

DECLARATION OF RESTRICTIONS AND EASEMENTS AND
ESTABLISHMENT OF HOMEOWNERS ASSOCIATION
FOR
AUTUMN TRACE SUBDIVISION

This Declaration is made this _____ day of _____, 2021, by Ryan's Buying LLC, a Wisconsin limited liability company ("Developer").

RECITATIONS

A. Developer owns the real estate located in the City of New Berlin, Waukesha County, Wisconsin, described on Exhibit A attached hereto and incorporated herein by this reference ("Property").

B. The Property will be a subdivision consisting of twenty (20) single-family lots and one (1) Outlots.

C. Developer desires to subject the entire Property (except dedicated streets), including all of the lots and outlots located within the Subdivision, 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 Property and all portions thereof (except for dedicated streets) shall be used, held, leased, transferred, sold, and conveyed subject to the conditions, restrictions, covenants, reservations and easements hereinafter set forth, which shall insure 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.

1. DEFINITIONS, PURPOSE & USE RESTRICTIONS

1.1 DEFINITIONS.

1.1.1 "Association" shall mean the Autumn Trace Homeowners Association, Inc. a nonprofit, nonstock corporation, which has been or will be created to carry out the purposes expressed in this Declaration and the Articles of Incorporation and By-laws for said Association.

1.1.2 "Common Area" or "Common Areas" shall mean and refer to: (i) the Outlots; and (ii) any other area within the Subdivision which is not a Lot as identified in this Declaration, 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. Fee title to the Outlot shall vest in the Association upon its formation by execution of the Articles of

Incorporation and no further conveyance document shall be necessary to vest title to the Common Areas in the Association.

1.1.3 “Developer” shall mean Ryan’s Buying LLC, a Wisconsin limited liability company, its successor and assigns.

1.1.4 “Environmental Corridor” shall mean that area of the Subdivision shown on the attached Exhibit B.

1.1.5 “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.

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

1.1.7 “Lot” shall mean each lot within the Subdivision identifiable by reference to a lot number, as set forth on the attached Exhibit B. The term “Lot” does not include the Outlot.

1.1.8 “Lot Owner,” “Lot Owners,” “Owner” 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.

1.1.9 “Outlot” shall mean Outlot 1 as depicted on the attached Exhibit B.

1.1.10 “Property” the lands described on Exhibit A attached hereto.

1.1.11 “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; 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; berms 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.

1.1.12 “Subdivision” shall mean the Autumn Trace Subdivision as shown on Exhibit B, excluding lands which are now or hereafter dedicated to the City.

1.1.13 “City” shall mean the City of New Berlin and any successor in interest

1.1.14 “City Engineer” shall mean the Engineer for the City of New Berlin.

1.2 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 standards for all improvements; 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 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.

1.3 SINGLE FAMILY USE; GENERAL RESTRICTIONS.

1.3.1 Each Lot shall be used solely for residential purposes by one Family, except that limited business activities may occur if all of the following conditions are met.

-Business activities must be conducted in the home

-All business vehicles/equipment shall be always stored indoors

-The home shall not be a place of business in which more than one (1) employee, in addition to the Lot Owner reports to work daily.

-The home shall not be a place of business in which more than one (1) inbound delivery and one (1) outbound shipment of raw and/or finished materials takes place inside of a given week. Delivers and shipments shall be facilitated by trucks no larger than twenty-six (26) feet. No Semi's.

-Business activities shall not create noxious odors or loud noises.

-The home shall not be held as a retail or showroom location where customers or clients are entertained.

1.3.2 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.

1.3.3 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.

1.3.4 Each Lot and all front, side, and rear yards shall be maintained by the Lot Owner 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.

1.3.5 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.

1.4 USE AND MAINTENANCE OF COMMON AREAS, IMPROVEMENTS IN RIGHT OF WAYS.

1.4.1 All Common Areas shall be used as open space for the common benefit of the Subdivision and are to be used for the purposes prescribed in this Declaration, and for no other activities by any Lot Owner.

1.4.2 The Association shall, at its cost and expense, maintain all the Common Areas. No Lot Owner shall erect any structure or improvement in the Common Areas.

1.4.3 Any signs, monuments or structures constructed by Developer or the Association on any Common Areas shall be properly maintained by the Association.

