

FIRST AMENDMENT TO
DECLARATION OF RESTRICTIONS AND HOMEOWNERS ASSOCIATION
FOR WESTCHESTER LAKES SUBDIVISION

This First Amendment to the Declaration of Restrictions and Homeowners' Association for Westchester Lakes Subdivision is made and entered into as of the 9th day of January, 1990, by Republic Development, Inc., a Wisconsin corporation, hereafter called "Developer" pursuant to and in accordance with the Declaration of Restrictions and Homeowners' Association dated October 16, 1989, and recorded in the office of the Register of Deeds for Ozaukee County, Wisconsin, November 13, 1989 in Volume 658, Pages 719 to 741, hereafter called the "Declaration".

RECITATIONS

0.1 WHEREAS, the Declaration subjects the platted lots and outlots within the Subdivision to the conditions, restrictions, covenants, reservations and easements set forth therein for the mutual benefit of the Lot Owners; and

0.2 WHEREAS, Article 4.04 of the Declaration provides that the Declaration may be amended by recording in the Office of the Register of Deeds for Ozaukee County, Wisconsin, a document executed by the owners of at least 75% of all lots in the Subdivision, and their mortgagees, such amendment to be effective upon recording; and

0.3 WHEREAS, None of the lots have been sold and are all presently owned by the Developer; and

AMENDMENT

NOW, THEREFORE, the Declaration is amended to read as follows (with changes and additions being underlined in the section heading and/or body of the paragraph for easy reference only):

Section 2.01 is amended as follows:

2.01 (a) Each home shall have a minimum living area (exclusive of basement, attic, garage, porches, patios and storage areas):

- (1) of not less than 2,500 square feet for a one-story home;
- (2) of not less than 2,500 square feet for a two-story home.

The Board shall have the exclusive right to determine whether such requirements will be satisfied and any decision of the Board shall be final and conclusive.

Except as amended and modified, all of the provisions of the Declaration shall continue and remain in full force and effect.

Dated at Milwaukee, Wisconsin this 9th day of January, 1990.

Developer and Owner of all lots

REPUBLIC DEVELOPMENT, INC.

By:

Dennis M. Bush
Dennis M. Bush
President

By:

Robert L. Desmond
Robert L. Desmond
Vice President

STATE OF WISCONSIN)
) SS.
OZAUKEE COUNTY)

Personally came before me this 9th day of January, 1990, the above-named Dennis M. Bush and Robert L. Desmond, as President and Vice President of Republic Development, Inc., to me known to be the persons who executed the foregoing instrument and acknowledged the same.

RECORDED

Dana A. Engle

Notary Public, State of Wisconsin
My Commission Expires: 10/17/93

1990 JAN 17 AM 10:30

Ronald H. Vaif
REGISTER OF DEEDS
OZAUKEE COUNTY, WI

Return to: Wisconsin Title Service
PO Box 618
Waukesha WI 53187-0618
Attn: Mark Gborowski \$6.00

DECLARATION OF RESTRICTIONS AND HOMEOWNERS ASSOCIATION
FOR
WESTCHESTER LAKES SUBDIVISION

This Declaration is made this 16 day of October, 1989 by Republic Development, Inc. (hereinafter called "Developer").

RECITATIONS

WHEREAS, Developer owns all those lands located in the City of Mequon, Ozaukee County, Wisconsin, described on Exhibit A attached hereto (the "Subdivision");

WHEREAS, upon approval of the final plat for Westchester Lake Subdivision, the Subdivision will be a platted subdivision consisting of 93 lots; and

WHEREAS, Developer desires to subject the lots as platted within the Subdivision, as well as all other portions of the Subdivision, as expanded from time to time (except dedicated streets and utilities), to the conditions, restrictions, covenants, reservations and easements hereinafter set forth, for the benefit of the Subdivision as a whole and for the benefit of each Lot Owner;

DECLARATION

NOW, THEREFORE, Developer hereby declares that the real estate described on the attached Exhibit A and all portions thereof (except for dedicated streets and utilities) shall be used, held, leased, transferred, sold, and conveyed subject to the conditions, restrictions, covenants, reservations and easements hereinafter set forth, which shall inure to the benefit of and shall pass with each Lot as covenants running with the land and shall apply to and bind all successors in interest, users and owners.

