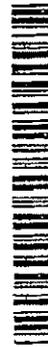


Exhibit H
Declaration of Conditions, Covenants, Restrictions
and Easements
for
Heritage Estates Subdivision
Document Title

Subdivision Plat recorded as
document # 1533024 and
Plat # 2923



DOCUMENT
1533026

RECORDED
At Kenosha County, Kenosha, WI 53140
Louise I. Principa, Register of Deeds
on 9/06/2007 at 2:32PM \$67.00
70044758

REC'D JENF

Recording Area

Name and Return Address

Stafford Residential, LLC
27636 - 75th Street
Salem, WI 53168

607

66-4-120-264-0200

Parcel Identification Number

This page is part of a legal document...DO NOT REMOVE

Document title, name & return address and PIN number must be completed by submitter. Other information such as the granting clauses, legal description etc may be placed on this first page of the document. Note: Use of this cover page adds one page to your document and \$2.00 to the recording fee. Wisconsin Statutes 59.43(2m)

EXHIBIT H

DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS,
AND EASEMENTS

FOR

HERITAGE ESTATES SUBDIVISION

THIS DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, AND EASEMENTS ("Declaration"), is made by STAFFORD RESIDENTIAL, LLC, a Wisconsin limited liability company ("Developer").

DESCRIPTION

Heritage Estates, located in the Town of Salem, WI, tax key 56-4-120-264-0200, legal description as follows:

Part of the Southeast Quarter of Section 26, Town 1 North, Range 20 East of the Fourth Principal Meridian, and being more particularly described as: Beginning at the intersection of the center of State Trunk Highway "83" (Antioch Road) with the South line of said Quarter Section; thence East along the South line of said Quarter Section 2213.6 feet and to the Southeast corner of said Quarter Section, thence North along the East line of said Quarter Section 1301.5 feet and to the South line of property once conveyed by Van Alstine to Robbins; thence west along the south line of lands so conveyed to Robbins, 2388.5 feet and to the center of the aforesaid highway; thence Southeasterly along the center of said Highway 1311.79 feet and to the point of beginning. Said land lying and being in the Town of Salem, County of Kenosha and State of Wisconsin. EXCEPTING THEREFROM That part of the Southeast Quarter of Section 26, Township 1 North, Range 20 East described as follows: Commencing at the Southwest corner of said Quarter Section; thence North 88°26'46" East, along the South line of said Quarter Section 455.21 feet to the reference line of State Trunk Highway 83 and to the point of beginning; thence North 9°30'07" West, 1332.55 feet to the South line of Arboretum Woods of Salem Subdivision; thence North 88°23'15" East, along the South line of said subdivision, 60.58 feet; thence South 9°30'07" East, 1332.61 feet to the South line of said Quarter Section; thence South 88°26'46" West, 60.58 feet and to the point of beginning.

RECITALS

WHEREAS, the Developer is the owner of the real property located in the Town of Salem (the "Town"), County of Kenosha, State of Wisconsin, known as Heritage Estates Subdivision; and

WHEREAS, the Developer desires to subject Heritage Estates Subdivision, described on attached Exhibit A, including Outlots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11,

DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, AND EASEMENTS CONTINUED

12, and 13 as shown on the final plat, which is made a part hereof and described in Article II of this Declaration (the "Property"), being a part of the development, to conditions, covenants, restrictions, easements, liens and charges (hereinafter collectively referred to as "Covenants") set forth in this Declaration, each and all of which is and are for the benefit of the Property, the Developer, the Town and for each owner thereof and shall pass with ownership of such Property, and each and every parcel and lot thereof, and shall apply to and bind the successors in interest and any owner thereof; and

DECLARATION

NOW, THEREFORE, the Developer hereby declares that the Property is and shall be held, used, transferred, sold and conveyed subject to the "Covenants" hereinafter set forth.

ARTICLE I

DEFINITIONS

The following words when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

1.1 "DEVELOPER" shall mean STAFFORD RESIDENTIAL, LLC, a Wisconsin limited liability company. The "Developer" may also mean the Architectural Control Committee and vice versa, with respect to any required approval and review process under the Declaration.

1.2 "ASSOCIATION" shall mean and refer to Heritage Estates Subdivision Property Owners Association, Inc.

1.3 "PROPERTY" shall mean and refer to all existing properties within the subdivision as are subject to this Declaration.

1.4 "COMMON AREAS" shall mean all property and real property interests located within Heritage Estates Subdivision and designated as Stormwater Detention Areas, Wetland Preservation Areas, and other areas as shown on a final plat designated as follows:

- Outlots 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, and 13, Dedicated Drainage, Detention Basin, Access and Maintenance Easement
- Dedicated Landscaping, Lighting and Signage Easement Areas
- Dedicated Wetland Preservation, Maintenance and Access Easement Areas
- Dedicated Drainage, Access and Maintenance Easement Areas

DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, AND EASEMENTS CONTINUED

- Dedicated Utility Easement Areas

Such interest shall also include all personal property, easements, fixtures, structures and improvements as the same are located on or in said areas.

1.5 "PRIVATE MINI PARK" shall mean all property interest located in Outlot 5 of which a portion or all may be dedicated to the Homeowners Association at the option of the Developer. This land must be accepted by the Home Owners' Association upon dedication. Special Provision for the property as described in Article V Section 5.1.

1.6 "LOT" shall mean and refer to any plot of land shown upon any recorded subdivision or lot line adjustment map or any certified survey map of the Property with the exception of the Common Areas.

1.7 "OWNER" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot; except that as to any Lot which is the subject of a land contract wherein the purchaser is in possession, the term "Owner" shall refer to such person instead of the vendor.

1.8 "MEMBER" shall mean and refer to all those Owners who are Members of the Association as provided in Article IV, Section 4.1.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

2.1 Existing Property.

The Property, more particularly described on Exhibit A attached hereto and including Outlots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 as shown on the final plat, which is and shall be held, used, transferred, sold, conveyed and occupied subject to this Declaration is located in Kenosha County, Wisconsin. The term "Existing Property" as used in this Declaration shall refer to all property which is subject to the provisions hereof.

ARTICLE III

GENERAL PURPOSES AND CONDITIONS

3.1 General Purpose.

The Property is subjected to this Declaration to insure the best use and the most appropriate development and improvement; to protect the Owners against such improper use of the Property as will depreciate the value thereof; to preserve, so far as practicable, the natural beauty of the Property; to provide for entrances to the Property; to guard against erection of poorly designed or proportioned structures and structures built of improper or unsuitable materials; to guard against an excess of similar or duplicate architectural styles and thereby avoid

DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, AND EASEMENTS CONTINUED

housing monotony; to obtain harmonious color schemes; to insure the highest and best development of the Property; to encourage and secure the erection of attractive, substantial homes, with appropriate location on Lots; to prevent haphazard and inharmonious improvement of Lots; to secure and maintain proper setbacks from streets and adequate free space between structures; to encourage, secure and maintain attractive and harmonious landscaping of Lots and Common Areas; and in general to provide adequately for a high type and quality of improvement in the Property and thereby to enhance the value of investments made by purchasers of Lots.

3.2 Initial Construction of Common Areas.

Notwithstanding anything contained herein to the contrary, the Developer shall be responsible for the initial construction, installation and landscaping of the stormwater, drainage and retention areas, entry monuments, cul-de-sac islands, street trees and their related landscaping and lighting elements (all as described below). Nothing contained herein shall constitute a waiver by the Developer to subsequently assess the costs of all, or a portion thereof, of the above-mentioned construction, installation and landscaping to the Association pursuant to a separate agreement.

3.3 Land Use and Building Type.

- (a) No Lot shall be used for any purpose except for single-family residential purposes as defined by the Town Zoning Ordinance. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one single-family dwelling not exceeding two (2) stories or thirty-five (35) feet in height, and an attached private garage for not less than two (2) cars as further described herein. Notwithstanding anything contained herein to the contrary, the Developer and any subsequent purchaser of a Lot may use such Lot for purposes of building model homes open to the public for inspection and /or sale subject to the requirements set forth herein.
- (b) Professional home occupations are permitted subject to the Town Zoning Ordinance and shall be further limited to the residents of the dwelling; and shall be limited to occupations that see no more than one client or customer per day at the dwelling.
- (c) State of Wisconsin Licensed and Certified in-home day cares are prohibited from operation within the Property. Occasional baby-sitting is permitted subject to Town Ordinances and State Statutes.

