

Doc No 2782432

1996-07-26 02:02 PM
Trans. Fee 0.00
Rec. Fee 54.00
Pages 23

**DECLARATION OF COVENANTS, RESTRICTIONS,
CONDITIONS AND EASEMENTS FOR LOTS 88-98
AND 194-204, AND OUTLOTS 11-12 OF THE
ASHLAWN ADDITION TO THE PLAT OF
SOUTHBRIDGE, VILLAGE OF WAUNAKEE, DANE
COUNTY, WISCONSIN**

Donald C. Tierney and Joanne K. Tierney (collectively the "Developer"), owners of the real estate in the Village of Waunakee, Dane County, Wisconsin, which has been platted as Lots 88-98 and 194-204, and Outlots 11-12 of the Ashlawn Addition to the Plat of Southbridge (the "Property"), hereby declare that all of the lots and outlots in the Property are subject to the following restrictions, covenants, conditions and easements, and that all of such lots and outlots are and shall be held, sold, occupied, conveyed and transferred subject to the covenants, restrictions, conditions and easements set forth herein:

Part of Parcel Nos. 57-0809-162-9002-1
57-0809-162-9100-2
57-0809-162-9542-8
57-0809-162-9722-0

ARTICLE 1

Definitions

For purposes of these Covenants, Restrictions, Conditions and Easements, the following terms shall be defined in the following manner:

1.1. "Developer" shall refer to Donald C. Tierney and Joanne K. Tierney, collectively, and their representatives, successors and assigns.

1.2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to a platted lot (exclusive of outlots) within the Property, except that as to any such 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. For purposes of Articles 3 and 5 hereof, where more than one person holds an ownership interest in any lot, the consent or agreement of a majority of the owners of any such lot shall be deemed to be the consent or agreement of the owner, of any such lot, and any such lot shall have only one vote on any matter provided for in Article

23/54

3 and 5 hereof and shall elect, by majority vote of such owner, only one member of any maintenance committee provided for herein.

1.3. "Property" shall mean and refer to the real estate described as Lots 88-98 and 194-204, and Outlots 11-12 of the Ashlawn Addition to the Plat of Southbridge, Village of Waunakee, Dane County, Wisconsin.

ARTICLE 2

Property Subject to This Declaration

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the Village of Waunakee, Dane County, Wisconsin, and shall be known as Lots 88-98 and 194-204, and Outlots 11-12 of the Ashlawn Addition to the Plat of Southbridge, Village of Waunakee, Dane County, Wisconsin.

ARTICLE 3

Architectural Control and Protective Covenants and Restrictions

3.1. For all buildings to be erected or placed on any lot subject to this Declaration, the plans, specifications, site, grading and landscaping plans for all such buildings must be submitted to the Developer or the Architectural Control Committee, whichever is then applicable, for written approval as to appearance, the quality of workmanship and materials, harmony of exterior design, including exterior colors, size, location with respect to topography and finish grade elevation, height of improvements, site layout, roof pitch, location of improvements and amount, quality and nature of landscaping, prior to commencement of any construction on any lot. All buildings erected on the Property shall have a minimum roof pitch of not less than 6/12 pitch, but a variance from this minimum may be granted by the Developer or the Architectural Control Committee, whichever is then applicable, in their discretion.

3.2. After the Developer and their representatives, successors and assigns, cease to have any title to any lot subject to this Declaration, the plans, specifications, site, grading and landscaping plans, and all other matters to be submitted to the Developer under these Covenants, Conditions, Restrictions and Easements, must be submitted to the Architectural Control Committee ("Committee") for approval in writing by a majority of the members of said Committee. The Committee shall consist of three persons, elected by the Owners of a majority of the lots (exclusive of outlots) within the Property.

The election of the Committee shall be held annually on the first Monday in May at 7:00 o'clock p.m. at a site selected by the Developer or the Committee. In the event of the failure of the Owners of a majority of the lots within the Property to elect a Committee in any year, the most recently elected members shall continue to serve until successors are duly elected.

3.3. For each building erected or placed on any lot subject to this Declaration, the prime contractor or builder to be hired for construction of such building shall be approved in writing by the Developer or the Committee, whichever is then applicable, prior to commencement of construction. The approval of the Developer or the Committee shall not be unreasonably withheld. Such approval may be withheld for reasons such as the proposed contractor's or builder's financial status, business history and prospects, building reputation or any other reason which would be similarly relied upon by a reasonably prudent businessman then developing a neighborhood of quality single family residences.

3.4. No alteration in the exterior appearance of existing buildings, including but not limited to, exterior remodeling and the construction of patios, decks, and swimming pools, shall be made without the prior written approval of the Developer or the Committee, whichever is then applicable.

3.5. The existing vegetation of each lot subject to this Declaration, including trees of a diameter of three (3) inches or greater, shall not be destroyed or removed except as approved in writing by the Developer or the Committee, whichever is then applicable. In the event such vegetation is removed or destroyed without approval, the Developer or Committee may require the replanting or replacement of same, the cost thereof to be borne by the Owner. No trees, shrubs or other vegetation of any kind or nature, whether now existing or whether grown or planted hereafter, shall have a height greater than four (4) feet at any time while these covenants are in effect, if such trees, shrubs or other vegetation are located within 10 feet of the lot lines of Lots 90, 91, 92, 93, 97 and 98, unless this restriction is waived in writing as to any particular item of vegetation or any particular lot or portion thereof by the Developer or the Committee, whichever is then applicable.

3.6. The elevation of a lot or outlot shall not be changed so as to materially affect the surface elevation or grade of the surrounding lots. A copy of all site, grading and landscaping plans shall be kept by the Developer or the Committee for the benefit of other purchasers in planning their individual elevations. Violations of the approved site, grading or landscaping plans shall give either the Developer or Committee, whichever is then applicable, or any adjacent lot owner within the Property, a cause of action against the person violating such site, grading or landscaping plan for injunctive relief or damages

as appropriate. No earth, rock, gravel, or clay shall be excavated or removed from any lot within the Property (including outlots for purposes of this section) without the approval of the Developer or the Committee, whichever is then applicable.

