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DECLARATION OF COVENANTS AND RESTRICTIONS FOR EVERGREEN ACRES ADDITION NO. 1 CEDARBURG, WISCONSIN

THIS DECLARATION is made this 19th day of September, 2000, by the Clarence W. Damerow and Luella A. Damerow Trust dated May 17, 1993, (hereinafter the "Developer").

WHEREAS, the Developer owns a subdivision in the City of Cedarburg (hereinafter the "City") known as Evergreen Acres Addition No. 1, (hereinafter the "Subdivision") consisting of 11 Lots (hereinafter the "lots") on the original plat of Evergreen Acres Addition No. 1; and the Developer desires to subject the subdivision to the conditions, restrictions, covenants, reservations, and easements hereinafter set forth for the benefit of the subdivision as a whole and for the benefit of each owner of any part of the subdivision;

NOW THEREFORE, Developer hereby declares that the real property hereinafter described shall be used, held, transferred, sold and conveyed, subject to the conditions, restrictions, covenants, reservations, and easements hereinafter set forth, which shall inure to the benefit of and pass with said property and each and every parcel thereof, and shall apply to and bind successors in interest of any owner thereof. **Exhibit A** attached hereto contains the legal description of the subdivision.

ARTICLE I
GENERAL PURPOSE

The general purpose of the declarations is to ensure that the subdivision and adjacent property will become and remain an attractive community and toward that end to preserve and maintain the natural beauty of certain open spaces and recreational areas within the vicinity of the subdivision; to ensure the best use and the most appropriate development and improvement of each building site; to protect the owners of building sites against such use of surrounding building sites as will subtract from the residential value of their property; to guard against the creation thereon of poorly designed or proportioned structures; to obtain harmonious use of material and color schemes; to ensure the highest and best residential development of said property consistent with the purposes for which it is platted; to encourage and secure the erection of attractive residential structures thereon with appropriate locations thereof on building sites and to secure and maintain proper spacial relationship of structures and lot lines.

ARTICLE II
LAND USE

Section 2.01. Use of Lands. The Subdivision shall be used for single-family residential purposes only. The lots are zoned RS-4 under the City Zoning Ordinance.

Section 2.02. Resubdivision Prohibited. The lots created by the Subdivision shall not be redivided in any manner.

ARTICLE III
CONSTRUCTION SPECIFICATIONS AND REQUIREMENTS

Section 3.01. Type of Buildings. No buildings approved for construction within the subdivision other than single-family dwellings with attached or built-in garages for not more than three nor less than two automobiles shall be erected or placed in the Subdivision. In no event shall a garage have less than two stalls facing the street.

Section 3.02. Building Size.

A) A single story "ranch home" shall have a minimum of 1,900 square feet of living area.

B) A two story home shall have a combined minimum of 2,200 square feet of living area on the first floor and second floor of the residence.

C) No Bi-level or Tri-level design homes are permitted within the subdivision.

All minimum size requirements shall be exclusive of any porches, basements, breeze ways and garages.

Section 3.03. Type of Construction. Every dwelling shall be constructed or erected on the site and no previously used building shall be moved onto or reassembled on any lot.

Section 3.04. Approval of Plans. Any lot owner seeking to construct, erect or build a new home, or any other structure, or to add to or modify any portion of the exterior of an existing home in the Subdivision shall submit their formal plans and specifications to the Subdivision Building and Design Committee, (hereinafter the "Committee") for review. All plans submitted shall specifically show the nature, kind, shape, size, height, location and proposed materials to be used. No lot owner shall proceed on any building, construction or modification whatsoever without the prior written consent of the Committee. In the event the Committee fails to approve or disapprove any plan, specification, plot plan or other matter submitted to it hereunder within twenty (20) days after the submission to the Committee, then such plan, specification, plot plan or other proposal shall be deemed approved. Modification of an existing home exterior includes; decks, hot tubs, patios, pools or similar alterations. Construction of new structures includes; gazebos, arbors associated with landscaping and other similar construction.

