

## DECLARATION OF WATER TRUST FOR WESTCHESTER LAKES SUBDIVISION

This Declaration is made this 1st day of October, 1989, by Republic Development, Inc. (hereinafter called "Developer").

RECITATIONS

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

WHEREAS, the Subdivision is a platted subdivision consisting of 93 lots;

WHEREAS, Developer intends to provide a water system including two wells, pumps, tanks and mains for domestic water use to service the lots in the Subdivision, as expanded from time to time, and has caused to be drilled on 2 wells of the Subdivision, as located on the final plat and has installed in the streets of the Subdivision water mains and laterals extended to the lot lines of the lots in the Subdivision;

WHEREAS, Developer, in connection with the platting of the Subdivision, has reserved and hereby does reserve an easement for the purpose of the right to construct, maintain and repair the well upon the lot(s) described in the final plat of Westchester Lakes Subdivision, together with an easement for the purpose of constructing, maintaining, and repairing the distribution facilities and distribution system consisting of well pump, storage tanks, controls, pump house, fire hydrants, water mains, valves and related equipment (hereinafter collectively referred to as the "Water System");

WHEREAS, Developer intends to convey to various purchasers lots in the Subdivision and all future platted lots within the Subdivision, as expanded from time to time, in accordance with and subject to the provisions of this Declaration of Trust to provide for the maintenance, repair, operation and service of the Water System for the benefit of present and future lot owners; and

WHEREAS, the Developer has subjected the platted lots within the Subdivision, as well as other portions of the Subdivision to the Declaration of Restrictions dated 10-16-89 and recorded in the office of the Register of Deeds for Ozaukee County, Wisconsin, in Reel 658, Image 719 to 741, as Document No. 423249, it being expressly understood that the provisions of the Declaration of Restrictions are incorporated herein;

DECLARATION

NOW, THEREFORE, the Developer grants, transfers and conveys to the Trustees (hereinafter defined) and their successors in office, the right to manage and operate the Water System and the easements to construct, maintain, repair and replace the Water System for the purpose of providing water service

to the lots in the Subdivision and all future platted lots within the Subdivision, as expanded from time to time as provided for in the Declaration of Restrictions, as well as all other portions of the Subdivision (except dedicated streets and utilities).

#### 1.01 Definitions.

(a) The definitions of terms as set forth in Section 1.01 of the Declaration of Restrictions shall control for the purposes of this Declaration.

(b) "Lot Owner" shall, for the purposes of this Declaration, mean the holder(s) of legal title to a lot within the Subdivision, as expanded from time to time, except in the case of a land contract Lot Owner shall mean only the land contract vendee(s).

(c) "Trustees" shall mean the President, Secretary and Treasurer of the Association appointed or elected in accordance with Section 3.08 of the Declaration of Restrictions who shall serve as Trustees of this Water Trust and administer this Trust for the benefit of the Lot Owners.

#### 2.01 Trustees: Selection and Vacancies.

(a) The Trustees shall initially consist of the persons 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 a Trustee.

(b) Any Trustee (other than a Trustee 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 Trustee appointed by Developer may be removed at any time by Developer and a successor may then be appointed by Developer.

(c) Vacancies in Trustee positions (caused other than by removal under Section 2.01(b) above) shall be filled by a majority vote of the Trustees 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.

(d) An annual meeting of the Trustees shall be held immediately after the annual meeting of the Association. No notice of the annual meeting of the Trustees shall be required.

(e) Regular meetings of the Trustees shall be held at such times and places as the Trustees determine by resolution to be appropriate and no notice of regular meetings shall thereafter be required.

(f) Special meetings of the Trustees may be called by any Trustee on three (3) days' prior notice to each Trustee, given orally or in writing.

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

(h) For all meetings of the Trustees, a quorum necessary to transact business shall consist of a majority of the Trustees and the act of such majority shall be the act of the Trustees. If there is less than a quorum present at any meeting of the Trustees, 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.

(i) Any action of the Trustees authorized under this Declaration may be taken upon the unanimous consent of all Trustees without a meeting.

(j) The Trustees may require that some or all offices 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.