3.7. All lots within the Property (other than outlots) shall be used only for single family residential purposes, except that (a) Developer may continue to use lands owned by Developer for present agricultural purposes and uses, and (b) Lots 202-204 may be used for condominium residence purposes consisting of one residence building on each of such lots, with no more than four condominium dwelling units on Lots 202-204 in the aggregate.

The following minimum floor area requirements shall apply to all single family residential buildings erected on any lots subject to this Declaration, other than on Lot 203:

- (a) No single story building shall have less than 1600 square feet.
- (b) No two-story building shall have less than 2000 square feet.
- (c) No raised ranch, bi-level, or tri-level building shall have less than 1600 square feet on the main level.

For the purposes of determining floor area, stair openings shall be included, but open porches, screened porches, attached garages, and basements, even if the basements are finished, shall be excluded.

The above minimum requirements may be waived by the Developer or the Committee, whichever is then applicable, in the event the proposed architecture and quality of the house is such as to present an appearance compatible with other houses within the Property.

3.8. All single family residential buildings, other than on Lot 203, must have an attached garage and such garage must contain not less than two (2) nor more than three (3) automobile garage stalls, but the maximum limitation may be waived by the Developer or the Committee, whichever is then applicable.

3.9. No building previously erected elsewhere may be moved onto any lot subject to this Declaration, except new prefabricated construction which has been approved by the Developer or the Committee, whichever is then applicable, in their discretion.

3.10. Unless waived by the Developer or the Committee when suitable alternative paving materials are used, whichever is then applicable, all driveways (including driveways located on outlots for purposes of this section) must be paved with concrete. No more than two (2) domestic animals may be kept on any lot subject to this Declaration. Commercial animal boarding, kenneling or treatment is expressly prohibited, whether for free or not, within the Property.

3.11. Accessory buildings or structures, including, but not limited to, storage sheds, detached garages and above ground swimming pools, are expressly prohibited within the Property except where approved in writing in advance by the Developer or Committee, whichever is then applicable.

3.12. Where public sidewalks exist, it is the responsibility of the abutting lot owner (including the owners of any outlots for purposes of this section) to maintain same in a safe and passable condition, reasonably free from snow, ice or obstruction. The owner of each lot may be assessed by the Village of Waunakee for the cost of installation of trees in the street terrace, and Developer shall not be responsible for any such assessment.

3.13. No trailer, basement, tent, shack, garage, barn, or any part thereof, shall ever be used as a residence, temporary or permanent, nor shall any residence be of a temporary character.

3.14. Parking of commercial or service vehicles owned or operated by residents within the Property is prohibited unless such vehicles are kept in garages. Storage of boats, travel trailers, mobile homes, campers, and other recreational vehicles within the Property is prohibited unless kept inside garages. This section shall not prohibit the temporary parking or storage of such vehicles for the sole purpose of loading or unloading such vehicles at the lot at which parked, for a period not to exceed twenty-four (24) hours. No cars or other vehicles shall be parked on lawns or yards at any time.

3.15. All areas of lots not used as a building site or lawn or under cultivation as a garden shall have a cover crop or be so cultivated or tended as to keep such areas free from noxious weeds. All lots (including outlots), and all improvements thereon, shall be kept in good order and repair and free of debris, including, but not limited to, the mowing of all lawns, the pruning of all trees and shrubbery and the painting (or other external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management. This paragraph shall not be construed to prevent a family garden or orchard, provided that all family gardens and orchards shall be located in the back yards.

3.16. On any lot conveyed by land contract or deed from the Developer, construction shall be commenced within one (1) year from the date of such land contract or deed. Upon violation of this restriction, the Developer shall have the option, exercisable by written notice to the lot owner within ninety (90) days after the expiration of such one (1) year period, to have said lot (and any appurtenant rights in any outlot, if any) conveyed to the Developer at the original sales price, free and clear of any liens and encumbrances created by act or default of the Owner of such lot, with taxes and installments on assessments for the year in which conveyance occurs being prorated as of the date of such conveyance. Developer may waive its rights under this section in writing, in its discretion.

3.17. Construction of all buildings shall be completed within six (6) months after issuance of a building permit for the respective building. Landscaping (including grading, sodding, and seeding) and paving of driveway shall be completed within one hundred eighty (180) days of completion of construction, provided weather conditions so allow. If such construction or landscaping is delayed due to matters beyond the control of the lot owner, the time for completion shall be extended by the period of such delay.

3.18. No exterior antennas, satellite dishes, solar panels, wind mills, walls or fences of any kind shall be permitted within the Property unless approved in writing in advance by the Developer or the Committee, whichever is then applicable, including approval of the location, material, height and color thereof.

3.19. No noxious or offensive trade or activity shall be carried on within the Property, nor shall anything be done which may be or will become a nuisance to the neighborhood. This shall not be construed to prevent a family garden or orchard, provided that all family gardens and orchards shall be located in back yards.

3.20. The elevation of any utility easement within the Property may not be changed in excess of six (6) inches without the permission of all of the applicable utilities and any party making such change shall be responsible for any damages caused to underground utilities based on any changes in grade of more than six (6) inches.

3.21. No lot or outlot as platted shall be resubdivided, except with the approval of the Developer or the Committee, whichever is applicable. No boundary line within the Property shall be changed, except with the approval of the Developer or the Committee, whichever is then applicable. This section shall not be construed to prevent the use of one lot and part or all of another lot or lots as one building site.

3.22. No signs of any type shall be displayed to public view on any lot (including outlots for purposes of this section) without the prior written consent of the Developer or the Committee, whichever is then applicable, except for (a) lawn signs of not more than six (6) square feet in size advertising the property where located for sale, and (b) signs erected by Developer advertising lots within the Property for sale.