Section 3.05. Elevation of Buildings and Grading of Lots. A master surface drainage and house grade plan has been prepared by the Developer designating the manner in which each lot shall drain in relation to all other lots in the Subdivision, and designating the grade elevation of the dwelling to be constructed thereon. A copy of the plan is on file in the office of the City Engineer and Building Inspector of the City. At the time a building permit is requested, the grade elevation of said dwelling shall be obtained from the Building Inspector and the dwelling shall be constructed accordingly. No deviation therefrom shall be permitted without the approval of the City . Within thirty (30) days after completion of a dwelling on any lot in the Subdivision, the lot owner shall grade the lot to conform with the master drainage plan and from that time forward, nothing shall be done which will impede or obstruct the flow of surface drainage water in accordance with said plan.

Section 3.06. Building Set-Back Lines. No building, garage or other structure shall be located on any lot so that the front, side, or rear yard distances are less than the minimums required by the City Zoning Ordinances.

Building setback from street Right of Way:	25 feet minimum
Building offset (from side lot lines):	8 feet minimum
Building offset (from back lot line):	25 feet minimum

Section 3.07. Completion of Construction. The exterior of every structure located in the Subdivision shall be completed within twelve (12) months after the beginning of construction.

Section 3.08. Driveways. Driveways shall be paved with concrete within six (6) months from the date of issuance of an occupancy permit by the City.

Section 3.09. Landscaping. Lot owners shall cause their entire lot to be sodded or planted with grass, within six (6) months from the issuance of an occupancy permit by the City, weather permitting.

No man made berms are allowed on the front yard of any lot in the subdivision. Berms may be allowed in the rear yards of lots if they are approved by the Committee in writing, do not exceed two (2) feet in height, and do not in any way effect the Grading and Erosion control plan on file with the City or any City ordinance.

Section 3.10. Temporary Structures. No structure of a temporary character, and no trailer, tent, camper, garage or outbuilding shall be used as a residence on any lot at any time, either temporarily or permanently; nor shall any building be occupied until it has been substantially completed in accordance with the plans and specifications submitted to and approved by the Committee.

Section 3.11. Construction Materials.

A) Siding shall be of wood, brick, aluminum, or vinyl and shall be stained or painted in a color approved by the Committee in writing. No structure shall have an exterior of tar paper, simulated brick siding or similar tar base material except those in the course of construction.

B) All roofing materials shall be limited to either cedar shake shingles, cedar shingles, earth tone concrete tile, earth tone fiberglass or asphalt three tab shingles. All roofing materials shall be approved by the Committee in writing.

ARTICLE IV
USE RESTRICTIONS

Section 4.01. Offensive Activities. No business, commercial, industrial, obnoxious or offensive activities shall be conducted on any lot in the Subdivision, nor shall anything be done which is or may become an annoyance or nuisance to the residents of the Subdivision.

Section 4.02. Fences, Walls, Sheds, and Out-Buildings. No fences, walls, sheds, out-buildings or other similar structures shall be erected or constructed in the Subdivision without the prior written consent of the Committee. If allowed by the Committee, these accessory structures shall be kept in repair by the lot owner. If these structures are not kept in repair, the Committee may demand their immediate removal by the lot owner, at lot owner's expense.

The Developer, at its expense, will construct a cedar split rail fence on the Eastern lot line of Lot 3, of Block 3 and on the Western lot line of Lot 2, of Block 3 to delineate the 10' wide Public Walkway which is being dedicated to the City on the plat. The owners of Lot 3, of Block 3, and of Lot 2, of Block 3, shall be jointly responsible for maintaining the 10' Public Walkway including the 5' paved way. The owners of Lot 3, of Block 3, and of Lot 2, of Block 3, shall also be responsible for maintaining the cedar split rail fence located at or near their respective lot line.

Section 4.03. State of Repair and Painting. All residences and garages shall be kept in a state of repair, including being painted and/or stained from time to time.

Section 4.04. Mailboxes and Names Signs. In order to maintain compatibility in quality and appearance, all mailbox structures and driveway entrance signs must be approved in writing by the Committee.