DEFINITIONS, PURPOSE & USE RESTRICTIONS

1.01 DEFINITIONS.

a) "Association" shall mean the Westchester Lakes Homeowners Association, a nonprofit, nonstock homeowner's association, created under this Declaration.

b) "Architectural Control Board," the "Board," or "ACB" shall mean the officers of the Association appointed or elected in accordance with Section 3.07 of this Declaration who shall serve as members of the Architectural Control Board and shall operate and manage the Association as a Board of Directors.

c) "Common Area" or "Common Areas" shall mean any outlot or other area within the Subdivision which is not a Lot as identified in this Declaration or on the subdivision plat, and includes, without limitation, all

such areas conveyed by the Developer to the Association and any dedicated street or other dedicated area for which the City has not assumed responsibility for maintenance, it being understood that boulevard islands may be dedicated to the City but maintained by and at the expense of the Association.

d) "Limited Common Area" or "Limited Common Areas" shall mean any outlot or other area within the Subdivision, as identified in this Declaration or on the Subdivision Plat as reserved for the exclusive use of one or more but less than all of the Lot Owners.

e) "City" shall mean the City of Mequon, a municipal corporation.

f) "Developer" shall mean Republic Development, Inc., a Wisconsin corporation, as well as any successor-Developer.

g) "Family" shall mean one or more persons related by blood, marriage or adoption who are living, sleeping, cooking and eating on the premises as a single housekeeping unit and shall exclude any person or group of persons where three or more are not so related or engaged as household employees.

h) "Home" shall mean a residential building designed and used as a dwelling for one Family (which shall not include any attached garage).

i) "Lot" shall mean a platted lot within the Subdivision identifiable by reference to a lot number, regardless of whether such property is currently platted or platted at some future time. The term "Lot" does not include any outlot or other Common Area.

j) "Lot Owner," "Lot Owners" or "co-Owners" shall mean the holder(s) of a legal or equitable ownership interest in fee simple record title to a Lot, regardless of the type of tenancy or estate, and shall include land contract vendees and vendors but shall not include the holder of any leasehold interest or any mortgage or consensual lien prior to acquisition of legal or equitable title.

k) "Property" shall include a Lot and all improvements.

l) "Section" shall mean all those provisions within a numbered heading of this Declaration.

m) "Structure" and "improvement" shall be synonymous and shall both mean and include any and all of the following, regardless of whether temporary or permanent in character or intended use: building, outbuilding, shed, booth, garage, car-port, or above ground storage facility; tenant; exterior lighting or electric fixture, antennae, tower, pole, or bug control device; fence, retaining or other wall, fountain or above-ground or in-ground swimming or wading pool; plantings; driveway, sidewalk or walkway; pet kennels or run line; screened or other type of porch, patio or gazebo; tree house or other exterior play equipment including skateboard ramps; burms and swales; and any

other type of equipment or facility for any decorative, recreational or functional purpose of any kind (including, without limitation, additions or alterations to or deletions from any of the foregoing) not located and ensealed entirely below ground level, unless located entirely within the exterior perimeter walls of the single family building constructed on the Lot. Use of the phrase "structure or improvement" or any other use of such words shall not imply different meanings for such terms.

n) "Subdivision" shall mean the lands described on the attached Exhibit A, excluding lands now or hereafter dedicated to the City, and including such contiguous parcels of real estate as may be acquired by Developer from time to time and declared by Developer to be a part of Westchester Lakes Subdivision under an instrument executed by Developer and recorded in the office of the Register of Deeds of Ozaukee County, Wisconsin

o) "successor-Developer" shall mean any person, firm or entity which expressly assumes in writing all then remaining obligations of Developer to the City under certain Development Agreements recorded in the office of the Register of Deeds for Ozaukee County, Wisconsin, as Document No. 421875 and ~~and~~ (as may be amended) relating to development of the Subdivision or portions thereof.

1.02 GENERAL PURPOSE.

The general purpose of this Declaration is to help assure that the Subdivision will become and remain an attractive residential area and in furtherance of such purpose: to preserve and maintain high aesthetic standards for all improvements, as well as the natural beauty of certain open spaces and Common Areas and Limited Common Areas within the Subdivision; to help assure the best use and most appropriate development and improvement of each Lot; to protect owners of Lots against use of surrounding Lots which may detract from the residential value or enjoyment of their Property; to guard against the erection or maintenance of garish or poorly designed or proportioned structures; to obtain a harmonious and aesthetically pleasing blend of materials, structures, and color schemes; to insure a residential development of the Subdivision consistent with high aesthetic standards and the purposes for which each such Lot is platted; to encourage and secure the erection of attractive residential structures with appropriate locations on the Lot; to prevent installation of improvements which may adversely affect the aesthetic appearance of a lot or surrounding area; to secure and maintain a proper spatial relationship of buildings, structures and other improvements; and to otherwise secure mutual enjoyment of benefits for owners and occupants of residential property within the Subdivision.