1.5 KEEPING OF RECREATIONAL VEHICLES.

Recreational vehicles (which shall include snowmobiles, ATV’s, travel trailers, vans, motor homes, dune buggies and other off-street motorized vehicles of any kind), boats and other

watercraft, and trucks shall not be parked, kept or stored on any Common Area or undeveloped area of the Subdivision, nor shall any such recreational vehicle, boat, watercraft or commercial truck be parked, kept, or stored on any Lot outside an enclosed garage.

1.6 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.

1.7 UTILITY LINES, ANTENNAS AND SATELLITE RECEIVERS.

All electric light, telephone lines, television service lines, or any other cable or conduit running from utility service lines or transformers to any Home shall be underground and no overhead service shall be provided or allowed on any Lot. No satellite receiver dishes over 30” in diameter shall be installed on any Lot, and no satellite receiver dish shall be attached to the front of any Home or in the front yard. Standard rooftop television antennae shall be allowed when installed in accordance with City’s regulations. Solar panels shall be allowed on the exterior of a Home, provided that they are appropriately screened from view.

1.8 SIGNS

No sign of any kind shall be displayed to the public view on any Lot except one sign not more than two square feet in size identifying the property of the Owner, one sign not more than six square feet in size advertising the property for sale or rent, a sign used by a builder to advertise a residence for sale, or as a model home, but only during the construction and sales period, such signs as may be used by the Developer in conjunction with initial Lot sales in the Subdivision, or one or more Subdivision entrance signs erected by the Developer and/or by the Association. Notwithstanding the foregoing, during the construction of a Home on a Lot, the homebuilder shall have the right to install and maintain a jobsite/rules sign and a sign identifying the builder’s company.

1.9 OUTLOTS

Outlots and features therein shall be for the private use and enjoyment of the lot owners. Trails, fencing and other feature maintenance shall be the responsibility of the HOA. Motorized vehicle traffic, storage and parking are prohibited on the outlots.

- 1.9.1 Ownership of the outlots is as follows. Lot owners have an undivided fractional ownership in Outlots 1 and 2 which are to be managed by the Association.

2. CONSTRUCTION OF IMPROVEMENTS

2.1 MINIMUM LIVING AREA & HEIGHT REQUIREMENTS; GARAGES.

2.1.1 No building or structure shall be erected, altered, placed, or permitted to remain on any Lot other than one detached, single-family dwelling, not exceeding two and one-half stories in height with an attached garage for not less than three (3) cars and a maximum of five (5) cars.

2.1.2 No dwelling shall be erected on any lot having less than the following minimum areas:

- a) Not less than 2750 square feet for a one-story dwelling.
- b) Not less than 2300 square feet for the first floor of a one and one-half story dwelling and not less than 3000 square feet for both the first and second floors combined.
- c) Not less than 2300 square feet for the first floor of a two-story dwelling and not less than 3000 square feet for both the first and second floors combined.

2.1.3 The maximum total floor area of a Home or structure within the Subdivision shall not exceed that permitted under the floor area ratio regulations for the city's zoning code.

2.1.4 Minimum area square footage calculations shall be made from the outside face of exterior wall construction and include all walls. Window, fireplace and room projections are included only when they project to the floor. Areas not included are decks, porches, garages, carports, attics, space labeled "optional" or "bonus", breezeways, sunrooms or similar additions. No floor area below finished yard grade shall be considered living area.

2.1.5 All attached garages shall be built at the same time as the private dwelling and shall be a minimum of three (3) cars and a maximum of five (5) cars.

2.2 LOCATION & SET BACK.

The Home, garage and detached accessory structure if applicable (including eaves, steps, overhangs, and attached porches, patios and other appurtenances) must be located within the "building envelope" for that Lot, as displayed on the Plat.

2.3 BUILDING MATERIALS AND REQUIREMENTS.

No used materials will be permitted in the construction of any building in this Subdivision except such materials as reclaimed brick or timbers, which will enhance the appearance of the building of which they will become a part of. There shall be a continuance of design on all sides of each dwelling. The front of each Home must contain 30% masonry, which may consist of brick, stone, cultured stone/brick, Dryvit and/or stucco. Side and rear elevations of the home's exterior siding shall consist of wood siding, cement board or LP siding, natural stone, cultured stone or brick, Dryvit and/or stucco. In no event shall any Home be sided with metal or vinyl siding. Aluminum soffits and fascia are not allowed. No exposed poured concrete or concrete block over eight (8) inches above grade shall be permitted on any Home. Foundation insulation shall be concealed with a concrete coating or ground-breaker material. The roofing of all Homes shall consist of fully dimensional asphalt shingles, wood

shakes or tile. Conventional (3 tab) asphalt shingles shall not be permitted. Developer shall have the right to approve other roofing materials if they are comparable quality or better suited to the approved building design. Window wraps and window grids must be used on all elevations. All Homes shall include an attached garage with a minimum of 500 square feet. Overhead doors shall not be front facing. Canted garages are permitted. Canted garages shall have a minimum cant of 30 degrees when paralleled to the road right of way.

