit which is indicated on the Condominium plat. In the event Declarant exercises its rights with respect to any unit, a minimum space of forty (40) feet between buildings shall be maintained.

14.2 Declarant's Right to Dispose of Units. Declarant shall have the right to lease units for any term, sell or otherwise dispose of units by deed, land contract or other form of installment sale, or by such other means of conveyance as it may choose, and in the event the Declarant shall be forced to foreclose or otherwise recover possession of any Unit as the result of the default of a purchaser under a land contract, installment sale or mortgage, Declarant shall be free to dispose of any such unit by any means whatsoever.

15. INSURANCE.

The Association shall obtain insurance for the property against loss or damage by fire and such other hazards for not less than the full replacement value of the property insured and a liability policy covering all claims commonly insured against. Insurance coverage shall be written on the property in the name of the Association as trustee for each of the unit owners in the percentages established in this Declaration. Premiums shall be common expenses. Provisions for such insurance shall be without prejudice to the right of each unit owner to insure his or her own unit for personal benefit. Insurance proceeds shall first be disbursed by the trustees for the repair or restoration of the damaged common elements, and the unit owners and mortgagees shall not be entitled to receive payment of any portion of the insurance proceeds unless the Association has determined not to rebuild, or the court has ordered partition of the Condominium property, or

there is a surplus of insurance proceeds after the common elements have been completely repaired or restored.

16. **DAMAGE OR DESTRUCTION.**

In the event of damage or destruction of common elements of the Condominium, the Association shall promptly undertake to repair or reconstruct it to a condition compatible with the remainder of the Condominium. All cost of repair or reconstruction in excess of the available insurance proceeds shall be a common expense. If the Condominium is damaged to an extent more than the available insurance proceeds, the Condominium shall be subject to an action for partition (subject to the restrictions in paragraph 18) upon obtaining the written consent of the unit owners having 75% or more of the votes. In the case of partition, the net proceeds of sale, together with any net proceeds of insurance shall be considered as one fund and shall be divided among all unit owners in proportion to their percentage interests in the common elements, and shall be distributed in accordance with the priority of interests in each unit. (Wis. Stats. 703.18)

17. **LIABILITY FOR COMMON EXPENSES.**

Funds for the payment of common expenses and for the creation of reserves for the payment of future common expenses shall be obtained by equal assessments against the unit owners. All common surpluses shall be credited to the unit owners' assessments for common expenses in proportion to their percentage interests in the

common elements or shall be used for any other purpose as the Association decides. No unit owner may exempt himself or his unit ownership from liability for his contribution toward the common expenses by waiver of the use and enjoyment of any of the Common Elements or Limited Common Elements or by the abandonment of his unit. No conveyance shall relieve the unit owner-grantor or his unit of such liability, and he shall be jointly, severally and personally liable along with his grantee for the common expenses.

All assessments, until paid, together with interest on them and actual costs of collection, constitute a lien on the units on which they are assessed, if a statement of lien is filed within two (2) years after the date the assessment becomes due. The lien is effective against a unit at the time the assessment became due regardless of when during the two years the lien is filed.

Until such time as a unit owned by Declarant is completed or another unit located in the same building is conveyed to a purchaser, Declarant, and not the Association, shall be directly responsible and shall pay for all insurance premiums and maintenance costs for such Unit and Declarant shall have no further obligation for assessments with respect to such units. Declarant shall pay monthly assessments to the Association on the same basis as any other unit owner for each completed unit owned by Declarant and for each unit owned by Declarant which is located in a building in which a unit has been conveyed to a purchaser. For purposes of Declarant's obligations for assessments, a "completed unit" shall be a unit for which the City of Brookfield has issued an occupancy

permit. In the event the Declarant's mortgagee obtains any or all of Declarant's unsold units by foreclosure or deed in lieu of foreclosure, such mortgagee shall have the same obligation for assessments as Declarant.

18. **PARTITION OF COMMON ELEMENTS PROHIBITED.**

Except as otherwise provided herein, there shall be no partition of the Common Elements and Limited Common Elements through judicial proceedings or otherwise until the Declaration is terminated and the property is withdrawn from its terms or from the terms of the applicable statutes regarding unit ownership or Condominium ownership; provided however, that if any unit shall be owned by two or more co-owners as tenants in common or as joint tenants, nothing contained herein shall be deemed to prohibit a voluntary or judicial petition of said single unit as between such co-owners.

