

## ORCHARD ESTATES SUBDIVISION

### Declaration of Restrictions, Covenants and Easements

THIS DECLARATION OF RESTRICTIONS, COVENANTS AND EASEMENTS (“Declaration”), is made by STM Builders, LLC, a Wisconsin limited liability company (“Developer”).

#### RECITALS

WHEREAS, the Developer is the owner of the real property located in the Village of Mt. Pleasant (the Village), County of Racine, State of Wisconsin, known as Orchard Estates Subdivision; and

WHEREAS, the Developer desires to subject Orchard Estates Subdivision, described on the attached Exhibit A and as shown on the final plat, which is made a part hereof and described in Article II of the Declaration (the “Property”), being part of the development, to conditions, covenants, restrictions, easements, liens and charges (hereinafter collectively referred to as “Covenants”) set forth in the declaration, each all of which is and are for the benefit of the Property, the Developer, the Village 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

WHEREAS, it is the Developer’s intention to develop the Property into twenty-two (22) single family lots, and

WHEREAS, Lot 23 is specifically excluded from these Restrictive Covenants.

#### DECLARATION

NOW THEREFORE, the Developer hereby declares that the Property is and shall be held, used, transferred, sold and conveyed subject to the Covenants and Easements 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 STM Builders, 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 Orchard Estates Homeowners Association, Inc., a Wisconsin Non-Stock Corporation organized under Chapter 181 of the Wisconsin Statutes.
  - 1.3 “Property” shall mean and refer to all existing properties as are subject to this Declaration.
  - 1.4 “Common Areas” shall mean all property and real property interests located within Orchard Estates Subdivision and designated as Stormwater Detention Areas and other areas as shown on the final plat designated as follows:
    - Outlots
    - Dedicated landscaping, Lighting and signage easements Areas
    - Dedicated Drainage, Pedestrian, Access and Maintenance 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 “Lot” shall mean and refer to any plot of land shown upon any recorded subdivision or land division map or any certified survey map of the Property with the exception of the Common Areas.
  - 1.6 “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 any Lot that 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.
  - 1.7 “Member” shall mean and refer to all those Owners who are Members of the Association as provided in Article IV, Section 1.
  - 1.8 “Village” shall mean the Village of Mt. Pleasant, Wisconsin.
  - 1.9 Lot 23 is specifically excluded from these Restrictive Covenants.

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 and all cul-de-sac’s and storm water detention basins 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 Racine County, Wisconsin. The term “Existing Property” as used in this Declaration shall refer to all property that is subject to the provisions hereof. Outlots 1,2, and 3 are non-buildable and shall be maintained in perpetuity pursuant to the terms hereof by the association.

ARTICLE III  
GENERAL PURPOSES AND CONDITIONS

- 3.1 General Purposes. 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 of poorly designed or proportioned structures, and structures built of improper or unsuitable materials; to guard against an excess of similar architectural styles and thereby avoid 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 locations on Lots; to prevent haphazard and inharmonious improvement of Lots; to secure and maintain proper setbacks from street 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 high type and quality of improvement in the Property and thereby to enhance the value of investments made by purchasers of Lots.
  
- 3.2 Initially 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 stormwater detention areas, entry monuments and their related landscaping and lighting elements. 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. The continuing maintenance obligation for such improvements shall be imposed on the association in perpetuity as defined herein.
  
- 3.3 Dwelling Quality. Residences shall have no more than two stories and shall include a full basement. An exposed basement shall not be considered to be a “story” for purposes of this section. Bi-level and Tri-level homes are prohibited. The face of every outside wall of any residence, including chimney chases, soffits and fascias, shall be constructed of brick, stone, cedar or other natural material approved by

the ACC. Front face must be 50% stone or brick as approved by ACC. Windows, doors and shutters may contain manufactured materials.