COMPLETION OF IMPROVEMENTS.

The initial construction of improvements constituting a Home shall be completed within fifteen (15) months following the issuance of a building permit by the City.

2.4 LANDSCAPING; DRAINAGE & GRADING; RETAINING WALLS.

2.4.1 All landscaping shall be completed within 12 months following the issuance of the occupancy permit for the Home.

2.4.2 To avoid a substantial increase in surface water drainage onto adjoining Lots, the grading plan for each Lot must provide for adequate drainage of storm and surface water toward adjoining streets and ditches and away from adjoining Lots. Grading shall adhere to the master grading plan.

2.4.3 At the time of building permit application each Lot Owner shall submit a grading plan to the City of New Berlin for review and approval by the City Engineer. To provide proper stormwater drainage, grading on all lots will need to adhere to the Master Grading Plan (**Exhibit C**) on file at the City of New Berlin. The Developer is not responsible for providing any topsoil for any Lot.

2.4.4 Where fill is necessary on the building site to obtain the proper topography and finished ground elevation, it shall be ground fill, free of waste material, and shall not contain noxious materials that will give off odors of any kind, and all dumping of fill materials shall be leveled immediately after completion of the building. Any excess of excavation of earth shall be removed from the building site.

2.4.5 Retaining walls shall be built of stone, decorative C.M.U. or brick, and not of concrete block or unfaced poured concrete. The installation of retaining walls must comply with City requirements.

2.5 DRIVEWAY.

Each Lot shall be improved by the Lot Owner with a concrete or paving stone driveway extending from the street to the garage within 12 months following issuance of an occupancy permit for the Home. All driveways shall have a minimum of a five (5) foot setback from the Lot line.

2.5.1 Interference with intersections prohibited. At street intersections, a driveway shall not provide direct ingress or egress to or from the street intersection area and shall not occupy areas of the roadway deemed necessary by the City Public Works Superintendent for effective traffic control or for highway signs or signals.

2.5.2 Interference with street prohibited. No driveway apron shall extend out into the street further than the face of the curb or the edge of the paved portion. All driveway entrances and approaches shall be constructed in a manner that does not interfere with the drainage of streets, side or roadside areas or with existing structures on the right-of-way. Ditches

2.5.3 No more than one driveway entrance and approach shall be constructed for any lot or premises except when additional road accesses are approved by the City after being deemed by the City of New Berlin Public Works Superintendent to be necessary and feasible without undue impairment of safety, convenience and utility of the street.

2.5.4 Five feet from side lot lines. All driveways entering onto City roads shall be at least five feet off of the nearest side lot line at the point where the property line meets the City road right-of-way line unless otherwise approved by the City. Moreover, all driveways or portions thereof located within the right-of-way shall be at least five feet off of an imaginary line drawn perpendicular to the right-of-way line to the roadway pavement from the point where the nearest side lot line meets the right-of-way line unless otherwise approved by the City.

2.6.5 Lot owner liable for damage or injury. The lot owner shall assume all responsibility for any injury or damage to persons or property resulting directly or indirectly from construction or repair of driveway approaches or entrances.

2.6.6 Concrete surfacing of private driveways. Driveways shall not extend over the driveway culvert, or between the culvert and the traveled portion of the roadway. Driveway pavement installed within 10 feet from the traveled portion of the roadway shall have a rise of not more than six inches.

2.6 SWIMMING POOLS.

Below ground swimming pools are permitted, subject to City approvals.

2.7 FENCES AND RETAINING WALLS

Chain link fencing and masonry walls used in a fencing application are prohibited. Retaining walls shall be constructed of natural stone material or decorative block. Cinder block and poured concrete walls are prohibited unless the viewed side is clad with a decorative stone.

2.8 EXCEPTIONS

Lot 20 is exempt from this section.

