

Document Number	<b>DECLARATION OF RESTRICTIONS AND COVENANTS</b>  Document Name	
		Recording Data Name and Return Address Joe A. Goldberger North Shore Legal 13460 N. Silver Fox Drive Mequon, Wisconsin 53097
		Tax Key Nos.

**DECLARATION OF RESTRICTIONS AND COVENANTS**

**FOR**

**FARMDALE ESTATES**

**DECLARATION OF RESTRICTIONS AND COVENANTS  
FOR  
FARMDALE ESTATES  
MEQUON, WISCONSIN**

This Declaration is made this \_\_\_ day of \_\_\_\_\_, 2019 by Farmdale Estates, LLC, a Wisconsin limited liability company (hereinafter the “Developer”).

**RECITATIONS**

WHEREAS, Developer owns the lands located in the City of Mequon, Ozaukee County, Wisconsin, described on Exhibit A attached hereto (the “Subdivision”):

WHEREAS, the Developer has caused the final plat of Farmdale Estates (the “Subdivision”), to be platted and recorded as a subdivision consisting of six (6) lots, and certain Common Areas hereafter defined;

WHEREAS, Developer desires to subject the residential lots as platted within the Subdivision, as well as all other portions of 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 for the purpose of creating a desirable use of the land within the Subdivision in an aesthetically pleasing residential environment;

**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, users and owners in interest.

**DEFINITIONS; PURPOSE & USE RESTRICTIONS**

1.01 DEFINITIONS.

- a) “Architectural Board,” “Board,” or “Board of Directors” shall mean the officers of the Association appointed or elected in accordance with Section 3 of this Declaration who shall serve as members of the Architectural Board and shall operate and manage the Association as a Board of Directors. The term “Board” as used herein, shall refer to each of the Architectural Board and the Board of Directors.
  
- b) “Assessment” shall mean any General or Special Assessment as provided for in this Declaration.

- c) “Association” shall mean Farmdale Estates Homeowners Association, Inc. a nonprofit, non-stock homeowner’s association, which shall be created pursuant to this Declaration and the laws of the State of Wisconsin.
- d) “Bylaws” shall mean the bylaws of the Association, as amended from time to time.
- e) “City” shall mean the City of Mequon.
- f) “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 and improvements thereto which may be 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 all Common Areas shall vest in the Association upon its formation by execution and filing of the Articles of Incorporation and no further conveyancing document shall be necessary to vest title to the Common Areas in the Association.
- g) “Declaration of Restrictions” shall mean the Farmdale Estates Declaration of Covenants Restrictions as recorded in the office of the Register of Deeds for Ozaukee County, Wisconsin.
- h) “Developer” shall mean Farmdale Estates, LLC, a Wisconsin limited liability company.
- i) “Developer Landscaping” shall mean all landscaping performed by the Developer on or with respect to the Common Areas and to certain Lots in the Subdivision.
- j) “Development Agreement” shall mean the Development Agreement entered into between Developer and the City, recorded as Document No. \_\_\_\_\_.
- k) “Family” shall mean one or more persons who are living, sleeping, cooking and eating on the premises as a single housekeeping unit but shall exclude any person or group of persons occupying such premises where three or more of such persons (other than household employees) are not related by blood, marriage or adoption.
- l) “Home” shall mean a residential building designed and used as a dwelling for one Family (which shall not include any attached garage).
- m) “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 other Common Area or Outlot.
- n) “Lot Owner,” “Lot Owners”, “Co-Owners” or “Owner” 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 if in possession, but shall not include the holder of any leasehold interest or any mortgage or consensual lien

prior to acquisition of legal or equitable title.

o) "Property" shall include a Lot and all improvements thereto.

p) "Roadway" shall mean the private, common driveway providing access to the Subdivision from Farmdale Road and to each Lot.

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

r) "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: buildings, outbuildings, sheds, tents, booths, garages, car-ports, above ground storage facilities, parking areas, exterior lighting or electric fixtures, antennas, towers, poles or bug control devices; fences, retaining or other walls, fountains, above or in-ground swimming or wading pools; plantings; driveways, sidewalks or walkways; pet kennels or run lines, screened or other types of porches, patio or gazebos, tree houses or other exterior play equipment including skateboard ramps, any and all forms of landscaping, 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 concealed 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.

s) "Subdivision" shall mean the lands described on the attached Exhibit A, excluding lands now or hereafter dedicated to the City.