All residences shall have roofs constructed of wood shingles, dimensional asphalt or dimensional fiberglass shingles, tile, slate or other material approved by the Architectural Control Committee with not less than 7" to 12" (7/12) pitch.

Lots 1 thru 22 (Lot 23 excluded):

1 story (for example: Ranch Style)	2100 total sq. ft.
2 story (for example: Traditional)	2600 total sq. ft.
1-1/2 story (for example: Cape Cod)	2500 total sq. ft.
	(minimum 1350 sq. ft. on 1 <sup>st</sup> floor)

For purposes of this section, "floor area" shall be defined as the area within the exterior wall lines of a building and shall not include floor space below grade, basements, garages, breezeways, and porches, attics and other areas not finished or useable as living quarters.

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

3.4 Architectural Control.

- a) No building, fence, wall, swimming pool, 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 change or alteration on 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 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. No Owner shall request or obtain a building permit for a Lot from the Village 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 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 or as otherwise determined by the ACC. The ACC shall have the sole discretion to determine which of the dwelling size requirements 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 in 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 this Declaration on Owners or the requirements of the Village 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.

Subject to approval by the Architectural Control Committee, structures may be located anywhere on a lot, provided such location is consistent with the basic principles of good site interrelationship between the various other nearby structures and provided further that no structure or part thereof shall be erected contrary to the Village of Mt. Pleasant building and zoning code restrictions in force at the time of construction. No structure or part thereof erected upon any corner lot in the Subdivision may be erected nearer than twenty-five (25) feet from the front foundation line of each home to the right-of-way of the roadway upon which the home abuts shall be not less than thirty-five (35). The side yard and setback shall be twelve (12) feet on both the driveway and non driveway side. The front yard setback shall be a minimal of twenty-five (25) feet and a maximum of thirty-five (35) feet. The rear yard setback shall be a minimum of twenty-five (25) feet.

The initial address of the Architectural Control Committee is Scott T. Matson 128 Morning Dove Lane, Racine, WI 53406.

- b) Residential construction on lots 7 through 12 is prohibited within 25 feet of a wetland.
- c) Lots 4 thru 7 and 16 thru 22 are affected by a front-yard averaging setback imposed by the village. Any minimum/maximum front-yard setback established herein does not supersede Section 90-1001(6)(b) front-yard averaging and all applicable R-100 zoning regulations established by the Village.

3.5 Landscape Architectural Control – Street Trees A Landscape Plan showing the proposed development of the entire Lot shall be submitted to the Architectural Control Committee within six (6) months after the commencement of construction. Adequate surface drainage shall be installed and evidence of substantial progress in carrying out the approved landscape plans shall be shown to the Architectural Control Committee within twelve (12) months after the landscape plan has been approved by the Architectural Control Committee. The parkway trees are the responsibility of the Lot Owner and not the Developer, and are to be installed in accordance with the approved subdivision Landscape Development Plan. A copy of which shall be provided to each Lot Owner.

3.6 Garages, Driveways, Service Walks and Sidewalks. Except for Lot 9, each residence constructed in the Subdivision shall have at least a two car garage which shall be directly attached to the residential structure or attached by a breezeway. Lot 9 may, with the permission of the Architectural Control Committee, construct a detached garage if and only if the prior approval is obtained and the exterior garage materials match the exterior residence material. Nothing herein shall be construed to prohibit garages which are larger than the minimum, provided that the same are approved by the Architectural Control Committee. No construction of any apron for the purpose of storing any vehicle shall be permitted. 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. The plans and specifications for residences submitted to the Architectural Control Committee for approval shall include the specifications for the location and surfacing of the driveways and walkways.

Lots 3 and 22 are prohibited direct vehicle access within thirty-five (35) feet of the intersection of Centennial Lane and Carriage Hill Drive measured from the road right of ways.

Lots 4 and 7 are prohibited direct vehicle access within thirty-five (35) feet of the Carriage Hill Drive cul-de-dac curvature measured from the road right of ways.

