

e) No tree may be cut down or removed from a lot unless approved for removal by the Board.

2.03 APPROVAL OF ARCHITECTURAL CONTROL BOARD REQUIRED FOR ALL IMPROVEMENTS.

a) No Home, garage or other structure or improvement of any kind shall be installed, erected, constructed or placed on any Lot (or altered or changed with respect to layout, location or exterior design, appearance, color or material composition) without: (1) prior submission of detailed plans to the Board appropriate for its review and approval; and (2) acquisition of prior written approval by the Board. Plans, to be considered appropriate for review by the Board, must include the following (unless the Board advises a Lot Owner in writing to the contrary): construction drawings, plans and specifications (prepared by a qualified home designer or architect if the improvement involves construction of a Home, garage or addition or change to either) showing dimensions, composition and color of exterior materials, together with paint color samples and brick color samples, and equipment, if any; a plot plan showing the location of the improvement with respect to set-backs from lot lines and other buildings and improvements, finished grade elevations, topography, drives, existing plantings and other data pertinent to such review by the Board as it may reasonably request; and a landscape plan prepared by a landscape architect. The Board shall consider the following factors and may deny or withhold approval of any proposed improvement if, in its sole judgment, any one or more of the general purposes specified in Section 1.02 will not be satisfied: material composition and quality; exterior design, appearance and color; coordination with other existing or contemplated improvements; location with respect to topography and existing surroundings, set-backs, finished grade elevations, access, drainage and plantings; and general aesthetics. ANY LOT OWNER WHO CAUSES OR ALLOWS ANY IMPROVEMENTS TO BE CONSTRUCTED, INSTALLED, PLACED OR ALTERED ON THE LOT WITHOUT PRIOR WRITTEN APPROVAL OF THE BOARD MAY BE REQUIRED TO REMOVE SUCH IMPROVEMENT IN ITS ENTIRETY AT THE LOT OWNER'S EXPENSE. Without intending to limit the generality of the foregoing, it is intended that the exterior color of any portion of a Home, garage or other improvement may not be changed in any significant respect without the prior written approval of the Board.

(b) Notwithstanding the foregoing provisions and limitations of Section 2.03(a), each Home shall include the following minimum specifications: (1) exteriors of all natural building materials, such as stone, brick or wood; (2) full masonry chimney with brick or stone exterior veneer; (3) finish roof construction of cedar shake shingles, tiles or other natural material approved by the Board; asphalt shingles may be permitted upon prior Board approval; and (4) front yard lamp post (with photoelectric cell) and mailbox post approved by the Board. The lamp post and mailbox post shall be purchased from the Association.

c) Upon approval by the Board of the plans for the proposed improvement and upon receipt of any necessary City and other governmental approvals or permits, construction or installation of the improvement may commence and, once commenced, shall be completed as to all exterior items within twelve months following either acquisition of Board approval or

issuance of any required building permit by the City, whichever is later. The Board may, in its discretion, extend such completion deadline up to an additional six months in the event it finds the delay has been caused primarily by factors beyond the control of the Lot Owner and his/her contractors.

d) In the event the Board fails to act upon proposed plans within 30 days following written acknowledgment by the Board that it has received such plans and that they are adequate for purposes of its review or in the event no suit to enjoin the erection, installation or change of the improvement or to require removal thereof has been commenced within one year following final completion thereof, no right shall exist to thereafter enforce these restrictions insofar as approval by the Board is required as to such particular matter.

e) Any approval or permission of the Board under this Section, to be binding or effective, must be in writing signed by the President or Secretary of the Association. No oral statements, representations or approvals of the Board or any of its members or agents shall be binding on the Board under any circumstances, regardless of any reliance thereon by any Lot Owner.

f) Within 90 days following construction or installation of any improvement, the Lot Owner shall furnish an as-built certified survey showing the location of the improvement, if requested by the Board.