3.4 Architectural Control.

No building, fence, wall, swimming pool, trampoline, seasonal enclosure, playground set, driveway, deck, sidewalk, landscaping, or other structure or improvement of any type (including antennae of any size or shape, whether freestanding or attached to another structure) shall be commenced, erected, or maintained upon any Lot, nor shall any exterior addition or improvement to or

DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, AND EASEMENTS CONTINUED

change or alteration of any Lot (including without limitation, adding a deck, patio, or sidewalk, repainting or landscaping changes on existing homes for which plans have previously been approved) be made until the plans, specifications and plot plan showing the nature, kind, shape, height, materials, color and location of the same and the landscape layout described in section 3.11 hereof shall have been submitted in quadruplicate to and approved in writing as to quality, materials, harmony of exterior design and location in relation to other structures, topography and compliance with the provisions of this Declaration, by the Board of Directors of the Association, or by an Architectural Control Committee (hereinafter "ACC") composed of three (3) representatives appointed by the Board (in either case hereinafter called the "Architectural Control Committee"). Notwithstanding anything to the contrary, as long as the Developer owns one or more Lots, the Developer reserves the right to carry out the functions of the ACC and may appoint certain individuals from the initial Board of Directors or from the Developer's staff to assist with these duties.

NO OWNER SHALL REQUEST OR OBTAIN A BUILDING PERMIT FOR A LOT FROM THE TOWN OR COUNTY WITHOUT FIRST OBTAINING THE WRITTEN APPROVAL OF THE PLANS AND SPECIFICATIONS FROM THE ACC.

In the event the ACC fails to approve or disapprove within thirty (30) days after the plans and specifications have been submitted to it, or in the event of disapproval, if no suit to enjoin the addition, alteration, or change or to require the removal thereof has been commenced before one (1) year from the date of completion thereof, then approval will not be required and this section will be deemed to have been fully complied with. The ACC shall have the right to waive minor infractions or deviations from these restrictions in cases of hardship, historic (vintage) design, or as otherwise determined by the ACC at its sole discretion. The ACC shall have the sole discretion to determine which of the dwelling size requirements and of this Declaration applies to a particular proposed dwelling and whether the same has been met. The provisions of this Declaration are minimum requirements and the Developer, or ACC, may, at its discretion, require stricter standards or, conversely, may relax standards on a case by case basis if it reasonably determines that such modified standards are required for the benefit of the entire Property, provided such variance is not in conflict with the dedications and restrictive covenants running with the land as described on the final plat or the obligations imposed by the Declaration on Owners or the requirements of the Town ordinances. Further, the Developer may require reasonable alterations to be made to any of the plans to be submitted under this Declaration and said requirements shall be binding upon each and every Owner.

3.5 New Construction Only.

No building shall be placed or permitted to remain on any Lot other than buildings newly constructed on the Lot; no previously constructed dwelling or structures shall be relocated to or situated upon any Lot without the written approval of the ACC.

DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, AND EASEMENTS CONTINUED

3.6 Dwelling Size.

No dwelling shall be erected on any Lot having a ground area within the perimeter of the main building, or at or above finish grade elevation of the first floor (exclusive of garages, porches, patios, breezeways and similar additions), measured along the exterior walls, of less than the following areas:

- (a) Not less than 2,300 square feet for a one-story dwelling;
- (b) Not less than 2,950 square feet for a two-story dwelling with a minimum first floor area of 1,600 square feet;
- (c) With respect to all other types of dwellings, not less than such areas, determined by the ACC, as are consistent with the foregoing and with other provisions hereof.

However, the ACC, in its sole discretion, reserves the right to make any deviation from the above requirements.

3.7 Grading, Building, Location and Lot Area.

- (a) Any grading of a Lot must conform to the last approved Master Grading and Drainage Plans ("Grading Plans") on file with the Development Department of the Town. All Lots shall have setbacks from the front lot line and from the interior lot lines of distances determined by the ACC but, in no event less than that set forth on the Final Plat and provided by applicable Town ordinance.
- (b) The minimum front or street setback shall be forty (40) feet, the minimum side yard setback shall be fifteen (15) feet and the minimum rear yard setback shall be twenty-five (25) feet. An allowable exception for cul-de-sac lots for which a thirty (30) foot front setback may be approved by the ACC.
- (c) Within each set of building construction plans submitted to the ACC for approval, shall be a plat of survey showing the placement of the proposed dwelling with the existing and proposed ground grade elevation shown every fifty (50) feet at the property line together with all easements. The ACC reserves the right to make modifications as to the final first floor grade of the building. The landscaping and drainage of the Lot shall conform to Grading Plans.
- (d) Each Owner shall be responsible for insuring that drainage from said Owner's Lot adheres to the existing drainage patterns as set forth in the Grading Plans and that the Owner's construction and other building activity does not interfere with or disrupt the existing or planned drainage patterns. The existing drainage pattern on a Lot shall not be changed

DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, AND EASEMENTS CONTINUED

significantly, and no change to the drainage pattern on other lands within the Property of Heritage Estates Subdivision shall be caused by an Owner which varies from the Grading plans as these plans are amended by the Developer from time to time, subject to Town approval. Minor changes from said Grading Plans, where these changes do not violate the purpose, spirit and intent of said Grading Plans, shall be reviewed and may, if for good and sufficient reasons, be approved by the ACC and the Town; in all other cases, the approved grades shall be strictly adhered to. Lot owners shall be held responsible for any violation that will cause additional expense to the Developer or any other Owner to correct any grading problems.

- (e) All clear water sump pump discharge shall be directed towards the rear of the property. At no time shall this discharge outfall be any closer than fifteen feet from the rear of the dwelling and no closer than fifteen feet to the side yard lot line. The outfall also must be placed in an area that upon first initial contact to the ground surface is an area of permeable material such as grass, gravel, sand, etc. At no time shall the outflow of this water be altered in a permanent or temporary manner which would direct it towards the street. Direction and placement of sump pump discharge must be shown on the plans submitted for Architectural Approval. In some cases, the Town Engineer may require sump pump discharge to be directly connected to the storm sewer system
- (f) All rain gutter and downspout discharge from the side and the rear of the building must be diverted towards the rear lot line. At no time shall any downspout tile system be brought any closer than fifteen feet of any side or rear property line.
- (g) Upon the approval of the building grades by the ACC, the applicant shall file the approved grades with the Town at the time of the building permit application review and approval prior to commencing any work.
- (h) Any excess fill from excavations shall be hauled, at the Lot Owner's expense, to a location within the Property or adjacent lands specified by the Developer and shall not be removed from the Property without the permission of the Developer.

3.8 Completion.

All construction of dwellings and other incidental structures shall be completed within one (1) year from date of commencement of construction unless the schedule prohibits the one year time line due to size or complication of design. This must first be approved by the Architectural Control Committee. Placement of driveways, construction of walkways, landscaping (except topsoil and grass) shall be completed within one (1) year from issuance of an occupancy permit from the Town .

DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, AND EASEMENTS CONTINUED

3.9 Easements/Dedications/Obligations.

- (a) **EASEMENTS-GENERAL.** Certain Easements affecting the Property are recorded on the final plat for Heritage Estates Subdivision in the office of the Register of Deeds of Kenosha County, Wisconsin. Each Lot shall be subject to any easement, dedication, restrictive covenant, or any other restriction granted (and/or retained) by the Developer on such final plat or hereafter to be granted (and/or retained) by the Developer or its successors and assigns to the Town, or the Heritage Estates Subdivision Property Owners' Association, or public or semi-public utility companies, for the erection, construction and maintenance of all poles, wires, pipes and conduits for the transmission of electricity, telephone, CATV and for other purposes, and for sewers, storm water drains, gas mains, water pipes and mains, and similar services, for performing any public or quasi-public utility function or for any other purpose that Developer or its successors and assigns may deem fit and proper for the improvement and benefit of the Property and for any other purpose as set forth in dedications and restrictive covenants on the final plat. The Owner of any Lot on which such easement area(s) are located may use such areas, together with the area between the roadway and their lot, for grass, plantings, driveways and other such uses as are described on the final plat and shall otherwise care for and maintain such area provided such uses shall not interfere with the improvements, their uses and purposes, and the uses and purposes of the Town; nor shall any improvements be placed within such areas without the prior written consent of the Developer, Town and/or any other party having an interest in the respective easement areas.
- (b) **SETBACKS.** The minimum front or street setback, shore yard setback, side yard setback, rear yard setback, wetland yard setback and on other such areas ("Setback Areas") are and shall be reserved for the use of nonexclusive easements for utilities service, in whole or in part, the Property or any Lot or Outlot located therein. By accepting title to a Lot and if not delineated on a final plat, each Owner hereby agrees that such Setback Areas may be subjected to easements for utility lines for electricity, sewer, water, gas, telephone, cable television, or other similar utilities. Within fifteen (15) days of written request therefore by the Developer, or after creation of the Association as provided herein, each Owner, if necessary and if not previously obtained, shall grant specific easements (and cause their lenders to agree to a non-disturbance of such easements) upon such terms as may reasonable be requested. No structures or other improvements may be constructed in the Setback Areas except landscaping in accordance with approved landscaping plans or as otherwise specifically permitted by the ACC and subject to any additional restrictions as set forth in the final plat.

DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, AND EASEMENTS *CONTINUED*

- (c) **ENTRY MONUMENT.** Entry monument, including related landscaping elements and lighting, all of which shall be collectively referred to as "Entry Monument" may be located on Outlot 1. Easements coextensive with the areas shown on the final plat as Dedicated Landscaping, Lighting and Signage Easements located within such Lots have been dedicated, given, granted and conveyed by the Developer to the Association for the purposes of placing, construction, installing and maintaining Entry Monument all in accordance with the Town approved plans and for related ingress and egress. The Developer, its successors, assigns and successors in title thereof shall be relieved of any maintenance obligations with respect to such areas only to the extent that the Association performs the required maintenance functions to the satisfaction of the Town. The Town shall have no maintenance obligations with respect to the above, mentioned areas. The Entry Monument structure and its' related landscaping elements shall remain the property of the Association.
- (d) **DEDICATIONS, EASEMENTS AND COVENANTS FOR STORMWATER RETENTION AREAS AND ADJACENT AREAS.** The fee interest in the areas shown on the final plat as Outlots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 have been dedicated, given, granted and conveyed by the Developer to the Association. These Outlots are subject to the easements, dedications and to the restrictive covenants imposed by the final plat. Notwithstanding such easements and dedications, the Town shall have no obligation to exercise its rights with respect to the maintenance for the aforementioned Outlots. The Association shall be responsible for completing all related construction, installation, necessary repairs, alteration, landscaping and all required maintenance to these Outlots. No filling or other activity or condition detrimental to their function as stormwater drainage facilities shall occur or exist within such Outlot or on the surrounding lands without the written approval of the Developer and the Town. Association shall be responsible for all maintenance of detention and retention ponds, which shall commence one year after recording of final plat. The routine maintenance shall include inspections of ponds, drainage swales, piping, inlets and outlets, mowing of slopes, debris removal, litter removal, erosion control, nuisance control, aeration control of ponds including purchase of aeration fountains and electric service. Non-routine maintenance shall consist of structural repairs and replacement, sediment removal, and stabilization of soils shall also be paid for by the Association. From time to time at the Town's discretion, the Town shall have the right to inspect such areas. The obligations contained within this section and as imposed by the final plat shall run with the land, shall be binding upon the Developer, its successors, assigns and successors in title in their capacity as Owners and shall benefit and be enforceable by the Town, the Developer and the Association. The Developer, its successors, assigns, and successors in title thereof shall be relieved of any preservation, protection, or maintenance obligations they may have as Owners only to the extent that the Association performs the required

DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, AND EASEMENTS CONTINUED

preservation, protection and maintenance functions to the satisfaction of the Town. The Association and its Members shall be bound by the aforementioned covenants and such similar covenants as are contained in the final plat forever.

- (e) **RESTRICTED WETLAND PRESERVATION.** The area designated as Wetland Preservation Area on the final plat in parts of Outlots 2, 3, 4, 5, and 6 shall be protected and maintained in its existing wetland state and no filling, dredging, or other activity or condition shall occur within such areas or on the surrounding land adjacent to such areas which is detrimental to such areas without the written approval of the Town and other governmental bodies having jurisdiction over such areas. Such areas are subject to an easement which has been dedicated to the Association for wetland conservancy and maintenance purposes and related ingress and egress; however, the Town shall have no obligation to exercise its rights with respect to such areas. The obligations contained within this section and as imposed by the final plat shall run with the land, shall be binding upon the Developer, its successors, assigns and successors in title in their capacity as Owners of any of the Lots or portion thereof and shall benefit and be enforceable by the Town and the Association. The Developer, its successors, assigns and successors in title thereof shall be relieved of any protection or maintenance obligations they may have as Owners only to the extent that the Association performs the required protection and maintenance functions to the satisfaction of the Town. The Association and its Members shall be bound by the aforementioned covenants and such similar covenants as are contained in the final plat forever.

3.10 Zoning Laws, Etc.

In addition to the provisions contained within this Declaration, all Lots and improvements thereon shall be subject to Town ordinances and applicable state and federal laws, as may be amended from time to time (hereinafter collectively referred to as "Laws"). No Lot shall be further divided, adjusted, or combined without the approval of the Town except Outlot 5 which, by an agreement between the Town and the Developer, that this PR-1 zoned area may be divided into three R-2 lots with the balance of Outlot 5 to remain open green space area for the enjoyment of Property Owners. Developer has agreed to donate a sum of money to be used in their Common Park Fund structure. This donation shall be at the option of Developer. The requirements under Town ordinances are not stated herein and, therefore, it shall be the sole responsibility of every Owner to understand and insure compliance with Town ordinances as the same may be amended from time to time. In the event of a conflict between the provisions of this Declaration and the Town ordinances and the Town ordinance is more strict than the provision contained herein, the Town ordinance shall control. Failure to mention a requirement, with respect to any Lot or other necessary approval in this Declaration, shall not imply that no such requirement exists with the Town and shall not constitute a waiver of such Town requirement and/or approval.

DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, AND EASEMENTS CONTINUED

3.11 Landscape Requirements.

(a) All landscape plans are subject to the approval of the ACC and shall be submitted in three (3) copies for approval no later than one hundred twenty (120) days after the dwelling approval from the Architectural Control Committee. All plans shall conform with the Landscape Standards. Each lot shall be required to plant a minimum of three (3) trees of 2 ½ " caliber on property. Two (2) of the trees must be in front yard and one (1) in rear yard. Each lot shall be required to have no less than twenty (20) shrubs. Such landscape plan shall include driveway, deck, patio, walkways, lawn, and plantings such that a pleasing park-like appearance shall ultimately be accomplished on the Property and a uniform line of planting is avoided. All plans shall detail out the size and species of plantings and include hardscape materials to be used. Landscape planting for any dwelling as approved by the ACC shall be completed within one (1) year from the date of issuance of an occupancy permit by the Town, except as set forth herein, and shall be properly maintained thereafter. In the event the landscaping is not maintained properly, in the opinion of the ACC, upon notification, the Owner of the Lot shall take adequate measures to properly maintain the landscaping. Refusal to comply with the maintenance requirement shall be considered a violation of Article III, Section 3.11 of this Declaration and shall be subject to penalties as provided in Article VII, Section 7.3. Any alterations to the approved landscape plan for a Lot shall be subject to the approval of the ACC. No trees, landscaping, or other planting existing on a Lot, except those in the location of the proposed dwelling, patio, walks and driveways, shall be altered or removed without prior written approval of the ACC.