## 1.02 GENERAL PURPOSE.

The general purpose of this Declaration is to help assure that the Subdivision will become and remain an attractive and safe 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 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 Lots; 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 INTERPRETATION

It is expected that the enforcement of this Declaration of Restrictions and its provisions will, from time to time, be subject to interpretation. In those instances where an interpretation of the provisions of this Declaration of Restrictions is required because there is no definitive rule or procedure to be followed, or because this is a question regarding an intangible concept, for example the determination of whether a proposed Structure is “harmonious” or “aesthetically pleasing”, the interpretation shall be made by the Architectural Board and that interpretation shall be binding upon the Lot Owner.

### 1.04 GENERAL RESTRICTIONS ON USE OF LOTS AND HOMES.

- 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 and permitted by the Zoning Code of the City for Lots in single family residential zoning districts. The term “residential purposes” shall include only those activities necessary for or normally associated with the use and enjoyment of a building designed as a dwelling for one family 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 members or guests without the prior written 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 so maintained, the Association may perform yard maintenance, charge the costs there to the Lot Owner and levy as 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 Property nor shall any activity be permitted or engaged in which constitutes a public or private nuisance.
- e) Each Lot and the Improvements constructed thereon shall be used in compliance with all the provisions of this Declaration.

### 1.05 USE AND MAINTENANCE OF COMMON AREAS: IMPROVEMENTS IN RIGHT OF WAYS.

- 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 Association (which approval, if given, may be revoked at any time).

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

c) The Association shall maintain all Common Areas so as to be neat and attractive in appearance. No Lot Owner shall erect any structure or improvement in the Common Areas.

d) The Association shall maintain the Roadway, including snow removal, maintenance and repairs.

1.06 RESTRICTIONS ON USE OF TRUCKS, TRAILERS, BOATS AND RECREATIONAL VEHICLES.

Recreational Vehicles (which shall include snowmobiles, trail bikes, travel trailers, vans, motor homes, dune buggies and other off-street motorized vehicles of any kind), trucks and motorcycles shall not be parked, kept or stored on any Common Area or undeveloped area of the Subdivision, nor shall any such Recreational Vehicle, truck or motorcycle 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). Recreational Vehicles and motorcycles 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 they are 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 prior to prompt collection 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 and if such burning is in compliance with local ordinances.

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 and will install substantial landscaping improvements. The Developer Landscaping may , but is not required to include various hedge and screen plantings, berms,

trees, shrubbery, entrance landscaping and monuments or signs, and related landscaping which are to be constructed and/or planted by the Developer on certain Lots and Common Areas in the Subdivision.

a) This Declaration hereby grants an easement upon, across, over and through all of the Lots and Common Areas of the Subdivision, for the purpose of allowing Developer and its agents ingress and egress in order to accomplish the construction or planting of any of the Developer 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 has been completed.

b) Each Lot Owner shall be responsible for maintaining and repairing the Developer Landscaping, (if any), which has been constructed or planted on such Owner's Lot. Such responsibility shall include, but not be limited to, the seeding, watering, and mowing of all lawns, the pruning, cutting and replacement of all trees and shrubbery to maintain the 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 replace, repair and maintain 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 replace, repair and maintain Developer Landscaping. The Association shall thereafter have the right, pursuant to the provisions of Section 4.09 hereof, to levy a Special Assessment against the Lot Owner involved for the costs of such replacement, maintenance and repairs performed by the Association.

c) The Association shall be responsible for maintaining and repairing the Developer Landscaping constructed and or planted on Common Areas. 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 Common Area landscaping in an attractive condition. 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 Common Area 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 4.09 hereof.

d) All easements and rights described in this Section 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 – ARCHITECTURAL CONTROL**