2.04 LANDSCAPING & DRAINAGE.

a) Within 6 months following issuance of an occupancy permit for a Home, a complete landscaping plan for the entire Lot shall be submitted to the Board for its approval under Section 2.03 above. In its discretion, the Board may reject or modify the landscaping plans for overall compatibility with the Developer Landscaping and Entry Landscaping described in section 1.09 above. All landscaping shall be completed (in accordance with the plan approved by the Board) within 12 months following the issuance of the occupancy permit for the Home.

b) To avoid a substantial increase in surface water drainage onto adjoining Lots, the landscaping plan shall provide for adequate drainage of storm and surface water toward adjoining streets and away from adjoining Lots if natural drainage on the Lot is to be or has been altered by grading or landscaping by the Lot Owner.

c) No fence, wall, hedge, or screen planting shall be installed unless in accordance with landscaping or other plans approved in advance by the Board under Section 2.03.

d) Each Lot Owner is responsible for compliance with Master Grade Plan as established by the City of Mequon.

2.05 DRIVEWAY.

Each Lot shall be improved by the Lot Owner with an asphalt, concrete or paving stone driveway extending from the street to the garage within 12 months following issuance of an occupancy permit for the Home. A plot plan showing the location of the drive shall be submitted to the Board for its prior approval under Section 2.03 above.

2.06 CONSTRUCTION MATERIALS -- STORAGE.

No building or construction materials shall be stored on any Lot outside of the Home or garage, other than during periods of actual construction or remodeling and then only for so long as may be necessary. Excess excavated material shall not be stored on any Lot during or after construction without the prior approval of the Board, unless required for backfilling, finish grading, or landscaping.

2.07 WATER SUPPLY.

Each Home shall be connected to the water supply system as established in the Declaration of Water Trust or to the water supply system of the City or public utility and no individual wells shall be used or permitted.

2.08 SEWERAGE DISPOSAL.

Each Home shall be connected with the City or other common sewer system and no septic tank or other individual sewerage system shall be used or permitted.

2.09 GARBAGE DISPOSAL.

Each Home shall be equipped with a garbage disposal connected to the sanitary sewer. No incinerator or incineration system for burning garbage or debris shall be used or permitted.

2.10 WIRES AND ANTENNA.

a) All utility lines and wiring for gas, electric, telephone, and cable television service to a Home, garage or other improvement shall be installed underground, unless otherwise permitted by the Board prior to installation.

b) No roof-top, tower-mounted or other external antenna or satellite dish for television or radio reception or for other electronic transmission or reception shall be erected or used without the prior written approval of the Board.

2.11 SIGNS AND MAILBOXES.

a) No sign or banner of any kind shall be placed or displayed to public view on any Lot, except: (1) one sign of not more than 6 square feet advertising the Property for sale; and (2) one standard sign (showing the Lot

Owner's name) as may be approved by the Board for uniform use in terms of size, design, appearance and location for each Lot in the Subdivision; and (3) such signs as the Developer or Board may approve for placement on those Lots affected by the Entry Landscaping for the purpose of advertising Westchester Lakes Subdivision.

b) No mailbox shall be installed unless the location, size, materials and appearance are approved in writing by the Board in accordance with Section 2.03.

THE ASSOCIATION

3.01 CREATION OF ASSOCIATION.

a) The Developer hereby creates and establishes a non-profit incorporated homeowner's association to be known as "Westchester Lakes Homeowner's Association," with all rights, powers, privileges and obligations as provided in this Declaration.

b) The Association shall exist during the term(s) of this Declaration and shall automatically terminate upon termination of this Declaration.

3.02 MEMBERSHIP.

a) Each Lot Owner shall automatically be a member of the Association and shall be entitled to one membership and one vote for each Lot owned, with ownership of a Lot being the sole qualification for membership. The membership in the Association appurtenant to a Lot shall be owned jointly and severally by all co-Owners of the Lot, regardless of the form of tenancy, estate, or interest in the Lot.

b) Association membership and voting rights shall be appurtenant to each Lot and shall not be assigned, conveyed or transferred in any way except upon transfer of an ownership interest of the Lot and then only to the transferee, nor shall membership or voting rights be retained except upon retention of an ownership interest in the Lot. Any attempt to make a prohibited transfer or retention of such rights shall be null and void.

c) Notwithstanding any provision in this Declaration to the contrary, the Developer shall be entitled to one membership and one vote for each Lot owned by the Developer.

