

**DISCLOSURE MATERIALS  
FOR  
THOMSON PRESERVE CONDOMINIUM**

Menomonee Falls, Wisconsin

Declarant:

Prairie Walk Development, LLC  
N28 W23000 Roundy Dr., Suite 20  
Pewaukee, WI 53072

Declarant's Agent:

Tim Smits

Prairie Walk Development, LLC  
N28 W23000 Roundy Dr., Suite 20  
Pewaukee, WI 53072

**NOTICE**

THESE ARE THE LEGAL DOCUMENTS COVERING YOUR RIGHTS AND RESPONSIBILITIES AS A CONDOMINIUM OWNER. IF YOU DO NOT UNDERSTAND ANY PROVISIONS CONTAINED IN THEM, YOU SHOULD OBTAIN PROFESSIONAL ADVICE.

THESE DISCLOSURE MATERIALS GIVEN TO YOU AS REQUIRED BY LAW MAY, WITH THE EXCEPTION OF THE EXECUTIVE SUMMARY, BE RELIED UPON AS CORRECT AND BINDING. FOR A COMPLETE UNDERSTANDING OF THE EXECUTIVE SUMMARY, CONSULT THE DISCLOSURE DOCUMENTS TO WHICH A PARTICULAR EXECUTIVE SUMMARY STATEMENT PERTAINS. ORAL STATEMENTS MAY NOT BE LEGALLY BINDING.

YOU MAY AT ANY TIME WITHIN FIVE BUSINESS DAYS FOLLOWING RECEIPT OF THESE DOCUMENTS, OR FOLLOWING NOTICE OF ANY MATERIAL CHANGES IN THESE DOCUMENTS, CANCEL IN WRITING THE CONTRACT OF SALE AND RECEIVE A FULL REFUND OF ANY DEPOSITS MADE. IF THE SELLER DELIVERS LESS THAN ALL OF THE DOCUMENTS REQUIRED, YOU MAY, WITHIN FIVE BUSINESS DAYS FOLLOWING RECEIPT OF THE DOCUMENTS, DELIVER A REQUEST FOR ANY MISSING DOCUMENTS. IF YOU TIMELY DELIVER A REQUEST FOR MISSING DOCUMENTS, YOU MAY, AT ANY TIME WITHIN FIVE BUSINESS DAYS FOLLOWING THE EARLIER OF EITHER THE RECEIPT OF THE REQUESTED DOCUMENTS OR THE SELLER'S DEADLINE TO DELIVER THE REQUESTED DOCUMENTS, CANCEL IN WRITING THE CONTRACT OF SALE AND RECEIVE A FULL REFUND OF ANY DEPOSITS MADE.

## INDEX

The Disclosure Materials the Declarant is required by law to provide to each prospective condominium purchaser contains the following documents and exhibits:

1. EXECUTIVE SUMMARY. The Executive Summary highlights for a buyer of a condominium unit essential information regarding the Condominium. The Executive Summary begins at Section 1, Page 1.

2. DECLARATION. The proposed Declaration establishes and describes the Condominium, the Units and the Common Elements. The Declarant reserves the rights to make changes to the Declaration prior to recording. A revised copy will be provided if such changes are made and once the Declaration is recorded. The Declaration begins at Section 2, Page 1.

3. BYLAWS. The proposed Bylaws contain rules which govern the Condominium, the Association, and effect the rights and responsibilities of Unit owners. The Bylaws begin at Section 3, Page 1.

4. ARTICLES OF INCORPORATION. The operation of the Condominium is governed by the Association, of which each Unit owner is a member. Organization of the Association is as specified in its proposed Articles of Incorporation. The proposed Articles of Incorporation begin at Section 4, Page 1.

5. ANNUAL OPERATING BUDGET. The Association incurs expenses for the operation of the Condominium which are assessed to the Unit owners. The anticipated operating Budget is an estimate of those charges which are in addition to mortgage and utility payments. The anticipated operating Budget begins at Section 5, Page 1.

6. MANAGEMENT OR EMPLOYMENT CONTRACTS. Certain services may be provided to the Condominium through contracts with individuals or private firms. There are no present Management or Employment Contracts.

7. FLOOR PLAN AND MAP. Based on the nature of the Units, there are no floor plans. The proposed Condominium Plat shows the location of the Unit you are considering and all common elements which are part of the Condominium. The proposed Condominium Plat begins at Section 7, Page 1.

8. DEVELOPER'S AGREEMENT. The Declarant has entered into a Developer's Agreement for the development of the Prairie Walk Development, LLC with the Village of Menomonee Falls. A copy of the Developer's Agreement begins at Section 8, Page 1.

9. PLANNED RESIDENTIAL DEVELOPMENT AGREEMENTS AND RESOLUTIONS. There are certain Planned Residential Development Agreements and Resolutions which govern the proposed Condominium. A copy of the Planned Residential Development Agreements and Resolutions begins at Section 9, Page 1.

10. RULES AND REGULATIONS. There are certain proposed Rules and Regulations which will govern the Condominium. The proposed Rules and Regulations begin at Section 10, Page 1.

11. STATUTORY RESERVE ACCOUNT STATEMENT. A Statutory Reserve Account Statement will be recorded as to the Condominium. A copy of the proposed Statutory Reserve Account Statement begins at Section 11, Page 1. No statutory reserves will be maintained.

**\*\*\* NOTE: TABS CORRESPOND TO SECTION NUMBERS \*\*\***

# **SECTION 1**

## **EXECUTIVE SUMMARY**



## SECTION 1

### EXECUTIVE SUMMARY

1. Condominium Identification. The name of the Condominium is Thomson Preserve Condominium.
2. Expansion Plans. The Declarant has not reserved the right to expand the Condominium.
3. Governance. The name and address of the Condominium Association is the Thomson Preserve Condominium Owners Association, Inc., N28 W2300 Roundy Drive, Suite 20, Pewaukee, WI 53072. The Condominium Association is self-managed. Tim Smits at 262-746-3600 may be contacted regarding the Condominium in general.
4. Special Amenities. There are no special amenities in the Condominium.
5. Maintenance and Repair of Units. Each Unit owner's responsibility for the repair and maintenance of their Unit is described in VI of the Declaration and may also be governed by the Rules and Regulations.
6. Maintenance, Repair, and Replacement of Common Elements. The Thomson Preserve Condominium Owners Association, Inc. is generally responsible for the maintenance, repair, and replacement of Common Elements. Repairs and replacements will be funded from Unit owner assessments and reserve funds.
7. Rental of Units. Unit owners may only rent their Units in strict conformity with the terms of the Declaration, Bylaws and Rules and Regulations. Generally, a Unit owner may rent a Unit for a period of not less than six months, and the Unit owner has certain responsibility for the actions of its tenant. See Article VI, #31 of the Declaration.
8. Unit Construction and Alterations. There are substantial restrictions on the construction of a residence and other improvements and landscaping contained generally at Article VI of the Declaration, including Association approval thereof.
9. Parking. Parking is available within the condominium at no additional cost to Unit owners. Restrictions with respect to parking are set forth in Article VI of the Declaration.
10. Pets. The rules relating to Unit owners' pets are set forth in Article VI of the Declaration.
11. Reserves. The Association does not maintain reserves for repairs and replacement of Common Elements beyond routine maintenance. A statutory reserve account is not maintained.
12. Fees on New Units. The Declarant has the same obligation as all other Unit owners to pay assessments on the Declarant's unsold Units during the period of the Declarant's control. Provisions addressing the levying and paying of assessments on Units during the period of the Declarant's control are set forth in Article VII #5 of the Declaration.

13. Amendments. A Unit purchaser's rights and responsibilities may be altered by an amendment of the Declaration or Bylaws. The amendment process and requirements are described in Article XII of the Declaration.

14. First Right of Purchase. The Association does not have a first right to purchase a Unit.

15. Transfer Fee. The Association does not presently charge a transfer fee in connection with transfer of a Unit, but reserves the right to impose such a fee in the future.

16. Disclosure Material Fee. The Association does not presently charge a disclosure material fee, but reserves the right to impose such a fee in the future.

17. Payoff Statement Fee. The Association does not presently charge a payoff statement fee, but reserves the right to impose such a fee in the future.

18. Developers Agreement and Planned Residential Development Agreement and Resolutions. The Village of Menomonee Falls has imposed certain restrictions and covenants on the Declarant and the Condominium which are identified in the Development Agreement and Planned Residential Development Agreements and Resolutions at Sections 8 and 9.

**SECTION 2**

**DECLARATION**

## **DECLARATION OF THOMSON PRESERVE CONDOMINIUM**

THIS DECLARATION is made and entered into by Prairie Walk Development, LLC (the “Declarant”), pursuant to Chapter 703 of the Wisconsin Statutes, the Condominium Ownership Act, as the same may be amended, renumbered, or renamed from time to time (the “Act”).

### **WITNESSETH:**

Declarant owns certain real property located in Menomonee Falls, Wisconsin (the “Property”), as is further and particularly described on Exhibit A attached hereto. Declarant intends to create a condominium under the Act which consists of eighteen (18) units that are each a cubicle within which a unit owner may build a residence, together with certain other improvements in connection therewith, all in strict accordance with this Declaration (“Condominium”).

Declarant intends by this Declaration to submit the Property and improvements to the condominium form of ownership under the Act and further desires to establish, for its own benefit and that of all future owners and occupants of the Condominium, certain easements, rights, restrictions, and obligations with respect to the ownership, use, and maintenance of the Condominium on the terms and conditions hereinafter set forth.

The name of the Condominium is “Thomson Preserve Condominium.”

An informational and reference copy of the plat of condominium to be recorded in accordance with the Act (“Plat”) is attached as Exhibit B, and any official use or reference should be made to the actual recorded copy of the Plat.

The addresses of the Condominium are as set forth on attached Exhibit C.

NOW, THEREFORE, Declarant, the fee owner of the Property, by this Declaration hereby (i) submits the Property and any improvements, subject to taxes and assessments not yet due and payable, municipal and zoning ordinances, recorded easements and restrictions, if any, and all other matters of record, to the condominium form of use and ownership as provided in the Act and this Declaration; (ii) establishes and imposes the following provisions, restrictions, conditions, easements, and uses to which the Condominium may be put; and (iii) specifies that the provisions of this Declaration shall constitute covenants to run with the land and shall be binding on Declarant, its successors and assigns, and all subsequent owners and occupants of all or any part of the Condominium.

### **ARTICLE I**

#### **DIVISION OF CONDOMINIUM INTO SEPARATE FREEHOLD ESTATES**

Declarant divides the Condominium into the following separate freehold estates:

1. Eighteen (18) separate residential freehold estates (a “Unit” or collectively, the “Units”), consisting of the space or area and all fixtures or improvements, contained within the boundaries of each such Unit as follows:

- a. The vertical boundaries shall be the perimetrical boundaries shown on the Plat, extended to the upper and lower boundaries of the Unit.
- b. The lower and upper boundaries shall be: (i) lower boundary – a horizontal plane located twenty-five (25) feet below the ground; and (ii) upper boundary – a horizontal plane located thirty-five (35) feet above the ground; each extended to the perimetrical boundaries shown on the Plat.
- c. Each Unit also includes all portions of the plumbing, heating, electric, natural gas, air conditioning, cable, telecommunications, and other systems serving only that Unit even if located partially outside the boundaries of the Unit.

2. A freehold estate in the “Common Elements” of the Condominium as hereinafter described.

## **ARTICLE II**

### **DESCRIPTION AND LOCATION OF THE CONDOMINIUM AND UNITS**

The legal description of the Property is as shown on Exhibit A.

The Property, including the Units and Common Elements, are shown on the Plat, Exhibit B.

The respective addresses of the Units are described on Exhibit C.

## **ARTICLE III**

### **DESCRIPTION OF COMMON ELEMENTS**

The Common Elements shall consist of all of the Condominium except the Units. The Common Elements include only the stormwater retention and open space areas shown on the Plat. There are no limited common elements in the Condominium.

## **ARTICLE IV**

### **PERCENTAGE OF OWNERSHIP IN COMMON ELEMENTS**

1. Ownership. The ownership of each Unit shall include a one-eighteenth (“1/18<sup>th</sup>”) fractional and undivided interest in the Common Elements.

2. Sharing of Expenses and Surpluses. The common surpluses and expenses of the Condominium relating to the Common Elements shall be shared among the owners of all Units according to their percentage of their undivided interest in the Common Elements, as expressed above.

3. Use of Surpluses. All common surpluses of the Condominium for each fiscal year of the below described Association shall be credited to the reserves or replacement funds for common expenses of the Condominium for the next succeeding fiscal year or years.

## **ARTICLE V**

### **ASSOCIATION OF UNIT OWNERS**

1. Administration. The Condominium shall be administered by a non-profit corporation known as Thomson Preserve Condominium Owners Association, Inc. (the "Association"). The Association shall be governed by a board of directors (the "Board of Directors"). The Board of Directors shall adopt bylaws ("Bylaws") and may adopt rules and regulations ("Rules and Regulations") in furtherance thereof.

2. Membership and Voting. Each Unit owner shall be a member of the Association. One (1) vote shall appertain to each Unit. Membership shall commence and terminate with ownership. The manner of sharing and casting ballots shall be set forth in the Bylaws.

3. Declarant Control. The Association shall be subject to Declarant control as provided in Article X. Prior to the conveyance by Declarant of twenty-five percent (25%) of the undivided interest in the Common Elements to purchasers, the Association shall hold a meeting and the Unit owners other than the Declarant shall elect at least twenty-five percent (25%) of the Board of Directors. Prior to the conveyance of fifty percent (50%) of the undivided interest in the Common Elements to purchasers, the Association shall hold a meeting and the Unit owners other than the Declarant shall elect at least one-third (1/3) of the Board of Directors.

4. Association Management. Subject to Article X, the Board of Directors may employ a professional property manager, management company or managing agent on a salaried basis with such experience and qualifications and on such terms and conditions as may be acceptable to the Board of Directors. Any such agreement must be terminable without fee upon no more than ninety (90) days' notice and the term thereof may not exceed three (3) years.

5. Condominium Instruments. The Association shall make available to Unit owners and to holders, insurers, or guarantors of any mortgage of a Unit, current copies of this Declaration, the Bylaws, any Rules and Regulations, and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. "Mortgage" as used in this Declaration includes a land contract for a Unit.

6. Audit. The holders of any first mortgage shall be entitled, upon written request, to an audited financial statement for the immediately preceding fiscal year of the Association prepared at the expense of such mortgagee. Such financial statement shall be furnished

within a reasonable time following such request. A “first mortgage” is one which is entitled to priority over all other mortgages for such Unit, without regard to other liens and encumbrances.

7. Easements. The Association shall have the right to grant permits, licenses, and easements over the Common Elements and that area within five feet of the inside of the Unit boundary, for utilities and other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominium, on such terms and conditions as the Board of Directors may deem advisable.

8. Services. The Association, may, at its sole discretion, arrange for or provide services to owners and their Units, directly or through contracts with the Declarant or other third parties, including service agreements by which a particular service is provided to all Units as a common expense, or service contracts offering services at the option of each Unit owner with the charges for such service being a specific charge to the Unit owner, or a specific assessment against the owner’s Unit, or both. Any Association contract for services may require individual owners or occupants to execute separate agreements directly with the persons providing services in order to gain access to or obtain specified services. Such contracts and agreements may contain terms and conditions as may be just, including provision for termination of services provided to such Unit. Any such termination shall not relieve the Unit owner of the continuing obligation to pay assessments for any portion of the charges for such service that are assessed against a Unit as a common expense. In its discretion, the Association may discontinue offering particular services and may modify or cancel existing contracts for services, subject to the contract terms and any provision that may exist elsewhere in the governing documents requiring the Association to provide such services.

9. Approvals. The Association may approve or disapprove any proposal submitted to it pursuant to this Declaration, but shall apply one or more of the following criteria in considering any proposal and/or may apply any additional criteria as the Board of Directors deems prudent: (i) matters of access and convenience to other Units; (ii) requiring the written agreement of the owner of the Unit making the proposal to pay the costs of restoring Common Elements affected by such proposal to their prior physical condition upon the termination of such use; and (iii) requiring the owner of the Unit making the proposal to agree, in writing, to pay a fair and reasonable monthly charge to the Association for any encroachment on Common Elements resulting from the proposal. The Board of Directors may, at its discretion, impose further conditions upon its consent to any proposal as it deems appropriate. There will be no deemed approvals of any Unit owner’s proposal.

## **ARTICLE VI**

### **MAINTENANCE, USE, ALTERATION, AND IMPROVEMENT OF CONDOMINIUM**

1. General Purpose. The general purpose of this Article is to assure that the Condominium will become and remain an attractive community and toward that end to preserve and maintain the natural beauty and the natural plant life and wildlife habitat of certain open spaces and areas within the Condominium; to insure the best use and the most appropriate development and improvement of each Unit; to protect the owners of Units against such use of surrounding Units as will detract from the value of their Unit; to guard against the erection thereon of poorly

designed or proportioned structures; to obtain harmonious use of materials; to insure the highest and best residential development of the Condominium consistent with the purposes for which it is declared; to encourage and secure the erection of attractive structures thereon, with appropriate locations thereof on Units; and to secure and maintain proper spatial relationship of structures and Unit lines.

2. Residential Unit. No Unit shall be used except for residential purposes. No structure shall be erected, altered, placed, or permitted to remain on any such Unit other than:

- a. one (1) single family home ("Home"), not exceeding two and one-half stories in height; and
- b. an attached private garage for not less than two (2) cars with a minimum of 400 square feet; and
- c. subject to approval by the Board of Directors, one (1) outbuilding incidental to residential use of the Unit; and
- d. any such other improvements only as expressly permitted by this Declaration.

3. Home Sizes. Homes erected within any Unit must meet or exceed the following minimum area requirements:

- a. Not less than 1,400 square feet for a one-story Home;
- b. Not less than 1,000 square feet for the first floor of a one and one-half or two-story Home and not less than 1,800 square feet for both the first and second floors combined; or
- c. Not less than 1,800 square feet on the upper floors of a split-level or bi-level Home. Upper floors are defined as the total living area on those floors immediately below the roof, regardless of whether or not they are at the same elevation.
- d. With respect to all other types of Home, not less than such areas, determined by the Board of Directors in its sole discretion, to be consistent with the foregoing and with other provisions hereof.
- e. Minimum area square footage calculations by the Board of Directors shall be made from the outside face of exterior wall construction and include all walls. Window, fireplace, and room projections are included only when floor joists are extended under those areas. Decks, porches, garages, carports, attics, space labeled "optional" or "bonus," breezeways, sunrooms, or similar additions and floor area below finished yard grade will be excluded from calculation.



- f. For purposes of calculating total area, the Board of Directors, in its sole discretion, shall determine what constitutes a one-story, a one and one-half story, a two-story, or a tri-level Home.
- g. In no event shall any Home be erected on any Unit containing a total area of less than 1,400 square feet as measured above.
- h. No Home shall be constructed which shall be a substantial duplication of another previously approved or constructed Home located within two hundred fifty (250) feet of the proposed Home, inside or outside the Condominium.

4. Approval Required. In order to maintain harmony in appearance and to protect the owners of the Units in the Condominium, no Home, accessory building, fence, sign, wall, swimming pool, or other structure shall be erected, constructed, or maintained upon any Unit nor shall any change or alteration be made thereon unless the complete plans and specifications thereof, a plot plan showing the exact location of such Home, accessory building, fence, sign, wall, swimming pool, or other structure, the elevation thereof and the grade of the Unit and a sketch or view of such Home, accessory building, fence, sign, wall, swimming pool or other structure or changes, shall have been submitted to and approved in writing by the Board of Directors. The decision of the Board of Directors shall be final and binding upon all parties. The Board of Directors shall have the right to refuse to approve any such plan or specifications which are not in conformity with these restrictions or are not desirable for aesthetic or any other reason. In passing upon such submission, the Board of Directors may take into consideration the suitability of the proposed Home, accessory building, fence, sign, wall, swimming pool or other structure, its design, elevation and the materials of which it is to be constructed on the Unit; the harmony thereof with the surrounding Homes and the view of and from adjacent property. All decisions of the Board of Directors shall be final. The Board of Directors shall have the right to approve variations or waive minor infractions or deviations from these restrictions as provided below.

5. Setbacks and Locations. Setbacks and locations of all Homes, accessory buildings, fences, signs, walls, swimming pools, or other structures shall be compliant with any applicable governmental regulation, including the ordinances of the Village of Menomonee Falls ("Village") and shall also be as follows:

- a. There shall be a minimum front yard setback of twenty-five (25) feet from the back of curb of a private street and thirty (30) feet from the back of curb of a public street.
- b. There shall be a minimum side yard setback of twenty (20) feet from the side of a structure to another structure and from the side of a structure to a property line.
- c. There shall be a minimum rear yard setback of twenty (20) feet from a property line.

All setbacks must be verified with the Village by the Unit owner prior to submitting plans to the Board of Directors for review. Variations from setback requirements may be allowed by the Board of Directors as provided below if an appropriate governmental variance has been previously approved. Governmental approval, or compliance with a governmental setback or requirement does not mean the Board of Directors must also approve, and the Board of Directors may decline to approve a variation irrespective of the granting of a governmental variance.

6. Garages, Parking, Parking Outdoor Storage. All garages shall be large enough to accommodate a minimum of two (2) cars. No truck, boat, mobile home, "POD" or portable storage unit, or trailer of any kind may be parked on a Unit outside of the garage other than for the delivery of materials or merchandise, except for periods not to exceed one (1) week during construction, servicing, remodeling, or moving periods; upon receipt of a written request, the Board of Directors may grant a variation with conditions. No vehicle shall be parked or stored on a Unit outside the garage while being repaired or restored for longer than an eight-hour period. No commercial vans or commercial trucks may be stored, parked, or placed overnight in a driveway of the Condominium without a permit issued by the Board of Directors, which permit may be issued in the discretion of the Board of Directors.

7. One Year to Complete. All Homes shall be completed within one (1) year from the date ground is broken.

8. Permitted Materials.

- a. No used materials will be permitted in the construction of any structure in the Condominium except materials such as reclaimed brick, which may be permitted with prior approval of the Board of Directors.
- b. Any accessory building or other structure, if approved, shall utilize the same roof and exterior materials as the Home.
- c. The exterior material of the Homes shall be a combination of brick, veneer, wood, "through color" vinyl or wood composite or PVC materials, or cement board composites. Manmade materials such as, but not limited to, aluminum siding and artificial stucco siding are not allowed. Aluminum soffit and fascia may be permitted. Cement board siding products and vinyl siding with a minimum gauge thickness of 0.044 will be permitted. Cultured stone and prefinished fiber sidings may be allowed upon specific approval by the Board of Directors.
- d. Approved roofing materials are limited to the following:
  - (i) Cedar Shakes,
  - (ii) Cement or Clay Tile,

- (iii) Slate, or
- (iv) Dimensional Asphalt Shingle, which are manufacturer guaranteed for thirty (30) years or longer.

9. Roof Pitch. The required minimum roof pitch is 7:12.

10. Variations. The Board of Directors, on a finding that the specific facts of an application or circumstance so require and where such variation will benefit the Unit in question and the Condominium as a whole, may vary from any such standard that it has adopted or may waive any standard in this Declaration. The Board of Directors may, in its discretion, also permit comparable or superior construction materials as substitutes for those required in this Declaration. Any such variation must be express and in writing. Granting of a variation in one instance will not amend or modify this Declaration. The Board of Directors may enforce any standard even if it has, expressly or by acquiescence, permitted previous variation from such standard. Any variations granted hereunder may be conditioned, and may be permanent or time-limited, and if not expressly time-limited will be deemed to be effective for so long as the use of such Unit is not materially altered. Variations provided hereunder are not governmental variances, and the Board of Directors may grant a variation as above in the absence of hardship and standards for granting governmental variances under zoning regulations shall not govern, constitute or be construed as the standards to be applied by the Board of Directors.

11. Compliance with Law. No noxious or offensive activity, nor any activity which is violative of the Village code, county ordinance, or state law, as applicable, shall be carried on upon any Unit nor shall anything be done thereon which may be or may become an annoyance or nuisance to any other Unit owner or the Condominium. No Home may be occupied until it has been substantially completed in accordance with the plans and specifications submitted to and approved by the Board of Directors and an occupancy permit obtained from the Village.