3.23. All buildings constructed on any lots subject to this Declaration shall conform to all governmental zoning requirements and all side-yard and set-back requirements imposed by local ordinance, subject to such modifications thereof as are applicable to any planned unit development (PUD) districts within the Property. The Developer or the Committee, whichever is then applicable, shall have the right to change the side-yard and set-back requirements for new construction within the Property from time-to-time, in their sole discretion.

3.24. No swale, drainage way, or stormwater detention area within the Property, whether established by easement or not, which is in existence at the time of development on any lot or outlot on the Property, shall be re-graded or obstructed, so as to impede the flow of surface water across such swale or drainage way, or interfere with the proper functioning of any such swale, drainage way or stormwater detention area, and no structure, planting or other materials shall be placed or permitted to remain within any such swale, drainage way or stormwater detention area.

3.25. The following landscaping requirements apply to all lots and outlots within the Property:

- (a) Front and side yards must be sodded, including street terraces.
- (b) Rear yard areas which are not sodded must be seeded.
- (c) Landscape plantings and maintenance of the premises and adjoining street terrace shall be the responsibility of the lot or outlot owner(s). Complete visual screening of the front, rear or side of any lot or outlot is prohibited without approval of the Developer or the Committee, whichever is then applicable.
- (d) THE VILLAGE OF WAUNAKEE HAS ADOPTED A STREET TERRACE TREE PLANTING POLICY WHICH AFFECTS ALL OF THE LOTS AND OUTLOTS WHICH ARE SUBJECT TO THIS INSTRUMENT. UNDER THIS POLICY, THE VILLAGE OF WAUNAKEE MAY PLANT TREES IN THE STREET TERRACE OF THE LOTS AND OUTLOTS WHICH ARE THE SUBJECT OF THIS INSTRUMENT. THE DEVELOPER IS NOT RESPONSIBLE FOR THE INSTALLATION OR THE LATER CONDITION OF SUCH TREES, IF ANY. THE

VILLAGE MAY RECOVER THE COST OF THIS TREE PLANTING POLICY FROM THE OWNERS OF LOTS AND OUTLOTS SUBJECT TO THIS INSTRUMENT BY SPECIAL ASSESSMENT. OWNERS OF LOTS AND OUTLOTS SUBJECT TO THIS INSTRUMENT SHALL BE RESPONSIBLE FOR SUCH ASSESSMENTS, IF ANY, AND THE DEVELOPER SHALL NOT BE RESPONSIBLE FOR SUCH ASSESSMENTS, IF ANY.

3.26. Outlot 12 shall be used solely for purposes of vehicular and pedestrian ingress and egress to Lots 202 through 204 and for purposes of providing a landscaped setback and public utilities from Blue Ridge Trail for Lots 202 through 204. Outlot 11 shall be used solely for purposes of vehicular and pedestrian ingress and egress to Lots 194 through 198, and 202 through 204, and for purposes of providing public utilities to Lots 194 through 198 and 202 through 204. Each owner of Lots 202 through 204 shall own an undivided one-third (1/3) interest in Outlot 12, which undivided interest shall be appurtenant to such lots, and no interest in Lots 202 through 204 shall be held, sold, conveyed or transferred without the appurtenant undivided one-third (1/3) interest in Outlot 12 being also held, sold, conveyed or transferred therewith. Each owner of Lots 194 through 198, and 202 through 204 shall own an undivided one-eighth (1/8) interest in Outlot 11, which undivided interest shall be appurtenant to such lots, and no interest in Lots 194 through 198 shall be held, sold, conveyed or transferred without the appurtenant undivided one-eighth (1/8) interest in Outlot 11 being also held, sold, conveyed or transferred therewith. No building or structure shall be erected or placed on or above the surface of Outlots 11 or 12, but this shall not prohibit the construction of ornamental fences and gates, fountains, ornamental lamps, benches or other structures of a similar nature, provided such structures are approved by the Developer or the Committee, whichever is applicable, and such structures provide an aesthetically pleasing and attractive environment without Outlots 11 and 12. Any areas not paved or planted with trees, shrubs or flowers on Outlots 11 or 12 shall be sodded, including street terraces. Landscaped plantings, sodding and maintenance of Outlot 11 shall be the responsibility of the owners of Lots 194 through 198, and 202 through 204, at their expense, with the cost thereof to be shared equally among the owners of Lots 194 through 198, and 202 through 204, in accordance with the procedures of Article 5 hereof. Landscaped plantings, sodding and maintenance of Outlot 12 and adjoining street terraces shall be the responsibility of the owners of Lots 202 through 204, at their expense, with the cost thereof to be shared equally among the owners of Lots 202 through 204, in accordance with the procedures in Article 5 hereof. Outlots 11 and 12 shall be maintained in an attractive and workmanlike manner, and kept free of debris, litter and refuse. The owners of Lots 194 through 198, and 202 through 204 shall constitute a Maintenance Committee to carry out the obligations hereof, as described in Article 5 hereof, with respect to Outlot 11. The owners of Lots 202 through 204 shall constitute a Maintenance Committee to carry out the obligations hereof, as described in Article 5 hereof, with

respect to Outlot 12. Maintenance with respect to Outlots 11 and 12 may be performed by one or more members of the respective committees, or may be contracted out to one or more independent contractors. Each owner with respect to Outlot 11 shall be liable for such owner's one-eighth (1/8) share of the reasonable cost of any such work. Each owner with respect to Outlot 12 shall be liable for such owner's one-third (1/3) share of the reasonable cost of any such work. Complete visual screening of the front, rear or side boundaries of Outlots 11 or 12 is prohibited without approval of the Developer or the Committee, whichever is then applicable. Developer shall only be responsible for such improvements with respect to Outlots 11 and 12 as the Developer, in Developer's discretion, elects to construct or install, except to the extent required by written agreement between the Developer and one or more of the owners of Lots 194 through 198, and 202 through 204; all other improvements to Outlots 11 and 12 shall be the responsibility of the subsequent owners of such outlots.