Section 4.05. Commercial Signs. No commercial sign of any type shall be erected in any part of the Subdivision, except that reasonable signs indicating properties for sale shall be permitted during periods of sale.

Section 4.06. Animals and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose or allowed to annoy neighbors. Any pet that habitually howls, barks or yelps must be brought under control of the keeper to the elimination of the disturbance/nuisance.

Section 4.07. Junkyards, Garbage and Refuse Disposal. No lot shall be used as a junkyard of any type. Specifically, no junk vehicles in disrepair (or parts therefrom) may be kept, maintained or accumulated on any lot. No lot shall be used or maintained as a dumping ground for rubbish. All trash, garbage and other waste shall be kept in appropriate sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and shall be suitably screened from view from the street and adjacent dwellings. It is the lot owner's responsibility to keep all underbrush or other unsightly growth controlled at an acceptable level.

Section 4.08. Commercial Vehicles. No trucks, other than panel trucks or vans, and no commercial-type vehicles shall be stored or parked on any lot except while parked in a closed garage, nor parked on any street in the Subdivision except while engaged in transporting to or from a residence in the Subdivision.

Section 4.09. Wires and Antennas. All exterior telephone and electric service and utility wiring (including lines to individual lots) shall be installed underground unless otherwise permitted by the Committee in writing, prior to installation. All air conditioners shall be concealed from street view and be located in a manner approved by the Committee. No external television, cable television, satellite dish, ham or radio antennas shall be erected upon, atop, or on any building or lot without prior written approval of the Committee.

Section 4.10. Snowmobiles, Bikes and ATVs. No snowmobile, motorized off-street bike, all-terrain vehicle, or any other such vehicle shall be operated within the Subdivision.

Section 4.11. Outside Storage on Lot Disallowed. No boat, boat trailer, house trailer, horse trailer, automobile, recreational vehicle, truck or other vehicle or any part thereof shall be stored or permitted to remain on any residential lot unless the same is stored or placed in the lot owner's garage or fully enclosed space, except for temporary storage for a period not to exceed fourteen (14) consecutive days in duration with such temporary storage not to occur more than three (3) times in one calender year.

ARTICLE V
BUILDING AND DESIGN COMMITTEE

Section 5.01. Initial Committee. The members of the initial Committee shall be Barb Dochow and Herman Dochow, or the survivor thereof; Joseph Kraus and Cheryl Kraus, or the survivor thereof; and Diane Dochow.

Section 5.02. Successor Building Committee. In the event of the retirement, death, or inability of Barb and Herman Dochow both; or Joseph and Cheryl Kraus both; or Diane Dochow individually, to act on the Committee, then the remaining committee members shall hold a meeting within a reasonable amount of time to vote and elect a replacement committee member or members as needed. Each committee member gets one vote. A replacement committee member must be a lot owner in the Subdivision and must be willing to serve on the Committee.

Section 5.03 Committee Liability. It is expressly understood and agreed that any standards established by, or any review or approval by the Committee shall not be construed as a warranty or endorsement or representation by the Committee or its members of the fitness, suitability, or adequacy of any approved plans or standards for any particular use or purpose. It is understood (and agreed by any submitter to the Committee) that the Committee members are uncompensated volunteers who shall not - *in any event* - be liable to any lot owner or other party for any act or omission by the Committee. Such Committee and its members shall have only an advisory function, and the sole responsibility for compliance with the terms of this Declaration of Restrictions shall rest with the lot owners. Each lot owner agrees to save, defend and hold harmless the Committee and its members on account of any activity by the Committee or its members relating to such owner's property or buildings to be constructed on his or her property.

Section 5.04. Termination. Whenever the Building Committee determines that the Subdivision has been fully developed, the Committee may at the Committee's option be disbanded by the unanimous action of the members then serving. The Committee shall record a Notice of such decision in the office of the Register of Deeds for Ozaukee County.