Lots 11, 12 and 13 are prohibited direct vehicle access within thirty-five (35) feet of Carriage Hill Drive and Gala Drive measured from the road right of ways.

Lots 15 and 16 are prohibited direct vehicle access within thirty-five (35) feet of Carriage Hill Drive and Spartan Drive measured from the public right of ways.

### 3.7 Hedges and Fences.

- a) Hedges, berms and walls shall be permitted with prior approval of the Architectural Control Committee. Fences shall only be allowed for in ground swimming pools with prior approval of ACC.
- b) Storage of more than one (1) full cord of firewood on a lot is prohibited.
- c) No hedge may extend to a point nearer to the street on which the house fronts than the front line of such house without the approval of the ACC.
- d) No fence shall be permitted to extend nearer to any street than the rear foundation line of the principal structure without the approval of the ACC.
- e) Fences or walls shall be aesthetically pleasing and in keeping with the design and architectural style of the home. The location, design, construction and material for all fences or walls are subject to approval by the ACC.

### 3.8 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.

- 3.9 Filling Building Site and Changing Contour. Where fill is necessary on the build site to obtain the proper topography and finished ground elevation, it shall be ground fill, free of waste material, and shall not contain noxious materials that will give off odors of any kind, and all dumping of fill materials shall be leveled immediately after completion of the building. Any excess excavation of earth shall be removed from the building site. Grade plans shall be submitted to the ACC for approval before altering the contour of any lot so as to 1) change the pre-existing surface water drainage as affects any adjoining lots, and/or 2) create a slope of more than three (3) horizontal feet to one (1) vertical foot within twenty (20) feet of any lot line. The proposed finished grade of the home, as determined to be eight (8) inches below top of foundation wall. The finished grade of the garage floor, shall be approved by the ACC prior to construction of the home.

The final grade for the lot shall conform to the master grading plan on record with the Village of Mr. Pleasant. No sod, gravel, sand, or soil may be removed from any lot except in connection with the construction of any building upon said lot and then only so much as is necessary and essential in the furtherance of such construction. Under no circumstances, shall any of such materials be removed beyond the Subdivision boundaries without the consent of the ACC. All grading work must conform to Village of Mount Pleasant Ordinances.

- 3.10 Completion. All construction of dwellings and other incidental structures shall be completed within one (1) year from the date of commencement of construction. Paving of driveways, construction of walkways, landscaping (except topsoil and grass) shall be completed within one (1) year from issuance of a Certificate of Occupancy permit from the Village. Decorative concrete is not recommended in public right of ways. Property owners will be responsible for decorative or colored concrete replacement costs.

3.11 Easements/Dedications/Obligations.

- a) Easements-General. Certain Easements affecting the Property are recorded on the final plat for Orchard Estates Subdivision in the office of the Register of Deeds of Racine, Wisconsin. Each Lot shall be subject to any easement, dedication, restrictive covenant, or any other restriction granted (and/or retained) by the Developer or its successors and assigned to the Village, or to the 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 and for other purposes, and for sewers, stormwater drains, gas mains, water pipes and mains, and similar services for performing any public or quasi-public function or for any other purpose that the Developer or its



successors or its 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, planting, driveways and other such uses as are described on the final plat and shall otherwise care for and maintain areas provided such uses shall not interfere with the improvements, their uses and purposes, and purposes of the Village; nor shall any improvements be placed within such areas without the prior written consent of the Developer, Village and/or any other party having interest in the respective easement area.

- b) Setbacks. The minimum front or street setback, side yard, rear yard 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 similar utilities. Within fifteen (15) days of written request therefor by the Developer, or after creation of the Association as provided herein, each Owner, if necessary and if not previously obtained, shall grant specific easement (and cause their lenders to agree to a nondisturbance of such easements) upon such terms as may reasonably be requested. No structure 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.

Residential construction must comply with Administrative Code NR151.