### **2.0 ARCHITECTURAL CONTROL.**

No building, swimming pool, gazebo, fence, wall, driveway, tennis court, light post, landscaping or other structure or improvement shall be constructed, erected, placed, altered or maintained on any Lot in the Subdivision without the approval of the Architectural Board. For any undertaking requiring the approval of the Architectural Board, three sets of plans [including construction plans with roof, siding and trim colors, site plans, grading plans (where necessary) and landscaping plans, including driveway location] shall be submitted to the Architectural Board. If and when plans are approved, two sets of the approved plans shall be signed, dated and returned by the Architectural Board to the Lot Owner as evidence of such approval. Any minor changes or revisions required by the Architectural Board may be noted as an exception to the approval on the plans and detailed in a letter to the Lot Owner. The Architectural Board may also request that revisions be first made to the plans by the owner's agent before approval is given. Once the Architectural Board has granted approval, all such approved plans shall be strictly adhered to by the Lot Owner, unless subsequent changes are approved, in writing, by the Architectural Board. The Architectural Board shall consist of one to three members, appointed by the Developer, until such time as a single-family home has been constructed on each Lot. Thereafter, the number of and members of the Architectural Board shall be determined by the Association.

In approving or disapproving proposed plans and specifications, the Architectural Board may take into consideration the suitability of the proposed building or other structure or improvement, its design, elevation, color, construction materials, its harmony with surrounding buildings, its proposed location on any Lot, the view from other properties in the Subdivision, and such other matters of terrain, environmental impact, aesthetics, and the impact of the proposed plans on other Lots in the Subdivision. The Architectural Board shall have the right to waive minor infractions or deviations from these restrictions in the case of hardship and/or in furtherance of the intent of these restrictions. Any determination of the Architectural Board shall be final and conclusive as to all persons then or thereafter owning Lots covered by these restrictions. The Architectural Board shall not be liable for actions taken, plans approved or disapproved, provided such acts or decisions are made in good faith.

**ANY LOT OWNER WHO CAUSES OR ALLOWS ANY IMPROVEMENTS TO BE CONSTRUCTED, INSTALLED, MAINTAINED OR ALTERED WITHOUT THE PRIOR WRITTEN APPROVAL OF THE ARCHITECTURAL BOARD MAY BE REQUIRED TO REMOVE SUCH IMPROVEMENT IN ITS ENTIRETY AT THE LOT OWNER'S EXPENSE.**

In addition to the requirements of these restrictions, all construction shall comply with applicable zoning and building code requirements. The Developer and/or the Architectural Board shall have no liability or responsibility in the event it approves plans which fail to comply with applicable zoning or building codes and/or which fail to properly handle site drainage. It is the sole responsibility of the Lot Owner to determine compliance with all applicable zoning and building codes and to obtain all necessary governmental and quasi-governmental approvals prior to the commencement of

construction. The Lot Owner shall obtain the approval of the Architectural Board prior to seeking governmental approvals and, in the event that such governing authority requires changes to plans subsequent to approval by the Architectural Board, such changes shall require the written approval of the Architectural Board prior to the commencement of construction.

It is specifically intended that the architectural provisions herein set forth shall provide for the compatibility of architectural styles amongst the various homes that are in close visual proximity, while at the same time avoiding the monotony caused by the duplication of styles. Toward this end, the Architectural Board may evaluate and approve the use of a particular style of home on any given Lot in the Subdivision. In granting that approval, the Architectural Board may consider the proposed residence in relation to the existing homes or previously approved homes that will be built in close visual proximity to the proposed residence.