12. Drainage and Grading. A master surface drainage and grade plan has been prepared by the Declarant designating the manner in which each Unit shall drain in relation to all other Units in the Condominium, and designating the grade elevation of the Home to be constructed thereon. A copy of this plan is on file in the office of the Declarant and with the Village. At the time a building permit is requested, the grade elevation of each Home shall be obtained from the Village, and the Home shall be constructed accordingly. No deviation therefrom shall be permitted without the prior written approval of the Village and the Board of Directors. Within thirty (30) days after completion of a Home on any Unit in the Condominium, the owner of said Home shall grade the Unit to conform to said drainage plan and from that time forward nothing shall be done which will impede or obstruct the flow of surface drainage water in accordance with the plan. Silt fences, hay bales, and/or erosion control measures may be placed at various locations in the Condominium by the Declarant or as ordered by any governmental authority in the course of development of the Condominium. Unit owners are required to maintain said silt fences until such time as turf cover is restored to all disturbed areas, and to comply with any orders of any governmental authority requiring additional silt fencing, hay bales, removals, and/or other erosion control measures for their Unit. If a Unit owner fails to comply with such order within twenty-four (24) hours, such governmental authority or the Association shall have the right to cause such work to be done, and to charge the cost thereof to the Unit owner, which if not

paid shall be added to the tax bill as a special assessment by the governmental authority or as a special charge by the Association pursuant this Declaration for the Unit in question.

13. Fill. Where fill is necessary to obtain the proper topography and finished ground elevation, it shall be free of waste material and shall not contain noxious materials, refuse or pollutants. Dumped fill material shall be leveled immediately after completion of the Home. Said fill is also subject to all applicable regulation of any governmental body with jurisdiction, regulation, including but not limited to, a fill permit issued by the Village, and any other governmental authority.

14. Swimming Pools. Only in-ground swimming pools are permitted, when installed in accordance with Village requirements. No above-ground swimming pools, other than temporary, portable above-ground pools with a diameter not to exceed twelve (12) feet and height not to exceed thirty-six (36) inches are permitted, provided they shall be kept in the rear yard and not in the driveway, front yard, or side yards. No other above-ground swimming pools are permitted. Board of Directors approval must be obtained for location and size of portable swimming pools greater than forty-eight (48) inches in diameter.

15. Fences. Lot line or perimeter fences are not permitted. Privacy or ornamental fences, or pool fences will be permitted, provided they are constructed of wood, ornamental iron, or manmade product approved by the Board of Directors and are a maximum of six (6) feet in height, and the design thereof has been submitted to and approved by the Board of Directors and Village in advance of construction thereof. Compliance with all Village fence regulations is required. Fence locations shall not conflict with underground public utility facilities.

16. Playsets. Children's outdoor play structures shall be permitted in the rear yard and not in the front yard or side yard. The Board of Directors' approval must be obtained for location and appearance before construction or placement. Outdoor sport courts and similar implements are not allowed.

17. Signage. No signs of any kind shall be displayed in any Unit except one (1) sign of not more than one (1) square foot in area advertising a home-based occupation permitted by this Declaration, or a sign of not more than five (5) square feet advertising a Unit for sale or rent, or signs used by a building contractor or by the Declarant to advertise the Unit during the construction and sales period or during a Parade of Homes or similar event. All such signs must be professionally designed and produced and in compliance with all Village requirements.

18. Landscaping. A landscape plan must be reviewed and approved by the Board of Directors as a part of the initial approvals for the construction of the Home. Yards within Units shall be landscaped and seeded or sodded within six (6) months after completion of the Home. A Unit's landscaping shall include any area from the front Unit line and the edge of the street pavement between the side Unit lines extended. Landscaping must include an asphalt, concrete or decorative drive, parking stand or turnabout. All landscaping must be of a conventional nature. No stone aggregate lawn, or wild or prairie type vegetation substitutes for a typical grass, seed or sod, lawn will be allowed.

19. Trees. No existing tree with a diameter of four (4) inches or more at a height of four (4) feet from the ground, beyond fifteen (15) feet from the outside perimeter of the approved

Home location, shall, without prior written approval of the Board of Directors, be cut down, destroyed, mutilated, moved, or disfigured. All existing trees shall be protected during construction and preserved by wells or islands, and proper grading in such matter as may be required by the Board of Directors. At least three (3) trees, minimum caliper of two (2) inches, shall be installed on each Unit at time of landscaping.

20. Motor Vehicles. No off-road motorcycles, ATVs, snowmobiles, trail bikes, dune buggies, go carts, or other unlicensed or off-street motorized vehicles of whatever type or description shall be operated within the Condominium.

21. Underground Utilities Only. All telephone, utility, electric, or cable service within the Condominium will be underground and no overhead service shall be provided or allowed.

22. Satellite Dishes, Antennae. Any satellite dish or antennae will comply with all applicable governmental restrictions. No satellite dishes greater than twenty-four (24) inches in diameter shall be allowed in the Condominium. Satellite dishes less than twenty-four (24) inches in diameter and other exterior antennae for television broadcast, multi-point multi-channel distribution for television or data, or other similar purposes are subject to review and approval by the Board of Directors pursuant to this Declaration. In addition, satellite dishes and antennas shall not be free standing and shall be attached to the Home and placed to minimize view from the street and from adjacent Units, provided such placement allows reception of an acceptable quality signal and does not unreasonably delay or increase the cost of installation, maintenance or use. No satellite dish or antennae shall be placed in any Common Area.

23. Construction Debris. It shall be the responsibility of each Unit owner to remove all debris caused by any and all construction work occurring on his Unit. No owner shall allow disposal of any waste building material, tree stumps, branches, tree trunks, or other material on any Unit or within the Condominium or any adjacent land, including but not limited to the Village street(s) abutting said Unit. The Unit owner shall be responsible for maintenance of all silt fence and other erosion control measures until final landscaping has been completed. Failure to comply will result in the Declarant advising Unit owner of this neglect and giving Unit owner twenty-four (24) hours in which to clean up their Unit or clean up off Unit waste building material, tree stumps, branches, tree trunks or other material, or repair the erosion control as directed. Failure of the Unit owner to perform the necessary clean up or repairs may result in the Declarant performing the required work and/or filing a lien against the Unit pursuant to this Declaration. The Unit owner is responsible to Declarant and/or the Village for the cost of repairing and replacing any street pavement, curb, gutter, sidewalk, or improvements which are damaged during the course of construction of the Home or improvements on the owner's Unit.

24. Retaining Walls. Retaining walls are subject to all governmental regulations, and Board of Directors approval, and shall be built of stone, brick, or decorative concrete masonry unit, but not of concrete block or unfaced poured concrete or loose rubble or stone.



25. Condominium Signage. Permanent entrance monuments, signs, lighting, or landscaping may be installed in the Common Elements by the Association with the approval of the Board of Directors.

26. Light Post and Mailbox. In order to maintain continuity in the Condominium, a customized street light with photocell and a share in a permanent mail/newspaper station must be purchased from the Declarant at the time of the closing of the purchase of a Unit. The cost of this package is \$1,200.00 and will be charged to buyer on the settlement statement at closing. The Declarant will install the mail/newspaper station in locations as directed by the U.S. Postal Service. The Unit owner may be required to provide an individual temporary mailbox at a common location as directed by the U. S. Postal Service prior to installation of the permanent mail/newspaper units.

27. Storm Water Management Practice Maintenance Agreement ("SWMP"). Declarant has entered into a SWMP dated March 12, 2022. The terms of the SWMP are included in and made applicable to the Condominium property pursuant to a post-construction runoff permit recorded with the Register of Deeds for Waukesha County, Wisconsin on March 14, 2022 as Document No. 4656705. The Board of Directors shall be responsible for the duties as required by the SWMP or any such permit. Any expenses relative to the SWMP or such permit shall be borne by the Association and shall be a common expense.

28. Unit Owner's Responsibility. The owner of each Unit shall maintain in a good and orderly condition all of its Unit, including but not limited to: (a) the Home, garage, and any other improvements constructed in such Unit; (b) the lawn and landscaping within such Unit; and (c) any permitted patios, decks, porches, hardscape, retaining walls, fire pits, swimming pools, playsets, or other improvements. The owner of each Unit shall also reimburse the Association for any repair or replacement of any portion of the Common Elements damaged through the fault or negligence of such owner or such owner's family, guests, invitees, or any other occupants of the Unit or invitee.

29. Association Responsibility. The Association shall maintain in good condition and repair, the Common Elements, except as provided above.

30. No Grading Changes by Owners. An owner of a Unit shall make no grading changes within such Unit which will adversely impact any adjacent Unit, including as to drainage.

31. Leases of Units. An entire Home and Unit may be leased for terms of not less than six (6) months. No leasing of rooms or similar division of a Home or Unit is permitted. Each occupant of a Unit pursuant to a lease shall comply with all provisions of this Declaration, the Articles of Incorporation, and Bylaws of the Association, and such Rules and Regulations as may be adopted by the Board of Directors pursuant to this Declaration or the Bylaws and each lease shall provide that a breach of any of the foregoing shall be deemed a default under the lease. Notwithstanding the foregoing, the Unit owner shall be responsible to the Association and each other Unit owner for any breach of any provision of this Declaration, Bylaws, or any Rules and Regulations caused by an occupant of such owner's Unit and the Association need deal only with the owner and shall not be obligated to address any breach with the offending occupant.

32. Pets. No animals, livestock, or poultry shall be raised, bred, or kept on any Lot, except that dogs, cats, or other household pets may be kept provided they are not kept, bred, or maintained for any commercial purposes. Outside kennels are an outbuilding as provided above, subject to Association review and approval and shall be located in the rear yard and not in the driveway, front yard, or side yards.

33. No Obstructions Parking. No Unit owner shall cause or permit the Common Elements to be so used as to deny to other Unit owners the full use of such portion of the Common Elements. Accordingly, there shall be no obstruction of any Common Elements. Common Element walks and drives, if any, shall be kept clean and orderly. No personal property shall be stored, parked, or placed on the Common Elements. No more than one (1) licensed automobile shall be parked overnight in a driveway appurtenant to a Unit.

34. Waste. Units shall utilize trash and recycling services as provided by the Village. The unreasonable or unsightly accumulation of waste, litter, excess, or unused building materials or trash is prohibited. Garbage containers shall be kept inside the garage or properly screened from public view. No waste shall be disposed of by fire in incinerators, open fires, or elsewhere.

35. Noxious Activity. No use or practice shall be allowed in the Condominium which: (a) is a nuisance, (b) is immoral or improper or offensive in the opinion of the Board of Directors, or requires any alteration of or addition to any Common Elements, (c) is in violation of the Bylaws or Rules and Regulations of the Association, or (d) unreasonably interferes with or is an unreasonable annoyance to the peaceful possession or proper use of the Condominium by other Unit owners or occupants, including the use of lighting or amplified sound at times or manners which is reasonably objectionable in the opinion of the Board of Directors.

36. Acts Affecting Insurance. No Unit owner or occupant shall commit or permit any violation of the policies of insurance taken out by the Board of Directors hereunder, or do or permit anything to be done, or keep or permit anything to be kept, or permit any condition to exist, which might (i) result in termination of any such policies, (ii) adversely affect the right of recovery thereunder, (iii) result in reputable insurance companies refusing to provide insurance to the Association or Board of Directors, or (iv) result in an increase in the insurance rate or premium to the Association or Board of Directors.

37. Legal Restrictions. No unlawful use may be made of the Condominium or any part thereof, and each Unit owner shall strictly comply with all valid laws, orders, rules and regulations of all governmental agencies having jurisdiction thereof (collectively "Legal Requirements"). Compliance with any Legal Requirements shall be accomplished by and at the sole expense of the Unit owner or owners or the Association, as the case may be, whichever shall have the obligation under this Declaration to maintain and repair the portion of the Condominium affected by any such Legal Requirements. Each Unit owner shall give prompt notice to the Board of Directors of any written notice it receives of the violation of any Legal Requirements affecting its Unit or the Condominium. Notwithstanding the foregoing provisions, any Unit owner may, at its expense, defer compliance with and contest, by appropriate proceedings prosecuted diligently and in good faith, the validity or applicability of any Legal Requirements affecting any portion of

the Condominium which such Unit owner is obligated to maintain and repair, and the Association shall cooperate with such Unit owner in such proceedings, provided that:

- a. Such Unit owner shall pay and shall defend, save harmless, and indemnify the Board of Directors, the Association and each other Unit owner against all liability, loss or damage which any of them respectively shall suffer by reason of such contest and any noncompliance with such Legal Requirements, including reasonable attorneys' fees and other expenses reasonably incurred; and
- b. Such Unit owner shall keep the Board of Directors advised as to the status of such proceedings.
- c. Subsections (a) and (b) above collectively called the "Conditions as to Contest".
- d. Such Unit owner need not comply with any Legal Requirements so long as it shall be so contesting the validity or applicability thereof, provided that (i) noncompliance shall not create a dangerous condition or constitute a crime or an offense punishable by fine or imprisonment, and (ii) no part of any building shall be subject to being condemned or vacated by reason of noncompliance or otherwise by reason of such contest ((i) and (ii) are called the "Conditions as to Deferral of Compliance"). The Association may also contest any Legal Requirements without being subject to the Conditions as to Contest and may also defer compliance with any Legal Requirements, but only subject to the Conditions as to Deferral of Compliance. The costs and expenses of any contest by the Association shall be a common expense.

## **ARTICLE VII**

### **ASSESSMENTS**

1. Liability; Late Payments. The Bylaws shall set forth the manner of making and collecting assessments against the Unit owners for common expenses of the Condominium. Regular assessments and special assessments not made for violations of the provisions of this Declaration, the Bylaws, or Rules and Regulations shall be made on an annual basis but shall be due and payable in monthly installments as determined by the Board of Directors. Each Unit owner shall be liable for such fractional or percentage interest of the common expenses of the Condominium as is provided in this Declaration. Any assessment or installment not paid when due shall be delinquent and the Unit owner may be charged interest on the unpaid assessment or installment, calculated from the date when the assessment or installment was first due until the date it is paid. The Board of Directors shall establish a uniform policy with regard to the number of days that must run following the due date for interest to be charged and shall establish the rate



of interest to be charged on such unpaid assessments or installments. All payments upon account shall be first applied to the interest, if any, and then to the assessment payment first due.

2. Liens. If a Unit owner defaults in the payment of any assessment or installment, the Association shall take appropriate measures as provided by law in accordance with the Bylaws. The lien for unpaid assessments provided in the Act shall also secure reasonable attorneys' fees incurred by the Association incident to the collection of such assessment or enforcement of such lien. In any foreclosure of a lien for assessments, the owner of a Unit subject to a lien shall be required to pay a reasonable rental for the Unit and the Association shall be entitled to the appointment of a receiver to collect the same. To the extent permitted by the Act, the lien provided therein and herein shall be subordinate to the lien of any first mortgage on a Unit.

3. Rights of Mortgagees. Any first mortgagee who obtains title to a Unit pursuant to remedies provided in the mortgage or foreclosure of the mortgage and any party purchasing the Unit in such a foreclosure shall not be liable for such Unit's unpaid installments of assessments which accrued prior to the acquisition of title to such Unit by such mortgagee or other party. The obligation of the former Unit owner to pay such assessment is not hereby extinguished.

4. Association Statements. The Association, upon ten (10) days' request, shall provide a letter to the purchaser of any Unit which states the existence, if any, of outstanding general or special assessments against the owner of the Unit being sold; provided, however, that all Units conveyed by Declarant shall be deemed to be conveyed free from all such outstanding general or special assessments and no such letter shall be required or given as to such Units.

5. First Assessment. Regular assessments shall be due and payable on the date of recordation hereof. The Declarant will have responsibility for paying the assessment for all Declarant owned units. The Declarant may seek proration thereof on the first sale of any Unit.

## **ARTICLE VIII**

### **RECONSTRUCTION AFTER LOSS; CONDEMNATION**

1. Reconstruction – Common Elements or Association Property. In the event of fire, casualty or any other disaster affecting any Common Element, or any real or personal property owned by the Association, any damage will be reconstructed and repaired, to substantially as existed prior to the fire, casualty or disaster. The Association shall undertake to cause such reconstruction and repair to be accomplished within a reasonable period of time.

2. Reconstruction – Unit. In the event of fire, casualty or any other disaster affecting any Unit, including any Home or improvement within a Unit, the affected Unit owner shall have the sole right and responsibility to repair, reconstruct or raze. If such Unit owner intends to repair or reconstruct such Unit owner shall promptly undertake the same, and shall submit plans for such repair or reconstruction to the Board of Directors for approval if such repair or reconstruction will deviate from prior approvals for such Unit. Thereafter, such Unit owner shall diligently and continually pursue completion of such repair or reconstruction within a reasonable period of time. If the Unit owner elects not to pursue repair or reconstruction, such Unit owner will cause the razing or removal of any improvement on a Unit, and the return of such Unit to a safe and dust and erosion free state, including the filling of any basement

3. Condemnation - Common Elements. The Association shall represent the Unit owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Elements or part thereof. The award or proceeds of settlement for a taking of part or all of the Common Elements shall be payable to the Association for the use and benefit of the Unit owners and their mortgagees as their interests may appear.

4. Condemnation - Units. Each Unit owner, or its first mortgagee as the case may be, shall have sole right and responsibility in any condemnation proceedings or in negotiations, settlements, and agreements with the condemning authority for acquisition of any Unit or part thereof. The award or proceeds of settlement for a taking of part or all of a Unit shall be payable to the involved Unit owner or its first mortgagee.

## **ARTICLE IX**

### **INSURANCE**

1. Association Insurance. The Board of Directors shall obtain and continue in effect insurance coverage on all improvements constituting Common Elements, if any, or otherwise on or within the Common Elements as well as personal and real property owned by the Association in an amount equal to the maximum insurable replacement value, with "inflation guard," "special condominium" and "condominium replacement cost" endorsements, without deduction or allowance for depreciation, which amount shall be determined annually by a recognized appraiser or insurer as selected by the Board of Directors, affording protection against loss or damage by fire and such hazards covered by a standard extended coverage endorsement and all risk endorsements and such other risks or hazards as from time to time shall be customarily covered with respect to improvements, personal and real property similar in construction, location and use. Said insurance shall be for the benefit of the Association and the owners of Units and their mortgagees as their interests in such insured property may appear; provided, however, all proceeds payable by reason of said insurance shall be paid to the Association as trustee for the owners of Units and their mortgagees for the express purpose of reconstruction and repair or as otherwise provided herein. Each policy obtained by the Association shall contain a "severability of interest" endorsement and a standard mortgagee clause endorsed to provide that the proceeds are payable to the Association for the use and benefit of the mortgagees as their interests may appear. For the avoidance of doubt, the foregoing is the sole responsibility of the Association pursuant to Section 703.17 of the Act, and for the purposes of that provision, "property" is limited to the Common Elements and any personal or real property owned by the Association.

2. Association Liability Insurance. In addition to the hazard insurance coverage provided above, the Board of Directors shall obtain comprehensive general public liability insurance in such amounts equal to or exceeding One Million Dollars (\$1,000,000.00) for a single occurrence covering all of the Common Elements or property owned by the Association. Coverage under this policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use of the Common Elements and legal liability arising out of actions related to employment contracts of the Association. Such policy must provide that it may not be cancelled or substantially modified, by any party, without at least ten (10) days' prior written notice to the

Association. The Board of Directors may also obtain such other insurance as it shall determine from time to time to be desirable including without limitation directors and officers errors and omissions coverage.

3. Cost; Waiver. All insurance premiums for any insurance coverage obtained by the Board of Directors shall be a common expense of the Condominium. The Association and each Unit owner hereby expressly waive any claim it or they may have against the other for any loss insured under any policy obtained by the Board of Directors, however caused, including such losses as may be due to negligence of such other party, its agents or employees. All such policies of insurance shall contain a provision that they are not invalidated by the foregoing waiver, but such waiver shall cease to be effective if the existence thereof precludes the Association from obtaining any such policy.

4. Exclusions From Coverage. Notwithstanding anything to the contrary herein, the insurance coverage obtained by the Board of Directors (i) will exclude any coverage for any Unit, or any personal property or "contents" of a Unit, and (ii) shall exclude any liability coverage on a Unit owner, its guests, invitees, employees or any other occupants of such Unit, arising out of any and all occurrences and happenings within a Unit and/or relating in any way whatsoever to said personal property. It is the sole responsibility of each Unit owner to obtain such insurance coverages as are excluded from the insurance coverage obtained by the Board of Directors.

5. Unit Owner Insurance and Sole Responsibility. Each Unit Owner shall have the sole responsibility to fully insure such Owner's Unit, including the Home and all other improvements, any and all personal property, in an amount equal to the maximum insurable replacement value from fire or other loss, casualty, risks or hazards as from time to time shall be customarily covered with respect to single family residences and related improvements, personal and real property similar in construction, location and use. Further, each Unit Owner shall have the sole responsibility to obtain liability insurance, either in conjunction with such Unit Owner's casualty insurance, or independent therefrom, in such coverages and amounts customarily appropriate for family residences and related improvements and personal property similar in construction, location and use. **By taking title to a Unit subject to this Declaration, each Unit Owner will acknowledge the foregoing responsibility to insure, and that that neither the Association nor the Board of Directors has any responsibility to insure any Unit, or Home, or any other improvement within a Unit, or any personal property of a Unit Owner.**

## ARTICLE X

### RIGHTS OF DECLARANT

1. Control of Association. Until the expiration of the earlier of three (3) years from the date the first Unit is conveyed to any person other than Declarant or thirty (30) days after the conveyance of seventy-five percent (75%) of the undivided interests in the Common Elements to purchasers, Declarant, or its successors and assigns, acting alone shall have the right to appoint and reappoint the members of the Board of Directors, other than those elected pursuant to this Declaration.

2. Other Rights. Pending the sale of all Units on the Condominium, Declarant, or its successors and assigns, acting alone:

- a. may, but shall not be obligated to, manage and operate the Condominium in accordance with the provisions of this Declaration; but any agreement for professional management of the Condominium, or any other contract providing for services of Declarant, shall not exceed three (3) years and shall provide for termination by either party without cause and without payment of a termination fee on no more than ninety (90) days' written notice;
- b. may use the Common Elements and any unsold Units within the Condominium in any manner as may facilitate the sale or leasing of all Units thereon, including, but not limited to, in connection therewith, maintaining a sales and/or rental office or offices, showing the Condominium or maintaining signs;
- c. reserves the right to (i) grant easements upon, over, through and across the Common Elements as may be required for furnishing any kind of utility services, including cable television or master antenna service, which easements may be granted to itself or its nominee and/or as may be necessary for excavation or repair of any of the Units; (ii) grant easements upon, over, through or across the Common Elements for ingress and egress to and from the Condominium and other real property adjacent to it; (iii) grant easements over the Common Elements for the benefit of the Condominium or other lands for parking or access; and (iv) grant easements or dedications for road, sewer, water and other utility purposes across, over and under the Common Elements for the benefit of the Condominium or other lands provided that in the instrument creating such easement, if such easements serve such other lands, Declarant shall specify a method by which the maintenance costs of such easement shall be shared by the Association and such other users and provided that use of such easements will not be reasonably anticipated to overburden the existing use of the Common Elements; and
- d. reserves the right to take such acts as may be necessary to ensure compliance with any and all applicable government statutes, regulations, codes, ordinances, rules, and orders, including, but not limited to, the terms and conditions of the approvals of the Condominium by the Village.

## ARTICLE XI

### RIGHTS OF MORTGAGEES

1. Notice. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor of a Unit mortgage and the Unit number or address, any such mortgage holder, insurer or guarantor will be entitled to timely written notice of:

- a. Any condemnation or casualty loss which affects either a material portion of the Condominium or the Unit securing its mortgage;
- b. Any sixty (60) day delinquency in the payment of assessments owed by the owner of any Unit on which it holds a mortgage or any breach of the provisions of any instrument or rule governing the Condominium which is not cured by such owner within sixty (60) days of such breach;
- c. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- d. Any proposed action which would require the consent of a specified percentage of eligible mortgage holders as specified in this Declaration.

2. Other Provisions. Mortgage holders shall also be afforded the following rights:

- a. Any restoration or repair of the Condominium after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with this Declaration and the original plans and specifications for such Unit, unless other action is approved by holders of mortgages on Units which have at least fifty-one percent (51%) of the votes of Units subject to mortgages.
- b. Any election to terminate the Condominium after substantial destruction or a substantial taking in condemnation must require the approval of holders of mortgages on Units which have at least fifty-one percent (51%) of the votes of Units subject to mortgages.

## ARTICLE XII

### AMENDMENT OF DECLARATION

1. Procedure. Except for the Declarant's right to amend this Declaration, this Declaration may only be amended in a writing executed by the Board of Directors, with the written consent of at least seventy-five percent (75%) of the Unit owners and their first mortgagees of their Unit or the holder of an equivalent security interest in the Unit. Approval from the first mortgage lender or equivalent security interest holder, or the person servicing the first mortgage loan or its

equivalent on a Unit, constitutes approval of the first mortgagee or equivalent security interest holder. As an alternative to the foregoing procedure, this Declaration may be amended in accordance with the alternative procedure set forth in Section 703.093 of the Wisconsin Statutes if at least seventy-five percent (75%) of the Unit owners consent to the amendment in writing and those consents are approved by the mortgagees or holders of equivalent security interests in the Units. No amendment shall change the rights of Declarant as contained in this Declaration. Any amendment to this Declaration shall become effective when recorded in the office of the Register of Deeds for Waukesha County, Wisconsin, and no action to challenge the validity of an amendment under this Article may be brought more than one (1) year after the amendment is recorded.