19. **CONVEYANCE INCLUDES INTERESTS IN COMMON AND LIMITED COMMON ELEMENTS.**

The percentage of the undivided interest in the Common elements and Limited Common Elements shall not be separated from the Unit to which it appertains. No unit owner shall execute a deed, mortgage, or other instrument affecting title to such unit ownership without including therein both his interest in the unit and his corresponding percentage of ownership in the Common Elements and Limited Common Elements, it being the intention hereof

to prevent any severance of such combined ownership. Any such deed, mortgage, or other instrument purporting to affect the one without including the other shall be deemed and taken to include the interest so omitted even though the latter is not expressly mentioned or described therein.

20. **EASEMENTS, RESERVATIONS AND ENCROACHMENTS.**

20.1 Utilities. Easements are hereby declared and granted for the benefit of the unit owners and the Association and reserved for the benefit of the Declarant for utility purposes, including the right to install, lay, maintain, repair water mains and pipes, sewer lines, gas mains, telephone wires and equipment, master television antenna systems or cables and equipment, and electrical conduits and wires and equipment, including power transformers, over, under, along and on any part of the units, buildings, common elements and limited common elements, to service the Condominium.

20.2 Driveways and Walkways. To the extent that the Condominium plat and building plans attached hereto show the common use of driveways and walkways for purposes of access, ingress and egress, valid easements are hereby established and shall exist for the mutual benefit of all unit owners and the Declarant for such uses.

20.3 Repair Easement. An irrevocable right and easement is hereby granted and declared for the benefit of the Association to enter units and to make repairs to Common Elements when repairs reasonably appear necessary for public safety or to prevent damage

to other portions of the Condominium. Except in cases involving manifest danger to public safety or property, the Association shall make a reasonable effort to give notice to the unit owner of the need for entry for the purpose of any repairs.

20.4 Encroachments. If any portion of the common elements encroaches on any unit or if any portion of any unit encroaches on any common element, as a result of duly authorized construction, reconstruction or repair of a building, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the building stands, provided however, that in no event shall a valid easement for encroachment be created in favor of a unit owner if said encroachment occurred due to the willful conduct of said unit owner or owners.

20.5 Binding Effect. All encroachments and rights described herein are easements appurtenant and running with the land, and are subject to the reasonable control of the Association. All easements and rights described herein are granted and reserved to, and shall inure to the benefit of and be binding on, the Declarant, their successors and assigns and on all unit owners, purchasers, mortgagees, lessees and occupants and their heirs, executors, administrators, successors and assigns. The Association shall have the authority to execute all documents necessary to carry out the intent of this Section.

21. **FAILURE OF ASSOCIATION TO INSIST ON STRICT PERFORMANCE NOT WAIVER.**

The failure of the Association to insist, in any one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, the by-laws or the rules and regulations established thereunder, or to exercise any right or option herein contained, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of any such term, covenant, condition or restriction, but such term, covenant, condition or restriction shall remain in full force and effect. The receipt by the Association of payment of any assessment from a unit owner, with knowledge of the breach, and no waiver by the Association of any provision hereof shall be deemed a waiver of such breach, and no waiver by the Association of an provision hereof shall be deemed to have been made unless expressed in writing and signed by the Association.

22. **AMENDMENTS TO THE DECLARATION.**

Except as provided herein and as provided in the Act (Wis Stats. 703.26) this Declaration may be amended with the written consent of at least 67% of the unit owners. An amendment becomes effective when it is recorded in the same manner as the Declaration. A unit owner's written consent is not effective unless it is approved by the mortgagee of the unit, if any.