- c) Dedications, Easements and Covenants for Stormwater Detention Areas. The fee interest in the areas shown on the final plat as Outlots 1, 2 & 3 has 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. The Developer and the Association shall be responsible for completing all related construction, installation, necessary repairs, alterations, landscaping and all required maintenance to these Outlots. No filling or other activities or condition detrimental to their function as stormwater drainage facilities shall occur or exist within such Outlots or on the

surrounding lands without the written approval of the Developer and the Village. From time to time in the Village's discretion, the Village 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 Village, 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. The Association and its Members shall be bound by the above mentioned covenants and such similar covenants as are contained in the final plat forever. The Village has the right to enter and effect repairs to storm water infrastructure if it is in the interest of the Village to do so.

- 3.12 Zoning Laws, Etc. In addition to the provisions contained within this Declaration, all Lots and improvements thereon shall be subject to the Village 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 subdivided or combined without the approval of the Village. The requirements under Village ordinances are not stated herein and, therefore, it shall be the sole responsibility of every Owner to understand and insure compliance with Village 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 Village ordinances and the Village ordinance is stricter than the provision contained herein, the Village 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 Village and shall not constitute a waiver of such Village requirement and/or approval.
- 3.13 Landscape Architectural Control. A landscape plan showing the proposed development of the entire lot shall be submitted to the ACC for approval within six (6) months after commencement of construction. Adequate surface drainage shall be installed and the approved landscape plan shall be completed within twelve (12) months after an occupancy permit has been issued for the home.
- 3.14 Noxious Activity. No noxious, offensive, or dangerous activity of any kind may be conducted upon any lot; nor may any trade, business or profession be carried on, and generally, no activities may be conducted which would constitute a nuisance to other owners of lots within the Subdivision.

- 3.15 Pets. No animals may be kept or maintained upon any lot except dogs, cats, or other usual and ordinary household pets. No separate outbuildings or enclosures may be erected or kept upon any lot for the purpose of housing or restraining any animal or pet, except if such building or enclosure have a concrete paved floor and be physically attached to the residence as a part thereof. The location, design and construction of any such enclosure shall be approved by the ACC.
- 3.16. Coachlamps. Each lot owner shall install a column mounted, sensor controlled, electric coach lamp, identified as Jamestown 9400, HAN B9430 (light fixture) and HAN 354 (base post) or its closest successor, at such time as a home is constructed on the lot. Coach lamps installed under this section shall be located within ten feet (10') of the road right-of-way. Nothing in this section shall be construed to prevent the installation of more than one light fixture. The style, material and location of each light installed under this section shall be approved by the ACC. No private lighting shall be allowed within the public right of ways.
- 3.17 Swimming Pools/Spas. Above ground swimming pools are specifically excluded. In-ground swimming pools may be allowed with the approval of the ACC and must be constructed in conformity with these restrictions and the ordinances of the Village of Mt. Pleasant. No portion of a swimming pool or the adjoining enclosed area shall be constructed or maintained nearer to the street line than the rear foundation of the principal structure. In-ground spas are permitted.
- 3.18 Roofing Material and Construction.
- a) All dwelling proposed to be erected, altered, or modified shall specify on the construction plans roofing materials acceptable in quality to the ACC and the construction shall be carried out with such roofing material as approved by the ACC.
  - b) All dwellings shall have roof pitches of 7 to 12 pitch (7/12) or as approved by the ACC.
- 3.19 Exterior Building Materials and Dwelling Quality.
- a) All dwellings proposed to be erected, altered, or modified shall, on the construction plans, denote exterior building material(s) proposed to be used on the face of every outside wall of any residence, including chimney chases, soffits and fascias, shall be constructed of brick, stone, cedar or other natural material approved by the ACC. Front face must be 50% stone or brick as approved by ACC and the construction shall be carried out with the

material(s) as approved by the ACC. Windows, doors and shutters may contain manufactured materials.