## 2.02 Powers and Duties of Trustees.

(a) The Trustees shall construct, operate and manage the Water System and shall determine the water rates and shall collect from the Lot Owners the service charges as herein provided. Payments received by the Trustees shall be used for the repair, maintenance, replacement, taxes (real and personal), insurance, auditing expense, and any and all other expenses incidental to the operation and maintenance of the Water System. The Trustees shall keep the Water System in good repair and maintenance and shall pay all taxes levied on said Water System and shall take such other actions as are necessary to operate and manage the Water System.

(b) The Trustees shall keep true and correct accounts of all income and expenses which book of accounts shall be subject to inspection by any of the Lot Owners at reasonable times after reasonable notice.

(c) The Trustees shall have the right to enter upon any portion of the Subdivision for the purpose of inspection, repairs, upkeep and any other purpose which may be incidental or necessary to maintaining the Water System.

## 3.01 Connection; Use; Charges; Default.

(a) Each Lot Owner on which a home is erected shall connect to water laterals of the Water System for the purpose of supplying water to such lot in such manner as may be directed by the Trustees. The laying and

connecting to such lateral pipes from the lot line to the home shall be at the expense of the Lot Owner. After connection with the system, the Lot Owner shall be obligated to make payments as provided in this Declaration. The initial connection fee is \$200.00 and shall be paid to the Trustees at closing of the purchase of a Lot.

(b) Each Lot Owner shall have the right of access to the Water System, subject to the same right as other Lot Owners and may draw water from the Water System as herein provided and each Lot Owner shall be bound by such rules and regulations relating to the use of the water from the Water System as may be promulgated by the Trustees. The City of Mequon or any successor or municipality having jurisdiction shall have the right to draw water from the Water System through the fire hydrants for the fire fighting purposes without charge to such municipality.

(c) No Lot Owner within the Subdivision shall separately provide or dig any well for supplying water upon any lot or the premises of the Subdivision.

(d) Upon connection to the water lateral, each Lot Owner shall pay to the Trustee a quarterly service charge of \$60.00 for water used. Quarterly service charges shall be billed at the end of each calendar quarter and prorated depending upon the date of connection. The Trustees shall, when necessary, adjust the quarterly service charge so as to assure sufficient funds to cover all expenses of operation of the Water System and to establish an adequate reserve for replacements.

(e) In the event that any Lot Owner shall fail to pay the quarterly service charge when due, the provisions of Sections 3.11 and 3.12 of the Declaration of Restrictions shall control all such unpaid charges, shall bear interest at 12% per annum or at such other maximum rate as may then be permitted by law, until the charges are paid in full, and shall constitute a lien on the lot and shall be collectible in accordance with the provisions of Section 3.12 of the Declaration of Restrictions. In addition to the remedies granted under Section 3.12 of the Declaration of Restrictions, the Trustees may, at their option, upon five days' notice, disconnect the water service of any defaulting Lot Owner from the Water System. Such service shall be reinstated upon payment of all quarterly service charges in arrears, together with interest as specified above, and reimbursement for costs of disconnecting and reconnecting the service.

#### 4.01 Termination.

(a) This Trust shall terminate upon the earliest to occur of any of the following events:

- (i) The Water System is taken over by either a governmental authority or a public utility (regulated and controlled as to the rates and services by a duly constituted public regulatory

body or commission) for maintenance and operation. In such event, the Trustees shall transfer all interest in and to this Declaration of Water Trust to such governmental authority or such public utility, together with all right, title and interest of the Trustees in and to the Water System, and together with all appurtenances thereto.

(ii) The municipal water service is provided either by a governmental authority or by a public utility (regulated and controlled as to rates and services by a duly constituted public regulatory body or commission) though means other than the Water System. In such event, the easements granted for those parts of the Water System not in use shall cease and terminate and the assets in the hands of the Trustees shall be liquidated and disposed of according to the terms hereof.