(b) The Developer shall install parkway trees in the public road right-of-ways and warranty said trees for a period of (1) year from the date of planting provided the Owner of the Lot in which the trees adjoin takes reasonable precautions to maintain, foster and promote its growth; should a tree die within the warranty period and it is determined by the Developer that the tree was harmed due to construction activity, grading, damage, lightning, wind, negligence or neglect, the warranty is void and the Owner shall be responsible for replacement upon expiration of the warranty. Owner is required to maintain the trees that adjoin the Lot; should a tree(s) die, the Owner shall promptly replace the tree(s) with a similar species, minimum of 2 ½" in diameter at the base at the same approximate location.

3.12 Nuisances, Etc.

No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be or may become a nuisance to the neighborhood.

DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, AND EASEMENTS CONTINUED

- (a) Trash, garbage, or other wastes shall not be kept except in sanitary containers and all such materials or other equipment for disposal of same shall be properly screened from public view. Outside incinerators are not permitted. Trash shall not be placed curbside earlier than the morning of the scheduled day of collection.
- (b) No vehicle, truck, trailer, tent, shack, garage, barn, or other outbuilding or living quarters of a temporary character shall be permitted on any Lot at any time except as provided for within this Declaration.
- (c) No external antennae, including satellite dishes, excepting satellite dishes of not greater than eighteen (18) inches in diameter, television antenna or radio towers of any type for any purpose, shall be permitted on any Lot at any time without the prior written approval of the Architectural Control Committee.
- (d) Basketball goals shall be permanently direct-buried within 3ft. of the driveway. No goals shall be installed on any portion of the main dwelling or garage structures nor shall any portable goals be permitted. Support poles shall be black and the backboards shall be transparent (plexi-glass or plastic). The use of such goals shall be limited to 8:00 a.m. to 10:00 p.m.
- (e) Solar panels and collecting equipment are prohibited on any Lot.
- (f) The installation, erection and use of clotheslines and similar devices and the placement or drying of clothing, linens, rugs or other items are prohibited outside the dwelling on any Lot.
- (g) No person shall kindle, start, maintain or conduct outdoor burning or open fires, including but not limited to, the burning of trash, paper, cardboard, leaves or items that emit noxious or hazardous smoke as determined by the ACC, except a fire for outdoor cooking or recreation. The fire for cooking or recreation shall be in a grill, fireplace or other equipment specifically designed for outdoor residential use. Paper or cardboard may be used as a starting device but not as the primary component to burn. Yard waste and leaves in small quantities are permitted to burn provided the receptacle is designed for such.

3.13 Animals.

No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats, or other small household pets (such as canaries or parakeets) or as otherwise approved by the ACC may be kept in a manner which will not disturb the type and quality of life and the environment of the Property. No animals shall be kept, bred, or maintained for any commercial purposes. Dog runs are prohibited. Dog houses or shelters shall be subject to ACC approval. No dogs are permitted to remain outside overnight.

DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, AND EASEMENTS CONTINUED

3.14 Mailboxes.

At the closing of a Lot, Buyer shall purchase mailbox for that lot from the Developer. The Developer shall install mailbox at time of completion of home at request of Buyer. Buyer shall thereafter maintain mailbox, subject to Association Rules.

3.15 Garages, Parking and Concrete Driveway Approaches.

- (a) Each Lot shall have a private, enclosed side-loaded garage(s) having not less than 576 square feet total for onsite storage of not less than two (2) automobiles for each one (1) family dwelling built upon such Lot and shall be connected to the street by a properly surfaced concrete or brick driveway (such driveway shall be installed and completed within one (1) year from the date of issuance of any occupancy permit) The use of asphalt is prohibited. In addition to attached garages, a 660 square foot detached garage may be designed and constructed of the same building materials and architectural style of the main dwelling and shall be located on the Lot to be cohesive with the attached garage and/or the main dwelling.
- (b) Attached garages on lots 3, 4, 11, 20, 41, and 42 may be front loading but garage door(s) facing the front Lot line shall not measure greater than 25% of the front elevation of the dwelling and garage together as measured by the respective foundations.
- (c) There shall be no outside parking of boats, snowmobiles, buses, trailers, recreational vehicles, construction equipment, or vehicles bearing any sort of advertisement of any type, vehicles greater than 8' in height, vehicles with a gross vehicle weight rating exceeding 12,000 lbs., any vehicle not in regular use or not registered with the Department of Motor Vehicles; such personal property shall be stored in garages or off-site.
- (d) Driveways. To minimize dust and to enhance the appearance of the Subdivision, the driveway or driveways shall, within one (1) year after issuance of the occupancy permit for a building site, be surfaced with concrete or brick pavers. The Architectural Control Committee may ask for the specifications for the location and surfacing of the driveways and walkways. Approaches from curb, and including sidewalk, shall be concrete and installed prior to occupancy. Owner shall construct approach and sidewalk section per Town of Salem standards. Any and all inspections shall be the responsibility of Owner, and the Owner shall bear the cost of such. It shall be the responsibility of Owner to meet all required elevations, pitches, and control joints set forth by the accepted engineered plan for site development.

DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, AND EASEMENTS CONTINUED

3.16 Design minimum Standards for Buildings.

- (a) FOUNDATIONS. All exposed foundations shall not exceed twelve (12) inches. If top of foundation exceeds more than twelve (12) inches above approved yard grade at the building structure, it must then be treated with an approved exterior finish to cover the excess of foundation. All plans must show detail on how this is to be constructed. No vinyl or aluminum skirting covering the foundation shall be permitted. Plans shall designate at what points this is to occur. No cantilevers will be allowed off the first floor foundation. In other words, all occupied parts of the home shall have a foundation.
- (b) BRICK. Where masonry is used on exterior walls, it shall terminate only at inside corners. This shall also apply to exterior panels of other materials such as vertical siding. All masonry shall return around outside corners to the other face of the home minimum one (1) foot, six (6) inches. No utility-size bricks shall be used.
- (c) EXTERIOR FINISHES. All homes shall be constructed of natural materials which shall include wood, stone, brick, fiber cement sidings, EFIS, and stucco. No vinyl products shall be permitted except shutters, and decorative accent pieces. No aluminum shall be used except for gutters, downspouts, aluminum clad windows, soffit, storm doors, and overhead doors. All windows shall be of wood frame construction and may have a pre-finished aluminum cladding from the manufacturer. No all-vinyl, aluminum, or fiberglass windows shall be permitted. Fiberglass clad windows may be considered by the ACC.
- (d) ROOFING MATERIAL AND CONSTRUCTION. All roofing shall be dimensional-style shingles with at least a thirty (30) year warranty. Other approved roofing products shall be tile, standing seam metals, slate, or cedar shake. All building plans shall state what kind of material will be used. All dwellings shall have roof designs with 8/12 pitch or greater, or as approved by the Architectural Control Committee.
- (e) CHIMNEYS / FIREPLACES. All chimneys shall be of a masonry product, and shall have a minimum of thirty-two (32) square feet of surface area. Height of the chimney shall comply with State building codes which apply to all fireplaces of masonry. Thin or light-weight stone may be used, but first must be approved by the Architectural Control Committee prior to approval of plan. No siding or wood trim shall be used as an exterior finish for chimney chases. Direct-vent fireplaces may be used, but venting must be flush on wall or extend beyond roof line with a masonry chimney. At no time shall a projection of building be used to contain a fireplace, unless it is treated in a way that it is not obvious that the projection is being used as a fireplace. The projection must be treated with 45° corners, and cannot be flush or closer than twelve (12) inches from the fascia board line. All chimney tops must be approved by the

DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, AND EASEMENTS CONTINUED

Architectural Control Committee. No "b venting" for water heaters or fireplaces shall be used unless contained inside a masonry chimney. No vent cap from any appliance, fireplace or water heater may be exposed from the top of such chimney and must be contained with a decorative chimney cap.