- b) The design, layout and exterior appearance of each dwelling proposed to be erected, altered, or modified shall be such that, in the opinion of the ACC at the time of approving of the building plans, the dwelling will be of a high quality and will have no substantial adverse effect upon property values.
- c) The proposed color schemes for a dwelling to be erected, altered, modified, or repainted with a new color scheme shall be submitted to the ACC for approval prior to painting or staining. It shall be the aim of the ACC to harmonize colors for not only the dwelling proposed, but to consider the effect of these colors and materials as they relate to other dwellings.
- d) All color schemes, including the color of siding, roof, brick, or stone samples must be submitted for approval before installation on the dwelling.
- e) Hung bays shall not be permitted on first floor at any dwelling, except for 12" maximum projected boxed, bow, or bay windows.

3.20 Signs. No signs of any character, kind, or description shall be maintained upon any lot in the Subdivision except signs of a size no greater than twenty-four (24) inches by twenty-four (24) inches advertising the premises as "For Sale", signs of a size no greater than twelve (12) inches by eighteen (18) inches bearing the name, address, or both of the resident occupying such lot; security service warning signs; municipal street signs and the master Subdivision identification sign. The content, size and design of all signs shall be controlled by the ACC. The Developer, its successors and assigns, shall be exempt from these sign restrictions during the entire development period. Larger signs may be used by the Developer or its agents or by a builder to advertise the property during the sale and/or construction period. Further, the Developer, its successors and assigns shall be allowed to erect and maintain signs and markers identifying the Subdivision.

3.21 Storage Tanks No exposed tank for the storage of fuel or natural gas or any other purpose may be maintained on any of the Lots above the surface of the ground.

3.22 Tree and Brush Removal. All trees, brush, stumps, roots, or other similar materials that may be cut or cleared upon any lot shall be removed from the Subdivision, or in the alternate, reduced to firewood within ninety (90) days after such cutting or clearing. When any tree is felled upon any lot, it

shall be done in such a manner that no stump or protrusion above the level of the ground remains.

- 3.23 Vehicular Storage. No outdoor storage of any commercial vehicle, boat, camper, trailer, snowmobile, recreational vehicle, motorhome, all-terrain vehicle or motorcycle is permitted. Unless the same is enclosed within a garage, no motor vehicle may be parked or kept on any lot in the Subdivision other than a car, truck or van which is licensed by the State of Wisconsin as a private passenger vehicle.
- 3.24 Temporary Structures. No structure of a temporary character, no boat, trailer, truck, basement, tent, shack, garage, barn or other outbuilding may be used at any time as a residence either temporarily or permanently. No building shall be moved on any lot in the Subdivision from another location without the prior written approval of the ACC.
- 3.25 Garbage or Refuse Disposal. No lot shall be used or maintained as a dumping ground for rubbish or waste materials. All containers for the storage and disposal of such material shall be kept in a clean and sanitary condition. To insure the attractive appearance of the Subdivision, all waste containers shall be kept in an enclosure and out of view from the street and adjacent or neighboring property owners.
- 3.26 Accessory or Utility Buildings. Accessory buildings are not allowed with the exception of the Lot 9 garage as approved by the ACC.
- 3.27 Lot Maintenance. Each vacant lot in the Subdivision shall be maintained by the owner of such lot so that the same shall not become a nuisance. No owner shall allow trash or debris to accumulate on any such vacant lot and the lot owner shall regularly mow the lot and comply with Village of Mt. Pleasant ordinances regarding weed control.
- 3.28 Site Grading Modification. Portions of the Subdivision are located within wetlands areas. Each lot shall be developed in conformity with all applicable laws and ordinances, Section 3.11(b) hereof, regarding these environmentally sensitive areas. Any proposed site grade modification must be approved by the ACC and Village engineer.
- 3.29 Cul-De-Sac Maintenance. In addition to the impositions contained in Section 3.11(b) and other impositions contained herein, the affected owners identified herein in perpetuity shall properly maintain landscape isles on all cul-de-sacs. The cul-de-sacs located on the property are contained on roadways which have been dedicated and owned by the Village of Mount Pleasant, Wisconsin. Owners shall have no ownership interest in the cul-de-sac. However, the planting on the cul-de-sac isles may be maintained by and at the expense of the owners of Lots 4,5,6 and