2.9 ACCESSORY STRUCTURES.

Notwithstanding anything to the contrary set forth in this Declaration, one (1) detached structure, accessory only to a pool (pool houses), with a maximum of one thousand (1000) square feet of covered/impervious area shall be allowed. Structures shall not be constructed on any Lot prior to the commencement of construction of the single-family Home on such Lot. Accessory structures shall be setback 15' behind a line extending off either side of the rear elevation of the primary structure. Accessory structures shall match the color, architecture and construction standards of the primary structure set forth in section 2.3 of this declaration. Accessory structures may contain a rear facing overhead door. Access driveways to pool houses are not permitted. All Lot Owners are further advised that accessory structure construction is also subject to all applicable local ordinances and approvals.

2.10 STORAGE OF CONSTRUCTION MATERIALS.

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, unless required for backfilling, finish grading, or landscaping.

2.11 DEVELOPER APPROVAL

To ensure the conditions of this section are met, building and grading plans shall be submitted and approved by the Developer and/or HOA board prior to the submission of a building permit application.

3. HOMEOWNERS ASSOCIATION

3.1 CREATION AND PURPOSE OF HOMEOWNERS ASSOCIATION.

Developer has created, or will create, a nonstock, nonprofit Wisconsin corporation known as "Autumn Trace Homeowners Association, Inc." for the purposes of carrying out the rights, obligations, and duties of the Association as set forth in this Declaration. The Association shall operate in accordance with the Articles of Incorporation and Bylaws for the Association.

3.2 MEMBERSHIP.

3.21 Each Lot Owner shall automatically be a member of the Association and shall be entitled to 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.

3.22 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.

3.3 POWERS OF THE ASSOCIATION.

Without limitation, and in addition to those powers bestowed upon the Association in the Articles, Bylaws and Chapter 181 of the Wisconsin Statutes, the Association shall have the

following powers, in addition to any others which may be necessary or incidental to performance of all 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, 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, 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 operate the Association for the mutual use and enjoyment of all Lot Owners.

4. COMMON AREA EXPENSES AND ASSESSMENTS

4.1 SPECIAL AND GENERAL ASSESSMENTS.

4.1.1 The Association 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 Association 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.

4.1.2 “Special Assessments” may be made and levied by the Association 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.

4.1.3 “General Assessments” shall be made and levied by the Association 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, restoration, upkeep or operation of the Common Areas;
- 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;
- 6) All items subject to Special Assessments which have not been collected from a Lot Owner at the time payment of such item is due, provided that upon collection of the Special Assessment from that Lot Owner, all other Lot Owners shall receive an appropriate adjustment, reimbursement or credit on future General Assessments, as the Association may determine, for payments made under this paragraph;
- 7) All damages, costs, expenses and attorney fees incurred in, or in anticipation of, any suit or proceeding (whether administrative, legislative or judicial) which are not otherwise collected by Special Assessment;
- 8) Costs and expenses of services, if any, made available to all Lots and/or for any Common Areas;
- 9) Any other costs and expenses incurred by the Association in the fulfillment of its obligations under this Declaration for the benefit of all of the Lots.

4.1.4 The Association shall maintain separate books and records for General and Special Assessment accounts of the Lot Owners, as may be necessary, provided that all funds received from either assessment may be commingled and thereafter disbursed to pay any costs or expenses incurred by the Association which would be subject to General or Special Assessments.

4.1.5 The Board of Directors shall determine the estimated expenses of the Association and prepare an annual operating budget in order to determine the amount of the annual General Assessments necessary to meet the estimated common expenses of the Association for the ensuing year and shall forward a copy to each Lot Owner or one of the co-Owners of the Lot, prior to the annual meeting for the Association.

4.2 PAYMENT OF ASSESSMENTS; INITIAL MONTHLY ASSESSMENT.

4.2.1 Each Lot Owner shall promptly pay, when due, all General and Special Assessments levied by the Association against such Owner and his, her or their Lot, together with all costs, expenses and reasonable attorney fees incurred by the Association in collection of any delinquent assessment(s). All assessments shall become due as the Association may determine appropriate (in a lump sum or in installments with or without interest). Time is of the essence with respect to all payments. All co-Owners of a Lot shall be jointly and severally liable for all General and Special Assessments levied against the Lot, regardless of the type of tenancy, estate or interest in the Lot (whether as joint tenants, tenants-in-common, land contract purchaser(s) or seller(s), or otherwise). General Assessment shall be billed annually, or at such more frequent intervals as the Association determines from time to time. A late fee of \$25.00 may be assessed against each Lot Owner for each delinquent payment.