2. Limitations on Certain Amendments. In addition to complying with Section 1 above, the approval of holders of mortgages on Units which have at least fifty-one percent (51%) of the votes of Units subject to mortgages, shall be required to add or amend any material provisions of this Declaration, the Articles, Bylaws, or Rules and Regulations which establish, provide for, govern or regulate any of the following:

- a. Voting rights;
- b. Assessments, assessment liens or the priority of assessment liens;
- c. Reserves for maintenance, repair and replacement of the Common Elements;
- d. Insurance or fidelity bonds;
- e. Responsibility for maintenance and repair;
- f. Expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium;
- g. Redefinition of any Unit boundaries;
- h. Reallocation of interests in the Common Elements or rights to their use;
- i. Convertibility of Units into Common Elements or of Common Elements into Units;
- j. Leasing of Units;
- k. Imposition of any restriction on a Unit owner's right to sell or transfer his or her Units;
- l. A decision by the Association to establish self-management of the Condominium;



- m. Restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in this Declaration; or
- n. Any provisions that expressly benefit mortgage holders, insurers or guarantors.

3. Approval. A Unit owner, or a mortgage holder in the cases of a technical amendment or any amendment not described in Section 2 above, who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a return receipt requested, shall be deemed to have approved such request.

4. VA Approval. If any Unit is subject to a mortgage owned or guaranteed under the U.S. Veterans Administration programs, then the condominium regime created hereunder may not be amended or merged with a successor regime without prior written approval in accordance with regulations implementing such programs.

5. Special Amendments. Declarant, for as long as the Declarant shall have ownership in the Condominium, and when the Declarant no longer has an interest in the Condominium then the Board of Directors, shall have the right and power to record "Special Amendments" to this Declaration at any time and from time to time which amend this Declaration (i) to comply with requirements of the FNMA, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veterans Administration, or any other governmental agency or public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities or any institutional lender issuing a commitment to make mortgage loans covering twenty percent (20%) or more of the Units, (ii) to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee mortgages secured by any Unit, (iii) to conform this Declaration with the requirements of the Act, or (iv) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to a Special Amendment on behalf of each Unit owner. Each deed, mortgage or other evidence of obligation, or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power reserved to Declarant to make, execute and record Special Amendments. The rights reserved to the Declarant under this Article XII, Section 5 shall terminate at such time as the Declarant no longer holds or controls title to any part of the Condominium or ten (10) years from the date this Declaration is recorded, whichever first occurs.

## **ARTICLE XIII**

### **DISPUTE RESOLUTION**

The Declarant, the Association and Board of Directors, all owners, and any other persons subject to this Declaration, collectively agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Condominium without the emotional and financial costs of litigation. Accordingly, each of the above parties agrees that any dispute involving the Condominium shall be settled by binding arbitration administered by Resolute Systems, Inc. under its rules then in effect. The arbitration shall be conducted by one arbitrator, at a location in Waukesha County, Wisconsin, as designated by the arbitrator. The decision or award of the arbitrator shall be in writing and shall include reasons for such decision. Subject to Wisconsin law, the arbitrator's decision shall be final and binding on the parties, and judgment on the award may be entered in any court having jurisdiction.

Any parties to a dispute involving the Condominium shall first make every reasonable effort to meet in person and confer for the purpose of resolving the dispute by good faith negotiations. The Board of Directors may appoint a representative to assist the parties in the resolution of the claim, including through formal mediation.

EACH OWNER, BY ACCEPTING A DEED TO A UNIT, WAIVES ANY RIGHT TO HAVE A CLAIM RESOLVED BY JUDICIAL PROCEEDINGS, INCLUDING ANY RIGHT TO TRIAL BY JURY. THIS SUBSECTION IS AN AGREEMENT TO ARBITRATE THE ABOVE-DESCRIBED CLAIMS AND MAY BE SPECIFICALLY ENFORCED BY ANY PARTY.

Notwithstanding the foregoing, the Declarant or the Association may commence litigation in the Circuit Court for Waukesha County necessary to:

1. collect any assessment or other amounts due from any owner; or
2. to obtain a temporary restraining order or other such emergency equitable relief necessary to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration and administer the Condominium.

## **ARTICLE XIV**

### **REMEDIES FOR VIOLATION BY UNIT OWNER**

If any Unit owner fails to comply with the Act, this Declaration, or the Bylaws, such Unit owner shall be liable for damages caused by the failure or for injunctive relief, or both, by the Association or by any other Unit owner.

## **ARTICLE XV**

### **RESIDENT AGENT FOR SERVICE OF PROCESS**

The Declarant has appointed Timothy Smits, N28 W23000 Roundy Drive, Suite 20, Pewaukee, Wisconsin 53072, as the resident agent of the Condominium for service of process.



The name or address of the resident agent may be changed by the Board of Directors and shall become effective upon the filing of the change in the office of the Department of Financial Institutions of the State of Wisconsin in accordance with Section 703.23 of the Wisconsin Statutes. Any change in the person or location for the service of process designated by the Board of Directors shall become effective upon the recording of notice thereof in the office of the Secretary of State of Wisconsin in accordance with Section 703.23 of the Wisconsin Statutes.

## **ARTICLE XVI**

### **RIGHT OF ENTRY**

The Declarant, for itself and its successors and assigns, including the Association reserves the right of entry to each Unit by itself or its agents or any person authorized by the Board of Directors to make installations, alterations or repair to any utility lines or installations which may cross a Unit and which serves more than one (1) Unit, upon prior request and at times convenient for the owner or occupant thereof; provided, however, that in case of emergency, entry of the Unit may be made immediately, whether the owner or occupant of the Unit is or is not present and without liability to Declarant, the Board of Directors or their agents. Any damage or loss caused as a result of such entry shall be at the expense only of the Unit owner if, in the judgment of those authorizing the entry, such entry was for emergency purposes.

## **ARTICLE XVII**

### **CONSTRUCTION AND EFFECT**

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

2. Captions. The captions and Article headings herein are intended only as matters of convenience and for reference and in no way define or limit the scope or intent of the various provisions hereof.

3. Successors and Assigns. All rights and benefits reserved or covenanted in favor of the Declarant under this Declaration shall inure to the benefit of and be binding upon its successors and assigns. Any reference in this Declaration to the “successors and assigns” of Declarant shall be deemed to refer only to such person or entity to whom Declarant has expressly assigned all of said rights and benefits by an instrument in writing specifically identifying the provisions so assigned.

4. Severability. If any provision, or any part thereof, of this Declaration or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Declaration, or the application of such provision, or any part thereof, to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby. Each provision, or any part thereof, of this Declaration shall be valid, and be enforced, to the fullest extent permitted by law.

5. Deemed Interests. Wherever in this Declaration a specified percentage of Unit owners or Common Element interests is required for any action, decision or diminution of Declarant control or Declarant's rights, Declarant shall be deemed to own all eighteen (18) Unit interests, less any interests for Units already conveyed at the time of such determination.

6. Acceptance of Deed. By acceptance of a deed of conveyance of a Unit from Declarant, the grantee of such Unit and each successor in title to such Unit or an interest therein shall, in the event of the occurrence of any or all of the events specified in Article XI or XII, be deemed to consent and agree to the action so taken. Each such grantee of a Unit and each successor in title to such Unit or an interest therein, hereby constitutes and appoints Declarant, its successors and assigns, as its true and lawful attorney (i) to execute, deliver and record on behalf of the grantee and each successor in title to such Unit or an interest therein, such instruments, if any, as may be required to effect the same, and (ii) to do all other things necessary to accomplish the action so taken.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

PRAIRIE WALK DEVELOPMENT, LLC

By \_\_\_\_\_  
Print \_\_\_\_\_  
Title \_\_\_\_\_

STATE OF WISCONSIN     }  
  } SS.  
COUNTY OF WAUKESHA }

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, the above named \_\_\_\_\_ as \_\_\_\_\_ of Prairie Walk Development, LLC to me known to be the person who executed the foregoing instrument and acknowledge the same.

\_\_\_\_\_  
[print name]  
Notary Public, State of Wisconsin  
My commission: \_\_\_\_\_

**CONSENT OF MORTGAGEE TO DECLARATION  
OF THOMSON PRESERVE CONDOMINIUM**

Signed by First Midwest Bank, mortgagee of this property, this \_\_\_\_ day of \_\_\_\_\_, 2022, in accordance with Section 703.09 of the Wisconsin Statutes.

FIRST MIDWEST BANK

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF WISCONSIN     )  
  ) SS.  
COUNTY OF \_\_\_\_\_)

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2022, the above named \_\_\_\_\_ to me known to be the person who executed the foregoing instrument and acknowledge the same.

\_\_\_\_\_  
[print name]  
Notary Public, State of Wisconsin  
My commission: \_\_\_\_\_

This instrument was drafted by:  
Attorney Daniel J. Habeck  
Cramer, Multhauf & Hammes, LLP  
1601 East Racine Avenue  
Post Office Box 558  
Waukesha, WI 53187-0558

**EXHIBIT A**  
**LEGAL DESCRIPTION**

All of Lots 1 and 2, Certified Survey Map No. 12209, recorded in the Waukesha County Register of Deeds office in Certified Survey Maps, Book 125, pages 122 through 129, inclusive as Document No. 4606300, being part of the Northwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 28, Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin.

Said lands contain 570,538 square feet (or 13.0978 acres) of land, more or less.

Proposed

**EXHIBIT B – CONDOMINIUM PLAT**

**\*Information copy, see recorded Condominium Plat for all official purposes**

**Proposed**

## EXHIBIT C

### UNIT NUMBERS AND ADDRESSES

All addresses are Menomonee Falls, Wisconsin 53146.

Unit Number	Unit Address
1	N58 W17929 Timm's Prairie Walk
2	N58 W17905 Timm's Prairie Walk
3	N58 W17877 Timm's Prairie Walk
4	N58 W17849 Timm's Prairie Walk
5	N58 W17823 Timm's Prairie Walk
6	N58 W17795 Timm's Prairie Walk
7	N58 W17781 Timm's Prairie Walk
8	N58 W17755 Timm's Prairie Walk
9	N58 W17741 Timm's Prairie Walk
10	N58 W17717 Timm's Prairie Walk
11	N58 W17687 Timm's Prairie Walk
12	W176 N5842 Timm's Prairie Walk
13	W176 N5858 Timm's Prairie Walk
14	N58 W17708 Timm's Prairie Walk
15	N58 W17734 Timm's Prairie Walk
16	N58 W17760 Timm's Prairie Walk
17	N58 W17786 Timm's Prairie Walk
18	N58 W17818 Timm's Prairie Walk

**SECTION 3**  
**BYLAWS**

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**BYLAWS**

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**BYLAWS OF THOMSON PRESERVE  
CONDOMINIUM OWNERS ASSOCIATION, INC.**

**ARTICLE I**

**NAME AND LOCATION**

1. Name. The name of the corporation shall be Thomson Preserve Condominium Owners Association, Inc. ("Association").
2. Location. The initial principal office of the Association shall be at N28 W2300 Roundy Drive, Suite 20, Pewaukee, Wisconsin 53072. The Association may have offices at such other places as it may, from time to time, determine.

**ARTICLE II**

**APPLICATION, MEMBERSHIP AND INITIAL ORGANIZATION**

1. Application. These Bylaws, together with the Declaration of Condominium of Thomson Preserve Condominium ("Declaration"), all amendments to the foregoing, all rules and regulations passed by the Association and the Wisconsin Condominium Ownership Act, as the same may be amended, renumbered or renamed from time to time (the "Act"), shall apply to, govern and control the Condominium property and all present or future owners, tenants, employees and other persons using it. The mere acquisition, rental or occupancy of a dwelling unit (a "Unit") on the property will signify the acceptance and ratification of these Bylaws by all such persons.
2. Members. The Members of the Association shall consist of the Unit owners who have record title in their names or who are the purchasers under a recorded land contract.
3. Initial Organization. Notwithstanding any provision set forth in these Bylaws to the contrary, Prairie Walk Development, LLC ("Declarant"), shall designate the initial Board, consisting of three (3) persons. Such members of the Board, or successors to any of them as designated by Declarant, need not be Unit owners and shall continue to serve as follows:
  - a. Prior to the conveyance of twenty five percent (25%) of the undivided interest in the General Common Elements, as defined in the Declaration, by Declarant to purchasers, a special meeting of the Members shall be called, at which time one (1) member of the initial Board, or their successors, as designated by Declarant shall tender their resignations and the Unit owners other than Declarant shall elect one (1) new member of the Board in accordance with the provisions of Article V of these Bylaws;
  - b. Notwithstanding paragraph (a) above, upon the expiration of three (3) years from the date the first Unit is conveyed to any person other than Declarant or upon the passage of thirty (30) days from the conveyance of seventy five percent (75%) undivided interest of the General Common Elements by Declarant to purchasers, whichever

occurs earliest, a special meeting of the members shall be called not later than thirty (30) days thereafter, at which time all members of the initial Board of Directors, or their successors, as designated by Declarant, but not having previously tendered their resignations, shall resign and the members shall elect such number of new members of the Board of Directors as shall be necessary so that the Board of Directors shall consist of five (5) persons, including such new members as may have been elected pursuant to paragraph (a) above, in accordance with the provisions of Article V of these Bylaws.

For the purpose of determining the percentages in paragraphs (a) and (b) above, the undivided interest in the General Common Elements shall be deemed to consist of eighteen (18) Unit interests. Declarant shall be deemed to own all eighteen (18) Unit interests less those appurtenant to Units actually conveyed by Declarant.

### **ARTICLE III**

#### **VOTING, MAJORITY OF OWNERS, QUORUM, PROXIES**

1. Voting. Each Member shall have one (1) vote for each Unit owned. If a Unit is owned by more than one person, is under lease or is owned by an entity other than individuals, the person entitled to cast the vote for the Unit shall be designated by a certificate signed by all of the record owners of the Unit or a duly authorized officer of the owner and filed with the Secretary of the Association. Such certificates shall be valid until revoked or superseded by a subsequent certificate or until a change in the ownership of the Unit concerned. A certificate designating the person entitled to cast the vote of a Unit may be revoked by the owner thereof at any time. There shall be no cumulative voting. If the owners of any Unit cannot agree on how to vote, each such Unit shall lose its vote for the particular item voted upon.

2. Quorum. Except as otherwise provided in these Bylaws, the presence in person or by proxy of Members holding more than fifty percent (50%) of the votes shall constitute a quorum.

3. Proxies. Votes may be cast in person or by proxy. Proxies must be filed with the Secretary before the appointed time of each meeting. Unless granted to a Lessee or a mortgagee, a proxy shall be effective only for one hundred eighty (180) days.

### **ARTICLE IV**

#### **MEETINGS**

1. Roster of Members. The Association shall maintain a current roster of names and addresses of every Member upon whom notice of meetings of the Association shall be served. Every Member shall furnish the Association with his or her name and current mailing address; no Member may vote at meetings of the Association until the foregoing information is furnished.

2. Place of Meetings. Meetings of the Association shall be held at its principal office or such other suitable place convenient to the Members as may be designated by the Board.

3. Annual Meetings. The annual meetings of the Association shall be held on the second Wednesday in September of each year (the “annual meeting”). At each annual meeting the Members shall elect one or more members of the Board in accordance with Article V hereof. The Members may also transact such other business of the Association as may properly come before them.

4. Special Meetings. The President shall call a special meeting of the Members when directed by resolution of the Board or when a petition signed by a majority of the Members is presented to the Secretary. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

5. Notice of Meetings. The Secretary shall deliver or mail a notice of each annual or special meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Member of record, at the address shown on the roster, at least ten (10) days but not more than thirty (30) days prior to such meeting, unless waivers are duly executed by all Members. The delivery or mailing of a notice in the manner provided in this Section shall be considered notice served and such notice shall be effective upon the date of delivery or mailing.

6. Adjourned Meetings. If any meeting of the Association cannot be organized because a quorum has not attended, the Members who are present, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

7. Order of Business. The order of business at all meetings of the Members shall be as follows:

- a. Roll call.
- b. Proof of notice of meeting or waiver of notice.
- c. Reading of minutes of preceding meeting.
- d. Reports of officers.
- e. Reports of committees.
- f. Election of directors (when applicable).
- g. Unfinished business.
- h. New business.

8. Parliamentary Procedure. Except where inconsistent with these Bylaws, meetings of the Association shall be conducted substantially in accordance with the latest revised edition of Roberts Rules of Order.

## ARTICLE V

### BOARD OF DIRECTORS

1. Number and Qualification. The affairs of the Association shall be governed by a Board of Directors, of whom not more than one person is a non-Unit owner, subject to the provisions of Article II, Section 3 hereof.

2. Election and Term of Office.

- a. Directors elected by Unit owners shall be elected by plurality vote. Each Unit shall be entitled to cast its vote for as many persons as there are Directors to be elected and for whose election the Unit owners of such Unit shall be entitled to vote. Votes shall not be cumulated.
- b. The term of the Director elected in accordance with paragraph (a) of Section 3 of Article II shall expire on the date of the annual meeting next succeeding the date of his election. Thereafter, the term of each Director elected or re-elected in succession of the Director shall be for two (2) years each and shall expire on the date of the annual meeting which is two (2) years next succeeding the date of such election or re-election.
- c. At the special meeting of the Association at which all members of the Board shall be elected by the Association as provided in paragraph (b) of Section 3 of Article II, the persons receiving the first, second and third highest number of votes shall be elected for a term of two (2) years and the persons receiving the fourth and fifth highest number of votes shall be elected for a term of one (1) year. All persons elected as members of the Board at any subsequent annual meeting of the Association shall be elected for a term of two (2) years. All members of the Board shall hold office until their respective successors shall have been elected and shall have qualified. In the event of a tie for the third or fifth highest number of votes, the outcome shall be determined by lot, in a manner prescribed by the presiding officer.

3. Powers and Duties. The Board shall have the powers and duties necessary to administer the Condominium property and, among other duties, carry out the following:

- a. make and enforce (including enforcement through the establishment of a system of fines) rules and regulations and amendments thereto from time to time respecting the operation, use and occupancy of the Condominium property;
- b. make and collect assessments from the Members in accordance with the provisions of the Declaration, and expend said assessments for

insurance, taxes, utility services for and maintenance, repair and operation of the Common Elements of the Condominium or for such other purposes as shall fall within the responsibility of the Association and general powers of the Board;

- c. execute contracts on behalf of the Association, employ necessary personnel, and carry out all functions and purposes necessary for the operation of the Condominium property, including acquiring and conveying property, contracting for off-site recreational services and suing on behalf of all Members;
- d. satisfy all liens against the Condominium property and pay necessary expenses connected therewith;
- e. employ a professional property manager, management company or managing agent on a salaried basis to perform such duties as the Board shall authorize including but not limited to, the duties listed in this Section; and
- f. perform such other functions as are required or permitted by law or the Declaration.

4. Fees. No fee or other compensation shall be paid to any member of the Board at any time except by specific resolution of the Association.

5. Vacancies. Subject to Article II, Section 3 hereof, vacancies in the Board caused by any reason other than the removal of a Director by a vote of the Members shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum; and each person so elected shall be a Director until a successor is elected at the next annual meeting of the Association.

6. Removal of Directors. At any regular or special meeting duly called, any one or more of the Directors elected by the Members may be removed with or without cause by Members holding more than fifty percent (50%) of the votes and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting.

7. Organization Meeting. The first meeting of a Board, after one or more Directors have been newly elected, shall be held within ten (10) days of such election at such place as shall be fixed by the Directors at the meeting at which such Directors were newly elected, and no notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, providing a majority of the whole Board shall be present.

8. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be designated from time to time, by a majority of the Directors, but at least one (1) such meeting shall be held during each fiscal year. Notice of regular meetings of the Board shall be given to each Director, personally or by mail, telephone or email, at least three (3) days prior to the day named for such meeting.

9. Special Meetings. Special meetings of the Board may be called by the President on three (3) days' notice to each Director, given personally or by mail, telephone or telegraph, which notice shall state time, place and purpose of the meeting. Special meetings of the Board shall be called by the President or Secretary in like manner and on like notice on the written request of at least three (3) Directors.

10. Waiver of Notice. Before or at any meeting of the Board, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

11. Board of Directors' Quorum. At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board. If at any meeting of the Board there is less than a quorum present, then the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

12. Fidelity Bonds. The Board shall require that all officers and employees of the Association and officers and employees of any professional manager handling or responsible for Association funds shall furnish adequate fidelity bonds. Such fidelity bonds shall name the Association as an obligee and be written in an amount equal to one hundred fifty percent (150%) of the estimated annual operating expenses of the Condominium, including reserves. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms and expressions. The bonds shall further provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Association and to Unit mortgagees of which the Association has knowledge. The premiums on such bonds shall be paid by the Association.

## **ARTICLE VI**

### **OFFICERS**

1. Designation and Election. The principal officers of the Association shall be a President, a Vice President, a Secretary, and a Treasurer, all of whom shall be elected annually by the Board. The Directors may elect an Assistant Treasurer, an Assistant Secretary or such other officers as in their judgment may be necessary. Any person may hold more than one office, except that the President may not also hold the office of Vice President.

2. Removal of Officers. Upon an affirmative vote of a majority of the members of the Board, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

3. President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board. He shall have all

of the general powers and duties which are usually vested in the office of President of an Association, including, but not limited to, the power to appoint committees from among the Members from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association.

4. Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board.

5. Secretary. The Secretary shall keep the minutes of all meetings of the Board and of the Association. He shall have charge of such books and papers as the Board may direct and he shall, in general, perform all the duties incident to the office of Secretary. The Secretary shall count the votes cast at any annual or special meeting of the Association or the Board.

6. Treasurer. The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association, in such depositories as may from time to time be designated by the Board.

7. Compensation. No officer shall receive compensation for services rendered to the Association unless the same be established by a resolution of the Members.

## **ARTICLE VII**

### **BUDGET, ASSESSMENTS, AND DEPOSITORIES**

1. Budget. The Board shall at least annually adopt and distribute to all Unit owners an annual budget for the operation of the Association. Such budget will contain all anticipated common expenses and any amounts to be allocated to a statutory reserve account under Section 703.163 of the Wisconsin Statutes, any other funds for future expenditures, the amount and purpose of any other anticipated Association expenditure, the amount in the statutory reserve account or any other funds held for future expenditures, any common surpluses, the amount and source of any income, other than Unit owner assessments, the aggregate amount of any assessment to be levied against Unit owners and the purpose of the assessment. Such budget will contain estimates of the cost of operating the Association and shall include all common expense items, including, but not limited to, taxes; the maintenance, repairs, and replacements to the General Common Elements in accordance with the Declaration; the cost of insurance of all types; management, maintenance and security personnel; administration costs; and any other expense item inuring to the benefit of all Members. The Board shall determine what sums, if any, will be required for improvements, capital expenditures, reserves or replacement funds, or other operations not included in the above which shall be included in the budget.

2. Assessment. The estimate of the charges to be paid during each year by each Member for the share of the common expenses of the Condominium, in accordance with the provisions of the Declaration, shall be assessed against each Unit and paid at such time as provided

in resolutions by the Board. The first assessment payment shall be made, on a prorated basis where proper, upon receipt by the Member of his deed to his Unit. If such assessment proves inadequate, the Board at any time may levy a further assessment to be payable in such reasonable manner as the Board directs. Assessments and installments on such assessments shall be paid on or before the date when such assessments and installments are due. Any assessment or installment not paid when due shall be delinquent, and the Unit owner may be charged interest on the unpaid assessment. The interest charged shall be calculated from the date when the assessment or installment was first due until the date it is paid. The Board of Directors shall establish a uniform policy with regard to the number of days that must run following the due date for interest to be charged and shall establish the rate of interest to be charged on such unpaid assessments or installments. All payments upon account shall be first applied to the interest, if any, and then to the assessment payment first due. If a Member fails to pay the assessment within the time herein specified, such failure shall constitute a default hereunder and the Board shall take such appropriate measures as may be allowable by law, including, but not limited to, the filing of a statement of condominium lien in accordance with the Act, which statement shall be signed and verified by the Secretary or any other officer authorized by the Board. No Member shall be entitled to cast a vote for a Unit at any meeting of the Association if the Association has recorded a statement of Condominium lien on the Member's Unit and the amount necessary to release the lien has not been paid at the time of the meeting.