3.27. The Developer, after a period of ten (10) years from the date of recording the final Plat or after seventy-five (75%) of the lots within the Property (other than outlots) have been sold, whichever occurs first, may elect to assign all of the Developer's rights to approve all of the items set forth in Article 3 hereof to the Committee.

3.28. Article 3 hereof shall run with the land and shall be binding upon and inure to the benefit of all persons having an interest in the Property for a period of thirty (30) years after the Plat is recorded, after which time Article 3 of this Declaration shall automatically stand renewed for successive five (5) year periods unless the same is cancelled as provided in Section 3.29 below. If any person, or his heirs, successors or assigns, shall violate or attempt to violate any of the covenants and restrictions contained in Article 3 hereof while Article 3 hereof is effective, the Developer, the Committee or any person or persons owning any lot or lots within the Property, and in the case of Sections 3.26, 3.34, 3.35, 3.37, 3.38, 5.06, 5.11 and 5.14 hereof, the Village of Waunakee, shall have standing to bring proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants or restrictions, and the prevailing party shall be awarded reasonable attorneys fees and costs, and any person violating any of these covenants or restrictions shall be liable for all costs of removing any such violation. The Village of Waunakee shall not be required to take any action hereunder.

3.29. Article 3 hereof, or any part thereof, may be cancelled, released, amended, or waived in writing as to some or all of the lots subject to this Declaration by an instrument signed by the Developer and the Owners of a majority of the lots (other than outlots) subject to this Declaration, or if the Developer has released or assigned the Developer's rights under Article 3 of this Declaration as provided, then by an instrument

in writing signed by the Owners of a majority of the lots (other than outlots) subject to this Declaration, but no provisions of Sections 3.26, 3.34, 3.35, 3.37, 3.38, 5.06, 5.11 and 5.14 hereof may be cancelled, released, amended or waived without the written consent of the Village of Waunakee, and no provisions of Section 3.26 hereof may be cancelled, released, amended or waived without the written consent of the Owners of all of the lands included in Lots 194 through 198, and 202 through 204 as to Section 3.26 hereof.

3.30. Invalidation of any one of these covenants or any severable part of any covenant, by judgment or court order, shall not affect any of the other provisions, which shall remain in full force and effect.

3.31. In the event the Developer or the Committee, whichever is then applicable, does not affirmatively approve or reject the plans, specifications and site, grading and landscaping plans, the prime contractor or builder, alterations, or any other matters which must be submitted to the Developer or Committee, within thirty (30) days after the same have been submitted to the approving authority in writing, then such approval shall not be required in that instance.

3.32. In exercising any authority under Article 3 of this Declaration, the Developer or Committee, as appropriate, shall act in accordance with the following standards:

- (a) to assure the most appropriate development and improvement of the Property;
- (b) to protect each Owner of a lot against improper uses by other lot owners;
- (c) to preserve the beauty of the Property;
- (d) to guard against the erection of poorly designed or poorly proportioned structures, or structures built of improper or unsuitable material;
- (e) to encourage and secure the erection of attractive, adequate sized homes, which conform and harmonize in external design with other structures within the Property and which are properly located upon the lot in accordance with its topography and finished grade elevation; and
- (f) to provide for high quality improvements which will protect the investments of purchasers of lots.

3.33. The Developer and the Committee shall not be liable for any loss suffered by any person on the basis of the approval or disapproval of any proposed use, plans, specifications, site, grading or landscaping plan or other matter, including any loss arising out of the negligence of the Developer or Committee.

3.34. If any Owner shall violate or attempt to violate any covenant or restriction with regard to drainage swales, drainage ways, stormwater detention areas, or maintenance or landscaping, or if any lot owner or Maintenance Committee responsible for specific duties with regard thereto shall fail to perform such duties, the Developer, the Committee or the Village of Waunakee shall have standing to bring proceedings at law or in equity against the person or persons violating or attempting to violate such covenant or restriction or failing to perform such duties, and shall be awarded appropriate relief, including reasonable attorney fees and costs, to remedy said violation. The Village of Waunakee shall not be required to take any action hereunder.

3.35. The Owner of any lot within the Property which abuts upon or is adjacent to land used for farming or grazing purposes (other than lands used by Developer for such purpose) shall erect and maintain, if requested by the adjacent property owner, a partition fence, satisfying the requirements of the Wisconsin Statutes for a legal and sufficient fence, between the Owner's lot and the adjacent land, without cost to the adjoining property owner, so long as the adjoining land is used for farming or grazing purposes. The Developer, the Committee or the Village of Waunakee shall have standing to bring proceedings at law or in equity against the Owner of such lot, and shall be awarded appropriate relief, including reasonable attorney fees and costs, in the event of any violation hereof. The Village of Waunakee shall not be required to take any action hereunder.

3.36. While the Developer retains ownership of any lots within the Property, the Developer reserves the right to submit some or all of said lots and related outlots as a site for the Parade of Homes of the Madison Area Builders Association. In the event some or all of said lots and related outlots are selected as a site for the Parade of Homes by the Madison Area Builders Association, this Declaration of Covenants, Restrictions and Conditions shall, as to the lots and outlots enrolled in the Parade of Homes, for the limited period of time commencing 48 hours prior to the commencement of the Parade of Homes and ending 48 hours after the conclusion of said Parade of Homes, be deemed temporarily altered and modified, to the extent necessary, to permit the Madison Area Builders Association to hold its Parade of Homes in the Property, pursuant to the then current Parade of Homes Rules and Developer's Checklist of the Madison Area Builders Association. All purchasers of lots within the Property, and their successors and assigns, shall take title subject to this specific reservation by the Developer and shall waive all

rights to object to violations of this Declaration by Developer, the Madison Area Builders Association, or any of the builders or participants in such Parade of Homes during the period of such Parade(s) as set forth above.