23. ADDITIONAL RIGHTS OF LENDERS.

23.1 Notices. The Association shall give notice to the holder of any mortgage, land contract vendor, insurer or guarantor of any mortgage of a unit ("Lender") provided said persons notify the Association in writing, delivered or mailed by certified mail to the Registered Agent of the Association, that they desire to receive notice of the following:

a) Written notice by mail of the call of any meeting of the members or the Board of the Directors of the Association to be held for the purpose of considering any proposed amendment to this Declaration.

b) Written notice by mail of default which is given to any Unit Owner on any failure to comply with or violation of any of the provisions of this Declaration, the Articles, the By-laws and rules and regulations promulgated thereunder, and any amendments thereto, simultaneously with the giving of required notice to any unit owner which shall be no later than within 30 days of such failure.

c) Notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

d) Notice to the Lender of physical damage to the structure, fixtures or equipment of the unit in an amount exceeding $10,000.00 when such damage is known to the Board of Directors and notice to all Lenders if common elements of the Condominium are damaged in an amount exceeding $20,000.00. The Board shall also notify the Lender in writing of any condemnation proceedings concerning the Condominium, and

23.2 Inspection of Books. The Association shall permit the examination of books and records of the Association by Lenders during normal business hours (including current copies of the Declaration, By-laws, rules, regulations, and minutes of meetings of members and directors) and upon request shall furnish the Lender

annual reports and such other financial data (including audited financial statements) as it sends to unit owners.

23.3 Consent to Amend. Unless 67% of the holders of first mortgages and/or land contract vendors and their respective unit owners, based upon one vote for each lender per unit, have given their prior written consent, the Association shall not:

a) Change the undivided percentage interest in the Common Elements of the Condominium appertaining to each unit.

b) Partition or subdivide any unit of the Condominium.

c) By act or omission, seek to partition, subdivide, encumber, sell or transfer the Common Elements, except for the granting of easements for public utilities or for other purposes consistent with the intended use of the Common Elements by the Condominium.

d) Use hazard insurance proceeds for losses to any Condominium property (whether to units or common elements) for other than repair, replacement or reconstruction of the Condominium property.

23.4 No Abandonment. Unless all holders of first mortgages on units have given their written consent, the Association shall not by act or omission seek to abandon the Condominium form of ownership of the property.

23.5 No Amendment to this Section. This Section (Section 23) shall not be amended by unit owners unless all lenders give their written consent.

24. NOTICES.

All notices or other documents to be served upon the Declarant shall be given to the Agent specified for receipt of process herein. When giving required notices to unit owners and lenders,

the Association shall notify each unit owner listed in the roster of unit owners maintained as required by paragraph 11.2 of this Declaration and all lenders who have given written notice of their desire to receive notices pursuant to paragraph 23.1 of this Declaration. The Association shall be deemed to have discharged its duty with respect to the giving of notices by mailing the notice or having it delivered personally to the unit owners and lenders mailed to the addresses filed with the Association.

25. SERVICE OF PROCESS.

The person to receive service of process for the Association shall be the registered agent, whose name shall be filed with the Secretary of State of Wisconsin. The initial registered agent of Turtle Creek I Condominium Association, Inc. is JEFFREY A. MIEROW. The initial registered office shall be 3055 N. Brookfield Rd., Brookfield, Wisconsin. Any successor shall be appointed by the Board of Directors of the Association.

26. NUMBER AND GENDER.

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

27. RULES OF CONSTRUCTION.

27.1 Liberal Construction. The provisions of any condominium instruments filed under the Act shall be liberally construed to facilitate the creation and operation of the Condominium. So long as the Condominium instruments and by-laws substantially conform with the requirements of this chapter, no variance from the requirements of the Act, no variance from the requirements shall affect the condominium status of the property nor the title of any unit owner to his or her unit, votes and percentage interests in the common elements and in common expenses and common surpluses.

27.2 Severability. All provisions of condominium instruments and by-laws are severable and the invalidity of one provision does not affect the validity of any other provision.

27.3 Conflicts. If there is any conflict between any provision of this Declaration and the provisions of the Condominium plat or any provisions of the Association by-laws, the provisions of the Declaration control. If there is any conflict between any provisions of any condominium instruments and any provisions of the Association by-laws, the provisions of the Condominium instruments shall control. If there is any conflict between any provisions of any condominium instruments or any provisions of any by-laws and any provisions of the Act, the provisions of the Act shall control.

27.4 Instruments Construed Together. Condominium instruments shall be construed together and are determined to incorporate on another to the extent that nay requirement of the Act applying to one instrument is satisfied if the deficiency can be corrected by

reference to any of the others.

28. **GOVERNING LAW.**

This Declaration, the Articles of Incorporation of the Turtle Creek I Condominium Association, Inc, the By-Laws of the Association, and the rules and regulations adopted by the Association are governed by the laws of the State of Wisconsin.