3. Depositories. The funds of the Association shall be deposited in a bank or banks or other depositories designated by the Board and shall be withdrawn therefrom only upon check or order signed by the professional property manager, management company or managing agent provided such manager company or agent is bonded or by such officers who shall from time to time be designated by the Board for that purpose. The Board may require that all payment of assessments imposed by the Board against Members be paid by such Members directly to a designated depository. For checks signed by officers, the Board may direct that checks of less than One Thousand Dollars (\$1,000.00) for payment of the obligations of the Association bear only one (1) signature of a designated officer but checks for a greater amount must bear a signature and counter signature of designated officers. The Board may from time to time establish dollar limitations in excess of which the professional property manager, management company or managing agent shall not have authority to draw checks. The Board shall notify the designated depository promptly upon the establishment of such limitation.

## **ARTICLE VIII**

### **AMENDMENTS**

1. Bylaws. These Bylaws may be amended by the Members in a duly constituted meeting for such purpose; but no amendment shall take effect unless approved by the owners of at least sixty-seven percent (67%) of the total Units. For the purpose of determining the percentage in the preceding sentence, the total Units shall be deemed to be a total of eighteen (18) Units until such time as the Declarant's right under Article X of the Declaration shall expire and Declarant shall be deemed to own all eighteen (18) Units less those actually conveyed at the time of such determination. No amendment shall limit any of the rights granted to or reserved by Declarant herein.



## **ARTICLE IX**

### **MORTGAGES, STATEMENT OF UNPAID ASSESSMENTS**

1. Notice to Association. Any Member who permits or causes his Unit to be encumbered by a mortgage shall notify the Secretary of each such mortgage and the name and address of each such mortgagee. Such notice may also be served by any such mortgagee. The Secretary shall maintain a record of the names and addresses of all mortgagees of which the Secretary shall have received notice.

2. Notice of Unpaid Assessments. Upon a request in compliance with the requirements of the Declaration by a mortgagee, a proposed mortgagee or purchaser who has a contractual right to purchase a Unit, the Association shall furnish to such mortgagee, proposed mortgagee or purchaser, a statement setting forth the amount of the then unpaid assessments pertaining to such Unit. If any such mortgagee, proposed mortgagee or purchaser of such Unit, in reliance upon such statement shall disburse mortgage loan proceeds or shall expend the purchase price, such mortgagee, proposed mortgagee or purchaser shall not be liable for, nor shall such Unit be subject to a lien which is not properly filed in accordance with law prior to the date of the statement, for any unpaid assessments in excess of the amount set forth in such statement. If the Association does not provide such a statement within ten (10) business days after such request, then the Association is barred from claiming against any such mortgagee, proposed mortgagee or purchaser under any lien which is not properly filed in accordance with law prior to the request for the statement.

3. Notice of Mortgagee. Any mortgagee of a Unit shall be entitled to written notice from the Association of any sixty (60) day delinquency in the payment of assessment owed by the Unit owner or, if applicable, any then occupant of the Unit, or any breach in the provisions of any of the provisions set forth in these Bylaws, the Declaration, any amendments to the foregoing or all rules and regulations of the Association, which is not cured within sixty (60) days of such breach; provided the Association shall previously have been notified of the mortgagee in the manner set forth above. Mortgagee shall also receive notice of (i) any condemnation or casualty loss affecting a material portion of the Condominium or the Unit securing its mortgage, (ii) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, and (iii) any proposed action which would require the consent of a specified number of eligible mortgage holders as set out in the Declaration. Any notice required or permitted to be given to any mortgagee pursuant to these Bylaws shall be deemed given if mailed or delivered to such mortgagee at the address shown in such record and shall be deemed effective as of the date of mailing or delivery.

## **ARTICLE X**

### **CONFLICTS**

These Bylaws are set forth to comply with the requirements of the Act. In case any of these Bylaws conflict with the provisions of such Act or of the Condominium Declaration, the provisions of such Act or Declaration shall control; and in case of any conflict between the Act and the Declaration the provisions of the Act shall control.

## ARTICLE XI

### FISCAL YEAR

The fiscal year of the corporation shall begin on the first day of January and end on the 31st day of December of each year.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_, Director

\_\_\_\_\_, Director

\_\_\_\_\_, Director

# **SECTION 4**

## **ARTICLES OF INCORPORATION**



State of Wisconsin  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
Division of Corporate & Consumer Services

**FILING FEE \$35.00**

Please check box to request ☐ + \$25.00  
Optional Expedited Service

FORM **102**

**ARTICLES OF INCORPORATION  
NON-STOCK, NOT FOR PROFIT CORPORATION**

Sec. 181.0202, Wis. Stats.

Executed by the undersigned for the purpose of forming a Wisconsin non-stock, not for profit corporation under Ch. 181 of the Wisconsin Statutes:

Article 1. Name of the corporation Thomson Preserve Condominium Owners Association, Inc.	
Article 2. The corporation is organized under Ch. 181 of the Wisconsin Statutes	
Article 3. Name of registered agent: Timothy J. Smits	Article 4. Registered office address in Wisconsin ( <i>A PO Box, in the same city/town, may be included but is insufficient alone.</i> ): N28 W23000 Roundy Dr., Ste. 20 Pewaukee, WI 53072
Article 5. Principal office address of the corporation: N28 W23000 Roundy Dr., Ste. 20 Pewaukee, WI 53072	
Article 6. The corporation: <input checked="" type="checkbox"/> will have members. <input type="checkbox"/> will not have members. ( <i>You must mark one.</i> )	
Article 7. The corporation: <input type="checkbox"/> is authorized to make distributions under sec. 181.1302(4). ( <i>You must mark one.</i> ) <input checked="" type="checkbox"/> is not authorized to make distributions under sec. 181.1302(4).	
Article 8. Other provisions (optional, attach additional pages labeled Article 8 and higher if necessary): To serve as an association of unit owners of Thomson Preserve Condominium Owners Association, who own real estate and improvements under the condominium form of ownership, as provided in the Condominium Ownership Act under the laws of the State of Wisconsin, subject to the terms and conditions of the Declaration of the aforementioned entity, recorded in the Office of the Register of Deeds for Waukesha County, Wisconsin. (Optional) This document has a <b>delayed</b> effective date: _____ (up to 90 days after received date)	

Article 9. Name and complete address of each incorporator:

Daniel J. Habeck  
1601 East Racine Ave., Ste. 200  
Waukesha, WI 53186

\_\_\_\_\_  
Incorporator's signature

\_\_\_\_\_  
Incorporator's signature

This document was drafted by Atty. Haley J. Stepanek/Cramer, Multhauf & Hammes, LLP  
(Name the individual who drafted the document)

Office Use Only

DFI/CORP/102 (02/22) Use of this form is voluntary.

ARTICLES OF INCORPORATION – Non-stock, Not for Profit Corporation

Contact Information:

Daniel J. Habeck

Name

1601 East Racine Ave., Ste. 200

Mailing Address

Waukesha

WI

53816

City

State

Zip Code

djh@cmhlaw.com

(262) 542-4278

Email Address

Phone Number

**INSTRUCTIONS** (Ref. sec. 181.0202 Wis. Stats. for document content)

Please use BLACK ink. Submit one original to State of WI – Dept. of Financial Institutions, Box 93348, Milwaukee WI, 53293-0348, together with the appropriate **FILING FEE of \$35**. Filing fee is **non-refundable**. If sent by Express or Priority U.S. mail, please mail to State of WI-Dept. of Financial Institutions, Division of Corporate and Consumer Services, 4822 Madison Yards Way, 4<sup>th</sup> Fl., North Tower, Madison WI, 53705. **NOTICE:** This form may be used to accomplish a filing required or permitted by statute to be made with the department. Information requested may be used for secondary purposes. If you have any questions, please contact the Division of Corporate & Consumer Services at 608-261-7577. Hearing-impaired may call 711 for TTY. This document can be made available in alternate formats upon request to qualifying individuals with disabilities.

Article 1. The name must contain “corporation”, “incorporated”, “company”, or “limited” or the abbreviation “corp.”, “inc.”, “co.” or “Ltd.” or comparable words or abbreviations in another language.

Article 2. This statement is required.

Articles 3 & 4. The corporation must have a registered agent located at a registered office in Wisconsin. The registered agent must be an individual, or an entity on record with this Department. **The corporation may not name itself as its own registered agent.** The address of the registered office is to describe the physical location where the registered agent maintains their business office. Provide the street number and name, city and ZIP code in Wisconsin. P O Box addresses may be included as part of the address, but are insufficient alone.

Article 5. The corporation must indicate a principal office address, wherever the corporation determines its principal executive offices to be.

Article 6. The corporation must indicate whether or not it will have members.

Article 7. The corporation must indicate if it is authorized to make distributions under sec. 181.1302(4).

Article 8. This space is provided for insertion of any desired material, such as a purpose, dissolution clause or director information. If the corporation names directors, it is required to name a minimum of 3.

Article 9. Print the name and complete address of each incorporator. At least one incorporator is required to sign the document, although all incorporators may sign.

If the document is executed in Wisconsin, sec. 182.01(3), Wis. Stats., provides that it shall not be filed unless the name of the drafter (either an individual or a governmental agency) is printed in a legible manner. If the document is not executed in Wisconsin, enter that remark.

This document may declare a delayed effective date. To do so, complete the remark under Article 8: The delayed effective date may not be before, or more than 90 days after, the document is received by the Department of Financial Institutions for filing.

DFI/CORP/102 (02/22) Use of this form is voluntary.

2

## **SECTION 5**

# **ANNUAL OPERATING BUDGET**

Thomson Preserve Condominium  
Association Budget  
Total Units (18)

Income:

2022 Annual Assessment (\$150 per year)	\$ 2,700.00
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Expenses:

G/L and Directors/Officers Insurance	\$ 500.00
--------------------------------------	-----------

Pond Maintenance	\$ 1,500.00
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Reserve Funds	\$ 700.00
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Total Expenses	\$ 2,700.00
----------------	-------------

Net Income:

-

**SECTION 6**

**MANAGEMENT OR  
EMPLOYMENT  
CONTRACTS**

None as of \_\_\_\_\_





# **SECTION 7**

## **MAP**

# **SECTION 8**

## **DEVELOPER'S AGREEMENT**

**DEVELOPMENT AGREEMENT**  
**The Sanctuary at Prairie Walk Condominiums**

This Development Agreement ("AGREEMENT") is between: Prairie Walk Development, LLC, a Wisconsin Limited Liability Company, with a business address of W28 N23000 Roundy Dr., Suite 20, Pewaukee, WI 53072 ("Developer"); and the Village of Menomonee Falls, a municipal corporation of the State of Wisconsin, located in Waukesha County (the "Village"). It is based upon the following:

- A. Developer is the owner of approximately 14.85 acres of land in the Village. This land is located in the Northwest ¼ of the Southeast ¼ of Section 28, Town 8 North, Range 20 East; and further shown and described in Exhibit "A" attached to this Agreement (the "Property" or "Development").
- B. Developer desires to develop the Property for residential purposes.
  - 1. The Property is presently zoned PRD, Planned Residential Development District. The zoning classification allows such development.
  - 2. The Property is currently classified as Medium Density Residential (between 2 and 6 dwelling units per net developable acre) on the Village land use plan. The land use classification allows for such development.
- C. One of the purposes of this Agreement is to avoid the harmful effects of premature land development, which leaves land undeveloped and unproductive, while at the same time making possible the further development of the Property, which cannot be developed under Village Ordinances unless and until the required public improvements provided in this Agreement are constructed.
- D. The Village's budget and public works schedule do not include the installation of improvements that are reasonably necessary and required for the proposed development of the Property. There thus would be a substantial delay in the construction and installation of such improvements but for this Agreement. Also, the proposed development of the Property would impose substantial burdens upon the Village, which can appropriately be mitigated by this Agreement.
- E. Section 236.13(2)(a) of the Wisconsin Statutes provides that as a condition of plat or CSM approval, the Village may require a developer to make and install or to have made and installed any required private improvements and contemplated any public improvements that are reasonably necessary or to provide a security in the form of a financial guarantee to ensure that those improvements will be made within a reasonable time.
- F. Section 236.13(2)(b) of the Wisconsin Statutes provides that the Village's acceptance of the Developer's dedication of public streets, alleys or other ways may be conditioned upon the construction of such improvements according to Village Specifications and without cost to the Village.

- G. Section 236.45(2) of the Wisconsin Statutes empowers the Village to adopt ordinances governing the development of land that are more restrictive than the provisions of Chapter 236 of the Wisconsin Statutes, and the Village has done so.
- H. Chapter 94 of the Municipal Code of the Village of Menomonee Falls regulates division of land within the Village and provides that approval of a final PLAT by the Village Board shall be conditioned upon installation of all improvements required by Chapter 94 or in the alternative upon the execution of a contract between the Developer and the Village with sufficient security in the form of a financial guarantee to ensure the installation of all improvements required by Chapter 94.
- I. This Agreement is entered into in fulfillment of these statutory and ordinance requirements. Developer agrees to develop the Property in accordance with this Agreement, all Village ordinances, all laws and regulations governing said development, conditions approved by the Village Plan Commission and Village Board of Trustees, and conditions of certain agencies and individuals with Waukesha County.

**NOW, THEREFORE,** based on the above, the parties agree as follows:

**Section I. Improvements.**

- A. Streets.
  - 1. Before beginning construction of improvements, the Developer shall provide the Village with construction plans which are sealed and signed by the Developer's Engineer. All public street plans shall conform to all federal, state, county and Village specifications, regulations and ordinances.
  - 2. The design and construction plans for the streets shall be reviewed and approved by the Village Engineering Department, and all applicable street access permits received from Waukesha County and/or Wisconsin Department of Transportation prior to starting construction.
  - 3. Developer shall grade and surface all planned streets in accordance with the plans, specifications and drawings on file in the Village and established standards of the Village as directed by the Village Director of Engineering and Development.
  - 4. Developer shall construct, install, furnish and provide curb and gutter or such other facilities necessary to provide adequately for surface water drainage and safety of the public, in accordance with plans, specifications and drawings on file in the Village and established standards of the Village as directed by the Village Director of Engineering and Development.
  - 5. Construction of the streets shall include the installation and/or reconstruction of streets, shoulders, and drainage facilities in adjacent and abutting rights of way as directed by the Village and/or Waukesha County to accommodate the Development and to provide suitable transitions into such adjacent and abutting rights of way from the Development.

6. With the exception of the bituminous concrete surface course for the streets, all streets shall be completed before any building permits are issued for the Development. However, notwithstanding the previous sentence, in no case shall the streets, with the exception of the bituminous concrete surface course, be completed later than one year from the date of this Agreement. The Director of Engineering and Development may extend this deadline in up to one year increments upon receipt of a formal written request by the Developer.
7. The finished bituminous concrete surface course shall be installed at least twelve (12) months after construction of the bituminous concrete binder course or when home construction is substantially complete on at least 80% of the lots, but no later than October 15, 2022. Prior to construction of the final bituminous concrete surface course, all repairs and restoration of damaged or deficient bituminous concrete binder course, curb and gutter sections, water valve boxes, sewer manholes, and storm inlet structures shall be completed at Developer's sole expense.
8. The developer shall maintain the public streets until the streets are dedicated and accepted by the Village Board. Snow Plowing operations may be completed by the Village on behalf of the Developer as identified in Section II, Paragraph C.
9. In addition to any obligations imposed in any other provision of this Agreement, the Developer shall have ultimate responsibility for cleaning up any and all mud, dirt, stone or debris on the streets until such time as the streets are accepted by the Village Board. If Village streets have not been kept free of mud, dirt stones or debris as required by this section or any other provision of this Agreement, the Village shall notify the Developer. The Developer shall clean up the streets within twenty-four hours after receiving such notice from the Village. If the Developer fails to clean up the mud, dirt, stone or debris in a timely manner after receiving notice from the Village, the Village shall have the option, at its discretion, to take whatever action it deems necessary to remedy the situation, and to impose a special charge under Section 66.0627 of the Wisconsin Statutes in an amount equal to the total amount of any costs incurred by the Village.

B. Sanitary Sewer

1. Before beginning construction of improvements, the Developer shall provide the Village with construction plans which are sealed and signed by the Developer's Engineer. All sanitary sewer facilities and plans shall conform to all federal, state, county and Village specifications, regulations and ordinances.
2. The design and construction plans for the sanitary sewer facilities shall be reviewed and approved by the Village Engineering Department, and all approvals received from the Wisconsin DNR, Village of Lannon and Village of Sussex prior to starting construction.
3. The Developer shall construct, install, furnish and provide a complete sewerage system up to and including 15 inch diameter sanitary sewer and all

appurtenances, throughout the entire Development, all in accordance with plans, specifications, and drawings on file with the Village and with established standards of the Village as directed by the Director of Engineering and Development.

4. Sanitary sewers shall be designed and installed to the limits as directed by the Village, with sizes, slopes, and elevations to accommodate the development of adjacent lands.
5. Construction of the sanitary sewer system will be completed to the point of substantial completion with all punch list items corrected before any building permits are issued for lots within the Development but in no case shall the sanitary sewer system be completed, dedicated and accepted later than one year from the date of this Agreement.
6. Upon the Village's inspection, cleaning, televising and concurrence that all punchlist items have been completed for the sanitary sewer system improvements, the Developer shall promptly take all necessary actions to connect and otherwise render such improvements usable. The Village will complete this sanitary sewer cleaning and televising at the Developer's cost.

C. Water System

1. Before beginning construction of improvements, the Developer shall provide the Village with construction plans which are sealed and signed by the Developer's Engineer. All public water facilities and plans shall conform to all federal, state, county and Village specifications, regulations and ordinances.
2. The design and construction plans for the municipal water system shall be reviewed and approved by the Village Engineering Department, and all approvals received from the Wisconsin DNR prior to starting construction.
3. Developer shall construct, install, furnish and provide a complete system of water distribution up to and including 16 inch diameter water main and all appurtenances throughout the entire Development, in accordance with the plans, specifications and drawings on file in the Village and with established standards of the Village as directed by the Village Director of Engineering and Development.
4. Water mains shall be designed and installed to the limits as directed by the Village with sizes to accommodate the development of adjacent lands.
5. Construction of the water distribution system will be completed to the point of substantial completion with all punchlist items corrected before any building permits are issued for lots within the Development, but in no case shall the water distribution system be completed, dedicated and accepted later than one year from the date of this Agreement.
6. Upon the Village's inspection, water sampling, testing and concurrence that all punchlist items have been completed for the public water system improvements, the Developer shall promptly take all necessary actions to connect and otherwise render such improvements usable. The Village will complete this inspection, testing and sampling at the Developer's cost.

7. The Developer shall provide at no cost to the Village easements for municipal water main facilities as required by the Village. The size and limits of these easements shall be as identified on the approved construction plans. The Developer shall execute an easement document acceptable to the Village which authorizes the Village to utilize any paved or unpaved street or roadway as necessary to complete any maintenance or repair of the municipal water main facilities.
  - a. If it becomes necessary for the Village to repair or reconstruct these facilities, the Village will complete the work and backfill all trenches to the proposed grade as shown on the approved master grading plan. Paved easement areas will be backfilled to finish grade with granular material only. Unpaved easement areas will be restored with topsoil, seed, fertilizer and mulch.
  - b. Except for the work performed by the Village under the preceding paragraph, all other surface restoration which may be required will be the responsibility of the property owners. This includes, but is not limited to restoration of the pavement, curb, culverts, headwalls, ditches, shrubs or trees that have been disturbed, removed or damaged during construction, reconstruction, and or repair operations.

D. Storm Sewer and Surface Water Drainage

1. Before beginning construction of improvements, the Developer shall provide the Village with construction plans which are sealed and signed by the Developer's Engineer. All surface and storm water drainage facilities and plans shall conform to all federal, state, county and Village specifications.
2. The design and construction plans for the storm water drainage facilities shall be reviewed and approved by the Village Engineering Department prior to starting construction.
3. The Developer shall construct, install, furnish and provide adequate facilities for storm and surface water drainage throughout the entire Development and grading and paving of the site in accordance with an approved grading plan providing for sump pump discharge via tile or open swale, to a public right of way or to an approved municipal drainage easement, in accordance with the plans, specifications and drawings on file in the Village and established standards of the Village as directed by the Director of Engineering and Development. The established standards of the Village include, but are not limited to, the following requirements:
  - a. Storm sewers shall be designed to accommodate a storm having a minimum recurrence of ten years in accordance with the Village's *Standards and Requirements for Development*.
  - b. Storm sewer flow shall be supplemented by overland flow to accommodate the one hundred-year rainfall event in such a manner that will not adversely affect life or property and to convey drainage to the stormwater detention facilities in accordance to the approved



Stormwater Management Plan for the Development. Where the overland flow path does not drain to the stormwater detention basin, the storm sewer shall be designed to accommodate the 100-year storm event.

- c. All drainage facilities shall be designed for ultimate development of tributary areas.
  - d. Proper facilities shall be provided to transmit the surface drainage from the Development to a street, waterway or dedicated easement that has adequate capacity to accept and transmit the anticipated flows from the Development and from adjacent lands.
- 4. Storm water detention shall be provided in accordance with the requirements of the Milwaukee Metropolitan Sewerage District (MMSD) and with the Village's Stormwater Management Ordinance. Stormwater detention facilities must also comply with the Wisconsin Department of Natural Resources requirements for water quality. All storm water retention and detention basins shall be constructed with an impervious liner including bottom and sides to the 100-year high water elevation.
  - 5. Construction of the surface and storm water drainage facilities shall be completed to the point of substantial completion with all punchlist items corrected and the storm water detention completed before any building permits are issued for lots within the Development but in no case shall the storm and surface water drainage facilities be completed later than one year from the date of this Agreement.
  - 6. The owners of the condominiums in the development shall be liable for the maintenance of the stormwater detention facilities in accordance with the Stormwater Permit issued for this Property and recorded with Waukesha County Register of Deeds.
  - 7. Only storm water drainage facilities in public road rights-of-way and public easements shall be dedicated to the Village in accordance with Section II.A of this Agreement. All detention basins and drainage swales on private property shall remain in the sole ownership and responsibility of the Developer, his heirs, successors and assigns, and future condominium owners.
  - 8. The Developer shall provide at no cost to the Village easements for municipal storm sewer facilities as required by the Village. The size and limits of these easements shall be as identified on the approved construction plans. The Developer shall execute an easement document acceptable to the Village which authorizes the Village to utilize any paved or unpaved street or roadway as necessary to complete any maintenance or repair of the municipal storm sewer facilities.
    - a. If it becomes necessary for the Village to repair or reconstruct these facilities, the Village will complete the work and backfill all trenches to the proposed grade as shown on the approved master grading plan. Paved easement areas will be backfilled to finish grade with granular material only. Unpaved easement areas will be restored with topsoil, seed, fertilizer and mulch.

- b. Except for the work performed by the Village under the preceding paragraph, all other surface restoration which may be required will be the responsibility of the property owners. This includes, but is not limited to restoration of the pavement, curb, culverts, headwalls, ditches, shrubs or trees that have been disturbed, removed or damaged during construction, reconstruction, and or repair operations.

E. Multi-use Paths

In lieu of constructing an asphalt multi-use path along Marcy Road as proposed in the Village's Comprehensive Plan, the Developer shall deposit funds in the amount of \$26,823 with the Village for the future construction of the proposed multi-use paths. Such payment shall be in full and shall be received by the Village prior to recording of the final plat.

F. Street Signs.

1. All materials, labor and equipment to install street signs, stop signs, and other required signs and posts shall be supplied by the Village Department of Public Works with funds to be provided by the Developer. This includes any signs that the Village plans to install at the proposed terminus of any 'dead-end' stub streets that are planned by the Village to be extended or connected to other streets in the future.
2. All materials, labor and equipment to install Type III barricades at all 'dead-end' streets shall be supplied by the Village Department of Public Works with funds to be provided by the Developer.

G. Street Lights.

Streetlights shall be LED Rectangular Fixtures on Fiberglass poles and shall be installed at each street intersection and in locations deemed necessary by the Village Engineering Department. The Village will obtain a proposal from We Energies to install the street lighting. All funds for the street lighting installation and deposit to cover the cost of the additional facilities charge associated with the fiberglass pole installation shall be provided by the Developer.

H. Utilities (Gas, Electric, Telephone, Cable TV, etc.)

Plans for the installation of utilities shall be approved by the Village of Menomonee Falls, and the installation of such utilities shall be in accordance with Village's utility permit requirements. The Developer shall pay for all costs for the installation of utilities. Other Jurisdictions:

Areas of the Property under the jurisdiction of other agencies, such as the Milwaukee Metropolitan Sewerage District, Waukesha County Department of Public Works, the State of Wisconsin Department of Transportation, the State of Wisconsin Department of Natural Resources or the U.S. Army Corps of Engineers, shall be developed in conformance with the requirements of those agencies.