7 for the cul-de-sac adjacent and the owners of Lots 17, 18, 19 and 20 for the cul-de-sac adjacent, upon approval of Homeowners Association. Any changes to the landscape plan for the cul-de-sacs shall be approved by a vote of a majority of the lots affected. Each indicated lot shall be liable for 25% of the cost of maintaining the respective cul-de-sacs. Should the lot owners not maintain the cul-de-sacs, the Association shall undertake the maintenance and have the right to assess the costs to the individual lots identified in this Section 3.29.

#### 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. 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 holds 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 by the Developer, whichever occurs last, 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 Board of Directors, thereafter consisting of three (3) members, shall be elected by the Members at each annual meeting of Members. Members of such elected Board of Directors shall serve for one (1) year 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 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 Easement of Enjoyment. Subject to the provisions herein, every Owner shall a right and easement of benefit and/or enjoyment in any

Common Areas acquired by the Association that shall be appurtenant to and shall pass with the title to every Lot.

- 5.2 Title to Outlots. Title to Outlots 1, 2, & 3 as mentioned above in Section 3.2 shall be conveyed to the Association by quit claim deed from the Developer. Members shall have the rights and obligation imposed by this declaration with respect to such Common Areas.
- 5.3 Extent of Owner's Interest. The rights and easements of benefit and/or enjoyment created hereby shall be imposed upon each lot owner as a 1/22 interest with a corresponding 1/22 obligation for all costs excluding the costs defined in Section 3.29 hereof.
- 5.4 Damage or Destruction of Common Areas by Owner. In the event any Common Area or any portion of the water, 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 Village to repair said damaged areas; the Association or the Village shall repair said damaged areas 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 in the discretion of the Association but subject to Village approval. The amount necessary for such repairs, together with ten (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 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, reviewing, or reconstructing any utilities, facilities, detention areas, drainage systems, sewer and water systems, impoundments or other improvements which benefit other Outlots, Lots and/or Subdivision as a whole, in addition to benefiting such Lot. If such Lot contains public utilities or facilities having an area-wide benefit which are maintained by the Village, the Village 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 any assess the cost, if such cost is not traditionally assumed by the Village and/or prior to acceptance of such public improvements, to the Owners.

The Village shall have the right but not the obligation to effect needed repairs to all areas assigned or titled to the Association hereunder and to assess the costs to the property owners for non-village owned facilities. The allocated costs to Lots 1 thru 22 are 1/22 each.

- 5.6 Disclaimer. The Developer shall convey the above mentioned Outlot 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 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 expresses in such deed, is deemed to covenant 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 repair to Common Areas; and (4) special assessments as provided in Sections 5.4 and 7.3. All such assessments, together with interest thereon and costs of collection or enforcement 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.

The Developer shall pay assessments on Lots owned by Developer pro rata. Assessments paid by Developer may be recovered by Developer by subsequent purchases of Lots.

- 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 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 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 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 Assessments. The assessment for each Lot shall be levied at the same time once each year. The Board shall declare the assessment 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 of Commencement of Annual General Assessment. Annual general assessments shall commence on the date as determined by Developer in its sole discretion.