## 2.01 ARCHITECTURAL STYLES AND BUILDING MATERIALS.

- a) The Architectural Board appointed pursuant to this declaration, shall encourage the use of architectural styles which are compatible with the surrounding structures and consistent with the topography and nature of the Subdivision. The Architectural Board shall encourage the use of qualified home designers and registered architects, or other equally qualified individuals or firms. The Architectural Board shall discourage and may prohibit the use of architectural styles which it deems unsuitable for the subdivision.
- b) The exterior of all Structures shall be constructed of all-natural building materials such as wood, brick, stone, stucco or a combination thereof. In no event shall the exterior of any Structure consist of metal or vinyl siding, however, “Hardiplank” or similar materials may be used.
- c) The front exterior elevation of residences shall be at least thirty percent (30%) brick, stone or stucco. Exposed poured concrete block foundation walls shall not exceed 12 inches as measured vertically on any residence or accessory structure. Where block or concrete would otherwise be exposed, the exterior material must be extended to within 12 inches of grade.
- d) The roofing on all dwellings shall consist of wood shakes, slate or forty (40) year dimensional asphalt shingles as approved by the Architectural Board. The Architectural Board, in its sole discretion, may permit or prohibit the use of other types of roofing having substantially the same appearance as the permitted materials, as it may deem appropriate, to preserve the architectural integrity and quality of appearance of dwellings in the subdivision. Further, the Architectural Board may permit the use of other high quality roof materials which it deems aesthetically pleasing and architecturally appropriate, including but not limited to masonry, metal and/or copper.
- e) All homes must have a fireplace. Direct vent fireplaces are permitted. All chimneys, whether located on an interior or exterior wall, shall be brick, stone or masonry faced

with stucco.

The Architectural Board shall have the exclusive right to approve the architectural style and the building materials used and any decision of the Architectural Board shall be final and conclusive.

## 2.02 MINIMUM LIVING AREA AND OTHER REQUIREMENTS.

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

- a) Each Home shall have a minimum living area (exclusive of basement, attic, garage, patios and storage areas):
  - i) not less than 2800 square feet for a one story Home;
  - ii) not less than 3200 square feet for a two-story Home with a minimum of 1900 square feet on the first floor.;
  - iii) no bi-level or tri-level homes shall be permitted.
- b) Each Home shall have a basement with a finished floor (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) or forty-two feet in height above finish grades, whichever is less.
- d) The roof of each Home shall be pitched to rise at least eight (8) inches vertically for each twelve (12) inches horizontally.
- e) An attached enclosed garage (for at least three and not more than four cars) shall be constructed at the time of construction of the Home and all exterior portions of the garage shall be completed prior to occupancy of the Home. The garage door may not face the same street that the front door of the Home faces. For any garage which is for three or more cars, the garage doors shall be broken into two or more planes.
- f) Lot Owner shall install, at the Lot Owner's expense, one front yard lamppost with photoelectric control and a mailbox. The style of mailbox and of the lamppost and lamp shall be consistent for each Lot and shall be designated by the Architectural Board. The Lot Owner shall complete the installation of the mailbox and front yard lamppost within Ninety (90) days of the issuance of the occupancy permit.

## 2.03 LOCATION: SETBACKS.

- a) No Home or garage (including eaves, steps, overhangs, and attached porches, patios and other appurtenances) shall be located on any Lot:
  - i) no building shall be closer than 100 feet to the ultimate right-of-way line of

- any public street, road, or highway upon which the property abuts;
- ii) no building shall be closer than 30 feet to the side or rear lot line;
- iii) buildings or structures housing livestock shall not be erected closer than 50 feet to a side or rear lot line at any point;
- iv) not more than 5% of the lot may be covered by buildings or structures.

Each corner Lot shall be determined by the Architectural 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. Setback requirements for lots abutting or containing wetlands may have setbacks greater than those set forth in this Section 2.03(a).

- 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 Architectural Board in any respect.
- c) Notwithstanding the setback 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 Architectural Board prior to any construction, it being intended that the Architectural Board may, at 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 Architectural Board deems advisable.
- d) The Architectural Board may, in its discretion, permit Improvements (other than the Home and garage) to be constructed, installed and located on a Lot provided, such permission must be in writing to be effective and may be granted by the Architectural Board. Said Improvements may include, but not be limited to, in-ground swimming pools, if they meet City ordinances and specifications, (above-ground swimming pools are expressly prohibited); accessory building(s) provided that such accessory building be constructed, (and maintained), of the same materials, architectural style and color as the Home. The approval of a fence, swimming pool or accessory building on any given Lot shall not obligate the Architectural Board to approve any such Improvement on any other Lot.