3.37. The owners of Lots 89 through 94 shall be responsible for mowing and maintaining the traffic island located within the right-of-way of Newmarket Mews, at their expense, with the cost thereof to be shared equally between and among the Owners of such six (6) lots. The traffic island shall be maintained in a workmanlike and attractive manner, and kept free of debris, litter and refuse. The Owners of each of Lots 89 through 94 shall constitute a Maintenance Committee to carry out the obligations hereof. Maintenance may be performed by one or more of the members of such Maintenance Committee, or may be contracted out to one or more independent contractors. Each Owner shall be liable for such Owner's one-sixth (1/6) share of the reasonable cost of any such maintenance and repair work. All decisions of such Maintenance Committee shall be made by a majority of the members thereof, and a meeting may be called, on reasonable notice, at a location within the Village of Waunakee, by any two (2) members of such Maintenance Committee.

3.38. NOTICE IS HEREBY GIVEN THAT THE REAR FORTY (40) FEET OF LOTS 196 THROUGH 200 IS SUBJECT TO A 40-FOOT WIDE SANITARY SEWER AND PUBLIC UTILITY EASEMENT, AS SHOWN ON THE PLAT. THE VILLAGE OF WAUNAKEE MAY NEED TO ENTER THIS EASEMENT AREA FROM TIME-TO-TIME TO PERFORM MAINTENANCE WORK REGARDING THE SANITARY SEWER LOCATED IN SUCH EASEMENT AREA, INCLUDING THE ENTRY OF TRUCKS INTO SUCH AREA. NO PERSON OR ENTITY MAY CONSTRUCT, BUILD, INSTALL, PLANT, GROW, OR MAINTAIN ANY BUILDINGS, STRUCTURES, FENCES, WALLS OR OTHER IMPROVEMENTS, OR ANY TREES, BUSHES, HEDGES OR OTHER LANDSCAPING WITHIN THE AREA DESIGNATED ON THE PLAT AT THE REAR OF LOTS 196 THROUGH 200 AS A FORTY (40) FOOT WIDE SANITARY SEWER AND PUBLIC UTILITY EASEMENT, WITHOUT THE EXPRESS WRITTEN CONSENT OF THE VILLAGE OF WAUNAKEE.

ARTICLE 4

Southbridge Homeowners Association, Inc.

Definitions

For purposes of Article 4 of these Covenants, Restrictions, Conditions and Easements, the following terms shall be defined in the following manner:

4.1. "Association" shall mean and refer to Southbridge Homeowners Association, Inc., its successors and assigns.

4.2. "Board" shall mean and refer to the Board of Directors of the Association.

4.3. "Declaration" shall mean the Declaration of Covenants, Restrictions, Conditions and Easements for Lots 88-98 and 194-204, and Outlots 11-12 of the Ashlawn Addition to the Plat of Southbridge, as it may from time-to-time be amended.

Association Membership and Board of Directors

4.4. **Members.** The Owner of each platted lot (exclusive of outlots) (a) within the Plat of Southbridge, Village of Waunakee, Dane County, Wisconsin, (b) within the Piedmont Addition to the Plat of Southbridge, including Lots 1 through 3 of Certified Survey Map No. 8034 (formerly Lots 52 through 55 of the Piedmont Addition to the Plat of Southbridge), (c) within the Property and (d) the record owner of each single-family residential lot (exclusive of outlots) created hereafter by Developer by plat or certified survey map for which membership in the Association is provided in the Articles and Bylaws thereof, as amended from time-to-time, shall be a member of the Association. Where more than one person holds an ownership interest in any lot, all persons holding such interest shall be members. The members shall have such rights as are set forth herein, in the Articles and By-Laws of the Association, as amended from time-to-time, and as may be provided by the laws of the State of Wisconsin.

4.5. **Board of Directors.** The affairs of the Association shall be managed by the Board. The Board shall be selected in the manner, and shall have such duties, powers and responsibilities as are set forth herein, in the Articles and By-laws of the Association, as amended from time-to-time, and as may be provided by the laws of the State of Wisconsin, subject to the rights of Developer as set forth in such instruments.

Common Areas; Entrance Sign

4.6. **Acquisition of Common Areas.** The Association may take title from time-to-time to real property within the Plat of Southbridge, the Piedmont Addition to the Plat of Southbridge, or the Ashlawn Addition to the Plat of Southbridge, Village of Waunakee, Dane County, Wisconsin, for the purpose of providing common areas for the use and benefit of the members. The Association shall have the right to exclusive management and control of all such common areas and all improvements thereon.

4.7. Obligations of Association. The Association shall have the duty to maintain common areas in good, clean, attractive and sanitary condition, order and repair, and to make such improvements and perform such maintenance as shall further the interests of the members.

4.8. Easement of Enjoyment. Subject to the provisions of this Declaration, all common areas shall be held by the Association for the benefit of the members. Each of said members shall have an equal, undivided right to use and enjoyment of such common areas, subject to the right of the Association to establish reasonable rules for the use of such common areas.

4.9. Entrance Sign. The Association shall maintain in good order and repair the entrance sign to the Plat of Southbridge, including lighting thereof and the waterfall thereon, and any pump, electrical equipment, piping and wiring associated therewith, located on Outlot 1 of the Plat of Southbridge, and shall provide water and electrical power therefor, at the expense of the Association.

Assessments

4.10. Creation of Lien and Personal Obligation of Assessments. The Developer hereby covenants, and each Owner of any lot within the Property (other than outlots) by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all assessments in the amount and manner hereinafter provided. All such assessments, together with interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and a continuing lien upon the lot (but not any outlot) against which each such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the person who was the Owner of such lot (other than outlots) at the time when the assessment became due and payable.