- (f) **WINDOW TREATMENTS.** Window treatments which face the exterior such as grilles and trim work shall be consistent on all sides of home, except for specialty windows and windows that are in a different field of exterior finish. Such as a window in a brick veneer area does not have to conform to a window in a different field of siding or veneer except for grilles. Historic-style homes window treatments will be subject to Architectural Control Committee approval.
- (g) **UTILITIES.** All electric light, telephone lines, television services lines, or any other cable or conduit running from utility service lines or transformers to any residence shall be underground.
- (h) **FASCIA.** All fascia must be a minimum of 8" (eight inches) in height of nominal dimension.
- (i) **WALL HEIGHTS.** All first floor walls shall have a finished dimension of at least 9'-0" from first floor deck [flooring] to the top of the top plate, and all second floor walls shall have a finished dimension of at least 8'-0" from second floor deck (flooring) to the top of the top plate.

3.17 Fences.

Only fences decorative in nature, such as wrought iron style, and standing no more than six (6) feet in height will be permitted. Plans including size, shape, and location of such fences must be approved by the ACC prior to installation. Stockade, chain-link and other such privacy or containment fences will not be permitted.

No fences shall be permitted in the Heritage Estates Subdivision except for landscaping aesthetics and small courtyards. Courtyards must follow the theme architecture of the main house structure and shall only be permitted at the rear of the house and be attached to the structure. These courtyards, except in a swimming pool area application, may not exceed the square footage of 1,000 square feet. Courtyard containment material permitted shall be of stone, brick, wrought iron, and / or aluminum. Chain link, lattice, plastics, cables, ropes, or wooden materials will not be allowed in the construction of the courtyard. No fencing design or materials at any point be used as a privacy screen of the area contained. No stone or masonry hedge walls will be permitted for containment. This courtyard area will not be used for the purposes of containing, housing, or restricting any type of pet or animal for a period of no more than six (6) hours at one time. At no time shall any type of pet or animal be left unattended outside from sunset to sunrise (i.e. dusk to dawn)

DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, AND EASEMENTS CONTINUED

The word containment is classified as having the capacity to hold, restrict or restrain an area of one entering or exiting a given area.

3.18 Pools.

Above ground swimming pools are prohibited on any Lot. In ground swimming pools are permitted only with ACC prior written approval, which may be withheld if the proposed pool poses an adverse effect to existing trees or topography. The construction and installation of an ACC permitted swimming pool shall be governed by the ordinances in effect for the Town at the time a permit is requested. All pools require fences in the Town and are subject to Article III, Section 3.17.

3.19 Maintenance Requirements for Detention / Retention Ponds.

I. ROUTINE MAINTENANCE.

- A. Inspections. Inspections of the ponds shall be a minimum of twice per year. Once in the Spring, once in the Fall. The inspection should be completed, preferably, during wet weather conditions to determine if the ponds are functioning properly.
 1. Inspection priorities shall include:
 - a. Visual observation of the embankments for subsidence, erosion, cracking, and woody plant material growth.
 - b. Visual observation of the conditions of the emergency spillway.
 - c. Visual observation of accumulation of sediment and debris in the barrels of the outlet structure, the outlet structure trash grates and stepped weir structures.
 - d. Visual obstruction of the adequacy of upstream and downstream channel erosion protection measures.
 - e. Visual observation and confirmation of any modification of the contributory watershed.
 - f. Visual observation of the pond and channel side slope integrity.
 - g. Visual observation of grouted rip rap emergency spillways and scour pad for grout failure and overall structure integrity.
 2. As-built plans shall be used for reference during the inspection procedures.
- B. Mowing.
 1. The side slopes and embankments shall be mowed at least two times per year to prevent the growth of woody plants and control weed growth.

DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, AND EASEMENTS CONTINUED

2. Additional mowing to further control the growth of weeds may be completed at the discretion of the owner.
 - C. Debris and Litter Removal.
 1. Debris and litter shall be removed from pond area.
 2. Debris and litter shall be removed from the primary and emergency outlet structures to prevent clogging.
 - D. Erosion Control.
 1. If the pond side slopes, emergency spillway and embankment suffer from slumping and/or erosion, correction measures such as re-grading, rip rap replacement, and re-vegetation may be required. The owner shall complete the appropriate corrective measure to repair the problem.
 - E. Nuisance Control.
 1. Biological control of nuisance algae and mosquitoes, utilizing flat head minnows, should be considered in lieu of chemical controls.
 2. Mechanical control of these nuisances may be considered as another option as opposed to chemical or biological control.
- II. NON-ROUTINE MAINTENANCE.
- A. Structural Repairs and Replacement.
 1. Eventually, the primary outlets for the ponds will deteriorate and will need replacement. The primary outlet structures were built with reinforced concrete products. It is anticipated that the life of those structures should exceed seventy-five (75) years. Routine maintenance and inspections will ensure longevity of structures.
 - B. Sediment Removal.
 1. A sediment clean-out cycle is recommended every ten (10) to twenty (20) years. The storm water management plan recommends sediment removal from the permanent pool area once the permanent pool depth is less than 3.5 feet.
 2. Bottom surveys of the sediment depth shall be completed on a five (5)-year basis. If the sediment survey reveals an accelerated deposition rate, upstream conditions should be inspected for erosion control and sedimentation problems. Control of upstream erosion and sediment transport will decrease the rate of sediment deposition and thus preclude frequent, costly dredging and disposal operations.
- III. ROUTINE MAINTENANCE OF GRASS SWALES

DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, AND EASEMENTS CONTINUED

- A. Swale maintenance shall be required to keep the grass cover dense and vigorous.
- B. Mowing shall be done on a regular basis throughout the growing season to maintain a maximum four (4) inch grass length.
- C. Mowing shall be done, as necessary, to control undesirable woody plant material.
- D. The grass swales shall be inspected once in the Spring and once in the Fall. Additionally, the swales should be inspected after major rainfall events.
- E. The grass swales shall be re-seeded and repaired if bare spots or erosion has occurred.
- F. Application of fertilizer and pesticides shall be used in moderation and only applied if absolutely necessary to maintain a dense stand of grass or to control nuisance insects.

3.20 Maintenance of Landscape Buffers, Islands and, Entrance Median Island.

Maintenance of the landscape islands, shared easements, and Highway 83 landscape buffer, retaining wall and all outlots shall be the responsibility of the Property Owners Association.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

4.1 Membership.

Each Owner shall be a Member of the Association. Such Membership shall be appurtenant to and may not be separated from ownership of a Lot. Each lot owner shall contribute the sum \$400.00 to the Association at the time of closing the initial purchase of each lot from the Developer to fund the activities of the Association. The Developer and its' affiliated building companies are exempt from this initial fee and shall pass this fee on to the buyer of any new home constructed by Developer or its' affiliated building companies. Thereafter, an annual assessment will be levied and collected against all lot Owners according to Article VI, Section 6.2. Every Member of the Association shall have one (1) vote in the Association for each Lot owned by the Member. When more than one (1) person or entity hold an interest in a Lot, the vote shall be exercised as they themselves shall determine. So long as the Developer, or its successors and assigns shall own one (1) or more Lots, the authority and functions of the Board of Directors and the Architectural Control Committee shall remain in and be exercised solely by the Developer or its successors and assigns. When the Developer, or its successors and assigns, no longer owns one (1) or more Lots, or at the end of fifteen (15) years from the date of sale of the first Lot to be sold

DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, AND EASEMENTS CONTINUED

by the Developer, whichever occurs first, the Developer shall promptly select three (3) Owners to serve on the Board of Directors of the Association until the next annual meeting of Members or until their successors have been duly elected. The Developer may, after three years from the date the first lot is sold, at his option, elect to turn the control of the Association over to the Property Owners if 75% of the lots are sold. The Board of Directors, thereafter consisting of three (3) members, shall be elected by the Members at the annual meeting of Members. Members of such elected Board of Directors shall serve for a staggered three year term or until their successors have been duly elected. The members of the Board of Directors shall not be entitled to any compensation for their services as such members. Any Member who is delinquent in the payment of charges, assessments and special assessments charged to or levied against his Lot shall not be entitled to vote until all of such charges and assessments have been paid. Members shall vote in person or by proxy executed in writing by the Member. No proxy shall be valid after six (6) months from the date of its execution.