IN WITNESS WHEREOF, the Declarant, TURTLE CREEK ENTERPRISES OF BROOKFIELD, INC., has caused this Declaration to be executed by its authorized officers.

TURTLE CREEK ENTERPRISES OF BROOKFIELD, INC.

Jeffrey Mierow
Jeffrey Mierow
President

(No Seal)

David Mierow
David Mierow
Secretary

State of Wisconsin)
)ss
Waukesha County)

Personally came before me this 1st day of March, 1990, the above named, Jeffrey Mierow, President and David Mierow, Secretary, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Ethel Kunstman
ETHEL KUNSTMAN
Notary Public, WAUKESHA County, Wis.
My Commission: expires 2-28-93.

This instrument was drafted by

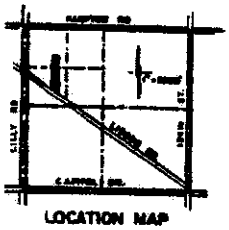
JAMES O. VOLLMAR
Attorney at Law

CONDOMINIUM PLAT

TURTLE CREEK I

CONDOMINIUM

PART OF THE N.W. 1/4 & S.W. 1/4 OF THE N.W. 1/4 OF SECTION 1, T. 7 N., R. 20 E., CITY OF BROOKFIELD, WAUKESHA COUNTY, WISCONSIN, PARCEL 1 OF CERTIFIED SURVEY MAP NO. 6344.



LOCATION MAP

SCALE: 1" = 80'

PARCEL 1 of Certified Survey Map No. 6344, recorded as Document No. 1628382 on pages 231, 232 and 233 of Volume 32 of Certified Survey Maps in the Office of the Register of Deeds for Waukesha County, being a part of the Northwest 1/4 and Southwest 1/4 of the Northwest 1/4 of Section 1, Township 7 North, Range 20 East, in the City of Brookfield, Waukesha County, Wisconsin.

I, Michael W. Buechl, do hereby certify that I have surveyed the above described property and that this survey is an accurate representation of the exterior boundary lines and the location of proposed buildings and improvements upon the said property.

This Condominium Plat is a correct representation of Turtle Creek I Condominium and the identification and location of each unit. Limited Common Ownership and the Common Elements can be determined from the Plat. The Common Elements are defined to be all the condominium property except the individual units and Limited Common Ownership described in this Plat. The undersigned surveyor makes no certification as to the accuracy of diagrammatic floor plans of the condominium buildings and units contained in the Plat or the approximate dimensions of floor areas thereof.

Surveyed by:

Pramann & Buechl, Inc.

WISCONSIN MICHAEL W. BUECHL S-1106 PEWAUKEE LAND SURVEYOR

Michael W. Buechl, Registered Wisconsin Land Surveyor

Date: Feb. 14, 1991

PARCEL 2 C.S.M. NO. 6344

TURTLE CREEK

S7°6'16"E 210.000'

COURTLAND AVE

N13°49'38"E 123.913'

N07°08'20"W 170.000'

S82°50'40"W 150.200'

DRIVE

4.8375 AC. 210720 S.F.

500.000

N03°20'30"E 502.143'

PARCEL 1 C.S.M. NO. 6344

S01°28'11"E

CREEK

TURTLE

TURTLE CREEK

OUTLOT 1 C.S.M. NO. 6344

S7°22'25"E

N08°41'35"W

S82°50'40"W 104.812'

S7°6'16"E 105.817'

AGRE VIEW SC

TURTLE CREEK

S39°01'20"E 1455.04'

2806.940'

S00°45'38"E 1561.204'

1265.736' M/L

N.W. COR. N.W. 1/4, SEC. 1-7-20

EXHIBIT A

CONDOMINIUM PLAT

TURTLE CREEK I

CONDOMINIUM

PART OF THE N.W. 1/4 & S.W. 1/4 OF THE N.W. 1/4 OF SECTION 1, T. 7 N., R. 20 E., CITY OF BROOKFIELD, WAUKESHA COUNTY, WISCONSIN, PARCEL 1 OF CERTIFIED SURVEY MAP NO. 6344.