4.2.2 An initial General Assessment of \$250.00 for each Lot shall be due and payable at closing to fund operating expenses of the Association.

4.3 DELINQUENT ASSESSMENTS, INTEREST, LIEN AND COLLECTION.

4.3.1 All General and Special Assessments which are not paid when due shall bear interest at the rate of 12% per annum until the assessment is paid in full; shall constitute a lien on the Lot; and shall be collectible and enforceable by the Association by suit against the Lot Owner, by foreclosure of the lien, and/or in any other manner or method provided under this Declaration or laws of the State of Wisconsin. The lien granted hereunder shall also cover and include all interest accruing on delinquent assessments, plus costs, expenses and attorney's fees for collection.

4.3.2 The Association shall have the exclusive right and power to collect or enforce collection of all General and Special Assessments and shall further have the exclusive right to bring any and all actions and proceedings for the collection thereof and/or the enforcement of liens arising therefrom. The Association may bring an action at law against any Lot Owner personally to collect such assessments and/or to foreclose the lien for such assessments against the Lot (in the same manner and method as an action to foreclose a real estate mortgage). The Board shall have the right at any time to notify all Lot Owners within the Subdivision of the delinquency of any Lot Owner.

5. RULES AND REGULATIONS.

The Association may from time to time adopt or change rules and regulations (hereafter “Rules and Regulations”) governing the operation, maintenance and use of the Common Areas by the Lot Owners and their respective families and guests. Such Rules and Regulations shall be designed to facilitate and encourage the peaceful use and enjoyment of the Common Areas by the Lot Owners and their respective families, without unduly interfering with the peaceful use and enjoyment of the surrounding Lots. All Lot Owners, lessees, licensees, invitees, other occupants, and guests of any Lot in the Subdivision shall abide by all such Rules and Regulations. A violation of any Rule or Regulation shall be a violation of this Declaration and may be enforced in the same manner as any other term or provision of the Declaration or as otherwise may be designated in the Rule or Regulation, including without limitation the imposition of forfeitures, penalties, or other charges against the Lot Owner, which shall be collectible by Special Assessment against the Lot and Lot Owner.

6. DETENTION BASIN/POND ON OUTLOT

6.1 CONSTRUCTION.

Developer has or will construct, on Outlot 1, 5 detention basins/ponds (“Pond”) in accordance with the plans and specifications approved by the City.

6.2 MAINTENANCE.

The Association shall, at its expense, provide normal and customary cleaning and maintenance to the Ponds on Outlot 1, which may include, but is not limited to, weed and algae control, dam stabilization, outlet structure (including trash rack), dredging and biological control. If, in the opinion of the City, the Association fails to maintain the Pond the City is authorized to give the Association written notice requiring it, within thirty (30) days thereafter, to cure the failure and to maintain and to provide the required care. If the Association fails to comply with the demands of the notice, the City shall have the right to provide the required maintenance and shall have the right to charge the Lot Owners and/or the Association on a pro rata basis for any costs incurred by the City as a result of such maintenance. Said costs shall be assessed as special charges pursuant to Section 66.0627, Wis. Stats. If such charges are not paid by any Lot Owner within the period fixed by the City, such charges shall become a lien upon the Lot Owner’s Lot as provided in Section 66.0627, Wis. Stats., and shall be extended upon the tax rolls as a delinquent tax against the Lot Owner’s Lot as provided in Section 66.0627, Wis. Stats.

6.3 DREDGING.

Dredging of the Pond requires approval from the Wisconsin Department of Natural Resources (“WDNR”), under Section 30.20 Wisconsin Statutes.

6.4 ADDITION OF CHEMICALS.

The application of EPA/State Registered Chemicals to detention basins/ponds or lakes is regulated by the WDNR. With few exceptions, a permit must be filed with, and approved by the

WDNR, prior to chemical treatment. In certain circumstances, a representative of the Department will monitor or supervise the chemical treatment. The Association shall contact the WDNR and obtain all necessary permits and approvals prior to introducing any chemicals into the Pond.