ARTICLE VI
NOTICE TO LOT OWNER'S

Section 6.01 Possible Impacts of Athletic Fields. This notice is to inform all the owners of the various subdivision lots (specifically lots 1, 2, 3, 4 and 5 of Block 3) that the adjacent land to the South of the subdivision is and will be used as athletic fields by the ~~City of~~ Cedarburg Public School District. This could cause impacts to these lot owners including but not limited to additional and untimely noise, crowds and additional traffic, as well as night lighting associated with evening sporting events.

Section 6.02 Storm Water Retention Ponds. The storm water retention pond (hereinafter the "pond") located on Outlot 1 (as shown on the final recorded Plat of the Subdivision) has been created and was required by the City to assist in the removal and detention of storm water from Evergreen Acres Addition No. 1.

The pond on Outlot 1 is not intended to be used for swimming or recreational facilities, and any use of the storm water retention ponds for such use is strictly prohibited. Any persons entering into or using the pond either intentionally or accidentally do so at their own risk. By purchase of a Lot in the Subdivision, each lot owner and its respective successors, assigns, heirs and personal representatives hereby waives to the fullest extent permitted by law, any and all claims for liability against the Developer, the Building and Design Committee, the Homeowner's Association and/or any lot owner in the subdivision and their respective agents, contractors, employees, officers, directors and shareholders for injury or damage to person or property sustained in or about or resulting from the use or existence of the pond. In addition, each Lot Owner (and its successors, assigns, heirs and personal representatives) agrees to indemnify, defend and hold harmless the Developer, Building and Design Committee, Homeowner's Association and other lot owners in the subdivision, and their respective agents, contractors, employees, officers, directors and shareholders from and against any and all liabilities, claims, demands, costs and expenses of every kind and nature (including attorneys' fees), including those arising from any injury or damage to any person (including death) or property sustained in or about or resulting from the use or existence of the storm water retention ponds.

Section 6.03 Homeowner's Association. At such time as the Developer determines in its sole discretion, the Developer shall convey legal ownership of Outlot 1 to the Evergreen Acres Homeowners Association, Inc. (hereinafter the "Homeowners Association") and delegate or assign the authority and responsibilities of the Homeowner's Association to the lot owners of the subdivision in accordance with the attached **Exhibit B.**

Section 6.04 Easements.

A) Easements for installation and maintenance of utilities and drainage facilities are shown on the final recorded Plat of the Subdivision. Within these easements, no structure, planting, or other material shall be placed or permitted to remain that may damage or interfere with the installation and maintenance of utilities, or that may damage, interfere with, or change the direction of flow of drainage facilities in the easements. The easement area of each Lot and all improvements on such Lot shall be continuously maintained by the Owner or Owners of such Lot, except for improvements and maintenance for which a public authority or utility company is responsible.

B) No Residence or other structure of any kind shall be built, erected or maintained on any such easement, reservation, or right of way, and such easements, reservations, and rights of way shall at all times be open and accessible to public and quasi-public utility corporations, their employees and contractors, and shall also be open and accessible to the Developer, the Building and Design Committee, all of whom shall have the right and privilege of doing whatever may be necessary in, on, under and above such locations to carry out any of the purposes for which such easements, reservations and rights of way are reserved.

ARTICLE VII
ADMINISTRATION

Section 7.01. Term of Covenants. The provisions of this Declaration shall be the covenants which run with the land and shall be binding on all persons claiming and owning any interest in the Subdivision for a period of twenty-five (25) years from the date on which this Declaration is recorded, after which these covenants shall be automatically extended for periods of ten (10) years each unless an instrument signed by all of the owners of the lots in the Subdivision agreeing to amend or terminate these covenants has been executed and recorded.

Section 7.02. Enforcement. The Building Committee or any lot owner in the subdivision may enforce these covenants by proceedings in law or in equity against any person or person violating or attempting to violate any provision hereof. The failure to promptly enforce any provision of this Declaration shall not be a defense against the subsequent enforcement of such provision.

Section 7.03 Amendment of Declaration of Restrictions. This Declaration may be amended, annulled, waived, changed or modified at any time by written declaration setting forth such changes and executed by owners of at least 60% of the lots in the subdivision and also executed and approved by the Developer so long as the Developer owns any parcel or lot in the subdivision or is a partner in any partnership owning any such lot or parcel or is a major shareholder in any corporation owning any such lot or parcel. If the Developer does not own any subdivision lots, then the Committee must execute and approve any amendments to the Declarations prior to such amendments becoming effective.