(iii) The Water System is, in its entirety, at the option of the City of Mequon, connected to or integrated with any municipal, intermunicipal, or metropolitan system which may hereafter be established by the City of Mequon, either alone or in cooperation with other municipalities or any statutory water district. In such event, the connection and integration shall be made without the awarding of any damages or the payment of any sum in consequence thereof by the said City, water district and/or municipality and any cash reserves and proceeds realized from the disposition of assets not required to effectuate such connection and integration shall be distributed to the Lot Owners as hereinafter provided.

(b) In any such event, the Trustees shall transfer all interest in and to the mains, hydrants and other component parts of the distribution system to such governmental authority or to such public utility or to such City, water district and/or municipality and the remaining assets, consisting principally of the wells, pumps, pump house, storage tank, controls, etc., shall be sold and converted into cash.

(c) Upon Termination of this Trust, any cash reserves derived from service charges or cash derived from the sale of the Water System assets shall be divided equally among the then Lot Owners of lots improved with homes which are connected to the Water System and returned to them after payment of all Trust expenses.

5.01 Miscellaneous.

(a) Extension of Water System. This Trust shall be applicable to all lots platted at the execution of this Trust and to all lots which are hereafter platted in Westchester Lakes Subdivision, as expanded from time to time in accordance with the provisions of the Declaration of Restrictions. The geographic jurisdiction of this Trust may be expanded and service may be provided by the Water System to other areas only in connection with an expansion of Westchester Lakes Subdivision, and then only to the extent of lands described in a duly recorded instrument and declared to be a part of Westchester Lakes Subdivision.

(b) Amendments. This Agreement may be amended at any annual meeting or a special meeting called for such purpose by the affirmative vote of Lot Owners of two-thirds (2/3) of lots subject to this Declaration of Water Trust; provided, however, that any such amendment shall also be approved by the City of Mequon, and provided further, that paragraphs 6 and 18 hereof may not be amended.

(c) Effect. The foregoing Declaration of Water Trust shall be construed as covenants running with the land. This Trust shall inure to the benefit of the present Lot Owners and their respective heirs, personal representatives, successors and assigns.

Dated at Milwaukee, Wisconsin, this 16<sup>th</sup> day of October, 1989.

REPUBLIC DEVELOPMENT, INC.

By: Dennis M. Bush

Dennis M. Bush, President

By: Robert Desmond

Robert Desmond, Vice President

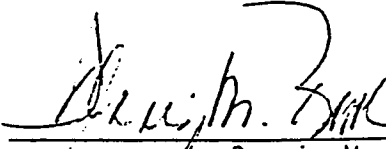
STATE OF WISCONSIN )  
 ) SS.  
Milwaukee COUNTY )


Personally came before me this 16th day of October, 1989, the above-named Dennis M. Bush and Robert Desmond, to me known to be the President and Vice President, respectively, of Republic Development, Inc., who executed the foregoing instrument and acknowledged the same on behalf of said corporation.

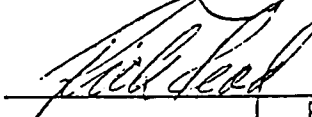
Carol J. Sweeney  
Notary Public, State of Wisconsin  
My Commission expires: April 18, 1993

## ACCEPTANCE OF TRUST

The undersigned hereby consent to act as the Trustees designated in the foregoing Declaration of Water Trust and in accordance with the terms and conditions thereof.

  
Dennis M. Bush, President

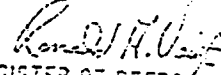
  
Tom Zimmerman, Secretary

  
Rick Read, Treasurer

RECORDED

✓

1999 NOV 13 AM 10:40

  
REGISTER OF DEEDS  
DOZAUKEE COUNTY, WI

This instrument was drafted  
as to preprinted portions by and  
should be returned following  
recording to:

Attorney John G. Gehringer  
FRISCH DUDEK, LTD.  
825 North Jefferson Street, Suite 500  
Milwaukee, Wisconsin 53202-6495  
(414) 273-4000