1.03 SINGLE FAMILY USE: GENERAL RESTRICTION.

a) Each Lot shall be used solely for residential purposes by one Family, except that business activities may be conducted in or from any Home if confined solely to the transaction of business by telephone. The term "residential purposes" shall include only those activities necessary for or normally associated with the use and enjoyment of a homesite as a place of residence and limited recreation.

b) Only one Home may be constructed on each Lot and no garage, tent, or other improvement (except for the Home) shall be used for temporary or permanent living or sleeping for family or guests without the prior approval of the Board.

c) Each Lot and all front, side, and rear yards shall be maintained by the Lot Owner so as to be neat in appearance when viewed from any street or other Lot and, if not properly maintained, the Association may perform yard maintenance and charge the costs thereof to the Lot Owner and levy a Special Assessment against the Lot. Developer may, but shall not be obligated to improve any areas of the Subdivision with grass or plantings or to cut grass or foliage growing in a natural environment.

d) No Lot shall be used in whole or in part for conducting any unlawful activity or for any unlawful purpose. No noxious odors or loud noises shall be permitted to escape from any Home or Lot nor shall any activity be permitted or engaged in which constitutes a public or private nuisance.

1.04 USE AND MAINTENANCE OF COMMON AREAS.

a) All Common Areas shall be used as open space for the common benefit of the Subdivision and not for recreational or other activities by any Lot Owner unless previously approved by the Board (which approval, if given, may be revoked at any time). Outlots are common areas.

b) Any signs, monuments or structures constructed by Developer or the Association on any Common Areas shall be properly maintained by the Association. The Association shall also maintain all other Common Areas so as to be neat and attractive in appearance. No Lot Owner shall erect any Structure or improvement in the Common Areas.

1.05 USE AND MAINTENANCE OF LIMITED COMMON AREAS.

a) The Plat of Westchester Lakes creates Outlot 5 which abuts portions of lots 48 through 93 inclusive. Outlot 5 is for the exclusive use and enjoyment of the Lot Owners of lots 48 through 93, their respective families and guests (hereinafter, the "Limited Common Area Lot Owners").

b) All of the Limited Common Element Lot Owners shall have a mutual easement of use and enjoyment over and across Outlot 5 and such easements shall be appurtenant to and shall pass with the title to the Limited Common Element Lots.

c) The Association shall administer, manage, operate, control, maintain and repair Outlot 5. The costs for the maintenance and repair of Outlot 5 shall be the responsibility of the Limited Common Area Lot Owners and the Association may separately assess those lot owners for such costs and maintenance. The Association may, from time to time, adopt or change rules or regulations governing the operation, maintenance and use of Outlot 5. Such rules or regulations shall be designed to facilitate and encourage the

peaceful use and enjoyment of Outlot 5 by the Limited Common Area Lot Owners, without unduly interfering with the peaceful use and enjoyment of the other Lots and Common Areas of the Subdivision. All of the Limited Common Area Lot Owners, their families and guests shall abide by all such rules and regulations.

1.06 RESTRICTIONS ON USE OF RECREATIONAL VEHICLES.

Recreational Vehicles (which shall include snowmobiles, trailbikes, travel trailers and vans, motor homes, and dune buggies and other off-street motorized vehicles of any kind) nor trucks shall not be parked, kept or stored on any Common Area or undeveloped area of the Subdivision, nor shall any such Recreational Vehicle or truck be parked, kept, or stored on any Lot outside an enclosed garage, without the prior approval of the Board (which may be withheld on the basis of aesthetics if for no other reason). Such Recreational Vehicles shall not be used or operated on any Lot or otherwise within the Subdivision except on dedicated streets in accordance with applicable traffic laws.

1.07 ANIMALS AND PETS.

No livestock, poultry, reptile, or other animal of any kind shall be raised, bred or kept on any Lot, except that dogs, cats, and other normal household pets (as may be approved by the Board from time to time) may be kept so long as not kept, bred or maintained for any commercial purpose or in an unreasonable number or manner. The right of any Lot Owner to keep such a pet on any Lot is subject to the condition that the pet is not allowed to unreasonably annoy any other Lot Owner and is not allowed to run at large.

1.08 GARBAGE AND REFUSE.

No Lot shall be used or maintained for dumping or storage of trash, garbage, or debris of any kind, except for temporary storage in sanitary covered containers suitably screened from view from streets and adjoining Lots. There shall be no burning or burial of any garbage, trash, or debris at any time, other than for burning of leaves and light brush if approved by the Board.

1.09 DEVELOPER LANDSCAPING; EASEMENTS; MAINTENANCE BY LOT OWNERS.

In order to preserve the natural amenities of the Subdivision and to provide for the enhancement of property values for the benefit of the Subdivision as a whole and for the benefit of each Lot Owner, Developer has created a master landscape plan as shown on the Plat of Westchester Lakes Subdivision and in the plans and specifications of Westchester Lakes Landscape Plan by Ewald Toldt Design Landscape dated 10-16-89 (hereafter "Developer Landscaping"). The Developer Landscaping may include various hedge and screen plantings, berms, trees, shrubbery and related landscaping which are to be constructed by the Developer on certain Lots in the Subdivision. The master landscape plan also includes the construction of improvements and landscaping for the entranceways to the Subdivision as shown on the plat of Westchester Lakes Subdivision and in the plans and specifications of Westchester Lakes Landscape Plan by Ewald Toldt Design Landscape, dated 10-16-89, as revised and amended by the final landscape plans (hereafter the "Entry Landscaping").