Section 7.04. Severability. Invalidation of any one of the covenants herein contained shall not affect any of the other covenants which shall remain in full force and effect.

Section 7.05. Expansion. These covenants and restrictions may be extended to adjacent lands owned by the undersigned by recording an Amendment to this Declaration which sets forth the description of such adjacent lands and which incorporates this document by reference to its recording data. See attached **Exhibit C**.

Section 7.06. Governing Law. These declarations of restrictions for the subdivision shall be interpreted under the laws of the State of Wisconsin.

Section 7.07 Conflicts Between Restrictions and Zoning or Building Regulations. In the event of any conflict between these restrictions and any Zoning Code or building laws, ordinances and/or regulations of the City of Cedarburg or Ozaukee County, the stricter provision shall apply.

IN WITNESS WHEREOF the undersigned, being the owners and mortgagees of the lands described herein, have caused this Declaration to be executed this 19th day of September, 2000.

DEVELOPER:

BY: Luella A. Damerow Trustee
Luella A. Damerow, Trustee

AUTHENTICATION

Signature of Luella Damerow authenticated this 19th day of September, 2000.

Andrew G. Falkowski
Andrew G. Falkowski
Member State Bar of Wisconsin
Bar #1030987

Drafted by:
Shanebrook & Fitzgerald Law Office, LLP
120 N. Main St., Suite 310
P.O. Box 87
West Bend, WI 53095
(262) 338-1750

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EXHIBIT A

Commencing at West ¼ corner of said Section 27; thence S02°03'32E" along the West line of said Southwest 1/4, 165.01 feet; thence N87°15'07"E, along the South line of Evergreen Acres a Subdivision being duly recorded in the Ozaukee County Register of Deeds. 650.66 to the point of beginning; Thence continuing N87°15'07"E, along said South line 370.02 feet to the northwest corner of Lot 3 of Certified Survey Map No. 2661, as recorded in Volume 19, Page 145; thence S02°09'33"E, along westerly line of Lots 3 and 4 of said Certified Survey Map No. 2661, 173.59 feet; thence S30°21'41"E, along westerly line of Lot 4 of said Certified Survey Map No. 2661, 217.68 feet to the southerly right of way line of Cleveland Street; thence continuing northeasterly, 41.90 feet along said right of way line, also being the arc of the curve to the left having a radius 180.00 feet (the chord bears N66°18'29"E, 41.80 feet); thence N59°38'25"E, 52.47 feet; thence S02°09'33"E, 165.78 feet; thence N87°09'53"E 12.00 feet to the east line of the Northwest ¼ of the Southwest ¼ of said Section 27; thence S02°09'33"E along said east line 3.45 feet to a 2" iron pipe set (as shown on a Badger Surveying Co. plat of survey 67-653 by Clarence H. Piepenburg on October 12th 1967); thence S87°10'03"W, 646.76 feet to a point (N87°10'03"E 609.80 feet from a iron pipe found shown set on said survey); thence N02°49'57"W 184.60 feet; thence N87°10'03"E 138.91 feet; thence N02°09'33"W, 107.72; thence N04°45'22"W, 84.31; thence N52°12'48"W, 73.29 feet; thence N02°09'33"W, 72.95 feet to the point of beginning.

Said parcel containing 5.085 acres more or less.

EXHIBIT B

EVERGREEN ACRES SUBDIVISION
HOMEOWNERS ASSOCIATION, INC.

1. Homeowner's Association. The Developer shall, at Developer's sole discretion, create a non-profit incorporated owner's association known as the **Evergreen Acres Subdivision Homeowner's Association, Inc.** (hereinafter the "Homeowner's Association") of which all the owners of the Lots in the Evergreen Acres Addition No. 1 Subdivision (and all lot owners of future stages of developments as provided in **Exhibit C**, shall be considered members of this non-profit corporation.