ARTICLE V

PROPERTY RIGHTS IN THE COMMON AREAS

5.1 Owner's Easements of Enjoyment.

Subject to the provisions herein, every Owner shall have a right and easement of benefit and/or enjoyment in any Common Areas acquired by the Association which shall be appurtenant to and shall pass with the title to every Lot. Outlot 5 shall remain in the ownership of the Developer until such time Developer may, at his option, dedicate a portion or all of the lot to the Association to be used as common green space land. The title to the part or all shall be conveyed as stated in Article V, Section 5.2.

5.2 Title to Outlots.

Title to the Outlots 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, and 13 shall be conveyed to the Association by quit claim deed from the Developer. Members shall have the rights and obligations imposed by this Declaration with respect to such Common Areas. The Entry Monuments shall be located on easements for the benefit of the Association and the Entry Monuments shall be maintained, operated and administered by the Association.

5.3 Extent of Owner's Easements.

The rights and easements of benefit and/or enjoyment created hereby shall be subject to the following:

- (a) The right of the Association, but subject to the prior written approval of the Town to dedicate or transfer all or any part of any Common Areas to any

DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, AND EASEMENTS CONTINUED

public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Board of Directors; and

- (b) The right of the Association, but subject to prior written approval of the Town, to mortgage any or all of the Common Areas and facilities constructed on the Common Areas for the purposes of construction or maintaining improvements or repair to Association land or facilities pursuant to approval of the Board of Directors.

5.4 Damage or Destruction of Common Areas by Owner.

In the event any Common Area or any portion of the water, storm sewer, drainage, or sanitary sewer systems servicing the Property is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, or members of his family, such Owner does hereby authorize the Association or the Town to repair said damaged areas; the Association or the Town shall repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association at the discretion of the Association but subject to Town approval. If the Town exercises its rights to do so, it will assess the beneficial owners. The amount necessary for such repairs, together with ten percent (10%) for overhead, shall be a special assessment upon the Lot of said Owner and shall accrue interest at the annual rate of eighteen percent (18%) unless paid in full within fifteen (15) days after notice to pay. Any such damage not caused by an Owner shall be the responsibility of the Association.

5.5 Right to Enter and Maintain.

The Developer and the Association and the respective easement grantees are hereby granted an easement and, consequently, shall have the right to enter upon any Outlot and/or Lot, at reasonable notice to the Owner, for the purpose of repairing, maintaining, renewing, or reconstructing any utilities, facilities, retention areas, drainage systems, sewer and water systems, impoundments or other improvements which benefit other Outlots, Lots and /or Heritage Estates Subdivision as a whole, in addition to benefitting such Lot. If such Lot contains public utilities or facilities having an area-wide benefit which is maintained by the Town, the Town, following prior written notification to the Developer may, if necessary, maintain such facilities in good working order and appearance, enter upon any Lot in order to repair, renew, reconstruct, or maintain such facilities or utilities and may assess the cost, if such cost is not traditionally assumed by the Town and/or prior to acceptance of such public improvements, to the Owners. No prior written notification shall be required for emergency repairs.

5.6 Ponds.

Storm water retention facilities located within Outlot 1 have been designed as storm water management, fire suppression water storage area and water quality

DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, AND EASEMENTS CONTINUED

devices. It is not intended as a recreational feature. Swimming, fishing, boating, ice skating and any other activity other than described herein is prohibited.

5.7 Disclaimer.

The Developer shall convey the above mentioned Outlots to the Association "as is" and without warranty, express or implied, of condition, quality of construction, fitness for a particular use or otherwise. The Association shall be responsible for obtaining adequate liability insurance for the Common Areas. The Developer shall have no liability for damage or injury to any persons or property arising from the existence or use of the Common Areas. The Association shall indemnify and hold the Developer harmless against any and all claims relating to the Common Areas.

ARTICLE VI

COVENANTS FOR ASSESSMENTS

6.1 Creation of the Lien and Personal Obligation of Assessments.

The Developer hereby covenants and each Owner of any Lot by acceptance of the deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant, assume and agree to pay to the Association (1) annual general assessments or charges; (2) special assessments for capital improvements and repairs to the Common Areas; (3) special assessments for exterior maintenance to Lots and repairs to Common Areas; and (4) special assessments as provided in Article V, Section 5.4 and Article VII, Section 7.3. All such assessments, together with interest thereon and costs of collection thereof, including attorney's fees, shall be (a) a charge on the land and a continuing lien upon the Lot against which such assessment is made and (b) the personal obligation of the person who was the Owner of such property at the time of the assessment. Notwithstanding any other provision in this Declaration to the contrary, the Developer shall be liable to the Association for the above mentioned assessments to the extent of seven percent (7%) of the total assessments due, provided for in this Article VI of the Declaration, for every Lot owned by the Developer in Heritage Estates Subdivision. Every subsequent Owner, who has purchased a Lot from the Developer or any other Owner, shall be subject to the entire amount of the assessment due and shall pay the same or prorated amount in the year of closing to the Association. In the event the assessments collected under Article VI are insufficient to cover the cost of performing the obligations as are contained within this Declaration and as imposed by the final plat, and the Developer continues to own Lots on which it pays only seven percent (7%) of the assessments as set forth under this Article VI, the Developer shall be responsible for up to one hundred percent (100%) of the assessments on such Lots to the extent necessary to cover the deficiency. Any further deficiency may be assessed against all of the Owners in the form of a special assessment under this Article VI.

DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, AND EASEMENTS CONTINUED

6.2 Annual General Assessment.

- (a) **PURPOSE OF ASSESSMENT.** The annual general assessment levied by the Association each year shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and, in particular, for the improvement, construction, maintenance, policing, preservation and operation of the Common Areas, in accordance with the requirements set forth herein and those obligations and restrictive covenants set forth on the final plat including, but not limited to, the cost of labor, equipment, materials, insurance, management and supervision thereof and fees paid for auditing the books of the Association and for necessary legal and accounting services to the Board of Directors.
- (b) **DETERMINATION OF THE ASSESSMENT.** The Board of Directors shall prepare and annually submit to the Members a budget of expenses for the ensuing year for payment of all costs contemplated within the purposes of the annual general assessment described in Article VI, Section 6.2(a). Upon adoption and approval of the annual budget by a majority of the Members, the Board shall determine the assessment by dividing the amount of the budget among all fully improved Lots equally. The rate of assessment shall not be limited by the amounts set forth in Wisconsin Statutes, § 779.70.
- (c) **METHOD OF ASSESSMENT.** The assessment for each Lot shall be levied at the same time once in each year. The Board shall declare the assessments so levied due and payable at any time after thirty (30) days from the date of such levy (with an option for payment in monthly installments if approved by the Board), and the Secretary or other officer shall notify the Owner of every Lot so assessed of the action taken by the Board, the amount of the assessment of each Lot owned by such Owner and the date such assessment becomes due and payable. Such notice shall be mailed to the Owner at last known post office address by United States mail, postage prepaid.
- (d) **DATE COMMENCEMENT OF ANNUAL GENERAL ASSESSMENTS.** Annual general assessments shall commence on the date as determined by the developer in its sole discretion.

6.3 Special Assessment for Capital Improvement and Repairs to Drainage System.

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

DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, AND EASEMENTS CONTINUED

assessments may also be levied to defray the costs of replacing or repairing all pipes, drains, grates and other appurtenances (not otherwise owned by the Town of Salem) located within any Storm Water Drainage, Access and Maintenance Easement area.