4.11. Creation of Assessments. Assessments shall be determined, established and collected each year, starting with calendar year 1997, in the following manner:

- (a) **Budget.** In December of each year starting in December 1996, the Board shall determine a budget for the ensuing calendar year, which shall include the costs to be incurred by the Association in connection with the maintenance, improvement and operation of common areas, payment of taxes and insurance, and other costs connected therewith, including a reasonable reserve for depreciation. Such budget shall be approved by a

vote of two-thirds (2/3) of the Board on or before the last day of December each year.

- (b) **Limitation on Assessments.** The maximum annual assessment which may be authorized under this Article shall be \$25 for each lot to which the Association has the power to make assessments hereunder or under other comparable instruments (excluding outlots), until the actual annual costs of maintenance, improvement and operation of common areas and payment of taxes, insurance and other costs associated therewith, including a reasonable reserve for depreciation, shall exceed the annual revenue generated by an assessment of \$25 per lot, in which event the maximum assessment per lot shall be such actual costs of maintenance, improvement and operation of common areas and payment of taxes, insurance and other costs associated therewith, including a reasonable reserve for depreciation, divided equally among all lots as to which the Association has the power to make assessments hereunder or under other comparable instruments (excluding outlots).
- (c) **Declaration of Assessments.** The Board shall declare assessments so levied due and payable thirty (30) days from the date of such levy. The Board shall notify each Owner of the action taken by the Board, the amount of the assessment against the lot owned by such Owner and the date such assessment becomes due and payable. Such notice shall be mailed to the Owner at the last known post office address by United States mail, with postage prepaid, or be personally delivered to the Owner.
- (d) **Collection of Assessments.** In the event any assessment levied against any lot remains unpaid for a period of sixty (60) days from the date of the levy, the Board may, in its discretion, file a claim for a maintenance lien against the lot for which payment is not made, and upon compliance with the provisions of Section 779.70, Wisconsin Statutes, or other applicable authority, such claim shall be and become a lien against such lot. The claim shall thereafter accrue interest at the rate of interest payable upon legal judgments in the State of Wisconsin, and the Board may exercise such remedies to collect such claim as may be afforded by law. The Owner of the subject lot shall be responsible for all costs of collection incurred by the Association in connection therewith. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of any common areas or abandonment of his lot.

- (e) **Joint and Several Liability of Grantor and Grantee.** Upon a voluntary conveyance, the grantee of a lot shall be jointly and severally liable with the grantor for all unpaid assessments as provided in this Article up to the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amount paid by the grantee therefore. However, any such grantee shall be entitled to a statement from the Association setting forth the amount of such unpaid assessments and any such grantee shall not be liable for, nor shall the lot conveyed be 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 ten (10) business days after the grantee's request, it is barred from claiming any lien which is not filed prior to the request for assessments owed by the grantor.

4.12. **Term.** Article 4 hereof shall run with the land and shall be binding upon and inure to the benefit of all persons having an interest in the Property for a period of thirty (30) years after the Plat for the Ashlawn Addition to the Plat of Southbridge is recorded, after which Article 4 of this Declaration shall automatically stand renewed for successive five (5) year periods unless the same is cancelled as provided in Section 4.13 below.

4.13. **Cancellation, Release, Amendment or Waiver.** Article 4 hereof, or any part thereof, may be cancelled, released, amended or waived in writing as to some or all of the lots subject to this Declaration by an instrument signed by the Developer and the Owners of a majority of the lots (other than outlots) subject to this Declaration, or if the Developer has released or assigned the Developer's rights under Article 3 of this Declaration as provided herein, then by an instrument in writing signed by both (a) the Owners of a majority of the lots (other than outlots) subject to this Declaration, and (b) a majority of the Board of the Association.

4.14. **Severability.** Invalidation of any one of these covenants or any severable part of any covenant, by judgment or court order, shall not affect any of the other provisions, which shall remain in full force and effect.

ARTICLE 5

Reciprocal Easement

5.01. Each owner of Lots 194 through 198, and 202 through 204 within the Property and their successors and assigns, is granted, for the benefit of each such owner of Lots 194 through 198, and 202 through 204, a perpetual right, privilege and

easement, in common, across, on and over Outlot 11, solely for pedestrian and vehicular ingress and egress to and from, and for the provision of public utilities to, Lots 194 through 198, and 202 through 204. The foregoing easement is solely for the use of each such owner of Lots 194 through 198, and 202 through 204, their successors and assigns, and their employees, agents, visitors, guests, licensees, tenants and invitees, and except for the owners of Lots 194 through 198, and 202 through 204, and the aforesaid authorized persons, the easement granted hereby shall be exclusive. All owners of Lots 194 through 198, and 202 through 204, and their employees, agents, visitors, guests, licensees, tenants and invitees shall comply in their use of the foregoing easement with all laws, ordinances and regulations relating thereto and they shall not impede, obstruct or interfere with the use thereof by any other person or entity authorized to use such easement. No building or structure shall be erected upon or placed on Outlot 11, but this shall not prohibit the construction of ornamental fences and gates, fountains, ornamental lamps, benches and other structures of a similar nature, provided such structures are approved by the Developer or the Committee, whichever is applicable, and such structures provide an aesthetically pleasing and attractive environment within Outlot 11. Any areas of Outlot 11, not paved or planted with trees, shrubs or flowers shall be sodded.