I. Quality of Work.

1. All work performed under the provisions of this Agreement shall be done in a workmanlike manner in accordance with the Wisconsin Standard Specifications for construction and established standards and specifications of the Village as directed by the Director of Engineering and Development.
2. The Village Engineer may make reasonable changes to the construction plans for any of the public improvements that are necessary to correct oversights, omissions, and errors, to compensate for changing site conditions, or to complete fully the work in accordance with sound engineering practices. Developer shall perform the work as changed entirely at its expense without claim for reimbursement.

J. Existing Rubbish and Structures

1. Developer shall remove and lawfully dispose of all rubbish, homes, barns, outbuildings, structures, driveways, private water or sanitary sewer systems and any related appurtenances and foundations which are located or found on the Property. All laterals must be abandoned as required for the project in accordance with the requirements of the Village Sewer and Water departments.
2. If the Developer fails to remove all existing rubbish, homes, barns, outbuildings and structures from the Property within sixty (60) days following issuance of a grading permit and/or erosion permit for the Development, the Village may, at its sole discretion, place a stop work order on the construction of the development until such time as such rubbish and structures on the Property are properly removed.

**Section II. Dedication and Acceptance.**

A. Upon Completion by Developer.

1. Subject to all of the other provisions of this Agreement and the appendices referred to herein, after completion of all of the above-described public improvements, the Developer shall, without charge to the Village, unconditionally give, grant, convey, and fully dedicate the same to the Village, its successors and assigns, forever, free and clear of all encumbrances whatever, together with, including without limitation because of enumeration, all land, buildings, structures, mains, conduits, pipes, lines, and appurtenances which may in any way be a part of or pertain to such improvements and together with any and all necessary easements for access thereto.
2. When all public improvements are completed and acceptable to the Village as called for under this Agreement, such public improvements will be formally dedicated and accepted by the Village Board. A document for formal Dedication and Acceptance shall be recorded with the Waukesha County Register of Deeds. After acceptance of the dedication, the Village shall have the right to connect or integrate other water or other facilities with those provided here-under as the Village decides, with no payment or award to, or

consent required of, the Developer. The Village will not accept any improvements that do not fully comply with Village standards and specifications. Claims of financial hardship by the Developer shall not be considered a reason for the Village to accept substandard materials or work.

**B. Completion by Village Following Developer Default**

1. If Developer does not complete the installation of and dedication of improvements by the dates established herein, the Village is authorized to take one or more of the following actions:
  - a. Pursuant to subsection (C) of Section II below, the Village may complete and take title to said improvements. The Village is authorized to take this action in addition to any remedy available to the Village under the financial guarantee. The decision by the Village to take this action shall not constitute a waiver of any remedy under the financial guarantee.
  - b. Upon notice to the Developer and its issuer or holder of the financial guarantee provided pursuant this Agreement pursue one or more of the remedies available under the financial guarantee.
2. The issuer or holder of said financial guarantee shall pay to the Village all costs for such completion including, but not limited to, materials, construction, legal fees, financing costs, engineering, inspection and administrative costs, upon demand.
3. If the issuer or holder of said financial guarantee fails in whole or in part to take any actions required in this subsection (B) or by the financial guarantee, in addition to its' other remedies, the Village at its' sole discretion shall be empowered without notice of hearing, to impose a special assessment upon any and all property in the Development for the amount of the completion costs, payable with the next succeeding tax roll.

**C. Village Responsibility for Improvements**

The Village shall not be responsible to perform any repair or maintenance on any improvements until they are dedicated and accepted by the Village Board. At the discretion of the Village, snow plowing operations may occur on behalf of the Developer prior to final dedication and acceptance of the surface course of asphalt. The Developer acknowledges the benefit of the snow plowing operations and will be responsible for any maintenance or repair to the Improvements caused from the snow plowing operations.

**Section III. Developer Guarantee.**

**A. Satisfactory Financial Guarantee.**

1. Before the start of construction, the Developer shall file with the Village Clerk or one of the following as a financial guarantee to the Village as assurance for the faithful performance of and payment for any and all work to be performed pursuant to this Agreement:

- a. a bond in the form as attached as Exhibit "E",
    - b. an irrevocable letter of credit, or
    - c. cash on deposit
  2. Such financial guarantee shall be approved by the Village Attorney and shall be in the amount identified on the attached Exhibit "C" and described as "Total Funds Required for Financial Guarantee". The amount shall be sufficient to fund all financial guarantees required under this Agreement.
  3. If the Developer provides an irrevocable letter of credit, Developer shall maintain the letter of credit during the term of this Agreement and shall provide the Village with proof of renewal of the letter of credit at least sixty (60) days prior to the expiration date, if any, of the letter of credit. The failure to provide proof of renewal shall constitute a default under this Agreement.
  4. The financial guarantee provided under this subsection may include the post-completion guarantee required under subsection (D) below.
- B. Reduction and Release of Guarantee.
1. From time to time, as work is completed and inspected, and as proper invoices are presented for completed work, the Village may authorize reductions in the amount of the financial guarantee held by the Village, in accordance with the Village's current procedures for such reductions. Requests sent to the Village for reductions to the financial guarantee will not relieve the Developer of the obligations identified in this Agreement.
  2. Any financial guarantee provided by Developer pursuant to this Agreement shall be in full force and effect and shall not expire until 14 months after either substantial completion of the improvements at the time the binder course is installed on roads to be dedicated or if improvements do not include a road dedication, completion of 90% of the improvements by cost.
- C. Village Remedies upon Developer Default.
1. If Developer should be adjudged bankrupt, or if it should make a general assignment for the benefit of its creditors, or if it or its contractors should disregard statutes, ordinances, regulations, orders, or the instruction of the Village Building Inspector or the Director of Engineering and Development, or upon failure of performance by Developer or Developer's contractor or sub-contractors to construct, install, furnish and provide any improvement required under this Agreement, or upon any other Developer default or failure to perform under any provision of this Agreement, the Village, upon the certificate of the Director of Engineering and Development that sufficient cause exists to justify such action, without prejudice to any other right or remedy of the Village, including the right to damages or any other remedy available under the financial guarantee, and after giving Developer and its issuer or holder of the financial guarantee provided pursuant to this Agreement at least fifteen (15) days' written notice and opportunity to cure, may (i) enter and take occupancy of the Property as is necessary to finish the

work, (ii) take possession of the premises and of all materials thereon as is necessary to finish the work, and (iii) draw upon any letter of credit or other financial guarantee posted or filed by Developer and finish the work by whatever method the Village may deem expedient. Developer shall pay Village the entire cost of so completing the work if funds available from any letter of credit or other financial guarantee posted by the Developer are insufficient to cover the entire cost.

2. Whether or not the Village Board elects to take charge of the work, Developer shall be liable to Village for its damages sustained by Developer's failure to complete the work on time in addition to the cost of completion of the work.

D. Post-Completion Guaranty, Warranty and Financial Guarantee.

1. To ensure the good quality of materials, workmanship and maintenance of the public improvements, as required pursuant to Village ordinance and this Agreement, the Developer shall provide the guaranty and warranty set out in paragraph (2) below and the post-completion financial guarantee as required in paragraph (3) below.
2. Post-Completion Guaranty and Warranty
  - a. The Developer guarantees the required public improvements in the Development for a period of fourteen months after the date the public improvements are substantially completed.
  - b. The Developer further warrants the required public improvements in the Development for a period of one year after the date the document for formal Dedication and Acceptance of the improvements by the Village Board is recorded with the Waukesha County Register of Deeds.
3. Post-Completion Financial Guarantee
  - a. Unless the Developer has provided it as a part of the financial guarantee required under subsection (A) above, the Developer shall, within five business days of the date of substantial completion, provide a post-completion guarantee bond in a form approved by the Village Attorney and containing the additional provisions noted below.
    - (1) The post completion financial guarantee shall be in an amount totaling 10 percent of the total cost of the completed public improvements plus the estimated amount of any uncompleted public improvements as determined by the Village Director of Engineering and Development.
    - (2) The financial guarantee shall be for a period of fourteen months after the date of substantial completion of the public improvements.
    - (3) The Village shall have access to such funds and the right at its' sole discretion to call or draw upon such funds to correct or repair any defect or deficiency if the Developer fails to honor this



guarantee to the satisfaction of the Village. The date the public improvements are considered substantially completed shall be the date as determined by the Director of Engineering and Development that ninety percent of the public improvements by cost are completed and the improvements have been completed to the satisfaction of the Director of Engineering and Development.

- b. The Village Director Engineering and Development shall give Developer, and the issuer or holder of the aforesaid financial guarantee at least fifteen (15) days' written notice and opportunity to cure or such lesser time as may be called for in the financial guarantee before calling or drawing upon the financial guarantee or acting to correct or repair any defect or deficiency, except that nothing shall preclude the Village in the event of an emergency from acting within a lesser period of time, with or without written notice, to correct or repair any defect or deficiency in any improvement provided pursuant to this Agreement. The Developer agrees for itself and for any contractor it retains to do any work in the development that the Village at its sole discretion shall determine which events constitute an emergency.

#### **Section IV. Method of Improvement.**

- A. The Developer shall only engage contractors for work included in this Agreement who are pre-qualified by the Village to perform the work.
- B. The Developer shall use materials and make the various installations in accordance with the Village approved plans and specifications made a part of this Agreement by reference and including those standard specifications as the Village Board or its commissions may have adopted and published prior to this date.
- C. Access to or withdrawal by Developer of all or any part of escrowed or secured funds required under Section III of this Agreement shall be permitted only with the approval of the Village.

#### **Section V. Issuance of Building Permits.**

- A. General Restrictions on the Issuance of Building Permits until certain Public Infrastructure is completed. No building permits shall be issued within the Development until all requirements shown in Exhibit "D" of this Agreement have been completed.
- B. Additional Restrictions on the issuance of Building Permits based on access to water and sewer.
  1. Subject to Paragraph 2 below, no building permit will be issued for the construction of a residential building for which Village water or Village sanitary sewer are not immediately available and in service; nor will such permit be issued unless the lot abuts upon a passable graded roadway which will allow proper and ready access for fire, police and other Village services.

2. In areas where Village sewer and water are not available, an approved well system and approved septic system can be used in lieu of municipal sewer and water; however, a passable graded road must abut such lot which will allow proper and ready access for fire, police and other Village services.
- C. If permits for construction of homes are issued by the Village prior to acceptance of the dedication of all improvements by the Village per Section II(A) above, it is understood that the Village will assume no liability for any damages which may occur to the municipal improvements, and the Developer agrees that any such damages shall be repaired at his sole expense to the complete satisfaction of the Village.

## **Section VI. Developer Responsibility to Indemnify.**

### **A. Compliance with Law and Regulations.**

Developer shall, in the performance of this Agreement, comply with and give all stipulations and representations required by all applicable federal, state and local laws, ordinances and regulations. Developer shall also require such compliance, stipulations and representations with respect to any contract entered into by Developer with others (pertaining to the work covered by this Agreement) as may be required by all applicable federal, state and local laws, ordinances and regulations.

### **B. Indemnification Agreement.**

1. In addition to, and not to the exclusion or prejudice of, any other provision of this Agreement, Developer shall indemnify and hold harmless the Village, its officers, agents and employees, and shall defend the same, from and against any and all liability, claims, loss, damages, interest, action, suits, judgments, costs, expenses, attorneys' fees and the like, to whomsoever owed and by whomsoever and whenever brought or obtained, which may in any manner result from or arise in the course of or out of the performance of the work and this Agreement, expressly including though not limited to negligence and the breach of any duty whether imposed by statutes, ordinances, regulations, order, decree or law of any other sort or by contract, on the part of Developer, or its officers, employees, agents, workmen, or independent contractors, in carrying out the work and in supervising and safeguarding the same in any respect whatever, and including claims arising under any federal, state or local law including Worker's Compensation laws.
2. If a claim is made against the Village arising out of the work and/or this Agreement, the Village agrees that it shall, within ten (10) days of its notice thereof, notify the Developer and any liability insurance carrier designated by the Developer. The Developer shall thereafter provide full cooperation in defense of the claim. The Developer shall, at the option of the Village, defend any claim on behalf of the Village in which case the Developer or its insurer is authorized to act on behalf of the Village in responding to any claim to the extent of this indemnity. Such authorization includes the right to investigate, negotiate, settle and litigate any such claim and control the defense thereof.



3. Developer shall, at its expense, obtain and carry comprehensive general liability insurance with combined single limits of at least \$1 million for one person and at least \$1 million per occurrence, and at least \$1 million property damage (or such higher amounts as the Village shall from time to time reasonably determine). Such policies shall cover both Developer and the Village and its' agents, employees, and officials, and all insurers shall agree not to cancel or change the same without at least ten (10) days' written notice to the Village. A certificate of Developer's insurance evidencing such insurance shall be furnished to the Village prior to starting construction. Each such policy shall provide that no act or default of any person other than the Village or its agents shall render the policy void as to the Village or affect the Village's right to recover thereon.
4. In every case, but not as a limitation on the liability of the Developer to the Village, where judgment is recovered against the Village on such claim, if such notice has been given to Developer, any judgment thereon shall be conclusive upon Developer as to the amount of damages and as to its liability to Village to the extent litigated therein.

## **Section VII. Village Right to Inspect.**

### **A. Village Right of Access to Property.**

1. Agents and employees of Village shall at all times have access to the work wherever it is in preparation or progress and Developer shall make appropriate arrangements for such access and for inspection.
2. If any work is covered up without the inspection, approval or consent of the Village, Developer will, if required by the Village, uncover the work at Developer's expense for examination by the Village. After the examination under this section is complete, Developer will pay costs of replacement.
3. Re-examination of questioned work not falling under the previous paragraph may be ordered by the Village. If the Village orders such re-examination under this section, the Developer shall uncover the work. If such work is found to be in accordance with the applicable plans, specifications and regulations, Village shall pay the cost of re-examination and replacement. If such work is found not to be in accordance with such plans, specifications and regulations, Developer shall pay such cost.

### **B. Approval by Village.**

All work shall be done subject to the approval of the Village's representatives. They shall decide all questions which arise as to the amount, quality, and acceptability to materials furnished, work performed, manner of performance, rate of progress of the work, interpretation of plans, specifications and regulations and acceptable fulfillment of this Agreement. Materials shall be furnished and work shall be performed in conformity with Village Standards and Specifications, and with the plans and specifications received by the Director of Engineering and Development and on file in the Village and construction industry standards in the Village and the Greater Milwaukee Area.

C. Disclaimer of Liability.

The Village disclaims any and all liability arising from inspection or any failure to inspect any improvement constructed by Developer. Developer shall indemnify and hold the Village harmless against any claim arising from the actions of the Village or its agents in relation thereto.

**Section VIII. Miscellaneous Provisions.**

A. Covenants to Run with the Land.

The terms of this Agreement are covenants running with the land and binding on the Village and the Developer and any and all successors and assigns.

B. Assignments.

Developer shall not assign this Agreement or obligations arising hereunder without the prior written consent of the Village.

C. Recording.

The Village will record this Agreement with the Waukesha County Register of Deeds. The Village will charge the Developer for the recording fees and provide a fully executed copy of this Agreement with recording information to the Developer for their records.

D. Standards.

The terms "established standards of the Village", "Village Standards and Specifications" and others similar thereto used in this Agreement shall mean those standards, specifications, guidelines, or other rules which are in effect on the date of this Agreement.

E. Force Majeure.

The deadlines for Developer's performance under this Agreement shall be extended for periods of time during which the Developer's performance is prevented due to causes which are outside the control of the Developer and which cannot be avoided by the exercise of due care by the Developer, including industry wide strikes or labor troubles, casualty, shortage of materials, weather conditions, and other acts of God.

F. Plans and Documents

The Developer shall provide the Village the plans and documents identified in Exhibit "B" attached hereto prior to acceptance by the Village Board of the improvements.

G. GIS System Data

All surveyed as-built data is to be provided in Wisconsin State Plane NAD 1983 Coordinate System – South Zone (horizontal reference) and in National Geodetic Vertical Datum of 1988 (vertical reference). The text (.txt) file is to have the following format: comma delimited, PNEZD (Point Number, Northing, Easting,

Elevation, Data). Surveyed as-built data is to include at minimum: northeast flange bolt elevation/location of hydrants (HYD), all water valves including blow-off valves (WTV), water stop boxes located at the property line (WBX), water main location (WTM, if available), center of sanitary sewer manholes (MHS), sanitary sewer lateral at property line (SAN), center of storm sewer manholes (MST), middle of flow line for storm catch basins round/square (CBR/CBS), end of pipe as polyvinyl chloride, corrugated metal, reinforced concrete... (PVC/CMP/RCP) plus diameter in inches ([dia]", or [dia]"x[dia}" for horizontal-elliptical pipes), any overflow structures (OFL), and spillway details (SPW). All costs for the collection and integration of GPS field data shall be paid for by the Developer.

#### H. Impact Fees

All applicable impact fees for the Development shall be paid prior to issuance of the building permit on that lot or as otherwise provided in Chapter 42 of the Village Municipal Code.

#### I. Grading Plan and Building Grades.

1. The Developer shall furnish to the Village Director of Engineering and Development a grading plan for the entire Development. The grading plan shall show existing and proposed contours, and shall list the proposed elevation at each lot corner and intermediate points at which there is a change in slope. All ditches, swales, berms, retention/detention basins, and other features shall be shown. The proposed finished yard grade shall be shown for each proposed residence or structure. The lowest possible basement elevation shall also be shown on those lots designated by the Director of Engineering and Development. The grading plan shall be submitted to and approved by the Village prior to the commencement of any construction activity.
2. Basement exposures identified on the approved grading plan provide a transition between adjacent residences and shall be strictly adhered to. Side loading garages will not be allowed if they adversely affect easements or swales, or transitions between lots.
3. If side-loading garages are to be considered for the development, the Master Grading plan shall show the grading for all side loading driveways. The parking pad shall not impact drainage swales or easements, or any transitions between adjacent properties or building pads.
4. If a property owner or builder wishes to amend the development grading plan by changing the exposure on a residence, or by constructing an end loading garage where the grading plan does not provide for such a garage, or by another type of change in grade, the owner or builder must prepare a grading plan showing the change. The revised grading plan must be approved by the Village.

#### J. Payment of Village Engineering, Inspection, Administrative, and Miscellaneous Costs and Fees by Developer

1. The financial guarantee to be filed by the Developer under Section III of this Agreement shall include all amounts identified on the attached Exhibit "C" which includes the costs described as "Total Estimated Village Engineering, Inspection, Administrative and Miscellaneous Costs" as assurance for the payment of all Village engineering, inspection, administrative, and miscellaneous costs and fees.
2. The Developer agrees to pay all Village engineering, inspection, administrative, and miscellaneous costs and fees associated with the development of the Property. This obligation to pay the Village's costs and fees related to the Development also includes all internal or external engineering, inspection, administrative, and miscellaneous costs or fees incurred by the Village for work performed by or on behalf of the Village. The Developer agrees that the Village shall bill the Developer periodically for amounts due to the Village under this agreement. The Developer agrees to pay such amounts to the Village within thirty (30) calendar days of billing by the Village. Any amount not received by the Village within this 30-day period shall accrue interest at the rate of 18 percent per annum commencing on the date of billing through the date payment is received by the Village.
3. In addition to any other remedy, if the Developer fails to pay any such amount when due, the Village at its sole discretion shall be empowered without notice of hearing, to impose a special charge for the amount of said deficiency, upon the property. This charge shall be payable with the next succeeding tax roll. Notwithstanding any of the foregoing payments by Developer for inspection services, any and all inspectors who provide such services shall be under the supervision, direction and control of the Village.

K. Wetlands, Waterways and Floodplain

1. The Property contain areas of wetlands, waterways and/or floodplain. The wetland areas, waterways and floodplain shall not be disturbed unless specifically authorized by the Village, Wisconsin DNR and Army Corps of Engineers.
2. The wetland and floodplain restrictions shall be placed on the Certified Survey Map. All wetland and floodplain boundaries shall be shown and identified on the Certified Survey Map.

L. Easement Documents.

Executed easement documents for all municipal easements required as part of this Development shall be provided by the Developer. The municipal easement documents are to be recorded with the Waukesha County Register of Deeds.

M. Pollution Representation and Warranty

1. Developer warrants to the Village that there are no hazardous substances, pollution or contamination on or in the property comprising the Development or the groundwater within or beneath the dedicated property. Such representation and warranty survive this Agreement, the dedication by

Developer of any land or interest in land provided for by this Agreement and the acceptance by the Village of any such dedication.

2. Upon written demand from the Village, the Developer shall promptly indemnify the Village or and hold the Village harmless against any and all claims, liability, damages and the costs of litigation resulting from or arising out of the presence of any such substance, pollution or contamination, including, without limitation, any actual attorneys' fees and expert witness fees.

N. No Third Party Beneficiaries.

This Agreement is not intended to benefit or to be enforceable by any person other than the Village, the Developer, and their respective successors and assigns, which shall not include, for the purposes of this paragraph, any person who has not assumed all of the benefits and obligations of this Agreement.

O. Amendment of Agreement

The Village and the Developer may, by mutual written agreement, and after approval of the Village Board, amend this Agreement at any time. The Village Board shall not, however, approve an amendment without having first considered the recommendations of the Village staff on the proposed amendment.

P. Severability

If a court of competent jurisdiction adjudges any section, clause, provision or portion of this agreement invalid, such part shall be severed from the Agreement, and the remainder of the Agreement shall survive and shall not be affected thereby.

Q. No Threat to Public Health or Safety

Notwithstanding any language in this Agreement to the contrary, the Developer shall not do, nor permit any other person subject to the direction or control of Developer to do, anything in connection with the performance of the Developer's obligations under this Agreement that poses a threat to the public health or safety.

R. No Rule of Construction against Drafter

The language used in this Agreement shall be deemed to be the language chosen by the parties to express their mutual consent, and or rule of construction shall be applied against any party as the drafter of this agreement.

S. Effective Date

This agreement shall become effective from and after the last to occur of the following events:

1. The Village Board's approval of the Agreement
2. The execution of this Agreement by the Developer.

T. Entire Agreement

This Agreement is the entire agreement of the parties. All prior agreements, commitments, promises, offers, representation and statements made by or on behalf of the parties with respect to the subject matter of this Agreement are hereby terminated and shall have no further effect.

U. Governing Law

The law of the State of Wisconsin shall govern all issues relating to this Agreement.

V. Incorporation into this Agreement of Conditions Imposed by Village Bodies

If the Village Board imposes any conditions upon the Developer as part of the approval of the issuance of a conditional use permit for the Property, or if the Architectural Control Board imposes any conditions or requirements as part of any approval given by it to the Developer for the Property, these conditions or requirements are incorporated by reference and made a part of this Agreement, and may be enforced under this Agreement in addition to any other method or remedy available to the enforcing party.

W. Release or Subordination of Liens and Encumbrances

The Property may be subjected to certain liens and encumbrances prior to the installation of any public improvements on the Property. If the Property is subjected to certain liens and Encumbrances, prior to the start of construction, Developer shall either:

1. Obtain satisfaction(s) or release(s) of such liens or encumbrances in a form acceptable to the Village; or
2. Obtain subordination or similar agreements in a form acceptable to the Village, subordinating any and all such liens and encumbrances to the Village interests in such public improvements.

**DEVELOPER**

IN WITNESS WHEREOF, **Prairie Walk Development, LLC** has caused this Agreement to be signed this \_\_\_\_ day of \_\_\_\_\_, 2021.

Prairie Walk Development, LLC

By: \_\_\_\_\_  
Timothy J. Smits, Managing Member

State of Wisconsin                    )  
  ) ss.  
County of \_\_\_\_\_ )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2021, the above named Timothy J. Smits, to me known to be the person who executed the foregoing instrument in his respective official capacity as Managing Member of Prairie Walk Development LLC, and acknowledged that he executed the foregoing instrument as a corporate officer as the deed of said corporation by its authority.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_ County, Wisconsin  
My Commission Expires on \_\_\_\_\_

**VILLAGE OF MENOMONEE FALLS**

Approved by the Village Board of the Village of Menomonee Falls on the \_\_\_\_ day of \_\_\_\_\_, 2021.

By: \_\_\_\_\_ By: \_\_\_\_\_  
David Glasgow Janice Moyer  
Village President Village Clerk

Approved as to form: \_\_\_\_\_  
Adam Koenings  
Village Attorney

Exhibits approved as to Form: \_\_\_\_\_  
Thomas M. Hoffman  
Director of Engineering and Development

This instrument was drafted by: Brian C. Hornickel, P.E., Senior Civil Engineer  
Village of Menomonee Falls

**EXHIBIT "A"**

**CERTIFIED SURVEY MAP OF THE PROPERTY**

Proposed



## CERTIFIED SURVEY MAP NO.

BEING A REDIVISION OF A PART OF LOT 2 OF CERTIFIED SURVEY MAP NUMBER 9256, BEING LOCATED IN A PART OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 28, TOWN 8 NORTH, RANGE 20 EAST, IN THE VILLAGE OF MENOMONEE FALLS, WAUKESHA COUNTY, WISCONSIN.