6.4 Special Assessment for Exterior maintenance to Lots.

- (a) **EXTERIOR MAINTENANCE TO LOTS.** In addition to the maintenance upon the Common areas described in Article VI, Section 6.2, the Association may, at the request of the Owner of any Lot or in the event the Owner of any Lot fails to maintain the exterior of any buildings or improvements on the Lot or the Lot itself in reasonable condition, provide exterior maintenance upon each Lot as follows: (i) paint, repair, replace and care for roofs, gutters, down spouts, exterior improvement; and (ii) lawn cutting, shrub and tree trimming, driveway and walk shoveling and window cleaning. The Association, its agents, contractors and subcontractors shall have all necessary rights of ingress and egress to and from such Lot, building, or improvement with full right to do whatever may be necessary to perform any such maintenance, repair, or replacement.
- (b) **ASSESSMENT OF COST.** The cost of such exterior maintenance, together with ten percent (10%) for overhead, shall be assessed against the Lot upon which such maintenance is performed and, if not paid within thirty (30) days of written notice of the amount of such assessment, shall accrue interest at the annual rate of eighteen percent (18%). Such special assessment shall constitute a lien and obligation of the Owner and shall become due and payable in all respects as herein provided.

6.5 Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein shall be subordinated to the lien of any first mortgage on the lot.

6.6 Exempt Property.

The following property subject to this Declaration shall be exempt from the assessments, charges and liens created herein: (i) all properties not within any Lot to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (ii) all Common Areas; and (iii) all properties exempted from taxation by state or local governments upon the terms and to the extent of such legal exemption. Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from the assessments, charges, or liens.

6.7 Joint and Several Liability of Grantor and Grantee.

Upon any sale, transfer, or conveyance, the grantee of a Lot shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor as

DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, AND EASEMENTS CONTINUED

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

6.8 Interest on Unpaid Assessment.

Any assessment under this Article VI which is not paid when due shall thereafter, until paid in full, bear interest at the rate of eighteen percent (18%) per annum. In addition to the interest charges, a late charge of up to Fifty Dollars (\$50.00) per day may be imposed by the Board of Directors against an Owner if any balance in common expenses remains unpaid more than thirty (30) days after payment is due.

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

No Owner may waive or otherwise escape liability for assessments by non-use of the Common Areas or abandonment of his Lot. If the Association has provided for collection of assessments in installments, upon default on the payment of any one or more installments, the Association may accelerate payment and declare the entire balance of said assessment due and payable in full. If the assessment levied against any Lot remains unpaid for a period of sixty (60) days from the date of levy, then the Board may, in its discretion, file a claim for maintenance lien against such Lot in the office of the Clerk of Circuit Court for Kenosha County within six (6) months from the date of levy. Such claim for lien shall contain a reference to the resolution authorizing such levy and date thereof, the name of the claimant or assignee, the name of the person against whom the assessment is levied, a description of the Lot and a statement of the amount claimed and shall otherwise comply in form with the provisions of Wisconsin Statute § 779.70. Foreclosure of such lien shall be in the manner provided for foreclosure of maintenance liens in said statute or any successor statute.

6.10 Reduction of Assessments.

Notwithstanding anything contained herein to the contrary, the Developer and/or Association shall not have the power to discontinue the collection of assessments and charges or reduce such assessments or charges to a level which, in the opinion of the Town, would impair the ability of the Developer, Association, or the Owner to perform the functions as set forth herein and in the final plat. Any proposed elimination or material reduction in the assessments or charges against Owners shall meet with the approval of the Town .

DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, AND EASEMENTS CONTINUED

ARTICLE VII

ENFORCEMENT, TERMINATION, MODIFICATION

7.1 Right to Enforce.

This Declaration and the covenants contained herein and on the final plat are enforceable only by the Developer and/or the Association and/or the Town or such person or organization specifically designated by the Developer, in a document recorded in the office of the Kenosha County Register of Deeds, as its assignee for the purpose thereof.

7.2 Manner of Enforcement.

This Declaration and the covenants contained herein and on the final plat shall be enforceable by the Developer and its assigns and/or the Town in any manner provided by law or equity, including but not limited to one or more of the following:

- (a) Injunctive relief;
- (b) Action for specific performance;
- (c) Action for money damages as set forth in this Declaration; and
- (d) Performance of these covenants by the Developer and/or the Town on behalf of any party in default thereof for more than thirty (30) days, after receipt by such party of notice from the Developer or the Town describing such default. In such event, the defaulting Owner shall be liable to the Developer or the Town for the actual costs (plus ten percent [10%] for overhead) related to or in connection with performing these covenants.

7.3 Reimbursement.

Any amounts expended by the Developer and/or the Town in enforcing these covenants, including reasonable attorney fees, and any amounts expended in curing a default on behalf of any Owner or other party, shall constitute a lien against the subject real property until such amounts are reimbursed to the Developer and/or the Town, with such lien to be in the nature of a mortgage and enforceable pursuant to the procedures for foreclosure of a mortgage.

7.4 Failure to Enforce Not a Waiver.

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

7.5 Right to Enter.

The Developer and/or the Town shall have the right to enter upon any building site or other Lot within the premises for the purpose of ascertaining whether the

DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, AND EASEMENTS CONTINUED

Owner of said Lot is complying with these covenants and if the Developer and/or the Town so elects under Article VII, Section 7.2(d) for the purpose of performing obligations hereunder on behalf of a party in default hereof.

7.6 Town Authority.

In the event the obligations contained herein and as continued in the final plat are not performed to the satisfaction of the Town, the Town shall have the right, but not the obligation, to perform such function and may assess any charges incurred in the performance of such covenants against the Association and/or the Owners. Any amounts expended by the Town in enforcing these obligations, including reasonable attorney fees, and any amounts expended in curing a default on behalf of any Owner or other party, shall be paid by the Owner. In the event such amounts are not paid, the charges may be levied as a special assessment by the Town in Accordance with Wisconsin Statutes.

7.7 Dedications/Restrictive Covenants/Easements.

Each and every Owner of a Lot shall be subject to and bound by the easements, dedications and restrictive covenants as are set forth on the final plat.

7.8 Conflict and Failure to Mention.

In the event of a conflict between the provisions of this Declaration and the Town ordinance, and the Town ordinance is more strict than the provision contained herein, the Town ordinance shall control. Failure to mention a requirement, with respect to any Lot and single-family home to be built thereon, or other necessary approval in this Declaration shall not imply that no such requirement exists with the Town and shall not constitute a waiver of such Town requirement and/or approval. Each and every Owner shall be solely responsible to insure that the Town ordinance is adhered to and shall be subject to the appropriate Town approval process for construction of a single-family home on a lot.

ARTICLE VIII
GENERAL PROVISIONS

8.1 Term and Amendment.

Unless amended as herein provided, this Declaration shall run with the Property and be binding upon all persons claiming under the Developer and shall be for the benefit of and be enforceable solely by the Association for a period of fifty (50) years from the date this Declaration is recorded and shall automatically be extended for successive periods of fifty (50) years unless an instrument signed by the Owners of two-thirds (2/3) of the Lots has been recorded, agreeing to terminate this Declaration in whole or in part. For the first fifteen (15) years following the date this Declaration is recorded, this Declaration may be amended, subject to the Town's written approval, at any time by written declaration,

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executed in such manner as to be recordable, setting forth such annulment, waiver, change, modification, or amendment executed:

- (a) solely by the Developer until such time as Developer conveys all Lots to other Owners (other than by multiple sale of Lots to a successor developer), and thereafter
- (b) by owners of seventy-five percent (75%) of the Lots (such Owners and percentage to be determined as provided in Article IV), provided the written consent of the Developer or its successors and assigns is first obtained, so long as the Developer, or its successors and assigns shall own any lots. Subsequent to such fifteen (15) year period, this Declaration may be amended by written declaration executed by at least seventy-five percent (75%) of the Lots subject to this Declaration provided the prior written approval of the Town is obtained. Such written declaration shall become effective upon recording in the office of the Register of Deeds of Kenosha County, Wisconsin. All amendments shall be consistent with the general plan of development embodied in this Declaration.

8.2 Notices.

Any notice required to be sent to any Member or Owner under the provisions of the Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailings.