3.03 VOTING.

a) The vote appurtenant to each Lot shall be cast as a whole (in person or by proxy) by the Lot Owner or any co-Owner. Fractional votes will not be allowed; and if co-Owners of a Lot do not agree on how the vote shall be cast or if a fractional vote is attempted, the right to vote on the matter in question shall be forfeited by such Owners. The Association may treat any co-Owner of a Lot or the proxy of any such co-Owner as duly authorized to vote for all co-Owners of that Lot.

b) Quorum: A quorum for voting purposes shall consist of fifty percent (50%) or more of the votes entitled to be cast.

c) There shall be no cumulative voting for election of officers or on any other matters. All decisions and actions of the Association, except as otherwise specifically provided for in this Declaration, shall be by a majority of the votes present and entitled to be cast.

d) A Lot Owner shall not be entitled to vote on a matter if any General or Special Assessment against the Lot is then delinquent.

e) Proxies shall be valid only for the particular meeting or time period designated in the proxy, unless sooner revoked, and must be filed with the Secretary at or before the appointed time of the meeting.

3.04 MEMBERSHIP LIST: NOTICES.

a) The Association shall maintain a current Membership List. Each Lot Owner shall furnish the information necessary for the Association to maintain such Membership List.

b) All notices required to be given to a Lot Owner shall be deemed to have been duly given: at the time of personal delivery to the Lot Owner or the Home of the Lot Owner; or 48 hours after mailing within the State of Wisconsin by regular or certified mail to the Lot Owner's mailing address shown in the Membership List. Notice to one co-Owner of a Lot shall be deemed effective notice to all other co-Owners of such Lot.

3.05 ASSOCIATION MEETINGS.

a) Written notice of all meetings of the Association stating the time, place, and purpose for which the meeting is called shall be given by the President or Secretary to each Lot Owner not less than 5 nor more than 30 days prior to the date of such meeting; provided, however, that notice of any meeting may be waived in writing before or after the meeting.

b) The annual meeting of the Association shall be held in June of each year for the purpose of electing officers and transacting any other business authorized to be transacted by the Association. The Board shall select the specific date, time and place of the annual meeting for a given year and shall furnish written notice to each Lot Owner in accordance with Section 3.05(a).

c) Special meetings of the Association shall be held whenever called by the President or two officers; however, such meetings must be called upon receipt by the President of a written request signed by Owners with one-third or more of all votes entitled to be cast.

d) A quorum for meetings necessary to conduct Association business shall consist of Lot Owners, present in person or by proxy, representing a majority of all votes entitled to be cast.

e) The act of a majority of the votes at any meeting at which a quorum is present shall be the act of the Association, unless a greater percentage is required under this Declaration.

f) If a quorum is not present at a meeting, no business of the Association shall be transacted; however, the majority of votes present (in person or by proxy) may adjourn the meeting from time to time without further notice if such adjourned meeting at which a quorum is present is held within 15 days of the meeting originally noticed. If a quorum is present at such an adjourned meeting, any business may be transacted which might have been transacted at the meeting as originally noticed.

3.06 POWERS OF THE ASSOCIATION.

a) Without limitation, the Association shall have the following powers in addition to any others which may be necessary or incidental to performance of any duties or powers of the Association specified in this Declaration:

1) to levy and enforce payment of General and Special Assessments on the Lots and against Lot Owners;

2) to enforce this Declaration;

3) to purchase, sell and convey Lots (including the improvements thereon) incident to foreclosure of a lien for any assessments and to acquire real estate as additional Common Area;

4) to enter and execute contracts, deeds, mortgages and documents on behalf of the Association which relate to any Common Area or improvements therefor;

5) to incur indebtedness on behalf of the Association and to execute drafts and other negotiable instruments;

6) to employ the services of any person, firm, or corporation to maintain the Common Areas and Limited Common Areas, or to construct, install, repair or rebuild improvements thereon;

7) to acquire, sell, transfer or exchange goods, equipment and other personal property or fixtures in the name of the Association for the operation of the Association;

8) to commence, prosecute, defend or be a party to any suit, hearing or proceeding (whether administrative, legislative or judicial) involving the enforcement of this Declaration or otherwise involving the exercise of any powers, duties or obligations of the Association;

9) to adopt Rules and Regulations for the management, operation, use and enjoyment of the Common Areas and Limited Common Areas, including fines or penalties which may be enforceable by Special Assessment against any Lot Owner or his/her family or guests violating such Rules or Regulations; and

10) to exercise all other powers necessary to maintain the Common Areas and Limited Common Areas and operate the Association for the mutual use and enjoyment of all Lot Owners.

b) The President, together with one other officer of the Association, is empowered to negotiate, execute and enter contracts, agreements and other undertakings or documents of any kind on behalf of the Association necessary or incidental to exercise of any powers or obligations of the Association or of the Board under this Declaration.