6.5 INSPECTIONS & RECERTIFICATION.

The Pond shall be inspected and recertified by an independent engineer or licensed land surveyor to confirm that it complies with the original design standards within two (2) years from the date of its construction and every five (5) years thereafter. Any deficiencies shall be corrected immediately. The City Engineer shall be notified three (3) working days in advance of the inspection and no more than five (5) working days after corrections have been made. A written report, not limited to photographs or diagrams of the deficiency and corrections with the certification, shall be submitted to the City Engineer for review and approval. Specific areas shall include, but not be limited to:

- 1) Pond Containment Berms are Stable and Free of Animal Burrowing's
- 2) Detention Storage
- 3) Erosion
- 4) Vegetative Cover
- 5) Sediment Accumulation
- 6) Trash Rack/Culvert Functions
- 7) Outlet Flow

7 NOTICE TO CITY ENGINEER.

The City Engineer has the authority to stop work, amend, or alter remediation measures to the Pond. Failure to comply may result in the issuance of a municipal citation in an amount prescribed by law, and the costs to prosecute for each violation. Each day a violation exists shall constitute a separate offense.

7. DECLARATION OF EASEMENTS

7.1 RESERVATION BY DEVELOPER OF RIGHT TO GRANT EASEMENTS.

Developer hereby reserves the right to grant and convey easements to the City and/or to any public or private utility company upon, over, through or across those portions of any Lot in the Subdivision within 20 feet of any front, rear, side or side street Lot line for purposes of allowing the City or utility company to furnish gas, electric, water, sewer, cable television or other utility service to any Lot(s) or through any portions of the Subdivision or for purposes of facilitating drainage of storm or surface water within or through the Subdivision. Such easements may be granted by Developer, in its own name and without the consent or approval of any Lot Owner, until such time as Developer has conveyed legal title to all Lots platted or to be platted in the Subdivision.

7.2 GENERAL COVENANTS.

The Lots in the Subdivision are subject to all other applicable recorded easements and restrictions. 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.

7.3 ENVIORNMENTAL CORRIDOR RESTRICTIONS

Those areas identified as a wetland/secondary environmental corridor/natural area preservation area on the "Autumn Trace" subdivision plat shall be subject to the following restrictions:

- a. Grading, filling and removal of topsoil or other earthen materials are prohibited, unless specifically authorized by the City of New Berlin and, if applicable, the Waukesha County Department of Parks and Land Use, the Wisconsin Department of Natural Resources and the Army Corp of Engineers
- b. The removal or destruction of any vegetative cover, i.e., trees, shrubs, grasses, etc., is prohibited, with the exception that invasive, dead, diseased, or dying vegetation may be removed, at the discretion of the landowner, and with approval of the City of New Berlin and the Waukesha County Department of Parks and Land Use (if applicable), silvicultural thinning, upon the recommendation of a forester or naturalist and with approval from the City of New Berlin and Waukesha County Department of Parks and Land Use (if applicable), shall also be permitted. the removal of any vegetative cover that is necessitated to provide access or service to an approved building or structure shall be permitted only when the access or service cannot be located outside of the wetland or secondary environmental corridor and only with approval from the City of New Berlin and Waukesha County Department of Parks and Land Use if applicable).

- c. Grazing by domesticated animals, i.e., horses, cows, etc, is prohibited, unless grazing is conducted in order to manage invasive vegetation and approval is obtained by the City of New Berlin plan commission.
- d. The introduction of plant material not indigenous to the existing environment of the wetland or secondary environmental corridor is prohibited, unless specifically authorized by the City of New Berlin and, if applicable, the Waukesha County Department of Parks and Land Use, the Wisconsin Department of Natural Resources and the Army Corps of Engineers.
- e. Ponds may be permitted subject to the approval of the City of New Berlin and if applicable the Wisconsin Department of Natural Resources and the Army Corps of Engineers.
- f. The construction of buildings is prohibited.

8. MISCELLANEOUS

8.1 LOT OWNER'S LACK OF AUTHORITY TO BIND ASSOCIATION.

No Lot Owner (other than the officers of the Association) shall have any authority to act for the Association or the other Lot Owners, as agent or otherwise, nor to bind the Association or the other Lot Owners to contracts, negotiable instruments or other obligations or undertakings of any kind.

8.1.1 Notice to Lot Owners related to City and County ordinances. The Developer, its successors and assigns, and all parties hereafter having an interest in the Property, are subject to all rules, codes, regulations, and ordinances of the City of New Berlin, Waukesha County, the State of Wisconsin and the federal government, and the same may be more restrictive than these Declarations. In the event there is a conflict between the requirements of these Declarations and any provision of the City, County, State or federal law or regulation, the more restrictive provisions shall apply.