2. Purpose. The Homeowner's Association is hereby created for the purposes of:

A) Managing and controlling the common affairs of Evergreen Acres Addition No. 1 Subdivision; and

B) Managing, controlling and maintaining any and all Common Areas in Evergreen Acres Addition No. 1 Subdivision (as defined below); and

C) Performing other duties as set forth herein for the common benefit of the subdivision Lot Owners.

3. Common Areas. The term "Common Areas" shall include the following areas of Evergreen Acres Addition No. 1 Subdivision, and any areas designated as Common Areas in any future stages of development of Evergreen Acres Subdivision added to this Declaration in accordance with **Exhibit C** (hereafter referred to as "**Future Stages of Development**"):

A) Outlot 1, including the storm water retention pond located there (as shown on the final recorded Plat of the Subdivision) and the associated land to be used for access to the retention pond.

All Common Areas and related facilities shall be owned and used for the common benefit of the Lot owners of Evergreen Acres Addition No. 1 Subdivision which common benefit and rights shall pass with the title to each lot. Such Common Areas shall not be used for recreational or any other activities by any Lot Owner unless in accordance with the terms, conditions and restrictions contained herein or as are hereafter adopted or otherwise approved by the Homeowner's Association. The Developer shall have the right to erect a sign in the Common Areas to promote the sale of Lots in the Subdivision. Any signs, monuments, structures or other common facilities constructed by the Developer or the Homeowner's Association on any Common Areas shall be operated and properly maintained and repaired by the Developer or the Homeowner's Association (as the case

may be) so as to be neat and attractive in appearance (including, without limitation, proper care and cutting of grass and other vegetation). The Homeowner's Association shall maintain all storm water drainage facilities (retention ponds) so as to ensure that they function properly. The obligation to maintain the storm water retention ponds includes, but is not limited to, the obligation to clean and dredge such facilities as necessary. Any portion of the Common Area within the public street right-of-way may only be improved or altered with the consent of the appropriate public authorities. The Homeowner's Association's cost to maintain and/or improve all Common Areas shall be paid proportionately by all Lot Owners, all as more particularly described in this Exhibit B, Section 12, herein.

4. Board of Directors. The Homeowner's Association shall be governed by a three (3) member Board of Directors, (hereinafter the "Board"), which shall be solely responsible for the activities of the Homeowner's Association. The initial members of the Board have been appointed by the Developer and are: Barb Dochow, Herman Dochow and Diane Damerow.

5. Qualification for Board Membership. Besides the initial Board of Directors, to qualify as a member of the Board, a person must be either an Owner or a duly designated officer, agent or representative of an Owner.

6. Term of Office-Initial Board Members. The term of office of the initial members of the Board (the "initial term") shall commence upon the date of recording of this Declaration and shall continue until one (1) calendar year after the year in which Developer no longer owns seventy-five percent (75%) of the Lots then subject to this Declaration (provided, however, in the event the Developer, during such a period adds Future Stages of Development to this Declaration pursuant to **Exhibit C** herein which results in Developer again owning twenty-five percent (25%) or more of the Lots subject to the Declaration, then the initial term of the Board members shall continue in full force and effect until one (1) year after such time as Developer no longer owns seventy-five percent (75%) of the Lots then subject to this Declaration). During such initial term, Developer shall have the right to appoint, remove or replace any or all three members of the Board, at the Developer's discretion. The Developer may also relinquish or reassert all or any part of the rights provided to the Homeowner's Association at any time or times during such initial term. If any initial Board member dies, resigns or is unable to act as a Board Member, the Developer shall appoint a successor Board Member to fulfill the initial term.

7. Election of Board Members. Subject to the rights of the Developer as provided in this **Exhibit B**, Section 6, above, after the expiration of the initial term of the initial Board members, an electoral meeting shall be held in which each Lot Owner shall be entitled to vote in person or by proxy to select new Board members. The Owners of a Lot (whether the Lot is owned singularly or collectively) shall have one (1) vote in the affairs of the Homeowner's Association, including elections of Board members.