5.02. Each owner of Lots 202 through 204, and their successors and assigns, is granted, for the benefit of each such owner of Lots 202 through 204, a perpetual right, privilege and easement, in common, across, on and over Outlot 12, solely for pedestrian and vehicular ingress and egress to and from, and for the provision of public utilities to, Lots 202 through 204, and to provide a landscaped setback from Blue Ridge Trail for Lots 202 through 204. The foregoing easement is solely for the use of each such owner of Lots 202 through 204, their successors and assigns, and their employees, agents, visitors, guests, licensees, tenants and invitees, and except for the owners of Lots 202 through 204 and the aforesaid authorized persons, the easement granted hereby shall be exclusive. All owners of Lots 202 through 204, and their employees, agents, visitors, guests, licensees, tenants and invitees shall comply in their use of the easement with all laws, ordinances and regulations relating thereto and they shall not impede, obstruct or interfere with the use thereof by any other person or entity authorized to use such easement. No building or structure shall be erected upon or placed on Outlot 12, but this shall not prohibit the construction of ornamental fences and gates, fountains, ornamental lamps, benches and other structures of a similar nature, provided such structures are approved by the Developer or the Committee, whichever is applicable, and such structures provide an aesthetically pleasing and attractive environment within Outlot 12. Any areas of Outlot 12 and the adjoining street terrace, not paved or planted with trees, shrubs or flowers shall be sodded.

5.03. Maintenance.

(a) All maintenance, replacement and repairs for Outlot 11 shall be the joint responsibility and obligation of the owners of Lots 194 through 198, and 202 through 204. All maintenance, replacement and repairs for Outlot 12 shall be the joint responsibility and obligation of the owners of Lots 202 through 204. The obligation for maintenance, replacement and repairs of the aforesaid outlots shall include, without limitation:

- (1) Maintaining any and all driveways and sidewalk surfaces on the aforesaid outlots in good order and repair, with the type of surfacing materials originally installed or such substitute as shall in all respects be equal in quality, use and durability;
- (2) Maintaining all landscaping on the aforesaid outlots and the adjoining street terraces in good order and repair, including the mowing of all lawns, and the pruning of all trees and shrubbery, all in accordance with good property management;
- (3) Removing all litter, ice and snow, mud and sand, debris and refuse, and sweeping the surfaces to the extent reasonably necessary to keep the surfaces in a clean condition; and
- (4) Maintaining in good condition and repair, including painting if necessary, any ornamental fences or gates, fountains, ornamental lamps, benches or other authorized structures on the aforesaid outlots.

(5) Any private street or driveway located on Outlot 11 shall be paved to a width of 24 feet. Any private street or driveway located on Outlot 11 shall be marked with "Fire Lane-No-Parking" signs at locations designated by the Village of Waunakee, if any.

(b) All maintenance, replacement and repair costs for Outlot 11 shall be paid by the owners of Lots 194 through 198, and 202 through 204 in equal shares. Each such owner's share of such expenses shall be one-eighth (1/8) of the total of such costs or expenses. All maintenance, replacement and repair costs for Outlot 12 shall be paid by the owners of Lots 202 through 204, in equal shares. Each such owner's share of such expenses shall be one-third (1/3) of the total of such costs of expenses. The cost of maintenance and operation referred to with respect to any of the aforesaid outlots shall include any real property taxes or assessments, general or special, which

shall be assessed against any of the aforesaid outlots in which such easements are located. Upon the conveyance of the first of Lots 194 through 198, and 202 through 204, by Developer by deed or land contract, there shall be formed a Maintenance Committee to carry out and administer the maintenance obligations described herein, which committee shall consist of the owners of Lots 194 through 198, and 202 through 204 as they exist from time-to-time hereafter. Upon the conveyance of the first of Lots 202 through 204 by Developer by deed or land contract, there shall be formed a Maintenance Committee to carry out and administer the maintenance obligations described herein, which committee shall consist of the owners of Lots 202 through 204 as they exist from time-to-time hereafter. The initial meeting of each Maintenance Committee shall be called by the Developer by written notice to each owner; thereafter, a meeting may be called by the owner of any such lot. All meetings of any Maintenance Committee shall be held at a reasonable time and place within the Village of Waunakee. Each Maintenance Committee may adopt rules for its operation and the use of any outlot with respect to which it has the obligation of maintenance, replacement and repair. Each platted lot shall be a member of the Maintenance Committee and shall have one vote per platted lot, and the decisions of each Maintenance Committee shall be made by a majority of the lot owners. Each Maintenance Committee shall bill each owner from time-to-time, but not less often than annually, for such owner's share of the costs incurred by each Maintenance Committee hereunder, which costs shall be payable upon demand. Each Maintenance Committee shall have a lien on the lot of any such owner (including any interest of such owner in any applicable outlot) where such owner has failed or refused to pay all or any part of the sums payable and assessed pursuant to the provisions of this section. Such lien will be junior to and in no way impair the lien or charge of any first mortgage on a lot, whether recorded before or after the recording of this instrument. The lien may be perfected and foreclosed in such manner as is permitted by law in the name of the Maintenance Committee or any member thereof. Maintenance, repair or replacement work may be performed by any Maintenance Committee, or any member thereof, or by an independent contractor retained by any Maintenance Committee. Any lot owner shall be entitled to a statement from the Maintenance Committee setting forth any unpaid obligations of such lot owner. If the Maintenance Committee does not provide such statement within ten (10) business days after the lot owner's request, the Maintenance Committee and the other lot owners are barred from claiming any lien which is not filed prior to such request.

5.04. Each owner of Lots 194 through 198, and 202 through 204 shall maintain at all times public liability insurance against claims for death, bodily injury and property damage arising out of Outlot 11 as provided below. Each owner of Lots 202 through 204 shall maintain at all times public liability insurance against claims for death, bodily injury and property damage arising out of Outlot 12 as provided below. All insurance required by this section shall be in an amount of not less than \$300,000.00 with respect to any one death or bodily injury, and in an amount of not less than \$50,000.00 with respect to property damage from any one occurrence. Each owner of a lot which is subject to this provision shall provide to the other owners of lots subject to this provision and sharing the ownership of an outlot in common, with an appropriate certificate of insurance showing the required coverage, which coverage cannot be cancelled without ten (10) days prior written notice to the other applicable lot owners. The Maintenance Committee may increase the minimum public liability coverage by a reasonable amount from time-to-time to reflect the effects of inflation.