(a) This Declaration hereby grants an easement upon, across, over and through all of the Lots and Common Areas and Limited Common Areas of the Subdivision, for the purpose of allowing Developer and its agents ingress and egress in order to accomplish the construction of any of the improvements or facilities involved in the Developer Landscaping and Entry Landscaping. This easement shall terminate upon the Developer's delivery of a certificate of completion to the Association, indicating that all work on the Developer Landscaping and Entry Landscaping has been completed.

(b) Each Lot Owner affected by the Developer Landscaping shall be responsible for maintaining and repairing the Developer Landscaping. Such responsibility shall include, but is not limited to, the seeding, watering and mowing of all lawns, the pruning, cutting and replacement of all trees and shrubbery so as to maintain the Developer Landscaping in an attractive condition consistent with the original design of Developer Landscaping.

In the event a Lot Owner is unable or unwilling to maintain or repair the Developer Landscaping, the Association and its agents shall have the right to enter upon said Lot to correct, repair, maintain and restore the Developer Landscaping. An irrevocable right and easement is hereby granted for the benefit of the Association to enter onto Lots to obtain ingress and egress necessary to maintain and make repairs to the Developer Landscaping. The Association shall thereafter have the right to levy a Special Assessment against the Lot Owner involved for the costs of such maintenance and repairs performed by the Association, pursuant to the provisions of Section 3.10 hereof.

(c) The Association shall be responsible for maintaining and repairing the Entry Landscaping and boulevard island areas dedicated to the City. Such responsibility shall include, but is not limited to, the seeding, watering and mowing of all lawns, the pruning, cutting and replacement of all trees and shrubbery so as to maintain the Entry Landscaping in an attractive condition consistent with the original design of the Entry Landscaping. An irrevocable right and easement is hereby granted for the benefit of the Association to enter onto Lots to obtain ingress and egress necessary to maintain and make repairs to the Entry Landscaping. The costs of such maintenance and repairs will be levied by the Association equally against all Lot Owners, other than the Developer, as a General Assessment pursuant to Section 3.10 hereof.

(d) Binding Effect. All easements and rights described herein are easements appurtenant, running with the land and are subject to the reasonable control of the Association. All easements and rights described herein are granted and reserved to, and shall inure to the benefit of and be binding on, the Lot Owners, purchasers, mortgagees, lessees and occupants and their heirs, personal representatives, successors and assigns.

CONSTRUCTION OF IMPROVEMENTS

2.01 MINIMUM LIVING AREA & HEIGHT REQUIREMENTS: GARAGES.

a) Each Home shall have a minimum living area (exclusive of basement, attic, garage, porches, patios, and storage areas) of not less than 2,300 square feet.

The Board shall have the exclusive right to determine whether such requirements will be satisfied and any decision of the Board shall be final and conclusive.

b) Each Home shall have a basement with a finished floor area (exclusive of any crawl space) of not less than 60% of the area of the first floor.

c) No Home shall exceed two and one-half stories (excluding the basement).

d) An attached enclosed garage (for at least two and not more than three cars) shall be constructed at the time of construction of the Home and all exterior portions of such garage shall be completed prior to occupancy of the Home.

2.02 LOCATION & SET BACK.

a) No Home or garage (including eaves, steps, overhangs, and attached porches, patios and other appurtenances) shall be located on any Lot:

- 1) closer than 50 feet to the front Lot line at any point;
- 2) closer than 50 feet to any side street line at any point;
- 3) closer than 20 feet to the side Lot line adjoining another Lot at any point; or
- 4) closer than 50 feet to the rear Lot line at any point.

Each corner Lot shall be determined by the Board to have one rear Lot line, one side Lot line, one front Lot line and a side street line based on the proposed orientation of the Home and other improvements.

b) Approval by the Plan Commission or building inspector of the City with respect to set-backs or other matters shall not be binding on the Board in any respect.

c) Notwithstanding the set-back requirement specified above, the orientation and precise location of each Home and garage, as well as all other improvements on the Lot, must be approved in writing by the Board prior to any construction, it being intended that the Board may, in its discretion, impose greater set-back requirements than those specified above in order to achieve or maintain the aesthetic appearance for the Subdivision or any portions thereof which the Board deems advisable.

d) The Board may permit improvements (other than the Home and garage) to be constructed, installed and located within the set-back areas described above; provided, such permission must be in writing to be effective and can only be granted after notice to all adjoining and adjacent Lot Owners advising them of the proposed improvement and affording them an opportunity to be heard with respect to the proposed improvement.