## 2.05 LANDSCAPING AND DRAINAGE.

- a) No later than six (6) months following issuance of an occupancy permit for a Home, the landscaping plan for the entire Lot as approved by the Architectural Board shall be implemented, installed and completed. The Architectural Board shall encourage the use of native plants and a natural landscape appearance. The Architectural Board shall discourage the use of formal gardens.
- b) No fence, wall, hedge, or screen planting shall be installed unless approved in advance by the Architectural Board under Section.
- c) Each Lot Owner is responsible for compliance with Master Grade Plan as established

by the City of Mequon.

2.06 DRIVEWAY.

Each Lot shall be improved by the Lot Owner with a asphalt, paving stone driveway or concrete driveway, extending from the Roadway abutting the Lot to the garage within six (6) months following issuance of an occupancy permit for the Home. A plot plan showing the location of the drive shall have been submitted to the Architectural Board for its prior approval in accordance with this Section.

2.07 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 Architectural Board, unless required for finish grading or landscaping.

2.08 WIRES AND ANTENNAS.

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 Architectural 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 Architectural Board.

2.09 SIGNS.

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 Architectural 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 Architectural Board may approve for placement on those Lots for the purpose of advertising Farmdale Estates Subdivision.

## **THE ASSOCIATION**

3.01 CREATION OF ASSOCIATION.

The Developer hereby creates and shall incorporate as a Wisconsin non-profit corporation a homeowner's association to be known as "Farmdale Estates Homeowners Association, Inc." with all rights, powers, privileges and obligations as provided in this Declaration and the Articles of Incorporation and By-Laws of the Association.

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 in the Lot and then only to the transferee. Membership and/or voting rights shall not 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) A Lot Owner shall not be entitled to vote on a matter if any Assessment against the Lot is then delinquent.
- c) 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) An annual meeting of the Association shall be held each year for the purpose of electing officers and transacting any other business authorized to be transacted by the Association. The Board of Directors 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 4.05(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 Lot 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. 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 all duties or powers of the Association specified in this Declaration:
  - i) to levy and enforce payment of Assessments on the Lots and against Lot Owners;
  - ii) to enforce this Declaration and, without limitation, to accept, own and maintain the Common Areas;
  - iii) 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;

- iv) to enter and execute contracts, deeds, mortgages and documents on behalf of the Association which relate to any Common Area or Improvements thereof;
- v) to incur indebtedness on behalf of the Association and to execute drafts and other negotiable instruments;
- vi) to employ the services of any person, firm, or corporation to maintain the Common Areas, or to construct, install, repair or rebuild Improvements thereon;
- vii) 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;
- viii) 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;
- ix) 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
- x) 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. 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 to exercise of any powers or obligations of the Association or of the Board under this Declaration.

3.07

MANAGEMENT OF ASSOCIATION BY THE BOARD OF DIRECTORS:  
ARCHITECTURAL BOARD.

- a) The Association and its business, activities and affairs shall be managed by the Board of Directors (which shall consist of all the officers of the association). The Board of Directors shall exercise and perform, in addition to the powers, duties and obligations specified in this declaration for the Board of Directors, 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 all Lots have been sold and fee simple title conveyed by Developer, (except for sale of Lots to Farmdale Estates, LLC which shall not be deemed sales by the Developer for

purposes of this Section 3.07(a), at which time, all officers of the Association shall be elected by the members of the Association.

- b) The Architectural Board shall exercise and perform all of the powers, duties and obligations specified in this Declaration for the Architectural Board. All officers of the Association then in office shall be members of the Architectural Board and no other person may be a member of the Board. Notwithstanding anything aforesaid to the contrary, the Developer shall be entitled to appoint all members of the Architectural Board until such time as all of the Lots have been sold and fee simple title conveyed by the Developer (except for sales to Farmdale Estates, LLC which shall not be deemed to be sales by the Developer for purposes of this Section 4.07(b), at which time the members of the Architectural Board shall be the officers of the Association. Except where otherwise expressly stated, the following provisions of this Section 4.07 shall apply to each of the Board of Directors and Architectural Board.
- c) 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 (who need not be Lot Owners or a Co-Owner), only a Lot Owner or Co-Owner of a Lot shall be eligible to serve as an officer and member of the Board. Each member of the Board shall serve and hold office until a successor is elected or appointed to such office. A Board Member may be both President and Secretary and another Board Member may be both Vice President and Treasurer, such that the Board may have only Two (2) members.
- d) 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 only by Developer and a successor may then be appointed by Developer.
- e) Vacancies in any officer position and on the Board (caused other than by removal under Section (d) 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.
- f) 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.
- g) 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.

h) 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.

i) 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.

j) 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.