8.2 SERVICE OF PROCESS.

Service of process upon the Association for all matters shall be made upon the President of the Association or such legal counsel as the Association may designate to receive service of process by recording such designation with the Register of Deeds for Waukesha County, Wisconsin.

8.3 ENFORCEMENT OF DECLARATION: NO REVERSION OF TITLE.

8.3.1 The Association shall have the exclusive right to enforce, by proceedings at law or in equity, all the terms, conditions, and provisions of this Declaration and any Rules or Regulations adopted by the Association, except that any Lot Owner may proceed, at such Owner's expense, to enforce any such terms, conditions or provisions (other than for collection of assessments against Owners of other Lots) if the Association fails to take such action within 60 days following a written request by such Lot Owner for the Association to do so. Any Lot Owner violating any of the terms, conditions or provisions of this Declaration or any Rules and Regulations shall pay all costs, expenses and actual attorney's fees incurred by the Association or by a prosecuting Owner in the successful enforcement thereof. Neither the Association, nor any member, director or officer thereof, shall be subject to any suit or claim by any Lot Owner for failure of the Association to take any action requested by a Lot Owner.

8.3.2 Each remedy set forth in this Declaration and/or in Rules and Regulations shall be in addition to all other rights and remedies available at law or in equity. All such remedies shall be cumulative and the election of one shall not constitute a waiver of any other. Any forbearance or failure of the Association to exercise any such right or remedy for any violation shall not be a waiver of such right or remedy under any circumstances (except as specifically provided in this Declaration) unless a written waiver is obtained from the Association.

8.3.3 Under no circumstances shall any violation of this Declaration or of any Rule and Regulation result in any reverted or reversion of title to any Lot.

8.4 SEVERABILITY.

The invalidity or unenforceability of any term, condition or provision of this Declaration shall in no way affect the validity or enforceability of any other term, condition, or provision of this Declaration, all of which shall remain in full force and effect.

8.5 COVENANTS RUN WITH LAND.

All terms, conditions and provisions of this Declaration (and as may be amended) shall constitute covenants running with the land.

8.6 AMENDMENTS TO DECLARATION.

This Declaration may be amended by recording in the office of the Register of Deeds for Waukesha County, Wisconsin, a document to that effect, which has been approved by the City Board and executed by the owners of at least 75% of all Lots in the Subdivision, and their mortgagees, with all signatures duly notarized. Such amendment shall become effective only upon recording. Notwithstanding the foregoing, this Declaration may not be amended without the express written consent of Developer prior to the date Developer has sold the last Lot owned by Developer.

8.7 TERM OF DECLARATION.

This Declaration (and any amendments) shall be binding for a period of 20 years (from the date the Declaration is recorded) upon all Lot Owners and any other persons claiming under or through the Developer. Upon the expiration date of such initial 20-year period, this Declaration shall be automatically renewed for a successive period of ten (10) years and thereafter for successive periods of ten (10) years upon the expiration date of the prior renewal period, unless there is recorded an instrument, approved by the City Board and executed by the Owners of at least 75% of all Lots in the Subdivision and their mortgagees, terminating this Declaration, in which event this Declaration shall terminate upon the recording of such instrument of termination or expiration of the initial 20-year term, whichever occurs later.

8.7.1 This section does not terminate, and shall not be interpreted to authorize termination of, any drainage easements, pond maintenance requirements, or other restriction herein that affects an interest in real estate while the record title to the real estate or an interest in the real estate remains in the State of Wisconsin or a political subdivision or municipal corporation of the State of Wisconsin, including the City, and the duration of any such restriction shall be unlimited and perpetual, unless terminated by the benefitted political subdivision by recorded document.

8.8 INTERPRETATION.

These Declarations shall be construed and interpreted in favor of restricting the use of each Lot consistent with the purposes hereof and any ambiguity shall be resolved against any Lot Owner who installs any structure or engages in any activity not clearly authorized under these Declarations or approved in writing by the Board.

IN WITNESS WHEREOF, this instrument has been duly executed as of the day, month and year first above written.

By: _____

ACKNOWLEDGMENT

STATE OF WISCONSIN)

)SS.

WAUKESHA COUNTY)

Personally came before me this ____ day of __, 2020, the above-named Ryan Janssen, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Print Name: _____

Notary Public, _____ County, WI

My commission expires _____

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B
SUBDIVISION PLAT

EXHIBIT C
MASTER GRADING PLAN