\$18<sup>00</sup>

698Q

EXHIBIT A  
LEGAL DESCRIPTION

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BEING A SUBDIVISION OF PARCEL TWO (2) OF CERTIFIED SURVEY MAP NO. 737, RECORDED AUGUST 18, 1975 IN VOLUME 3 OF CERTIFIED SURVEY MAPS ON PAGES 138 AND 139, AS DOCUMENT NO. 273755, BEING A PART OF THE NORTHWEST ONE-QUARTER (1/4) OF SECTION TWENTY-TWO (22), TOWNSHIP NINE (9) NORTH, RANGE TWENTY-ONE (21) EAST, IN THE CITY OF MEQUON, AND LANDS ALL BEING A PART OF THE NORTHWEST ONE-QUARTER (1/4), NORTHEAST ONE-QUARTER (1/4), SOUTHWEST ONE-QUARTER (1/4) AND THE SOUTHEAST ONE-QUARTER (1/4) OF THE NORTHWEST ONE-QUARTER (1/4) OF SECTION TWENTY-TWO (22), TOWNSHIP NINE (9) NORTH, RANGE TWENTY-ONE (21) EAST, IN THE CITY OF MEQUON, OZAUKEE COUNTY, WISCONSIN, WHICH IS BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST 1/4 OF SECTION 22; THENCE NORTH 89° 59' 26" EAST ALONG THE NORTH LINE OF SAID 1/4 SECTION 419.00 FEET TO A POINT, SAID POINT BEING THE POINT OF BEGINNING OF THE LANDS HEREIN TO BE DESCRIBED; CONTINUING THENCE NORTH 89° 59' 26" EAST 623.04 FEET TO A POINT; THENCE SOUTH 00° 19' 34" EAST 325.00 FEET TO A POINT; THENCE NORTH 89° 59' 26" EAST 602.20 FEET TO A POINT ON THE WEST LINE OF SPRING DALE ESTATES, BEING A SUBDIVISION OF A PART OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 9 NORTH, RANGE 21 EAST, IN THE CITY OF MEQUON, OZAUKEE COUNTY, WISCONSIN; THENCE SOUTH 00° 19' 34" EAST ALONG THE WEST LINE OF SPRING DALE ESTATES 993.00 FEET TO THE SOUTHWEST CORNER OF SAID SUBDIVISION; THENCE NORTH 89° 49' 00" EAST 988.57 FEET TO THE SOUTHEAST CORNER OF SAID SPRING DALE ESTATES; THENCE SOUTH 00° 19' 48" EAST 1330.19 FEET TO THE SOUTHEAST CORNER OF SAID 1/4 SECTION; THENCE NORTH 89° 58' 13" WEST ALONG THE SOUTH LINE OF SAID 1/4 SECTION 2257.90 FEET TO A POINT; THENCE NORTH 00° 04' 00" WEST AND PARALLEL TO THE WEST LINE OF SAID 1/4 SECTION 330.45 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH 20 ACRES OF THE SOUTH 1/2 OF SAID 1/4 SECTION; THENCE NORTH 89° 58' 13" WEST 387.00 FEET TO A POINT ON THE WEST LINE OF SAID 1/4 SECTION; THENCE NORTH 00° 04' 00" WEST ALONG WEST LINE OF SAID 1/4 SECTION 989.93 FEET TO A POINT; THENCE NORTH 89° 49' 00" EAST 264.00 FEET TO A POINT; THENCE NORTH 00° 04' 00" WEST 376.15 FEET TO A POINT; THENCE SOUTH 89° 49' 00" WEST 264.00 FEET TO A POINT ON THE WEST LINE OF SAID 1/4 SECTION; THENCE NORTH 00° 04' 00" WEST ALONG THE WEST LINE OF SAID 1/4 SECTION 310.20 FEET TO A POINT; THENCE NORTH 89° 59' 26" EAST 419.00 FEET TO A POINT; THENCE NORTH 00° 04' 00" WEST 636.64 FEET TO THE POINT OF BEGINNING. EXCEPTING THOSE PORTIONS DEDICATED FOR PUBLIC STREET PURPOSES.

NOTE: Following approval of the final plat for Westchester Lakes Subdivision the legal description will be as follows:

Lots One (1) through Ninety-three (93) inclusive, of WESTCHESTER LAKES SUBDIVISION, in the City of Mequon, Ozaukee County, Wisconsin.