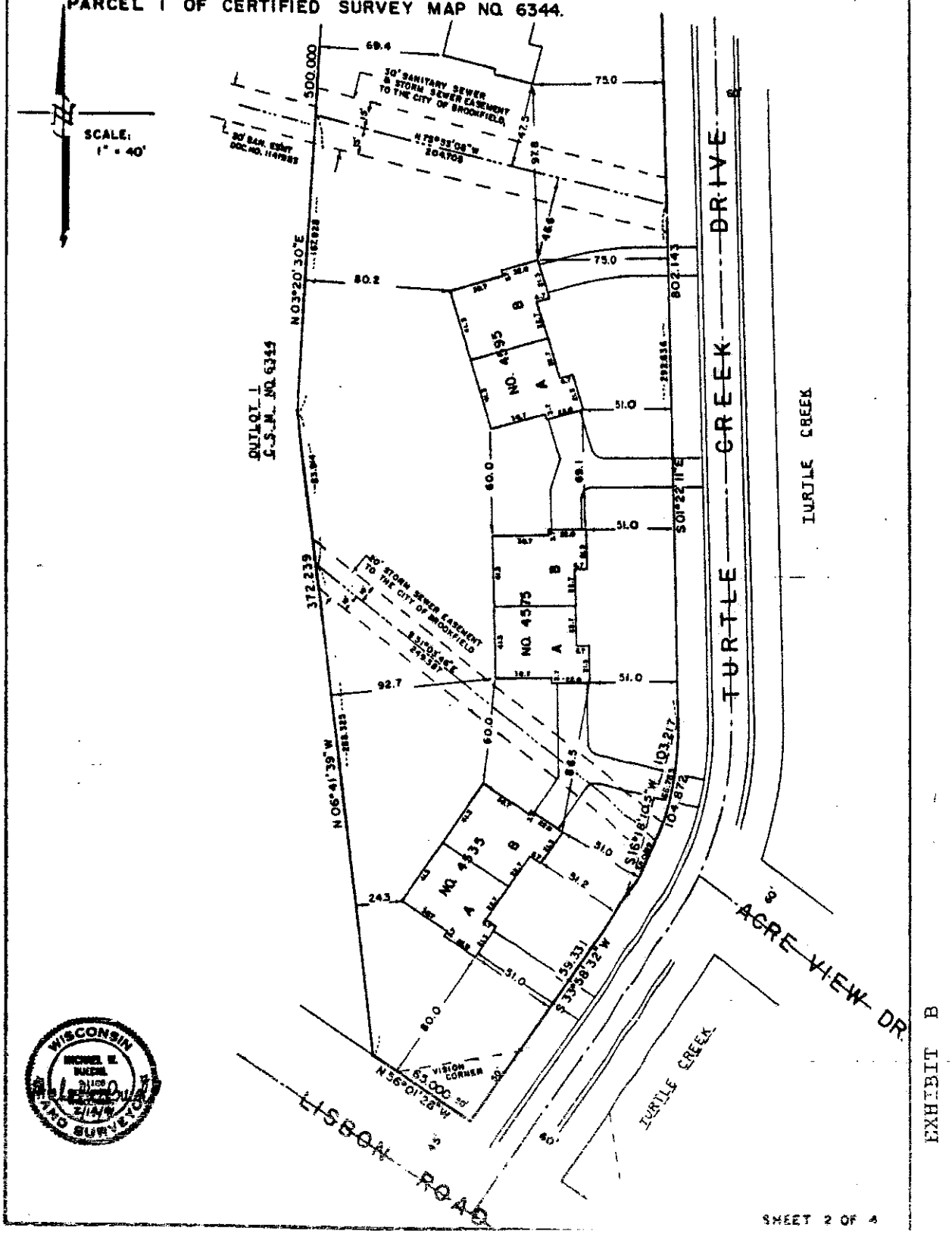


EXHIBIT B

CONDOMINIUM PLAT

TURTLE CREEK I

CONDOMINIUM

PART OF THE N.W. 1/4 & S.W. 1/4 OF THE N.W. 1/4 OF SECTION 1, T. 7 N., R. 20 E., CITY OF BROOKFIELD, WAUKESHA COUNTY, WISCONSIN, PARCEL 1 OF CERTIFIED SURVEY MAP NO. 6344.