### "OVERALL DETAIL SHEET"

#### PREPARED FOR:

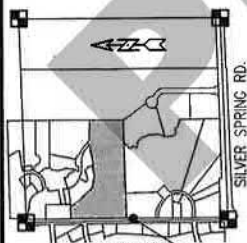
PRAIRIE WALK DEVELOPEMENT LLC  
C/O THOMSON COMPANIES  
W28 N23000 ROUNDY DR. #20  
PEWAUKEE, WI 53072

#### PREPARED BY:

TRIO ENGINEERING, LLC  
4100 N. CALHOUN ROAD,  
SUITE 300  
BROOKFIELD, WI 53005  
PHONE: 262-790-1480  
FAX: 262-790-1481

#### NOTES:

- ALL BEARINGS ARE REFERENCED TO GRID NORTH OF THE WISCONSIN STATE PLANE COORDINATE SYSTEM, SOUTH ZONE (NAD-27), IN WHICH THE WEST LINE OF THE S.E. 1/4 OF SECTION 28, TOWN 8 NORTH, RANGE 20 EAST, BEARS N00°31'51"W.
- ALL ELECTRIC, TELEPHONE, AND COMMUNICATION DISTRIBUTION LINES AND LATERALS INCLUDING CATV CABLES, CONSTRUCTED AFTER THE RECORDING OF THIS CERTIFIED SURVEY MAP SHALL BE PLACED UNDERGROUND.
- THE 100-YEAR FLOODPLAIN BOUNDARY SHOWN HEREON IS BASED ON FEMA MAP NO. 55133C0207G, MAP REVISED: NOVEMBER 5, 2014 AND LOCAL FLOODPLAIN PER VILLAGE. FLOODPLAIN ELEVATIONS LISTED HEREON PER VILLAGE.
- WETLANDS BOUNDARIES SHOWN HEREON WERE LOCATED BY HEARTLAND ECOLOGICAL GROUP INC. (ERIC PARKER) IN MAY, 2019.



#### LOCALITY MAP

S.E. 1/4, SEC. 28  
T. 8 N., R. 20 E.  
SCALE: 1" = 2000'

NW CORNER OF THE SE 1/4  
SEC. 28-8-20  
CONC. MON. W/BRASS CAP  
N. 416,125.65,  
E. 2,497,889.50

DRAFTED THIS 14th DAY OF AUGUST, 2020  
THIS INSTRUMENT WAS DRAFTED BY TED R. INDERMUEHLE, S-3119

#### MARCY ROAD

(70' WIDE PUBLIC R.O.W.)

W. LINE OF THE SOUTHEAST 1/4  
SECTION 28-8-20  
(N00°31'51"W 2656.23)

SW CORNER OF THE SE 1/4  
SEC. 28-8-20  
CONC. MON. W/BRASS CAP  
N. 413,469.53,  
E. 2,497,914.11

JOB NO. 92-063-295-02  
SHEET 1 OF 7

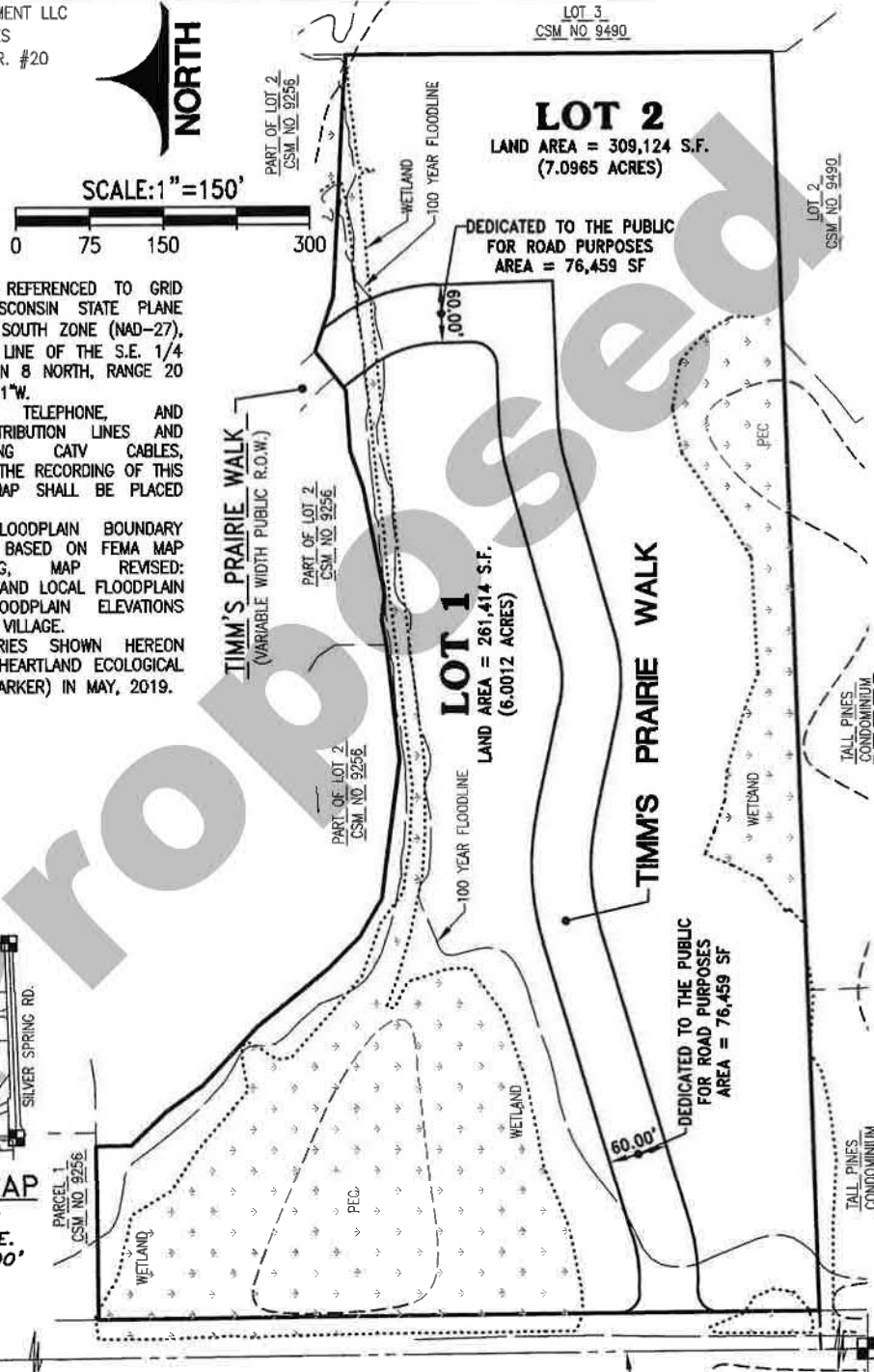


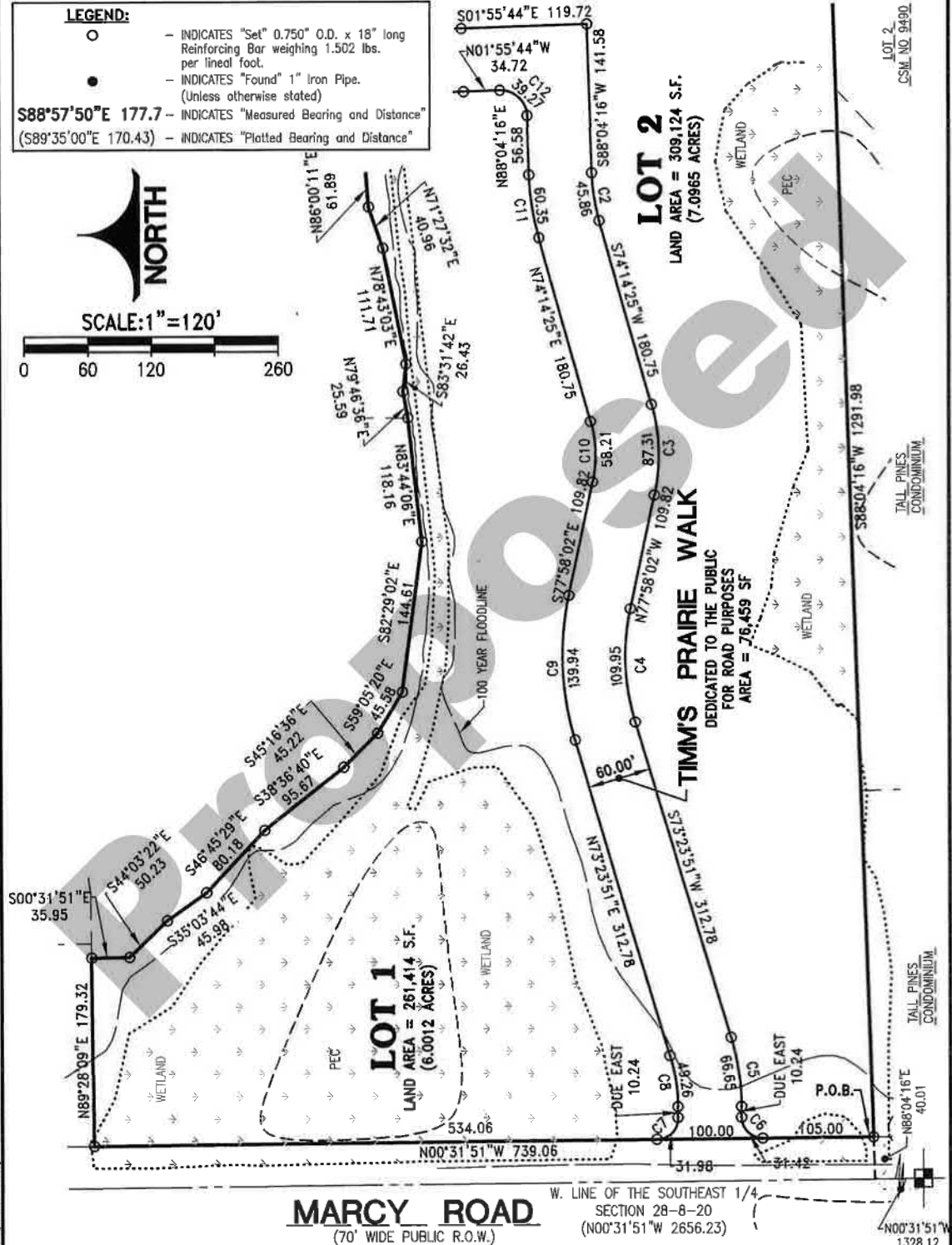
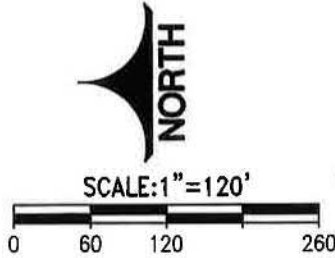
EXHIBIT "A"

# **CERTIFIED SURVEY MAP NO.**

BEING A REDIVISION OF A PART OF LOT 2 OF CERTIFIED SURVEY MAP NUMBER 9256, BEING LOCATED IN A PART OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 28, TOWN 8 NORTH, RANGE 20 EAST, IN THE VILLAGE OF MENOMONEE FALLS, WAUKESHA COUNTY, WISCONSIN.

**LEGEND:**

- - INDICATES "Set" 0.750" O.D. x 18" long Reinforcing Bar weighing 1.502 lbs. per lined foot.
- - INDICATES "Found" 1" Iron Pipe. (Unless otherwise stated)
- S88°57'50"E 177.7 - INDICATES "Measured Bearing and Distance" (S89°35'00"E 170.43) - INDICATES "Plotted Bearing and Distance"



H:\C2301\295197063-02\Survey\C2301\33055M01.dwg

DRAFTED THIS 14th DAY OF AUGUST, 2020  
THIS INSTRUMENT WAS DRAFTED BY TED R. INDERMUEHLE, S-3119

JOB NO. 92-063-295-02  
SHEET 2 OF 7

EXHIBIT "A"

BEING A REDIVISION OF A PART OF LOT 2 OF CERTIFIED SURVEY MAP NUMBER 9256, BEING LOCATED IN A PART OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 28, TOWN 8 NORTH, RANGE 20 EAST, IN THE VILLAGE OF MENOMONEE FALLS, WAUKESHA COUNTY, WISCONSIN.

LOT 3  
CSM NO 9490

S00°13'39"E 436.44

LAND AREA = 309,124 S.F.  
(7.0965 ACRES)

LOT 2  
CSM NO 9490

## TIMM'S PRAIRIE WALK

(VARIABLE WIDTH)  
PART OF LOT 2

# LOT 1

LAND AREA = 261,414 S.F.  
(6.0012 ACRES)

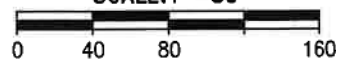
**TIMM'S PRAIRIE WALK**

INDICATED TO THE PUBLIC  
FOR ROAD PURPOSES  
AREA = 76,459 SF

AREA = 76,459 SF



SCALE: 1"=80'



DRAFTED THIS 14th DAY OF AUGUST, 2020  
THIS INSTRUMENT WAS DRAFTED BY TED R. INDERMUEHLE, S-3119

JOB NO. 92-063-295-02  
SHEET 3 OF 7

EXHIBIT "A"

## **CERTIFIED SURVEY MAP NO.**

BEING A REDIVISION OF A PART OF LOT 2 OF CERTIFIED SURVEY MAP NUMBER 9256, BEING LOCATED IN A PART OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 28, TOWN 8 NORTH, RANGE 20 EAST, IN THE VILLAGE OF MENOMONEE FALLS, WAUKESHA COUNTY, WISCONSIN.

### **CURVE TABLE:**

NO.	RADIUS	CENTRAL ANGLE	ARC	CHORD	CHORD BEARING	TANGENT IN	TANGENT OUT
C1	180.00	33°19'08"	104.67	103.21	S18°35'18"E	S35°14'52"E	S01°55'44"E
C2	190.00	13°49'51"	45.86	45.75	S81°09'20.5"W	S88°04'16"W	S74°14'25"W
C3	180.00	27°47'33"	87.31	86.46	S88°08'11.5"W	S74°14'25"W	N77°58'02"W
C4	220.00	28°38'07"	109.95	108.81	S87°42'54.5"W	N77°58'02"W	S73°23'51"W
C5	230.00	16°36'09"	66.65	66.41	S81°41'55.5"W	S73°23'51"W	N90°00'00"W
C6	20.00	90°00'01"	31.42	28.28	S44°28'08.5"W	S89°28'09"W	S00°31'52"E
C7	20.00	91°37'19"	31.98	28.68	S46°18'45.5"E	S00°30'06"E	N87°52'35"E
C8	170.00	16°36'09"	49.26	49.09	N81°41'55.5"E	N90°00'00"E	N73°23'51"E
C9	280.00	28°38'07"	139.94	138.49	N87°42'54.5"E	N73°23'51"E	S77°58'02"E
C10	120.00	27°47'33"	58.21	57.64	N88°08'11.5"E	S77°58'02"E	N74°14'25"E
C11	250.00	13°49'51"	60.35	60.20	N81°09'20.5"E	N74°14'25"E	N88°04'16"E
C12	25.00	90°00'00"	39.27	35.36	N43°04'16"E	N88°04'16"E	N01°55'44"W
C13	120.00	33°19'08"	69.78	68.80	N18°35'18"W	N01°55'44"W	N35°14'52"W
C14	260.00	3°18'15"	14.99	14.99	N36°53'59.5"W	N35°14'52"W	N38°33'07"W

### **PRESERVATION RESTRICTIONS:**

Those areas identified as Wetland, 100 Year Floodplain, and Primary Environmental Corridor (P.E.C.) on this Map shall be subject to the following restrictions:

1. Grading, filling and removal of topsoil or other earthen materials are prohibited except in connection with the construction of a proposed multi-use trail, unless specifically authorized by the Village of Menomonee Falls, the Wisconsin Department of Natural Resources and the Army Corps of Engineers.
2. The removal or destruction of any vegetative cover, i.e., trees, shrubs, grasses, etc., is prohibited, with the exception that dead, diseased, or dying vegetation may be removed, at the discretion of the landowner and with approval from the Village of Menomonee Falls. Silvicultural thinning upon the recommendation of a forester or naturalist and with approval from the Village of Menomonee Falls shall also be permitted.
3. The introduction of plant material not indigenous to the existing environment is prohibited.
4. Ponds may be permitted subject to the approval of the Village of Menomonee Falls and, if applicable, the Waukesha County Department of Parks and Land Use, the Wisconsin Department of Natural Resources and the Army Corps of Engineers.
5. The construction of buildings is prohibited.

## **CERTIFIED SURVEY MAP NO.**

BEING A REDIVISION OF A PART OF LOT 2 OF CERTIFIED SURVEY MAP NUMBER 9256, BEING LOCATED IN A PART OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 28, TOWN 8 NORTH, RANGE 20 EAST, IN THE VILLAGE OF MENOMONEE FALLS, WAUKESHA COUNTY, WISCONSIN.

### **SURVEYOR'S CERTIFICATE:**

STATE OF WISCONSIN     )  
  )ss  
COUNTY OF WAUKESHA    )

I, Ted R. Indermuehle, Professional Land Surveyor, do hereby certify:

That I have surveyed, divided, and mapped all that part of Lot 2 of Certified Survey Map Number 9256 located in the Northwest 1/4 of the Southeast 1/4 of Section 28, Town 8 North, Range 20 East, Village of Menomonee Falls, Waukesha County, Wisconsin, now being more particularly bounded and described as follows:

Commencing at the Southwest corner of the said Southeast 1/4 Section thence North 00°31'51" West along said West line, 1328.12 feet to a point; Thence North 88°04'16" East 40.01 to the East Right-of-Way line of "Marcy Road" said point being the place of beginning of lands hereinafter described;

Thence North 00°31'51" West along said East line, 739.06 feet to the South line of Parcel 1 of Certified Survey Map Number 9256; Thence North 89°28'09" East along said South line, 179.32 feet to a point; Thence South 00°31'51" East 35.95 feet to a point; Thence South 44°03'22" East 50.23 feet to a point; Thence South 35°03'44" East 45.98 feet to a point; Thence South 46°45'29" East 80.18 feet to a point; Thence South 38°36'40" East 95.67 feet to a point; Thence South 45°16'36" East 45.22 feet to a point; Thence South 59°05'20" East 45.58 feet to a point; Thence South 82°29'02" East 144.61 feet to a point; Thence North 83°44'06" East 118.16 feet to a point; Thence North 79°46'36" East 25.59 feet to a point; Thence South 83°31'42" East 26.43 feet to a point; Thence North 78°43'03" East 111.71 feet to a point; Thence North 71°27'32" East 40.96 feet to a point; Thence North 86°00'11" East 61.89 feet to a point; Thence North 51°26'53" East 50.71 feet to a point; Thence South 71°00'46" East 59.12 feet to a point; Thence South 86°56'29" East 248.42 feet to a point on the West line of Certified Survey Map Number 9490; Thence South 00°13'39" East said West line, 436.44 feet to a point on the North line of Said Certified Survey Map; Thence South 88°04'16" West along said North line, 1291.98 feet to the point of beginning of this description.

The Area of said Parcel is 646,997 Square Feet (14.8530 Acres) of land, more or less.

That I have made such survey, land division and map by the direction of **Prairie Walk Development, LLC** owners of said lands.

That such map is a correct representation of all the exterior boundaries of the land surveyed and the land division thereof made.

That I have fully complied with the provisions of Chapter 236 of the Wisconsin Statutes and the Subdivision Regulations of the Village of Menomonee Falls, in surveying, dividing and the mapping the same.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Ted R. Indermuehle, P.L.S.  
Professional Land Surveyor, S-3119  
**TRIO ENGINEERING, LLC**  
4100 N. Calhoun Rd. Suite 300  
Brookfield, WI 53005  
Phone: (262)790-1480 Fax: (262)790-1481

Drafted this 14th Day of August, 2020

THIS INSTRUMENT WAS DRAFTED BY TED R. INDERMUEHLE, S-3119

L:\LOBBYSIWPD\CS\DOCUMENT\295\92063-02\Survey\530-Certified Survey Map\Prairie Walk CSM.doc

Job. No. 92-063-295-01

SHEET 5 OF 7

EXHIBIT "A"

## **CERTIFIED SURVEY MAP NO.**

BEING A REDIVISION OF A PART OF LOT 2 OF CERTIFIED SURVEY MAP NUMBER 9256, BEING  
LOCATED IN A PART OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 28, TOWN 8  
NORTH, RANGE 20 EAST, IN THE VILLAGE OF MENOMONEE FALLS, WAUKESHA COUNTY,  
WISCONSIN.

### **CORPORATE OWNER'S CERTIFICATE OF DEDICATION:**

**Prairie Walk Development, LLC**, Limited Liability Companies duly organized and existing under and by virtue of the laws of the State of Wisconsin, as owner does hereby certify that said Limited Liability Companies has caused the land described on this map to be surveyed, divided, mapped and dedicated as represented on this map in accordance with the provisions of Chapter 236 of the Wisconsin Statutes and the Subdivision Regulations of the Village of Menomonee Falls, this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

**Prairie Walk Development, LLC**

\_\_\_\_\_  
Timothy J. Smits, Member

STATE OF WISCONSIN     )  
  ) ss  
COUNTY OF                 )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, Timothy J. Smits, Member of the above named limited liability companies, to me known to be the person who executed the foregoing instrument, and to me known to be such Member of said limited liability companies, and acknowledged that he executed the foregoing instrument as such officer as the deed of said limited liability companies, by its authority.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, \_\_\_\_\_ County, WI  
My commission expires: \_\_\_\_\_

### **CONSENT OF MORTGAGEE:**

\_\_\_\_\_, a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin, mortgagee of the above described land, does hereby consent to the surveying, dividing, dedicating, and mapping of the land described on this Certified Survey Map, and does hereby consent to the above certificate of **Prairie Walk Development LLC**, owners, this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

STATE OF WISCONSIN     )  
  ) ss  
COUNTY OF                 )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, \_\_\_\_\_, of the above named corporation, to me known to be the person who executed the foregoing instrument, and to me known to be such of said corporation, and acknowledged that she executed the foregoing instrument as such officer as the deed of said corporation, by its authority.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, \_\_\_\_\_ County, WI  
My commission expires: \_\_\_\_\_

Drafted this 14th Day of August, 2020

THIS INSTRUMENT WAS DRAFTED BY TED R. INDERMUEHLE, S-3119

Job. No. 92-063-295-01

SHEET 6 OF 7

L:\LOBBY\SWP\DOCS\DOCUMENT\295192063-02\Survey\530-Certified Survey Map\Prairie Walk\_CSM.doc

EXHIBIT "A"

**CERTIFIED SURVEY MAP NO. \_\_\_\_\_**

BEING A REDIVISION OF A PART OF LOT 2 OF CERTIFIED SURVEY MAP NUMBER 9256, BEING  
LOCATED IN A PART OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 28, TOWN 8  
NORTH, RANGE 20 EAST, IN THE VILLAGE OF MENOMONEE FALLS, WAUKESHA COUNTY,  
WISCONSIN.

**VILLAGE BOARD APPROVAL:**

APPROVED by the Planning Commission of the Village of Menomonee Falls on this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_.