6.3 Special Assessment for Capital Improvement and Repairs to Drainage System. In addition to the annual general assessment 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, repairs, 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 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 Village) located within any water drainage 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 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 a reasonable condition, provide exterior maintenance upon each Lot as follows: (i) paint, repair, replace and care for roofs, gutters, down spouts, exterior improvements; 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; and (ii) all properties exempt 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 assessment, 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 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 which 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 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 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 Racine 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 Statutes 779.70. Foreclosure of such lien shall be in the manner provided for foreclosure of maintenance in said statute on 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 Village, 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 assessment or charges against the Owners shall meet with the approval of the Village.

## ARTICLE VII ENFORCEMENT, TERMINATION, MODIFICATION

- 7.1 Right to Enforce. This Declaration and the covenants contained herein and on the final plat are enforceable by the Developer and/or the

Association and/or the Village or such person or organization specifically designated by the Developer, in a document recorded in the office of the Racine 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 Association, and/or the Village (but the Village shall have no obligation to enforce the same and may do so in its discretion) 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 Association, and/or the Village on behalf of any party in default thereof for more than thirty (30) days, after receipt by such party of notice from the Developer, the Association, or the Village describing such default. In such event, the defaulting Owner shall be liable to the Developer, the Association or the Village for the actual costs (plus fifteen percent [15%] for overhead) related to or in connection with performing these covenants.
- 7.3 Reimbursement. Any amounts expended by the Developer, the Association, and/or the Village 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, the Association, and/or the Village, 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, the Association, and/or the Village to enforce these covenants in the event of a subsequent default.
- 7.5 Right to Enter. The Developer, the Association, and/or the Village shall have the right to enter upon any building site or other Lot within the premises for the purpose of ascertaining whether the Owner of said Lot is complying with these covenants and if the Developer, the Association, and/or the Village so elects under Section 7.2(d) for the purpose of performing obligations hereunder on behalf of a party in default hereof.

- 7.6 Village Authority. In the event the obligations contained herein and as contained in the final plat are not being performed to the satisfaction of the Village, the Village 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 Village 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 Village in accordance with Wisconsin Statutes.
- 7.7 Dedication/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 Village ordinances, and the Village ordinance is stricter than the provisions contained herein, the Village ordinances 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 Village and shall not constitute a waiver of such Village requirement and/or approval. Each and every Owner shall be solely responsible to insure that the Village ordinance is adhered to and shall be subject to the appropriate Village 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 by the Association for a period of fifty (50) years from the date of this Declaration is recorded and shall be 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 Village's written approval, at any time by written declaration, 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 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 Village is obtained. Such written declaration shall become effective upon recording in the office of the Register of Deeds of Racine County, Wisconsin. All amendments shall be consistent with the general plan of development embodied in this Declaration.

Notwithstanding any provisions of this Section 8.1, owners may not change the pro rata maintenance obligation of Outlots 1, 2, and 3 or the cul-de-sac isles identified herein.

- 8.2 Notices. Any notices required to be sent to any Member or Owner under the provisions of this 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 causes 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 covenants 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.
- 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 or the remaining provisions which shall remain in full force and effect. Said invalid or illegal provisions will be modified to reflect, as close as possible,

the original intent of the former invalid or illegal provision, but in such a manner so as to make said provision valid and legal.

IN WITNESS WHEREOF, this instrument has been duly executed this \_\_\_\_ day of \_\_\_\_\_, 2006.

STM Builders, LLC

\_\_\_\_\_  
By: Thomas M. Suchla, Member

\_\_\_\_\_  
By: Scott T. Matson, Member

State of Wisconsin )  
  ) ss.  
Kenosha County     )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2006, the above named Thomas M. Suchla and Scott T. Matson, to me known to be such persons and members who executed the foregoing instrument and acknowledge that they executed the same as the sole members on behalf of the Developer, by its authority.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission expires \_\_\_\_\_

This Instrument drafted by:  
Attorney Joseph F. Madrigrano, Jr.  
1108 56<sup>th</sup> Street  
Kenosha, WI 53140  
262-657-2000  
State Bar No. 1014345

Exhibit A  
Final Plat  
Legal Description