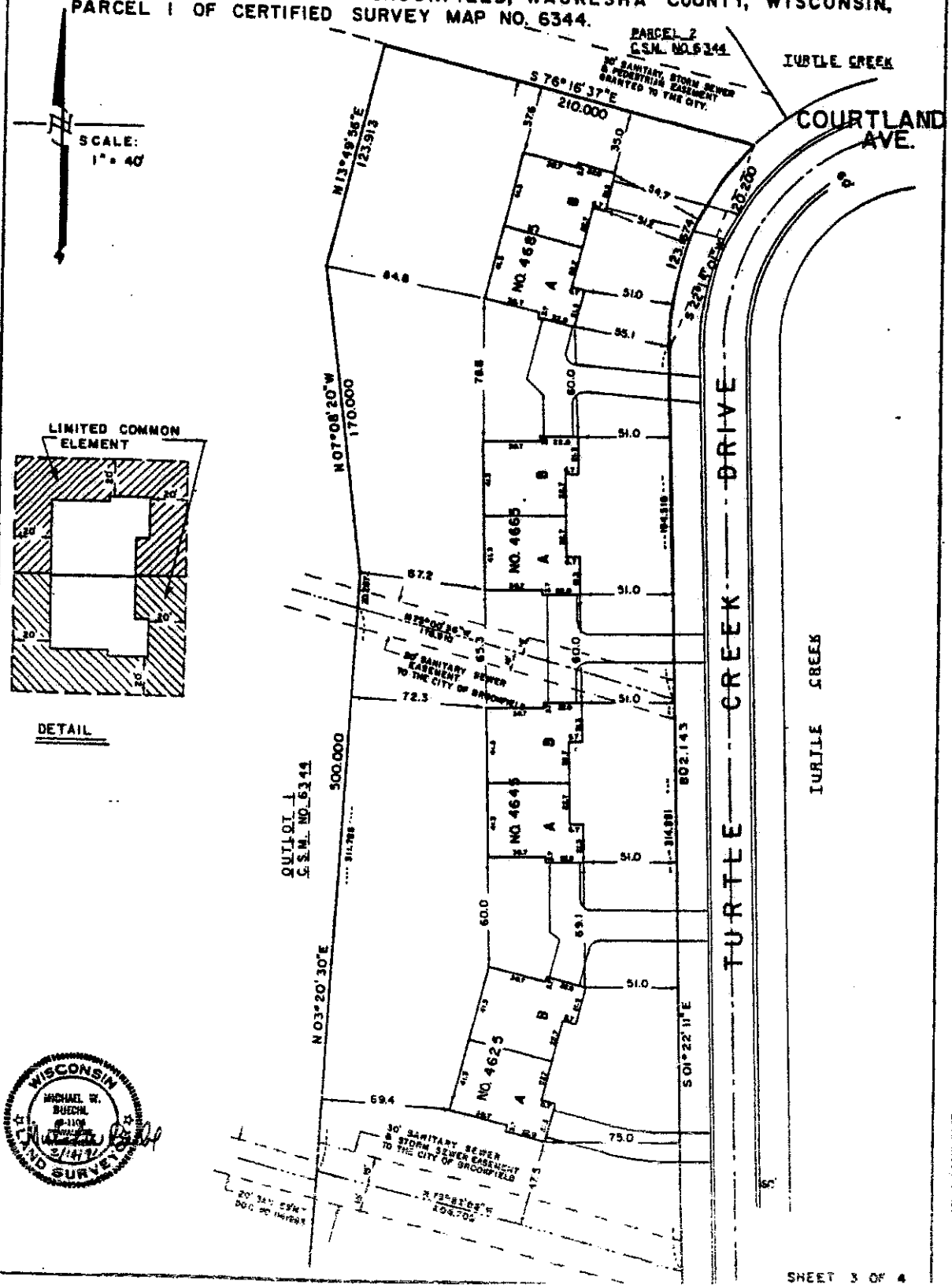


EXHIBIT B

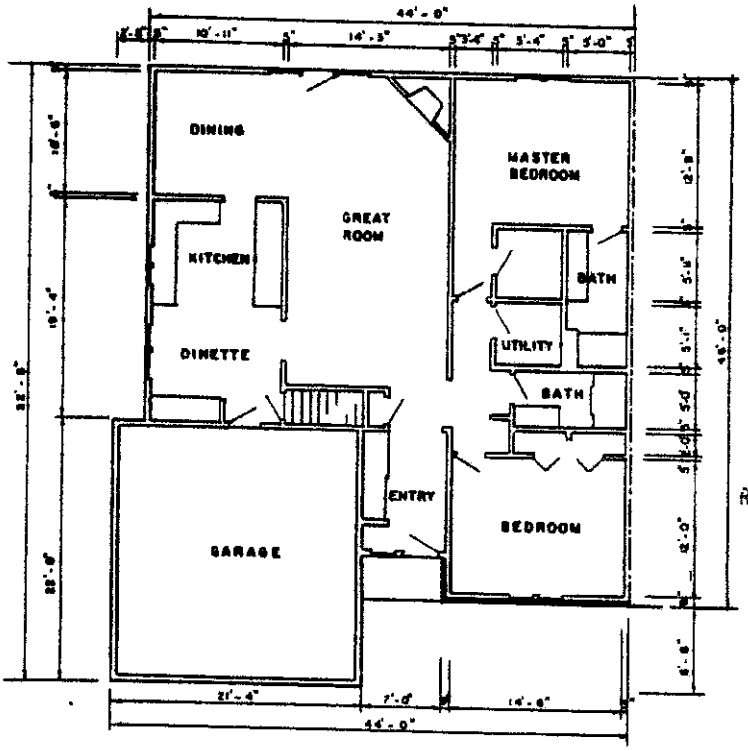
CONDOMINIUM PLAT

TURTLE CREEK I

CONDOMINIUM

PART OF THE N.W. 1/4 & S.W. 1/4 OF THE N.W. 1/4 OF SECTION 1, T. 7 N., R. 20 E., CITY OF BROOKFIELD, WAUKESHA COUNTY, WISCONSIN, PARCEL 1 OF CERTIFIED SURVEY MAP NO. 6344.