3.07 ARCHITECTURAL CONTROL BOARD.

a) All Officers of the Association then in office shall be members of the Architectural Control Board and no other person may be a member of the Board. Each member of the Board shall serve and hold office until a successor is elected or appointed to such office.

b) The Board shall initially consist of the person(s) appointed by Developer as President, Secretary, and Treasurer of the Association to hold office until successors are appointed by Developer or elected by the Association. Except for officers appointed by Developer, a person must be a Lot owner or co-Owner of a Lot in order to be eligible to serve as an officer and member of the Board.

c) Any officer and member of the Board (other than an officer appointed by Developer) may be removed from office with or without cause at any regular or special meeting of the Association by a majority vote of all Lot Owners and a successor may then be elected at that meeting to fill the vacancy thus created or at a special meeting thereafter called for that purpose. Any officer appointed by Developer may be removed at any time by Developer and a successor may then be appointed by Developer.

d) Vacancies in any officer position and on the Board (caused other than by removal under Section 3.07(c) above) and newly created officer positions resulting from an increase in the number of officers shall be filled by a majority vote of the officers then in office and each person so elected shall serve until a successor is either appointed by Developer or elected at the next annual meeting of the Association.

e) An annual meeting of the Board shall be held immediately after the annual meeting of the Association. No notice of the annual meeting of the Board shall be required.

f) Regular meetings of the Board shall be held at such times and places as the Board determines by resolution to be appropriate and no notice of regular meetings shall thereafter be required.

g) Special meetings of the Board may be called by any officer on three (3) days prior notice to each officer, given orally or in writing.

h) Before, at, or after any meeting of the Board, any officer may (in writing) waive notice of such meeting and such waiver shall be deemed equivalent to the giving of notice.

i) For all meetings of the Board, a quorum necessary to transact business shall consist of a majority of the officers and the act of such majority shall be the act of the Board. If there is less than a quorum present at any meeting of the Board, no business shall be transacted; however, the majority of those present may adjourn the meeting from time to time without further notice if such adjourned meeting at which a quorum is present is held within 15 days of the meeting originally scheduled. If a quorum is present at an adjourned meeting, any business may be transacted which might have been transacted at the meeting as originally noticed.

j) Any action of the Board authorized under this Declaration may be taken upon the unanimous consent of all officers without a meeting.

k) The Board may require that some or all officers and/or employees of the Association handling or responsible for Association funds furnish adequate fidelity bonds, the premiums for which shall be paid for by the Association as a common expense.

3.08 OFFICERS.

a) The Officers of the Association shall be:

1) a President, who shall: be the chief executive officer of the Association and a member of the Board; be responsible for the proper execution of the business and affairs of the Association (subject to the control of the Board); preside at all meetings of the Association and the Board; have the authority to appoint various committees; have all the general powers and duties usually vested in the Office of President, as well as such other powers and duties as may be prescribed from time to time by resolution of the Association.

2) a Secretary, who shall: be a member of the Board; keep the minutes of all meetings of the Board and of the Association; have charge of all the Association's books and records; maintain the Membership List and keep it current; have charge of delivering all notices and approvals on behalf of the Board and the Association; and, in general, perform all duties incident to the office of Secretary, together with such other powers and duties as may be prescribed from time to time by resolution of the Association.

3) a Treasurer, who shall: be a member of the Board; be responsible for the Association's funds and assets; keep complete and accurate accounts of all receipts and disbursements, financial records, and books of accounts; deposit all monies in the name and to the credit of the Association in depositories as may from time to time be designated by the Board; assess and collect all General and Special Assessments made by the Board; and exercise such other powers and duties as may be prescribed from time to time by resolution of the Association.