8. Term of Office - Board Members. After the initial term as provided in **Exhibit B, Section 6**, has concluded, the term of office for the Board members shall be for two (2) calendar years. If any Board member dies, resigns, or is unable to act or cease to be qualified to be a Board member, the unexpired term of such member shall be filled by special election of the Homeowner's Association.

9. Meetings of Board. All meetings of the Board shall be open to all Owners and shall be held upon not less than three (3) days prior written notice to all of the Owners. Two (2) members of the Board shall constitute a quorum. Actions of the Board shall be taken by a simple majority vote. The Board shall call a meeting of all Owners not less than one (1) time per calendar year.

10. Duties of the Board. The Board shall have the following duties:

A) To establish dates and procedures for the election of Board members;

B) To promulgate operating procedures for the conduct of the Homeowner's Association's and the Board's affairs;

C) To see to it that the common areas of the subdivision are adequately insured, maintained, repaired and improved;

D) To keep records of any and all assessments of the various lot owners;

E) To enforce the terms, conditions and restrictions contained in this Declaration according to the terms thereof.

11. Powers of the Board. The Board shall have the following powers:

A) To take such action as may be necessary to cause the Common Area to be maintained, repaired, landscaped (where appropriate) and kept in good, clean and attractive condition;

B) To enter into contracts and to employ agents, attorneys, accountants or others for purposes of discharging its duties and responsibilities hereunder;

C) To levy and collect assessments in accordance with the provisions of this **Exhibit B, Section 12**, below; and

D) To do anything or take any other action which is incidental to or necessary for the Board to perform its duties and discharge its obligations under this Declaration.

12. Assessments. The Board shall levy and collect assessments in accordance with the following provisions:

A) The Owner of each Lot, including the Developer, if the Developer still owns Lots, shall be subject to a general annual charge of assessment (**"General Assessment"**) equal to its pro rata share of the costs incurred or anticipated to be incurred by the Homeowner's Association in performing its duties and discharging its obligations hereunder. The pro rata share of an Owner of a Lot or Lots shall be a fraction, the numerator of which shall be the number of Lots owned by said Owner and the denominator of which shall be the total number of Lots subject to this Declaration (including additional lots in Future Stages of Development) at the time of the assessment. Said costs shall include, but not be limited to: taxes, insurance, including general liability insurance with respect to the Common Areas; repairs, replacements and additions to the improvements made to the Common Areas; equipment; materials; labor management and supervision thereof; and, all costs of the Homeowner's Association reasonably incurred in conducting its affairs and enforcing the terms, conditions and restrictions contained in this Declaration.

The Board shall also have the power to levy a special assessment (**"Special Assessment"**) against any individual Lot Owner for the failure of such Lot Owner to: maintain said Owner's Lot in accordance with the reasonable standard of the Evergreen Acres Addition No. 1 Subdivision; and/or failure of said Owner to comply with the terms, conditions and restrictions contained in this Declaration. Herein General Assessments and Special Assessments are sometimes collectively referred to as **"Assessments and Assessment;"**

B) The Homeowner's Association shall have the sole right to bring all actions and proceedings for the collection of the charges and for the enforcement of liens securing the charges. Any liens securing unpaid charges arising by virtue of this Declaration shall be subject and subordinate to the lien of any first-lien mortgage, whether the mortgage is executed or recorded before or after the creation of the lien.

C) Assessments shall be approved at a duly convened meeting of the Board;

D) Written Notice of Assessment shall be personally delivered to each Owner subject to the Assessment or delivered by regular mail addressed to the last known address of such Owner;

E) Assessments shall be due and payable on or before thirty (30) days after the mailing or personal delivery of the Notice, as the case may be,

F) Assessments not paid when due shall bear interest at the lesser of the rate of twelve percent (12%) per annum or the highest annual interest rate allowed by law from the date due until paid, and such unpaid Assessments and the interest thereon shall constitute a continuing lien on the real estate against which it was assessed until they have been paid in full. The Assessments and interest thereon shall also be the personal obligation of any current or subsequent Owner of the Lot against which the Assessment was made.