1710 Sq Ft



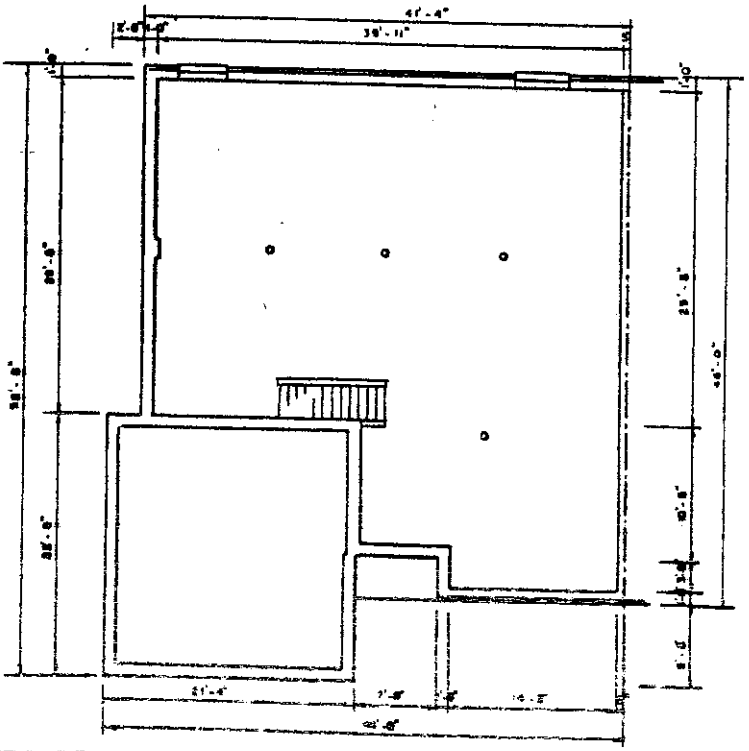
FIRST FLOOR PLAN

UNIT A

UNIT B (REVERSE PLAN)

1637248

REGISTER'S OFFICE
WAUKESHA COUNTY, WIS.
1991 MAR -8 AM 11:16
REEL 1281 IMAGE 1129
REEL 1281 IMAGE 1159



BASEMENT PLAN

UNIT A

UNIT B (REVERSE PLAN)

WISCONSIN
LAND SURVEYOR

EXHIBIT C