\_\_\_\_\_  
David Glasgow, Village President

\_\_\_\_\_  
Janice Moyer, Village Clerk

**MENOMONEE FALLS PLAN COMMISSION:**

Preliminary Approval:      Date: \_\_\_\_\_  
Secretary \_\_\_\_\_

Final Approval:      Date: \_\_\_\_\_  
Secretary \_\_\_\_\_



## **EXHIBIT "B"**

Plans and documents to be provided by the Developer to the Village prior to acceptance of the public improvements by the Village Board:

1. Complete set of construction as-built drawings for sanitary sewer, storm sewer, and water main on standard size mylar\*, Adobe PDF format and AutoCAD format (\*.DWG) on computer CD. Plan and profile sheets shall indicate as-built data without removing original data from the drawings.\*\* These as-built drawings shall be labeled as "As-builts" on each sheet and shall be stamped and signed by a Professional Engineer.
2. All surveyed as-built data is to be provided in Wisconsin State Plane NAD 1983 Coordinate System – South Zone (horizontal reference) and in National Geodetic Vertical Datum of 1988 (vertical reference). The text (.txt) file is to have the following format: comma delimited, PNEZD (Point Number, Northing, Easting, Elevation, Data). Surveyed as-built data is to include at minimum: northeast flange bolt elevation/location of hydrants (HYD), all water valves including blow-off valves (WTV), water stop boxes located at the property line (WBX), water main location (WTM, if available), center of sanitary sewer manholes (MHS), sanitary sewer lateral at property line (SAN), center of storm sewer manholes (MST), middle of flow line for storm catch basins round/square (CBR/CBS), end of pipe as polyvinyl chloride, corrugated metal, reinforced concrete... (PVC/CMP/RCP) plus diameter in inches ([dia]", or [dia]"x[dia}" for horizontal-elliptical pipes), any overflow structures (OFL), and spillway details (SPW).
3. Grading as-built plan on mylar\*, Adobe PDF format and AutoCAD format (\*.DWG) on computer CD. The grading as-built plan shall indicate the as-built elevations of all lot corners, grade breaks, berms, drainage swales and stormwater detention areas without removing original data from the drawings. These as-built drawings shall be labeled as "As-builts" on each sheet and shall be stamped and signed by a Professional Engineer or Registered Land Surveyor.
4. Master Grading Plan on mylar\*, Adobe PDF format and AutoCAD format (\*.DWG) on computer CD. The proposed finished yard grade shall be shown for each proposed residence or structure, and the lowest possible basement elevation shall be shown on those lots designated by the Director of Engineering and Development.
5. Roadway/Paving plan and profile sheets, and Roadway Intersection plans on mylar\*, Adobe PDF format and AutoCAD format (\*.DWG) on computer CD.
6. Development plan cover sheet, construction detail drawings, erosion control plans, and sewer and water system plan sheets on mylar\*, Adobe PDF format and AutoCAD format (\*.DWG) on computer CD.
7. A *Stormwater Management Facilities Operation and Inspection Report* on the Village approved form is required for each stormwater detention facility certifying compliance of the facility. The report shall be stamped and signed by a Professional Engineer.



8. Design sheets for each length of sanitary sewer main and storm sewer main on forms approved by the Village. Design computations shall be provided for all storm sewers based upon a 10-year storm event (including determination of hydraulic grade lines) and where applicable, the 100-year storm event.
9. All necessary permits must be obtained from other agencies including but not limited to, the Wisconsin D.O.T., the Wisconsin Department of Natural Resources, the U. S. Army Corps of Engineers, or Waukesha County.
10. The Developer will execute the proposed municipal easement documents. These documents shall include provisions that, in the event the Village has to excavate in the easements, the Village will restore the easement surface grade to the proposed grade as shown on the master grading plan. The easement surface will be restored with topsoil, seed, fertilizer and mulch. The Village will not approve or restore shrubs, trees, pavements or structures of any type.
11. An itemized list of final quantities and costs for all public infrastructure improvements.
12. Provide Warranty Deeds, Title Policies, and Mortgage releases, if applicable, for the transfer of any Outlots to the Village.
13. A executed, recorded copy of the Deed Restrictions shall be provided by the Developer.
- \* Mylar shall be double matte 0.004" minimum thickness. Xero-graphic mylar reproductions are not acceptable.
- \*\* Sanitary sewer and storm sewer asbuilts shall include field measurement from center to center of each structure, and all rim and invert elevations. Lengths, sizes, and distances between all laterals shall also be shown along with depth of lateral below grade. Any changes in sewer pipe or sewer structure location shall be illustrated on the asbuilts. (Cross out original location & draw in new location.)
- \*\* Water main asbuilts shall include measurements between all valves and fittings, and any variation in elevation from the approved plan. Any changes in water main pipe or water main structure location shall be illustrated on the asbuilts. (Cross out original location & draw in new location.)

## EXHIBIT "C"

### THE SANCTUARY AT PRAIRIE WALK CONDOMINIUMS

#### Village Engineering, Inspection, Administrative and Misc. Costs

ESTIMATED AMOUNT	ITEM
\$ 1,000	Village Legal Expenses
\$ 69,235	Village engineering, administration and inspection of sanitary sewer and laterals, surface and storm water drainage facilities, water distribution system and water services, street grading and construction including curb and gutter, and sidewalk (8%)
\$ 1,500	Erosion Control Fees
\$ 1,000	Platting Fees (See Section VIII.(H))
\$ 1,000	Street signs, stop signs, etc. (4 x \$250 each)
\$ 10,000	Street Lighting (2x\$5,000 each)
\$ 1,500	Sanitary Sewer Cleaning and Televising
\$ <u>26,823</u>	Future Construction Costs of Multi-Use Path
\$ 112,058	Total Estimated Village Engineering, Inspection, Administrative and Miscellaneous Costs

#### Development Improvement Costs

\$ 687,931	Sanitary Sewer Water Main Storm Sewer and Drainage
\$ 177,507	Street Construction
\$ 319,308	Grading and Restoration
\$ 94,780	Construction Contingency (8%)
\$ <u>8,000</u>	Engineering (non-Village – staking, as-builts, GIS survey)
\$ 1,287,526	Total Development Improvement Costs
\$ <u>112,058</u>	Total Estimated Village Engineering, Inspection, Administrative and Miscellaneous Costs
<b>\$ 1,399,584</b>	<b>Total Funds Required for Letter of Credit or other Financial Guarantee.</b>

## **EXHIBIT "D"**

### **VILLAGE OF MENOMONEE FALLS DEVELOPMENT APPROVAL CRITERIA**

The following items in the development are required to be completed prior to the issuance of building permits per Section V:

1. Complete installation of sanitary sewer, storm sewer, and water main; completion of punch list items; all tests for sanitary sewer, manholes, and water main passed and the safe water sample obtained.
2. Sanitary sewer, storm sewer and water main as-builts are to be completed by the developer's engineer and received by the Village.
3. Complete installation of concrete curb & gutter and binder course of asphalt pavement.
4. Complete installation of sidewalk or asphalt path if required in the development.
5. Certification and acceptance of grading for conformance with approved master grading plan:
  - a. As-built grades on lot lines and lot corners shall be within 0.25 ft. of the final grades shown on the approved master grading plan. The as-built grading plan shall show spot elevations along the side lot lines at the top of curb, front lot corners, front setback, back of building pad extended, any high points and grade breaks, and rear lot corners.
  - b. All drainage easements shall be fine graded to within 0.25 ft. of the final grades shown on the approved master grading plan and provide positive drainage. As-built grades of the swales shall be shown every 25 feet with the spot elevations taken at the flowline of the swale and 10 feet on either side of the flowline.
  - c. Building pad grades shall be between 0.0 ft. and 2.0 ft. lower than the final grades shown on the approved master grading plan. As-built grades are to be shown at the front and back of each building pad.
  - d. Stormwater detention ponds shall be certified and as-built. Elevations shall be taken at cross sections not exceeding 25 feet from top to bottom of the pond banks and embankments, top and bottom of safety shelf, inlet and outlet pipe inverts, outlet structure and emergency spillway.
  - e. All final grading must be within the above tolerance and provide positive drainage. Any areas not within tolerance or found to have insufficient drainage shall be regraded.
6. Final Plat or C.S.M. recorded with Waukesha County Register of Deeds.
7. All municipal easements recorded with Waukesha County Register of Deeds.
8. All property lot corner pipes, perimeter pipes, and horizontal curve pipe shall be set by developer's surveyor.

9. All disturbed areas shall be restored with topsoil, seed, fertilizer and mulch in accordance to Village erosion control ordinance and specifications.
10. All swales in drainage easements are to fine graded and stabilized with topsoil, seed, fertilizer and erosion control blanket per Village specifications. Drainage easements are to be maintained by the developer until stabilized with grass.
11. All erosion control measures as shown on the approved erosion control plan shall be in place and in properly functioning condition.

Proposed

**EXHIBIT "E"**

**VILLAGE APPROVED BOND LANGUAGE**

Proposed

## EXHIBIT "E" (Continued)

### PERFORMANCE BOND

**DEVELOPER** (Name and Address):

**SURETY**

(Name, and Address of Principal Place of Business):

**OWNER** (Name and Address):

#### DEVELOPER'S AGREEMENT

Effective Date of Agreement:

Amount:

Description (Name and Location):

#### BOND

Bond Number:

Date (not earlier than Effective Date of the Agreement):

Amount:

Surety and Developer intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

#### DEVELOPER AS PRINCIPAL

**SURETY**

\_\_\_\_\_  
(Seal)  
Developer's Name and Corporate Seal

\_\_\_\_\_  
(Seal)  
Surety's Name and Corporate Seal

By:

Signature

By:

Signature (attach power of attorney)

Print Name

Print Name

Title

Title

Attest:

Signature

Attest:

Signature

Title

Title

#### OWNER APPROVAL

Signature

Print Name

Title: (Mayor) (President) (Chairman)

## EXHIBIT "E" (Continued)

1. The Developer and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Developer's Agreement, which is incorporated herein by reference.
2. If the Developer performs the Developer's Agreement, including all warranties, guarantees, payments and reimbursements as described therein, the Surety and the Developer shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
3. The Surety's obligation under this Bond shall arise after:
  - 3.1 The Owner first provides notice to the Developer and the Surety that the Owner is considering declaring a Developer Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Developer, and Surety to discuss the Developer's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. The Owner shall determine the location of any conference required by this Bond. If the Owner, the Developer, and the Surety agree, the Developer shall be allowed a reasonable time to perform the Developer's Agreement, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Developer Default;
  - 3.2 The Owner declares a Developer Default and notifies the Surety.
4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations.
5. Upon notice from Owner, the Surety shall within 15 days of Owner's notice and at the Surety's expense take one of the actions described in Section 5.1, 5.2, or 5.3, in addition to making payments as described in Section 5.4:
  - 5.1 Arrange for the Developer, with the consent of the Owner, to perform and complete the obligations of the Developer's Agreement;
  - 5.2 Undertake to perform and complete the obligations of the Developer's Agreement itself, through its agents or independent contractors;
  - 5.3 With the consent of Owner, obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for an agreement for performance and completion of the obligations of the Developer's Agreement, arrange for an agreement to be prepared for execution by the Owner and a developer selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Developer's Agreement and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Agreement Price incurred by the Owner as a result of the Developer Default.
  - 5.4 The Surety shall immediately upon request from Owner, make payment for all sums owed to Owner by Developer pursuant to the Developer's Agreement which Developer has failed for more than 30 days to make payment in full.
6. If the Surety does not commence to proceed as provided in Paragraph 5 within 15 days of Owner's notice, unless extended by Owner in writing, and continue to proceed as soon as practicable and without delay, the Surety shall be deemed to be in default on this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. Surety shall not require the Owner to negotiate or enter a Takeover Agreement, Release, or any written agreement of any kind prior to Surety performing its obligations of this Bond, and any such request by Surety shall be deemed to be a default.
7. If the Surety elects to act under Paragraph 5.1, 5.2 or 5.3 and 5.4, then the responsibilities of the Surety to the Owner shall not be greater than those of the Developer under the Developer's Agreement except as described herein and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Developer's Agreement. The Surety is obligated, for:
  - 7.1 The responsibilities of the Developer for correction of defective-work and completion of the Developer's Agreement, including the full warranty period provided within the Developer's Agreement.
  - 7.2 Additional legal, design professional, and delay costs resulting from the Developer's Default, and resulting from the actions or failure to act of the Surety under Paragraphs 5 and 6, including all actual costs of actions, including litigation, Owner may take to enforce the terms of this Bond against Surety.
  - 7.3 Liquidated damages. Recognizing that the Owner will incur significant damages from Surety's delay, rather than require proof of the amount of such damages, and not as a penalty, Surety shall pay to Owner \$500 per day, for each day that Surety fails to fully comply with the terms of this Bond within the time required by this Bond.
8. The Surety shall not be liable to the Owner or others for obligations of the Developer that are unrelated to the Developer's Agreement. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.
9. The Surety hereby waives notice of any change, including changes of time, work, or other terms, to the Developer's Agreement or to related subcontracts, purchase orders, and other obligations.
10. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within six years after a declaration of Developer Default or within six years after the Developer ceased working or within six years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs last. If the provisions of this paragraph are void or prohibited by law, the maximum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.
11. Notice to the Surety, the Owner, or the Developer shall be mailed or delivered to the address shown on the page on which their signature appears.
12. Statutory Bond Reduction. As and to the extent required by Wisconsin Statutes Section 236.13(2)(a)1., and not otherwise, the amount of this Bond shall be automatically reduced upon substantial completion of the public improvements to the amount equal to the total cost to complete any uncompleted public improvements plus 10 percent of the total cost of the completed public improvements, subject to the following. Any such reduction shall not apply to defaults, notices, conditions, claims or occurrences arising prior to substantial completion.

## **SECTION 9**

# **PLANNED RESIDENTIAL DEVELOPMENT AGREEMENTS AND RESOLUTIONS**



## **PRAIRIE WALK - PRD STATEMENT**

The project will be comprised of 57 single-family condominiums located on 32.42 acres of developable land. The density of the project will be 1.76 units per acre. The condominiums will be served by public sanitary sewers and watermains, and private storm sewers and streets.

The primary floor plan will offer two options, a single story ranch unit and the same unit with an optional second story bedroom & bath. The architectural integrity of the project will be maintained by providing diversity within the building elevations similar to what is found in single-family subdivisions. Along with the flexibility of providing either single story ranch or two story units, additional architectural variations include; side entry and front entry garages, roof lines, exterior materials, color schemes, porches and decks.

### **Project Statistical Data**

- Total Project Area (Excludes Farmstead) – 44.4 Ac.
- Undevelopable Area – 12.0 Ac.
- Developable Area – 32.4 Ac.
- Total Number of Dwelling Units - 57
- Dwelling Units Per Developable Acre – 1.76
- Gross Square Footage of Unit – 2,041 SF
- Active Floor Area – 1,587 SF
- Percentage of Unit Coverage – 6.0%
- Green Space Area Preserved (Excludes P.E.C., Wetland and Floodplain) – 24.5 Ac.
- Maximum Building Height – 35 Ft.
- Parking
  - Required – 114 Spaces
  - Provided – 228 Spaces

### **Financial Impact**

The Developer will pay all applicable approval and impact fees as required by the Village Municipal Code.

The condominiums will be served by public sanitary sewers and watermains. The storm sewers and streets are private and will be maintained by the Condominium Association.

Snow plowing, lawn and landscape maintenance and garbage collection will be the responsibility of the Association.

The following is a comparison of the taxes generated for the property in its present state and as a developed site based on the Village's 2000 mill rate.

**Present**

Property currently assessed at \$96,232

Tax -  $\$96,232 \times \$0.0248119 = \$2,388$

**Developed**

57 Units @ \$200,000 = \$11,400,000

Tax -  $\$11,400,000 \times \$0.0248119 = \$282,856$

**Project Schedule**

It is estimated that grading, utility and pavement construction will begin the summer of 2001 with the Phase I infrastructure work being completed the fall of 2001. The construction for the model and Phase I production buildings will begin the fall of 2001 with completion the spring of 2002. It is anticipated that the entire project will be completed within a five-year period.

**Project Organization**

The ownership of the project will be as a Limit Liability Company (LLC). The members of the LLC will be Thomas Thomson, Dean Frederick, Timothy Smits and Michael Schiltz.

Sales of the condominiums will be through The Thomson Group.

**Declaration of Condominium**

A Declaration of Condominium will be prepared and recorded with the Waukesha County Register of Deeds. This document may include the following items; additional items may be included if deemed necessary:

- Declaration
- By-Laws
- Articles of Incorporation
- Management/Employment Contracts
- Annual Operating Budget
- Leases
- Plat of Survey and Floor Plans

- **Expansion Plans**

A copy of the Declaration of Condominium for our Lenox Square Project is included with this submittal as an example. The final Declaration for Prairie Walk will be forwarded to the Village prior to recording for your review.

VILLAGE OF MENOMONEE FALLS RESOLUTION NO. 234-R-01

A RESOLUTION APPROVING THE PRAIRIE WALK  
(PRD) PLANNED RESIDENTIAL DEVELOPMENT

WHEREAS, Thomas Thomson, Dean Frederick, Timothy Smits and Michael Schiltz have an interest in the following described lands:

All that part of the Northwest 1/4 of the Southeast 1/4 of Section 28, Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin, now being more particularly bounded and described as follows:

Commencing at the Northwest corner of the said Southeast 1/4 Section; Thence North 88° 08' 33" East along the North line of the said Southeast 1/4 Section, 33.01 feet to the place of beginning of lands hereinafter described;

Thence South 00° 31' 51" East, 217.76 feet to a point; Thence North 88° 08' 33" East, 200.00 feet to a point; Thence South 00° 31' 51" East 327.00 feet to a point; Thence South 88° 08' 33" West 200.00 feet to a point; Thence South 00° 31' 51" East 783.32 feet to a point; Thence North 88° 04' 16" East, 1298.98 feet to a point; Thence North 00° 13' 39" West 1326.64 feet to a point in the said North line of the said Southeast 1/4 Section; thence South 88° 08' 33" West along the said North line, 1305.96 feet to the place of beginning of this description.

Said parcel of land contains 1,662,851 sq. ft. (or 38.1738 acres) of land more or less.

And

All that part of the Southwest 1/4 of the Northeast 1/4 of Section 28, Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin, now being more particularly bounded and described as follows:

Commencing at the Southwest corner of the said Northeast 1/4 Section; Thence North 88° 08' 33" East and along the South line of the said Northeast 1/4 Section, 40.01 feet to the place of beginning of lands hereinafter described;

Thence continuing North 88° 08' 33" East and along the said South line, 1298.96 feet to a point; Thence North 00° 38' 53" West, 202.29 feet to a point; Thence South 88° 41' 49" West 1298.30 feet to a point in the East right-of-way line of Marcy Road; Thence South 00° 31' 31" East and along the said East street line 214.86 feet to the place of beginning of this description.

Said parcel of land contains 270,818 sq. ft. (or 6.2171 acres) of land more or less.

WHEREAS, the previously described lands are located in a Planned Residential Development District; and

WHEREAS, Thomas Thomson, Dean Frederick, Timothy Smits and Michael Schiltz have proposed a Planned Residential Development consisting of 57 single-family condominium units to be known as Prairie Walk; and

WHEREAS, the overall density of the Prairie Walk development is 1.28 dwelling units per acre (57 dwelling units on 44.4 acres), and 1.76 dwelling units per developable acre (57 dwelling units on 32.4 developable acres); and

WHEREAS, details concerning the general character, financial Impact, Project Schedule, and Project Organization are contained in a document submitted with the PRD application on March 12, 2001, entitled "Prairie Walk – PRD Statement"; and

WHEREAS, deed restrictions, which will be recorded at the Waukesha County Register of Deeds, will be put in place for Prairie Walk; and

WHEREAS, the developer has placed a monotony clause in the deed restrictions for this development that is suitable to the Village Architectural Control Board.

WHEREAS, Section 17.036(6) of the Zoning Ordinance requires any approval of a Planned Residential Development be by Village Board Resolution; and

WHEREAS, Prairie Walk Planned Residential Development is consistent with the spirit and intent of the Zoning Ordinance; and

WHEREAS, Prairie Walk Planned Residential Development is in keeping with current economic and social considerations; and

WHEREAS, Prairie Walk Planned Residential Development justifies the application of the Planned Residential Development District requirements; and

WHEREAS, Prairie Walk Planned Residential Development will create an attractive and satisfying residential environment of sustained desirability and economic stability beneficial to the Village; and

WHEREAS, Prairie Walk Planned Residential Development will result in the preservation of open land in a manner which will enhance the total environmental setting and desirability of the development; and

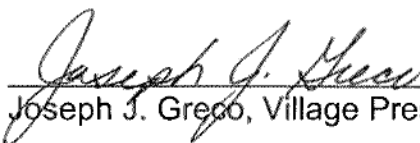
WHEREAS, the Plan Commission, at its meeting of May 9, 2001, recommended the Prairie Walk Planned Residential Development be approved; and

WHEREAS, at its meeting on June 25, 2001, the Architectural Control Board approved the Prairie Walk Planned Residential Development;

NOW, THEREFORE, BE IT RESOLVED that the conditions and restrictions as recommended by the Plan Commission and Architectural Control Board hereinabove set forth be and the same are hereby adopted and approved as the conditions and restrictions for the construction, location and operation of the Prairie Walk Planned Residential Development.

BE IT FURTHER RESOLVED that the Village Clerk be and is hereby directed to record a Certified Copy of this resolution with the Register of Deeds for Waukesha County, Wisconsin.

Adopted by the Village Board of Trustees of the Village of Menomonee Falls this 16<sup>th</sup> day of July, 2001.

  
\_\_\_\_\_  
Joseph J. Greco, Village President

  
\_\_\_\_\_  
Richard A. Farrenkopf, Village Manager/Clerk-Treasurer

STATE OF WISCONSIN)

) ss.

Milwaukee County )

**Official Notice**

VILLAGE OF MENOMONEE FALLS  
RESOLUTION NO. 234-R-01  
A RESOLUTION APPROVING THE  
PRAIRIE WALK (PRD) PLANNED  
RESIDENTIAL DEVELOPMENT

WHEREAS, Thomas Thomson, Dean Frederick,  
Timothy Smits and Michael Schiltz have an inter-

est in the following described lands:

All that part of the Northwest 1/4 of the South-  
east 1/4 of Section 28, Town 8 North, Range 20 East,  
in the Village of Menomonee Falls, Waukesha  
County, Wisconsin, now being more particularly  
bounded and described as follows:

Commencing at the Northwest corner of the said  
Southeast 1/4 Section; Thence North 88° 08' 33"  
East along the North line of the said Southeast 1/4  
Section, 33.01 feet to the place of beginning of lands  
hereinafter described;

Thence South 00° 31' 51" East, 217.76 feet to a  
point; Thence North 88° 08' 33" East, 200.00 feet to  
a point; Thence South 00° 31' 51" East 327.00 feet to  
a point; Thence South 88° 08' 33" West 200.00 feet  
to a point; Thence South 00° 31' 51" East 783.32 feet  
to a point; Thence North 88° 04' 16" East, 1298.96  
feet to a point; Thence North 00° 13' 39" West  
1326.64 feet to a point in the said North line of the  
said Southeast 1/4 Section; thence South 88° 08' 33"  
West along the said North line, 1305.96 feet to the  
place of beginning of this description.

Said parcel of land contains 1,662,851 sq. ft. (or  
38.1738 acres) of land more or less.

And

All that part of the Southwest 1/4 of the North-  
east 1/4 of Section 28, Town 8 North, Range 20 East,  
in the Village of Menomonee Falls, Waukesha  
County, Wisconsin, now being more particularly  
bounded and described as follows:

Commencing at the Southwest corner of the said  
Northeast 1/4 Section; Thence North 88° 08' 33"  
East and along the South line of the said Northeast

Suzanne Sobczyk being duly sworn, doth depose and  
say that she is an authorized representative of The  
MENOMONEE FALLS NEWS, a newspaper  
published at MENOMONEE FALLS,  
Wisconsin and that an advertisement of which the annexed  
is a true copy, taken from the said paper, was published  
therein on

.....  
August 8 2001  
.....  
.....  
.....  
.....

(Signed)..... Suzanne Sobczyk.....  
BOOKKEEPER

Subscribed and sworn to me before this 8th.....day  
Of.....August....., 2001....

.....  
Notary Public, Milwaukee County Wisconsin

My Commission expires.....4-1-13.....

VILLAGE OF MENOMONEE FALLS RESOLUTION NO. 762-R-09

WHEREAS, Thomas Thomson, Dean Frederick, Timothy Smits and Michael Schiltz have an interest in the following described lands:

All that part of the Northwest 1/4 of the Southeast 1/4 of Section 28, Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin, now being more particularly bounded and described as follows:

Commencing at the Northwest corner of the said Southeast 1/4 Section; Thence North 88° 08' 33" East along the North line of the said Southeast 1/4 Section, 33.01 feet to the place of beginning of lands hereinafter described;

Thence South 00° 31' 51" East, 217.76 feet to a point; Thence North 88° 08' 33" East, 200.00 feet to a point; Thence South 00° 31' 51" East 327.00 feet to a point; Thence South 88° 08' 33" West 200.00 feet to a point; Thence South 00° 31' 51" East 783.32 feet to a point; Thence North 88° 04' 16" East, 1298.98 feet to a point; Thence North 00° 13' 39" West 1326.64 feet to a point in the said North line of the said Southeast 1/4 Section; thence South 88° 08' 33" West along the said North line, 1305.96 feet to the place of beginning of this description.

Said parcel of land contains 1,662,851 sq. ft. (or 38.1738 acres) of land more or less.