8.3 Enforcement.

To the extent that other specific remedies are not provided herein, upon the occurrence of a violation of the covenants, conditions and restrictions set forth in this Declaration, the Association shall give the Owner written notice of the violation and if such violation is not remedied within five (5) days after notice, or if a second occurrence of such violation shall occur within six (6) months of the original notice of such violation from the Association, the Association may levy a fine in the amount of Five Hundred Dollars (\$500.00) and an additional fine of One Hundred Dollars (\$100.00) for each day thereafter the violation continues. All fines levied by the Association shall constitute a special assessment and a lien on the Lot of the Owner who caused the violation and if a fine is not paid within fifteen (15) days after written notice of such fine, the amount due shall accrue interest at the rate of twelve percent (12%) annually. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or recover damages, and against the land to enforce any lien created by these covenants. Failure of the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, AND EASEMENTS CONTINUED

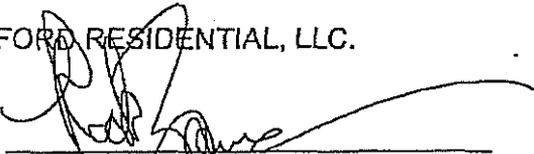
8.4 Severability.

Invalidation of any of the provisions of this Declaration, whether by court order or otherwise, shall in no way affect the validity of the remaining provisions which shall remain in full force and effect. Said invalid or illegal provision will be modified to reflect, as closely as possible, the original intent of the former invalid or illegal provision, but in such a manner as to make said provision valid and legal.

IN WITNESS WHEREOF, this instrument has been duly executed this 10th day of August, 2007.

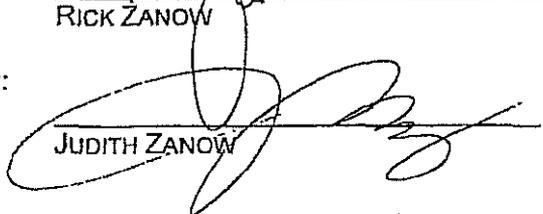
STAFFORD RESIDENTIAL, LLC.

By:



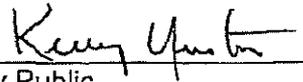
RICK ZANOW

By:



JUDITH ZANOW

Personally came before me this 10th day of August, 2007, the above named, to me known to be such person and member who executed the foregoing instrument and acknowledge that he executed the same as the sole member on behalf of the Developer, by its authority.



Notary Public,

KELLY HUSTON

1/25/09
Commission Expires



Document Number

FIRST AMENDMENT TO THE
DECLARATION OF COVENANTS, COVENANT
RESTRICTIONS & EASEMENTS FOR
HERITAGE ESTATES SUBDIVISION
Document Title



DOCUMENT
1692218

RECORDED
At Kenosha County, Kenosha WI 53140
JoEllyn N. Storz, Register of Deeds
January 10, 2013 12:25 PM
\$35.00
Pages 5

Recording Area

Name and Return Address

MARK BOURQUE
40 PRUDENTIAL
6040 39 AVE STE 4
KENOSHA WI 53142

SEE ATTACHED 5

Parcel Identification Number (PIN)

THIS PAGE IS PART OF THIS LEGAL DOCUMENT – DO NOT REMOVE.

This information must be completed by submitter: document title, name & return address, and PIN (if required). Other information such as the granting clause, legal description, etc., may be placed on this first page of the document or may be placed on additional pages of the document.

**FIRST AMENDMENT TO DECLARATION OF CONDITIONS, COVENANTS,
RESTRICTIONS AND EASEMENTS FOR HERITAGE ESTATES SUBDIVISION**

This First Amendment to the Declaration of Conditions, Covenants, Restrictions and Easements for Heritage Estates Subdivision, is made this 19TH day of November, 2012, pursuant to the Declaration of Conditions, Covenants, Restrictions and Easements for Heritage Estates Subdivision dated August 10, 2007 and recorded on September 6, 2007 in the Kenosha County Register of Deeds as document number 1533026.

1. The Statement of Declaration. The purpose of this Amendment is to permit the installation of a specific standard of vinyl and fiberglass windows placed upon residential buildings within the Heritage Estates Subdivision.

2. Amendment to Paragraph 3.16(c) of the Declaration of Conditions, Covenants, Restrictions and Easements for Heritage Estates Subdivision. Paragraph 3.16(c) of the Declaration of Conditions, Covenants, Restrictions and Easements for Heritage Estates Subdivision is hereby deleted in its entirety and restated as follows:

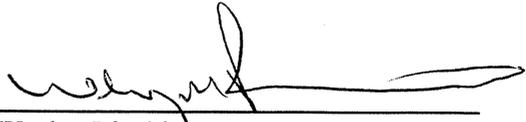
(c) EXTERIOR FINISHES. All homes shall be constructed of natural materials which shall include wood, stone, brick, fiber cement sidings, EFIS, and stucco. No vinyl products shall be permitted except shutters, and decorative accent pieces. No aluminum shall be used except for gutters, downspouts, aluminum clad windows, soffit, storm doors, and overhead doors. All windows shall be of wood frame construction and may have a pre-finished aluminum cladding from the manufacturer. Vinyl and fiberglass windows shall be permitted provided that they are The North American Fenestration Standard, ANSI/AAMA/WDMA 101/I.S. 2/NAFS – 02 and are either double hung, casement style or fixed windows. The Vinyl must be a solid color throughout. No painted vinyl shall be permitted.

3. Effective Date. The effective date for this Amendment shall be the date it is recorded with the Kenosha County Register of Deeds.

4. Miscellaneous. All terms not specifically defined herein have the same meanings as provided in the Declaration of Conditions, Covenants, Restrictions and Easements for Heritage Estates Subdivision dated August 10, 2007 and recorded on September 6, 2007 in the Kenosha County Register of Deeds as document number 1533026. Except as modified by this Amendment, the Declaration of Conditions, Covenants, Restrictions and Easements for Heritage Estates Subdivision dated August 10, 2007 and recorded on September 6, 2007 in the Kenosha County Register of Deeds as document number 1533026 remains in full force and effect and is hereby ratified and approved for all purposes.

IN WITNESS WHEREOF, this instrument is signed this 30TH day of November, 2012.

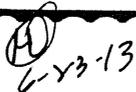
Burco Holdings, LLC
a subsidiary of Talmer Bank & Trust, f/k/a
First Banking Center

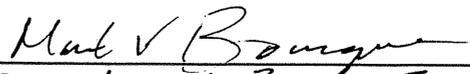
By: 
Wesley Ricchio
For Talmer Bank and Trust

STATE OF WISCONSIN)
) ss.
COUNTY OF KENOSHA)

Personally came before me this 30TH day of November, 2012, Wesley Ricchio for Talmer Bank and Trust, who acknowledged the foregoing document for the purposes recited therein on behalf of said company.

MARK S. BOURQUE
Notary Public
State of Wisconsin


6-23-13


Name: Mark S. Bourque
Notary Public, State of Wisconsin
My Commission 6-23-13

Town of Salem

By: Diann Tesar
By: Diann Tesar
Town of Salem Board Chairman

STATE OF WISCONSIN)
) ss.
COUNTY OF KENOSHA)

Personally came before me this 19th day of November, 2012, Diann Tesar, Town of Salem Board Chairman, for the Town of Salem, who acknowledged the foregoing document for the purposes recited therein on behalf of said company.

Cynthia R. Ernest
Name: Cynthia R. Ernest
Notary Public, State of Wisconsin
My Commission 3/10/2013

Town of Salem

By: Cindi Ernest
By: Cindi Ernest
Town of Salem Clerk

STATE OF WISCONSIN)
) ss.
COUNTY OF KENOSHA)

Personally came before me this 28th day of November, 2012, Cindi Ernest, Town of Salem Clerk, for the Town of Salem, who acknowledged the foregoing document for the purposes recited therein on behalf of said company.

Eileene Anderson
Name: EILEENE Anderson
Notary Public, State of Wisconsin
My Commission 3/10/13

EILEENE ANDERSON
NOTARY PUBLIC
STATE OF WISCONSIN
GA 3/10/13