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

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

m) No person shall receive any payment for services rendered as an officer of the Association or as a member of the board or 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.

n) 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 an 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.

o) All decisions of the Board on any matter (including, without limitation, decisions under Section 2) 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.

p) The Board of directors may require that some or all officers and/or employees of the Association handling or responsible for Association funds furnish 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:

i) a President, who shall: be the chief executive officer of the Association and a member of the Board of Directors and the Architectural Board; be responsible for the proper execution of the business and affairs of the Association (subject to the control of the Board of Directors); 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.

ii) a Secretary, who shall: be a member of the Board of Directors and the Architectural 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 Boards 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.

iii) a Treasurer, who shall: be a member of the Board of Directors and the Architectural 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 of Directors; assess and collect all General and Special Assessments made by the Board of Directors; and exercise such other powers and duties as may be prescribed from time to time by resolution of the Association.

iv) 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 or by appointment of Developer; however, it is not required that the Association have one or more Vice Presidents. A Vice President, if any, in addition to serving on the Board of Directors and the Architectural Board, shall have such other powers, duties and responsibilities 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 COMMON EXPENSES AND ASSESSMENTS AGAINST LOTS AND LOT OWNERS.

- a) At the time of Closing of the purchase of any Lot by any Owner, the Owner shall pay to the Association the sum of \$1000.00 as an initial deposit for the benefit of the Association.
- b) The Board of Directors shall pay or arrange for payment for all costs, expenses and liabilities incurred by the Association out of the proceeds of all General and Special Assessments (herein collectively referred to as "Assessments") which shall be made against the Lot Owners and their Lots. The Board of Directors may, at any time, levy Assessments for such purposes against the Lot Owners and their Lots.
- c) "General Assessments" may be made and levied by the Board of Directors equally against each Lot Owner and his, her or their Lot for the following "common expenses" which may be anticipated, incurred or paid by the Association for:
- i) maintenance, repairs, upkeep or operation of Common Areas, and any additional Common Areas (such as any contiguous real estate) as may be acquired by the Association;
  - ii) any insurance maintained by the Association;
  - iii) taxes, assessments and charges of any kind made or levied by any governmental authority against the Association or upon any property of the Association;
  - iv) 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;
  - v) costs and expenses for additional improvements to Common Areas beyond those installed by the Developer;
  - vi) all items subject to Special Assessment 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 Board of Directors may determine, for payments made under this paragraph;
  - vii) 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;
  - viii) costs and expenses of services, if any, made available to all Lots and/or for any Common Areas;
  - ix) all other costs and expenses declared to be common expenses under this

Declaration.

d) The Association shall maintain separate journals for General and Special Assessment Funds of the Lot Owners, as may be necessary, provided that all funds received from all Assessments may be commingled and thereafter disbursed to pay any costs or expenses incurred by the Association.

e) 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 Assessments necessary to meet the estimated expenses of the Association for the ensuing year and shall furnish a copy to each Lot Owner or one of the Co-Owners of the Lot. The Board of Directors may adjust the General Assessment at any time so as to insure that sufficient funds are available to cover all anticipated costs and to establish an adequate reserve for replacements.

e) At the closing of the purchase of any Lot, the purchaser shall pay \$500.00 to the Association as an initial membership fee. The initial membership fee shall be used to create an initial reserve fund for the Association and such initial reserve shall be used exclusively for the uses set forth in Section 4.09 hereof.