And

All that part of the Southwest 1/4 of the Northeast 1/4 of Section 28, Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin, now being more particularly bounded and described as follows:

Commencing at the Southwest corner of the said Northeast 1/4 Section; Thence North 88° 08' 33" East and along the South line of the said Northeast 1/4 Section, 40.01 feet to the place of beginning of lands hereinafter described;

Thence continuing North 88° 08' 33" East and along the said South line, 1298.96 feet to a point; Thence North 00° 38' 53" West, 202.29 feet to a point; Thence South 88° 41' 49" West 1298.30 feet to a point in the East right-of-way line of Marcy Road; Thence South 00° 31' 31" East and along the said East street line 214.86 feet to the place of beginning of this description.

Said parcel of land contains 270,818 sq. ft. (or 6.2171 acres) of land more or less.

WHEREAS, the previously described lands are located in a Planned Residential Development District; and

WHEREAS, Thomas Thomson, Dean Frederick, Timothy Smits and Michael Schiltz proposed a Planned Residential Development consisting of 57 single-family condominium units to be known as Prairie Walk; and

WHEREAS, the overall density of the Prairie Walk development is 1.28 dwelling units per acre (57 dwelling units on 44.4 acres), and 1.76 dwelling units per developable acre (57 dwelling units on 32.4 developable acres); and

WHEREAS, details concerning the general character, financial impact, project schedule, and project organization are contained in a document submitted with the PRD application on March 12, 2001, entitled "*Prairie Walk – PRD Statement*"; and

WHEREAS, deed restrictions, are recorded at the Waukesha County Register of Deeds, for Prairie Walk; and

WHEREAS, the developer has placed a monotony clause in the deed restrictions for this development that is suitable to the Village Architectural Control Board.

WHEREAS, Section 17.036(6) of the Zoning Ordinance requires any approval of a Planned Residential Development be by Village Board Resolution; and

WHEREAS, Prairie Walk Planned Residential Development is consistent with the spirit and intent of the Zoning Ordinance; and

WHEREAS, Prairie Walk Planned Residential Development is in keeping with current economic and social considerations; and

WHEREAS, Prairie Walk Planned Residential Development justifies the application of the Planned Residential Development District requirements; and

WHEREAS, Prairie Walk Planned Residential Development will create an attractive and satisfying residential environment of sustained desirability and economic stability beneficial to the Village; and

WHEREAS, Prairie Walk Planned Residential Development will result in the preservation of open land in a manner which will enhance the total environmental setting and desirability of the development; and

WHEREAS, the Plan Commission, at its meeting of May 9, 2001, recommended the Prairie Walk Planned Residential Development be approved; and

WHEREAS, at its meeting on June 25, 2001, the Architectural Control Board approved the Prairie Walk Planned Residential Development; and

WHEREAS, on April 15, 2009 Dean Frederick and the Thomson Corporation requested the Prairie Walk Plan Residential Development be modified to allow the following four modifications:

- The minimum floor area for a single story ranch dwelling units to be 1,400 square feet.
- The minimum floor area for a two story dwelling unit to be 1,800 square feet.
- Dimensional asphalt shingled roofs with a minimum 7:12 pitch in colors complimentary to the building design.
- Exterior materials of the units to utilize a combination of brick veneer, high quality "through color" vinyl and VERSATEX Architectural Trim board to assure that the appearance is attractive at all times and reduce the need for maintenance; and

WHEREAS, the Plan Commission, at its meeting on June 2, 2009 recommended the Village Board of Trustees approve the four modifications; and

WHEREAS, the Architectural Control Board, at its meeting on June 22, 2009 recommended the Village Board of Trustees approve the four modifications;

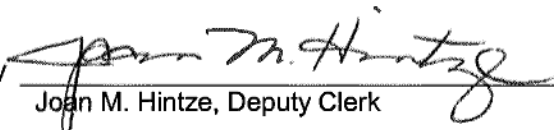
NOW, THEREFORE, BE IT RESOLVED that the modifications, conditions and restrictions as recommended by the Plan Commission and Architectural Control Board hereinabove set forth be and the same are hereby adopted and approved as the conditions and restrictions for the construction, location and operation of the Prairie Walk Planned Residential Development.

BE IT FURTHER RESOLVED that the Village Clerk be and is hereby directed to record a Certified Copy of this resolution with the Register of Deeds for Waukesha County, Wisconsin.

Adopted by the Board of Trustees of the Village of Menomonee Falls on the 6th day of July, 2009.

By   
Randall R. Newman, Village President

Date  
Published July 16, 2009

By   
Joan M. Hintze, Deputy Clerk



COMMUNITY **CNI** NEWSPAPERS

## AFFIDAVIT OF PUBLICATION

0003366558

MENOMONEE FALLS VILLAGE CENTRE  
W156 N8480 PILGRIM RD

MENOMONEE FALLS, WI 53051

Patti Guerrero hereby states that she is authorized by Journal Sentinel Inc. to certify on behalf of Journal Sentinel Inc., publisher of Community Newspapers, public newspapers of general circulation, printed and published in city and county of Milwaukee; was published in the My Community Now- Northwest on 7/16/2009; that said printed copy was taken from said printed newspaper(s).

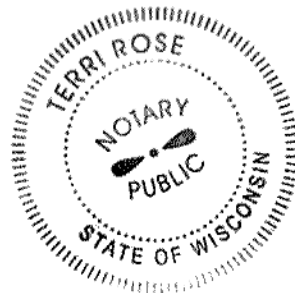
Patti /Guerrero

State of Wisconsin )  
 ) SS:  
County of Milwaukee)

Subscribed and sworn before me this 17 day of July, 2009.

Notary Public State of Wisconsin

My Commission Expires 2-20-11



#### VILLAGE OF MENOMONEE FALLS

feet to a point; Thence South 000 31' 51" East 327.00 feet to a point; Thence South 880 08' 33" West 200.00 feet to a point; Thence South 000 31' 51" East 783.32 feet to a point; Thence North 880 04' 16" East, 1298.98 feet to a point; Thence North 000 13' 39" West 1326.64 feet to a point in the said North line of the said Southeast 1/4 Section; thence South 880 08' 33" West along the said North line, 1305.96 feet to the place of beginning of this description.

Said parcel of land contains 1,662,851 sq. ft. (or 38.1738 acres) of land more or less.

And

All that part of the Southwest 1/4 of the Northeast 1/4 of Section 28, Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin, now being more particularly bounded and described as follows:

Commencing at the Southwest corner of the said Northeast 1/4 Section; Thence North 880 08' 33" East and along the South line of the said Northeast 1/4 Section, 40.01 feet to the place of beginning of lands hereinafter described;

Thence continuing North 880 08' 33" East and along the said South line, 1298.96 feet to a point; Thence North 000 38' 53" West, 202.29 feet to a point; Thence South 880 41' 49" West 1298.30 feet to a point in the East right-of-way line of Marcy Road; Thence South 000 31' 31" East and along the said East street line 214.86 feet to the place of beginning of this description.

Said parcel of land contains 270,818 sq. ft. (or 6.2171 acres) of land more or less.

Thence continuing North 880 08' 33" East and along the said South line, 1298.96 feet to a point; Thence North 000 38' 53" West, 202.29 feet to a point; Thence South 880 41' 49" West 1298.30 feet to a point in the East right-of-way line of Marcy Road; Thence South 000 31' 31" East and along the said East street line 214.86 feet to the place of beginning of this description.

Said parcel of land contains 270,818 sq. ft. (or 6.2171 acres) of land more or less.

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#### VILLAGE OF MENOMONEE FALLS

Village Architectural Control Board.

WHEREAS, Section 17.036(6) of the Zoning Ordinance requires any approval of a Planned Residential Development be by Village Board Resolution; and

WHEREAS, Prairie Walk Planned Residential Development is consistent with the spirit and intent of the Zoning Ordinance; and

WHEREAS, Prairie Walk Planned Residential Development is in keeping with current economic and social considerations; and

WHEREAS, Prairie Walk Planned Residential Development justifies the application of the Planned Residential Development District requirements; and

WHEREAS, Prairie Walk Planned Residential Development will create an attractive and satisfying residential environment of sustained desirability and economic stability beneficial to the Village; and

WHEREAS, Prairie Walk Planned Residential Development will result in the preservation of open land in a manner which will enhance the total environmental setting and desirability of the development; and

WHEREAS, the Plan Commission, at its meeting of May 9, 2001, recommended the Prairie Walk Planned Residential Development be approved; and

WHEREAS, at its meeting on June 25, 2001, the Architectural Control Board approved the Prairie Walk Planned Residential Development; and

WHEREAS, on April 15, 2009 Dean Frederick and the Thomson Corporation requested the Prairie Walk Plan Residential Development be modified to allow the following four modifications:

• The minimum floor area for a to be 1,400 square feet.

• The minimum floor area for a two story dwelling unit to be 1,800 square feet.

• Dimensional asphalt shingled roofs with a minimum 7:12 pitch in colors complimentary to the building design.

• Exterior materials of the units to utilize a combination of brick veneer, high quality "through color" vinyl and VERSATEX Architectural Trim board to assure that the appearance is attractive at all times and reduce the need for maintenance; and

WHEREAS, the Plan Commission, at its meeting on June 2, 2009 recommended the Village Board of Trustees approve the four modifications; and

WHEREAS, the Architectural Control Board

#### VILLAGE OF MENOMONEE FALLS

conditions and restrictions for the construction, location and operation of the Prairie Walk Planned Residential Development.

BE IT FURTHER RESOLVED that the Village Clerk be and is hereby directed to record a Certified Copy of this resolution with the Register of Deeds for Waukesha County, Wisconsin.

Adopted by the Board of Trustees of the Village of Menomonee Falls on the 6th day of July, 2009.

By Randall R. Newman,  
Village President

Date Published

July 16, 2009

Joan M. Hintze, Deputy Clerk

#### VILLAGE OF MENOMONEE FALLS

##### VILLAGE OF

##### MENOMONEE FALLS

##### RESOLUTION NO. 762-R-09

WHEREAS, Thomas Thomson, Dean Frederick, Timothy Smits and Michael Schiltz have an interest in the following described lands:

All that part of the Northwest 1/4 of the Southeast 1/4 of Section 28, Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin, now being more particularly bounded and described as follows:

Commencing at the Northwest corner of the said Southeast 1/4

Section 28, Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin, now being more particularly bounded and described as follows:

Commencing at the Northwest corner of the said Southeast 1/4

Section 28, Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin, now being more particularly bounded and described as follows:

Attest: Joan M. Hintze, Deputy Clerk  
By: Randall R. Newman, Village President  
Village of Menomonee Falls on the 6th day of July, 2009.

1. clause, provision or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall remain in full force from and after its passage and publication.

## Village of Menomonee Falls – Portion of Zoning Code pertaining to PRD Changes

### Subdivision II. – PRD Planned Residential Development District

#### §122-268 – Procedures to secure approval of project

(2)(f) *Changes.* Any subsequent changes or additions to an approved plan shall first be submitted for recommendation to the plan commission. The plan commission, after receiving recommendations from the architectural control board, when applicable, shall make its recommendation to the village board. If, in the opinion of the plan commission, such change or addition is substantial, it shall make its recommendation to the village board. Without limitation to the village board's right to determine any other change substantial, a change in any of the following respects may be construed to be as substantial:

- (1) An increase of more than five percent in the total number of dwelling units from that shown in the approved project plan, i.e., a change in density.
- (2) A significant change in the size, value of type of structures from that indicated in the approved project plan.
- (3) The addition of any principal uses not included in the approved project plan.
- (4) A change in the basic concept of the site development which would significantly alter detrimentally the relationship of uses or open space, either within the project or as it may affect adjoining properties.

# **SECTION 10**

## **RULES AND REGULATIONS**

**RULES AND REGULATIONS**  
**OF**  
**THOMSON PRESERVE CONDOMINIUM**

The following Rules and Regulations are adopted by Thomson Preserve Condominium Owners Association, Inc. (the "Association"). These Rules and Regulations may be amended or repealed by a majority vote of the Board of Directors of the Association at any time during the existence of the Condominium; provided, however, that these Rules and Regulations are subject to the Declaration of Thomson Preserve Condominium (the "Condominium"), as amended from time to time, and the Bylaws of the Association. Copies of all amendments to the Rules and Regulations shall be furnished to the Unit owners by the Association at least ten (10) days prior to the time such amendment shall be effective. Capitalized terms not defined herein shall have the meaning attributed to such terms as set forth in the Declaration of Thomson Preserve Condominium.

**PRELUDE**

Congratulations on your purchase of a Unit in the Condominium. Condominium ownership has a great many benefits. As a Unit owner, you are part owner of the entire project and are automatically a member of the Association that manages the common elements of the Condominium.

These Rules and Regulations are your rules and regulations and are intended to help all Unit owners manage their shared interests. It is generally the responsibility of the Association to manage the Common Elements of the Condominium and not to be involved in the management and maintenance of individual Units except to the extent that it affects other Unit owners.

As a Unit owner, you can all improve your ownership experience by bringing to it an attitude of mutual interest and cooperation. It is not the role of the Association to manage the relationships of neighbors. Try to approach your neighbors as you would in a single-family neighborhood working out differences in a friendly and understanding manner. Again, welcome to the Condominium. We are confident that you will enjoy and take pride in Thomson Preserve Condominium.

**ARTICLE I**  
**ENFORCEMENT AND MANAGEMENT**

1. In order to reduce expense and maintain uniform enforcement of the rules, the Association will designate one or more persons through whom all questions and concerns regarding the enforcement of these Rules and Regulations will be communicated, to the Association. All Unit owners will be notified in writing of the persons so designated. Except in the case of an emergency, all communications to the designee should be in writing. The initial designee is Timothy Smits at (262) 746-3600.

2. Other than the designee, Unit owners are not to have direct contact with any third-party hired by the Association to repair, or maintain the Common Elements of the Condominium. Such direct contact could lead to substantial additional expense to the Association and, therefore, the Unit owners in the form of increased assessments. Accordingly, if you have a concern about Common Element maintenance, you should direct your concerns to the Association's designated representative identified pursuant to these Rules and Regulations.

3. The Association is willing to help Unit owners find solutions to disputes; however, the Association is not a law enforcement agency nor a court. Unit owners should comply with the following procedure when violations of the rules and regulations are noticed:

- a. When a neighbor acts in what you believe to be an offensive or unreasonable manner, try to approach the neighbor with your concern.
- b. In any emergency, please call the local police or fire department.
- c. If an animal is causing a problem and you cannot or are unwilling to contact the Unit owner directly, please call the local police or animal control authorities.
- d. If a violation is not resolved by a Unit owner's independent efforts, report the violation to the Association. Reports must be filed in writing with the Association. A report must include:
  - (i) the name and address (Unit Number) of the party involved in the violation;
  - (ii) the date and time of the violation;
  - (iii) a specific description of the violation; and
  - (iv) the name of a contact person who can provide additional information to the Association if necessary.

4. Procedure for Enforcement. The Association may enforce these Rules and Regulations as it deems necessary and appropriate pursuant to the Declaration and Bylaws. Enforcement may include recourse to the police, a lawsuit, if necessary, and fines of not less than \$25.00 per day per violation, nor more than \$500.00 per day per violation. Fines, if levied pursuant to the Bylaws, may become a lien on the Unit to which it relates.

- a. Except in the case of an emergency, the Board of Directors shall provide written notice to a Unit owner violating the Rules and Regulations.
- b. If the violation is not corrected within ten (10) days of initial notice, the Board shall advise the Unit Owner of the fine that will be levied if the Unit owner fails to immediately comply.

- c. Any Unit owner who receives a fine may appeal the fine to the Board of Directors. To appeal, the Unit owner must notify the Board of Directors in writing and request to appear before the Board at a mutually agreeable time. During the period of Declarant Control, the Unit owner shall appear before one (1) Director. Following the period of Declarant Control, the Unit owner shall appear before at least three (3) Directors unless alternative arrangements are agreed to in writing.
- d. The decision of the Board of Directors regarding an appeal shall be final and binding unless the Unit owner submits a written demand for arbitration to the Board within ten (10) days of the date of the Board's decision. Arbitration shall be conducted by a neutral third party that is mutually agreed upon by the Unit owner and the Board. If the Unit owner and the Board cannot agree upon a neutral third party, either party may petition to the Circuit Court of the Waukesha County to appoint an arbitrator. The cost of the arbitration shall be shared equally between the Unit owner and the Board prior to the receipt of an arbitration award, but the arbitrator shall have the right to allocate fees and costs between parties as part of an arbitration award. If more than one (1) Unit owner is a party to the arbitration, the cost of the arbitration shall be shared equally between all parties unless the arbitration award directs otherwise. Arbitration shall be final and binding.
- e. The above enforcement procedures are not exclusive. If the Board of Directors, in its sole discretion, determines that circumstances so warrant, it may proceed immediately and without notice to exercise any remedy provided in the Declaration or by law or equity, including turning the violation over to an attorney for enforcement and/or filing a lawsuit.
- f. The offending Unit owner will pay any costs incurred by the Association to enforce rules, including attorney fees.

5. All Unit owners are asked to make their Association assessment payments via the ACH method or automatic withdrawal from a designated account. Any Unit owner who does not utilize this method of payment may be charged a service fee of Twenty-Five and 00/100 Dollars (\$25.00) per year. Any assessment or installment not paid within ten (10) days of its due date shall be delinquent and the Owner shall be charged interest at the rate of twelve percent (12%) per annum on the unpaid assessment or installment of such assessment. Interest shall accrue from the date when the assessment or installment was first due until paid. All payments upon account shall be first applied to interest, if any, and then to the assessment payment first due.

## **ARTICLE II**

### **USE OF UNIT AND COMMON ELEMENTS**

1. No Unit owner shall occupy or use his Unit, or permit his Unit to be occupy or used, for any purpose other than as a private residence, which, subject to the Condominium Declaration or Bylaws, may include a home office for himself, his family or his temporary guests and lessees.

2. No Unit owner, any of his family members, agents, employees, lessees, invitees or guests may obstruct in any way the use of the Common Elements or another Unit.

3. No Unit owner, any of his family members, agents, employees, lessees, invitees or guests shall carry on any noxious or offensive activity in any Unit or in the Common Elements, nor shall anything be done therein which may be or become an annoyance or nuisance to others.

4. No Unit owner, his family members, agents, employees, lessees, invitees or guests shall commit any form of waste on the Common Elements.

5. No Unit owner shall allow his Unit to be used for any improper, immoral, unlawful or objectionable purpose, nor shall any Unit owner do anything to injure the reputation of the Condominium.

6. No Unit owner, his family members, agents, employees, lessees, invitees or guests shall allow the unreasonable or unsightly accumulation of waste, litter or any form of trash in any area. All trash, garbage and other waste materials removed from a Unit shall be placed in designated covered containers provided by the municipal authority or private contractor, as may be applicable, otherwise in appropriate containers owned by the Unit owner.

## **ARTICLE III**

### **ARCHITECTURAL CONTROL COMMITTEE**

1. Unless and until the Board of Directors appoints an independent Architectural Control Committee, the Board of Directors shall act as the Architectural Control Committee. The Architectural Control Committee shall promulgate rules and regulations regarding what plans, specifications and other types of documentation must be provided to the Architectural Control Committee in order for the Architectural Control Committee to render a decision regarding any planned improvement that requires Architectural Control Committee approval. The Architectural Control Committee shall have twenty (20) business days from the receipt of the plans, specifications or other documentation to approve or disapprove the planned improvement; provided, however, if the planned improvement requires additional time to evaluate, the Architectural Control Committee shall be given such additional time as is reasonably necessary to evaluate the planned improvement. All reasonable expenses incurred by the Architectural Control Committee, including, but not limited to, the retaining of consulting engineers, architects and designers, shall be paid by the Unit owner who is requesting the evaluation of the planned improvement.



2. Unless otherwise approved by the Board of Directors, construction activities will be limited to the hours of 8:00 a.m. to 6:00 p.m. Monday through Friday and 10:00 a.m. to 4:00 p.m. on Saturday. No construction activities are permitted on Sunday. This provision does not apply to Declarant's construction activities so long as Declarant owns any Units in the Condominium.

3. In addition to the items set forth in the Declaration or Bylaws that require the consent of the Architectural Control Committee, the following alterations shall also require the approval of the Architectural Control Committee:

- a. Subject to the Bylaws, the installation of any television or radio antennas, or satellite dishes, or any device used for reception of radio waves or similar data transmissions; and
- b. The installation of any signs, "For Sale" signs, displays, posters or advertising material of any kind, which are visible to the public. (This rule shall not apply to or advertising material erected or installed by the Declarant.)

#### **ARTICLE IV**

##### **ANIMALS**

No animals, livestock, or poultry shall be raised, bred, or kept on any Lot, except that dogs, cats, or other household pets may be kept provided they are not kept, bred, or maintained for any commercial purposes. Outside kennels are an outbuilding as provided above, subject to Association review and approval and shall be located in the rear yard and not in the driveway, front yard, or side yards.

#### **ARTICLE V**

##### **INSURANCE RATES AND COMPLIANCE WITH LAW**

1. No Unit owner, nor his family members, agents, employees, lessees, invitees or guests shall do or act in any manner in any Unit or in the Common Elements which will cause an increase in the rate of insurance on the Common Elements.

2. Unit owners shall strictly comply with all municipal, state and federal fire codes including, but not limited to, those dealing with the placement and use of barbeque grills and similar cooking devices and those dealing with portable fire pits.

3. No Unit owner shall permit anything to be done or kept in his Unit or in the Common Elements which will result in the cancellation of insurance on any Unit or any part of the Common Elements, or which would be in violation of any law or ordinance.

## **ARTICLE VI**

### **LEASING OF UNITS**

1. Subject to the terms of the Declaration and/or Bylaws, and the following rules, a Unit owner may lease their unit.
2. Any Unit owner who enters into a lease for their Unit shall provide the Association with a copy of such lease at least thirty (30) business days prior to the tenant's anticipated occupancy.
3. No Unit, other than a Declarant owned unit, may be leased for a term of less than six (6) months.
4. A Unit owner who leases their Unit shall remain primarily liable for the payment of any Assessment or any other amount due under any Condominium Document and the Association shall pursue the Unit owner for any unpaid Assessment or any other payment due the Association.
5. The rights and obligations of any tenant of any Unit shall be subject to the covenants, conditions and restrictions set forth in the Declaration. Both the tenant and the Unit owner shall be liable to the Association for tenant violations of the Declaration and/or damage to Common Areas caused by the tenant, whether or not the Unit owner has actual knowledge of the tenant's conduct.
6. Unit owners shall provide their tenants with a copy of all the Condominium Documents including, but not limited to, a copy of these Rules and Regulations. Tenant's signed receipt for the same shall be provided to the Association.

## **ARTICLE VII**

### **REFUSE DISPOSAL AND RECYCLING**

1. All garbage and trash must be secured in plastic bags and deposited in approved garbage containers or designated rubbish area.
2. Except for pickup day, garbage cans or recycling receptacles will be stored and screened from view from the roadway.
3. No garbage and/or trash shall be permitted to become a nuisance, annoyance, safety or health hazard.
4. Failure to adhere to the proper procedures for disposing of garbage and/or trash may be subject to a written warning and fine if the problem continues.
5. Non-corrugated packing boxes, moving materials, furniture, mattresses, tires, batteries, etc., will not be taken by the regular collector and must be removed promptly from the property. Owners must contact the refuse company directly to make special arrangements for pickup and direct billing to their own Unit for that special pickup.

6. Owners are responsible for appropriately disposing of all toxic waste materials such as paint, solvents, motor oil, etc.

Proposed

# **SECTION 11**

## **STATUTORY RESERVE ACCOUNT STATEMENT**

STATUTORY RESERVE ACCOUNT STATEMENT  
THOMSON PRESERVE CONDOMINIUM

This Statutory Reserve Account Statement is made by Prairie Walk Development, LLC, the Declarant of Thomson Preserve Condominium, pursuant to Section 703.163 of the Wisconsin Statutes.

**WITNESSETH**

Prairie Walk Development, LLC created Thomson Preserve Condominium by recording a Declaration of Condominium of Thomson Preserve Condominium recorded in the office of the Register of Deeds for Waukesha County, Wisconsin (the "Declaration");

The Declaration affects the real property described on Exhibit A attached hereto.

A statutory reserve account has not been established for Thomson Preserve Condominium in accordance with Section 703.163 of the Wisconsin Statutes.

Executed this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

PRAIRIE WALK DEVELOPMENT, LLC

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF WISCONSIN    )  
                                  ) ss.  
COUNTY OF WAUKESHA )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 202\_\_, the above-named \_\_\_\_\_, to me known to be the person who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
\_\_\_\_\_  
[print name]  
Notary Public, State of Wisconsin  
My Commission expires: \_\_\_\_\_

This instrument drafted by:  
Attorney Daniel J. Habeck  
Cramer, Multhauf & Hammes, LLP  
PO Box 558  
Waukesha, WI 53187-0558

**EXHIBIT A**

**LEGAL DESCRIPTION**

Thomson Preserve Condominium

PROPOSED