4) one or more Vice-Presidents (not to exceed four at any one time), the number of which shall be determined by resolution of the Association; however, it is not required that the Association have one or more

Vice-Presidents. A Vice-President, in addition to serving on the Board, shall have such other powers, duties and restrictions as may be prescribed from time to time by resolution of the Association.

b) All officers shall be elected annually by the Association if not subject to appointment by Developer. Each officer shall hold office until a successor is duly elected or until death, resignation, or removal, whichever first occurs. No person may hold two or more offices at any one time, except that officers appointed by Developer may hold any number of offices.

3.09 MANAGEMENT OF ASSOCIATION BY THE BOARD.

a) The Association and its business, activities and affairs shall be managed by the Board (which shall consist of all the officers of the Association). The Board shall exercise and perform, in addition to the powers, duties and obligations specified in this Declaration for the Board, all powers, duties and obligations of the Association (except to the extent this Declaration may otherwise expressly require the prior vote of the Association on a particular matter). Notwithstanding any other provision of this Declaration to the contrary, Developer shall be entitled to appoint all officers of the Association until such time as 80 percent of all present and future platted Lots in the Subdivision have been sold and fee simple title conveyed by Developer (at which time, all officers of the Association shall be elected by the members of the Association).

b) The Board may appoint committees consisting of one or more Lot Owners to make recommendations to the Board or the Association on any matter.

c) No person shall receive any payment for services rendered as an officer of the Association or as a member of any committee unless specifically authorized by prior resolution of the Association. The Board may reimburse out-of-pocket expenses incurred by an officer or committee member in the performance of his/her duties.

d) No member of any board or committee or officer of the Association shall be liable to any Lot Owner or to any other party including the Association for any loss or damage suffered or claimed on account of any act, omission, error or negligence of such board or committee member or officer, provided such person acted in good faith, without willful or intentional misconduct.

e) All decisions of the Board on any matter (including, without limitation, decisions under Section 2.03) shall be enforceable against any Lot Owner if made in a good faith exercise of the judgment or discretion of its members so long as such decision is not clearly in conflict with the express provisions of this Declaration. Any Lot Owner or other person seeking to avoid, set aside or challenge any such decision of the Board shall have the burden of proof to establish that such standards were not met at the time the decision was made.

3.10 COMMON EXPENSES AND ASSESSMENTS AGAINST LOTS AND LOT OWNERS.

a) The Board shall pay or arrange for payment for all costs, expenses and liabilities incurred by the Association out of the proceeds of assessments which shall be made against the Lot Owners and their Lots. The Board may, at any time, levy assessments for such purposes against the Lot Owners and their Lots, other than the Developer and Lots owned by the Developer. The Developer shall not be responsible at any time for any assessments, General, Special or otherwise.

b) "Special Assessments" may be made and levied by the Board against a particular Lot Owner (other than the Developer) and his, her or their Lot (without levying against other Lots) for:

- 1) costs and expenses (anticipated or incurred) for repair of damage to Common Areas caused by or at the direction of the Lot Owner or the family or guests of the Lot Owner;
- 2) costs, expenses and actual attorneys fees incurred in, or in anticipation of, any suit, action or other proceeding to enforce this Declaration against the Lot Owner;
- 3) interest due on General or Special Assessments; and
- 4) all other costs and expenses anticipated or incurred by the Association which are subject to Special Assessments as provided under this Declaration.

c) "General Assessments" may be made and levied by the Board equally against each Lot Owner (other than the Developer) and his, her or their Lot for the following "common expenses" which may be anticipated, incurred or paid by the Association for:

- 1) maintenance, repairs, upkeep or operation of Common Areas, Limited Common Areas, and any additional Common Areas (such as any contiguous real estate) as may be acquired by the Association;
- 2) any insurance maintained by the Association;
- 3) taxes, assessments and charges of any kind made or levied by any governmental authority against the Association or upon any property of the Association;
- 4) all costs and expenses for the operation and administration of the Association, including legal, accounting and management fees and other costs incident to the exercise of any of its powers or obligations;
- 5) costs and expenses for additional improvements to Common Areas beyond those installed by Developer;