G) The Board may, at their discretion, record a document with the Register of Deeds in Ozaukee County, Wisconsin, giving notice of a lien for any such unpaid Assessment and upon payment or satisfaction of the amount due and/or record a document canceling or releasing any such lien. The failure to file any such notice shall not impair the validity of the lien. All recording and attorney fees relating to any such document or the collection of an Assessment shall be borne by the affected Owner.

H) Upon application by any Owner, any member of the Board may, without calling a meeting of the Board, provide to such Owner a Certificate of Status of Lien certifying (1) that the signer is a duly elected or appointed member of the Board; and (2) as to the existence of any unpaid Assessments or other amounts due to the Homeowner's Association. Such statement shall be binding upon the Homeowner's Association and shall be conclusive evidence to any party relying thereon of the payment of any and all outstanding Assessments or other amounts due to the Homeowner's Association.

I) Any lien for Assessments may be foreclosed by a suit brought by the Board, acting on behalf of the Homeowners Association, in a like manner as the foreclosure of a mortgage on real property or as a proceeding to enforce a lien under chapter 779 of the Wisconsin Statutes. The affected Owner shall be responsible for all of the Homeowner's Association's costs in collecting the Assessment, including, but not limited to, attorneys' fees.

13. Additional Improvement to Common Areas. During the initial term of the Board, the Board shall not have the power to make improvements to the Common Areas in addition to those then in existence (herein referred to as "**Additional Improvements**") without the written approval of the Developer. After the initial term, the Board shall not have the power to make Additional Improvements having a cost in excess of One Thousand Dollars ($1,000) without the consent of ninety percent (90%) of the then current Lot Owners, unless such an improvement is required by the City of Cedarburg, Ozaukee County; the State of Wisconsin, or the Government of the United States of America.

14. Failure to Act. If the Board fails to discharge its duties under this **Exhibit B** and under the Bylaws of the Homeowner's Association within sixty (60) days of written demand by the City, the City may take any necessary action (See Exhibit B to Developer's Agreement Evergreen Acres Addition No. 1 Retention Pond Maintenance Agreement). This necessary action could include maintaining, repairing or improving the common area (storm pond) and then charging each lot owner in the subdivision as a special charge on the owner's next real property tax bill. All charges incurred in connection therewith shall be charged to the lot owners based on their pro rata share (the same as such an owner's share under **Exhibit B, clause 12.** above) of such costs.

15. Indemnify and Hold Harmless Covenant. The Developer and Board Members of the Homeowner's Association shall not be liable for any action taken by them in good faith in discharging their duties hereunder, even if such action involved a mistaken judgment or negligence by the member or agents or employees of the Board and/or Developer. The Homeowner's Association shall indemnify and hold the members of the Board and the Developer harmless from and against any and all costs or expenses, including reasonable attorneys' fees, in connection with any suit or other action relating to the performance of their duties hereunder.

16. Non-Waiver of Rights. Failure of the Homeowner's Association, the Board of Directors or the Developer to enforce any terms, conditions or restrictions contained in this Declaration upon the violation thereof, shall not be deemed to be a waiver of the rights to do so, or an acquiescence in any subsequent violation.

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EXHIBIT C

FUTURE STAGES OF DEVELOPMENT OF EVERGREEN ACRES ADDITION NO. 1 SUBDIVISION

The Developer, its successors and assigns shall have the right, after the effective date hereof, to add Future Stages of the Development to the real estate subject to this Declaration, provided such Future Stages of Development are or become adjacent to the real estate which is or becomes subject to this Declaration or any supplemental declaration. The future Stages of Development authorized under this Exhibit C shall be added by recording a Supplemental Declaration of Restrictions with respect to such Future Stages of Development which shall extend the provisions of this Declaration to such Future Stages of Development, and shall indicate any provisions which differ from the provisions of this Declaration or any prior Supplemental Declaration. Except with respect to increasing the number of Lots and adding to the Common Areas, and all amendments and modifications incidental thereto, such Supplemental Declarations shall not otherwise revoke, modify, amend or add to the covenants established by this Declaration or any prior Supplement Declaration.