3.10 PAYMENT OF ASSESSMENTS.

a) Each Lot Owner shall promptly pay, when due, all Assessments levied by the Board of Directors 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. All Assessments shall become due as the Board of Directors may determine appropriate (in a lump sum or in installments with or without interest). Time is of the essence with respect to all payments. The amount of the Assessments, as well as the due dates for payment thereof may be adjusted from time to time as determined by the Board of Directors. Notwithstanding the foregoing, during the period of Developer control of the Association, (i.e. until the sale of 75% of the Lots), any Lot owned by the Developer (individually an "Unsold Lot" and collectively, the "Unsold Lots") shall be exempt from Assessments for Common Expenses until such Unsold Lot is sold. However, the Developer shall be liable for the balance of the actual common expenses until such time as the Developer has sold 75% of the Lots at which time Developer shall pay all Assessments and Special Assessments due on any Unsold Lot or Unsold Lots.

b) All Co-Owners of a Lot shall be jointly and severally liable for all 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).

3.11 DELINQUENT ASSESSMENTS: INTEREST, LIEN AND COLLECTION.

a) All Assessments which are not paid when due: shall bear interest at 18 percent per annum or at such other maximum rate as may then be permitted by law until the Assessment is paid in full; shall constitute a lien on the Lot; and shall be collectible and

enforceable by the Board of Directors (in its own name or the name of 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.

b) The Association (through the Board of Directors) shall have the exclusive right and power to collect or enforce collection of all Assessments levied by the Board of Directors 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 of Directors shall have the right at any time to notify all Lot Owners within the Subdivision of the delinquency of any Lot Owner.

### 3.12 RULES AND REGULATIONS.

a) The Association may from time to time adopt or change rules or regulations (hereafter "Rules or Regulations") governing the operation, maintenance and use of the Common Areas by the Lot Owners and their respective families and guests. Such Rules or 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.

b) 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/or Lot Owner.

c) Rules and Regulations shall be enforced by the Board of Directors but may not be enacted, amended, or repealed by the Board of Directors.

### 3.13 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.

### 3.14 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 Ozaukee County, Wisconsin.

3.15 ENFORCEMENT OF DECLARATION: NO REVERSION OF TITLE.

a) The Association (through the Board of Directors) 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 and subject to the limitations of Section 2, 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 or 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 the Board of Directors shall be subject to any suit or claim by any Lot Owner for failure of the Association or the Board of Directors to take any action requested by such Lot Owner against another Lot Owner.

b) Each remedy set forth in this Declaration and/or in Rules or 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 or the Board of Directors 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 provided in Section 2, unless a written waiver is obtained from the Board.

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

## **MISCELLANEOUS**

4.01 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 10 feet of any 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 to persons other than a successor-Developer.

4.02 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.

4.03 COVENANTS RUN WITH LAND.

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

4.04 AMENDMENTS TO DECLARATION.

This Declaration may be amended at any time by recording a document to that effect in the Office of the Register of Deeds of Ozaukee County executed (a) solely by the Developer until such time as the Developer shall no longer owns any Lot and thereafter (b) by Owners at least seventy-five (75%) of the Lots, except that no amendment will be permitted without the express consent of the Developer as long as Developer owns any Lot.

4.05 TERM OF DECLARATION.

This Declaration (and any amendments) shall be binding for a period of twenty (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 twenty (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 (executed by the Owners of at least Sixty-Seven (67%) percent 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 twenty (20) year term, whichever occurs later.

4.06 INTEPRETATION.

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 which is clearly not authorized under these Declarations or approved in writing by the Board of Directors.

IN WITNESS WHEREOF, this Declaration of Restrictions is executed by Farmdale Estates, LLC as Developer, as of the date first written above.

**FARMDALE ESTATES, LLC**  
a Wisconsin limited liability company

By: The Victory Companies, of Wisconsin, Inc. a  
Wisconsin Corporation,

Its: Sole Member

By: \_\_\_\_\_  
John Stoker, President

**AUTHENTICATION:**

The signature of John Stoker was authenticated on \_\_\_\_\_, 2019.

\_\_\_\_\_  
Joe A. Goldberger  
Title: Member State Bar of Wisconsin

This Instrument was drafted by and return after recording to:

Joe A. Goldberger  
State Bar No. 1012616  
North Shore Legal  
13460 N. Silver Fox Drive  
Mequon, Wisconsin 53097  
(262) 241-1833  
[jagoldberger@nslalaw.com](mailto:jagoldberger@nslalaw.com)

# **EXHIBIT A**

## **Legal Description**