5.05. Any award resulting from taking or condemnation of any portion or all of any outlot subject to this Article 5 will be distributed among the owners of such outlot, in equal shares, except to the extent that the use of such funds is necessary to replace the taken portion of such outlot to as near the original condition as is possible, in which event such funds shall be held in trust by the Maintenance Committee and used for such purpose.

5.06. No termination, extension, modification, waiver or amendment of this Article 5 will be effective unless a written instrument setting forth the terms thereof has been executed, acknowledged and recorded in the office of the Register of Deeds of Dane County, Wisconsin, signed by all of the owners of Lots 194 through 198, and 202 through 204 with respect to Outlot 11, and all of the owners of Lots 202 through 204 with respect to Outlot 12, and in addition thereto, with respect to any of the aforesaid outlots, by the Village of Waunakee, except that the Developer shall also be required to consent in writing thereto so long as Developer is the owner of any lot within the Property. No termination, extension, modification, waiver or amendment of Sections 5.06, 5.11 or 5.14 hereof shall be effective without the written consent of the Village of Waunakee.

5.07. Nothing contained in this instrument will be deemed to be a gift or dedication of any portion of any outlot referred to herein to the general public or to any public purpose whatsoever. The owners of Lots 194 through 198, and 202 through 204 with respect to Outlot 11, and the owners of Lots 202 through 204 with respect to Outlot 12, by written agreement of all of the owners of the applicable lots with respect to particular outlots shall have the right to temporarily close all or any portions of the respective outlots to such extent as may, in the opinion of their counsel, be legally

sufficient to prevent a dedication thereof or the accrual of any rights to any person or to the public therein, and to temporarily close, if necessary, by action of a majority of the applicable owners of any such outlots in order to permit repairs.

5.08. Nothing contained in this Article 5 shall be construed to make any Owner or Developer, or their successors and assigns, partners or joint venturers of each other or to render any party liable for the debts or obligations of any other party, except as expressly provided in this Article 5.

5.09. No delay or omission by any party, or their successors and assigns, to exercise any right or power accruing upon any noncompliance or failure of performance by another party under the provisions of this Article 5 shall impair any such right or power or be construed to be a waiver hereof. A waiver of any party, or their successors or assigns, of any of the provisions of this Article 5 to be performed by another shall not be construed to be a waiver of any succeeding breach thereof or of any provision contained herein.

5.10. If any provision or portion of this Article 5, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Article 5 or the application of such provision, or portion thereof, to any other persons or circumstances shall be valid and enforceable to the fullest extent permitted by law.

5.11. All of the terms and provisions of this Article 5 are intended to be and shall be construed as easements and as covenants running with the land, and shall be binding upon, to the benefit of and be enforceable by the owners of Lots 194 through 198, and 202 through 204, and all subsequent owners of such parcels or any parts thereof, by the Village of Waunakee, and by the applicable Maintenance Committee, and, so long as Developer owns any lot within the Property, by the Developer. The Village of Waunakee shall not be required to take any action hereunder.

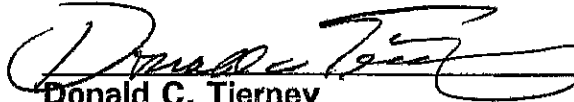
5.12. Upon the reasonable request of any party, any other party shall execute and deliver, from time-to-time, a certificate confirming, if such then be the fact, that this Article 5 continues in full force and effect and unmodified (or, if modified, stating the modifications), and that the certifying party knows of no existing defaults by the other party, or if such default is known, specifying the same.

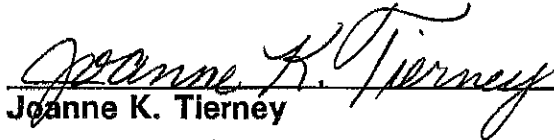
5.13. This Article 5 shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

5.14. No breach of this Article 5 will entitle any party to cancel, rescind or otherwise terminate this instrument, but this limitation will not affect, in any manner, all other rights or remedies which the parties shall have by reason of any breach of this Article 5. In the event that any party shall default in the performance of any obligation hereunder, the applicable Maintenance Committee, any member of any Maintenance Committee, and the Village of Waunakee, and the Developer, so long as Developer owns any lot within the Property, may cause such default to be cured at the expense of the defaulting party, which sum the defaulting party shall pay upon demand, and in addition to the right to collect damages, may seek to enjoin such default in a court of competent jurisdiction, and recover the costs and expenses of any such action, including reasonable attorney fees. The Village of Waunakee shall not be required to take any action hereunder.

5.15. In each instance in which any owner of any lot referred to in this Article 5 conveys all or any part of their interest in any such lot and the appurtenant interest in any related outlot to a grantee, he, she or it will be deemed to be a new party hereto. On recording of any such conveyance with the Register of Deeds of Dane County, Wisconsin, which conveys the entirety of the grantor's interest in any of the lots referred to herein, and the related outlot, the conveying party will be released from any obligation under this Article 5 arising thereafter with respect to such lot and related outlot.

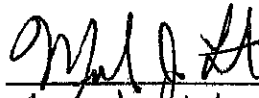
IN WITNESS WHEREOF, the undersigned have executed this instrument on this 26th day of July, 1996.


Donald C. Tierney


Joanne K. Tierney

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

On this 26th day of July, 1996, before me, a Notary Public, personally appeared Donald C. Tierney and Joanne K. Tierney to me known, who being by me duly sworn, did depose and say that they executed said document.


Michael J. Lawton
Notary Public, State of Wisconsin
My Commission: 2 years

***This instrument drafted by
and to be returned to:
Attorney Michael J. Lawton
Lathrop & Clark
P.O. Box 1507
Madison, WI 53701
tierndon\3\ashlawn.oov
960717***