

*Prepared by and
Return to:*

*WENDY Stachowitz
MACHARLEY DEVELOPMENT, INC.
3104 MACHARLEY LANE
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1356012

LACROSSE COUNTY
REGISTER OF DEEDS
DEBORAH J. FLOCK

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DECLARATION OF CONDOMINIUM OWNERSHIP

AND OF

EASEMENTS, RESTRICTIONS AND COVENANTS

FOR

IRISH PINES CONDOMINIUMS

**DISCLOSURE OF MATERIALS
OF
IRISH PINES CONDOMINIUMS**

Town of Shelby, Wisconsin

Owner/Declarant: MacHarley Development, Inc.
3104 MacHarley Lane
La Crosse, WI 54601

Developer/General Contractor: MacHarley Development
3104 MacHarley Lane
La Crosse, WI 54601

Sales Agent: Jill Graewin
Gerrard Hoeschler
La Crosse, WI 54601

1. These are the legal documents covering your rights and responsibilities as a condominium owner. If you do not understand any provisions contained in them, you should obtain professional advise.
2. These disclosure materials given to you as required by law may be relied upon as correct and binding, oral statements may not be legally binding.
3. You may at any time within five (5) business days following receipt of these documents, or following notice of any material changes in these documents, cancel in writing the contract of sale and receive a full refund of any deposits made.

DISCLOSURE MATERIALS

INDEX

This disclosure materials the Declarant is required by law to provide to each prospective condominium purchaser contain the following documents and exhibits:

1. **Declaration.** The Declaration establishes and describes the condominium, the units and common areas. The Declaration is Exhibit C.
2. **Bylaws.** The Bylaws contain rules which govern the condominium and affect the rights and responsibilities of Unit Owners. The Bylaws is attached as Exhibit B.
3. **Annual Operating Budget.** The Association incurs expenses for operation of the condominiums which are assessed to the Unit Owners. The operating budget is an estimate of those charges which are in addition to mortgage and utility payments. The budget is attached as Exhibit E.
4. **Floor Plans and Map.** The Declarant has provided floor plans of the units being offered for sale and a map of the condominiums which shows the location of the unit you are considering and all facilities and common areas which are part of the condominium. The map and the floor plans are attached as Exhibit D.
5. **Owners Association.** The Unit Owners, acting collectively through the Board and its offices, shall be known and organized as IRISH PINES HOMEOWNERS ASSOCIATION, INC., a nonprofit corporation with Chapter 181, Wisconsin Statutes. A copy of the Articles of Incorporation of such corporation is attached as Exhibit F.
6. **Rules and Regulations.** In addition to the Bylaws of the Association, the Declarant has provided a set of Rules and Regulations for the harmonious operation of the condominiums. They are attached as Exhibit G.

IRISH PINES CONDOMINIUMS

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INTRODUCTION

THIS DECLARATION is made and entered into by MacHarley Development, Inc., herein referred to as Declarant:

WITNESSETH, THAT:

Whereas, the Declarant is the owner in fee simple of certain real estate, hereinafter described, located in the Town of Shelby, La Crosse County, Wisconsin; and

Whereas, the Declarant desires and intends by this Declaration to submit and subject said real estate, together with all buildings, structures, improvements and other permanent fixtures of whatsoever kind now or to be hereafter constructed, and all rights and privileges belonging or in anyway pertaining thereto, to the provisions of the Condominium Ownership Act of the State of Wisconsin, Chapter 703, Wisconsin Statutes, as amended from time to time (hereinafter referred to as the "Act"); and

Whereas, the Declarant desires to establish certain rights and easements in, over and upon said real estate for the benefit of itself and the benefit of all future owners or occupants of the said real estate or any part thereof (which shall be known as Irish Pines Condominiums) and any Unit or Units thereof or therein contained, and to provide for the harmonious, beneficial and proper use and conduct of the Property and all Units, together with mutually beneficial restrictions and obligations with respect to the use and maintenance thereof; and

Whereas, the Declarant desires and intends that the several Unit Owners, mortgagees, occupants, and other persons hereinafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interests subject to the rights, easements, privileges and restrictions hereinafter set forth, all of which are declared to be furtherance of a plan to promote, enhance and protect the common amenities and cooperative aspect of ownership, and to facilitate the proper administration of said property, and are established for the purpose of enhancing and protecting the value, desirability, appearance and aesthetics of the Property.

Now therefore, the Declarant as the holder of title and said real estate hereinafter described, and for the purpose hereinabove set forth, declares as follows:

ARTICLE I

DESCRIPTION

1.01 **Legal Description.** The real estate which is hereby submitted and subjected to the provisions of the Condominiums Ownership Act of the State of Wisconsin is legally described as follows:

Lots 1 and 2 of Certified Survey Map filed May 1, 2000, in Volume 9 of Certified Survey Maps, page 56, as Document No. 1250426, being part of the NE ¼ of the NE ¼ of Section 12, Township 15 North, Range 7 West, Town of Shelby, La Crosse County, Wisconsin.

1.02 **Address.** The address of the Condominiums shall be Irish Pines Place, La Crosse, WI 54601

1.03 **Construction of Condominiums.** Irish Pines Condominiums will consist of two (2) units in each of the six (6) buildings constructed principally of poured concrete foundations and footings, wood frame and drywall interior partitions, insulated glass windows, and vinyl siding exterior. Roofs are fiberglass shingle. The buildings and each unit is served by municipal gas, electric utilities, all of which are separately metered, and well water and septic sewer system which are commonly shared.

1.04 **Unit Plans.** Each unit will follow the basic floor plan, as shown on Exhibit B with approximate dimensions. Unit owners can customize the interiors, including the lower level, of their Units and add options or special features. Each unit will have a garage and a deck.

1.05 **Ownership of Common Elements.** Subject to the Declarant's right to expand the Condominium, each Unit will own an undivided one-half interest in the Common Elements as a tenant in common with the other Unit Owner, and will be responsible for a corresponding fractional share of the common expenses. After the construction of all six phases, each Unit Owner will own an undivided 1/12 interest in the Common Elements as a tenant in common with all other Unit Owners, and will be responsible for a corresponding fractional share of the common expenses. However, any first mortgagee who obtains title to a Unit pursuant to the remedies contained in its Mortgage or through foreclosure of its Mortgage will not be liable for more than six months of such Units regularly budgeted unpaid dues or charges accrued before the acquisition of the title to the Unit by the Mortgagee. Any such unpaid dues or expenses not allocated to a mortgagee shall be reallocated prorata among the remaining Unit Owners.

ARTICLE II

DEFINITIONS

- 2.01 **Declaration.** This instrument, by which the Property, as hereinafter defined, is submitted to the provisions of the Act, and shall include such amendments, if any, to this instrument as from time to time may be adopted pursuant to the terms thereof.
- 2.02 **Property.** The air space, land, buildings, all improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for the use in connection therewith, which have been or are intended to be subject to the provisions of the Act.
- 2.03 **Unit.** A part of the property subject to this Act intended for independent use, including one or more cubicles of air at one or more levels of space, or one or more rooms or enclosed spaces located on one or more floors (or parts thereof) in any of the buildings, together with the undivided interest in the Common Elements appurtenant thereto.
- 2.04 **Unit Owner.** The person who owns a Unit and an undivided interest in the common areas and facilities appurtenant to such Unit in the fraction specified and established in the Declaration.
- 2.05 **Unit Number.** The number, letter, or combination thereof, designating the Unit in the Declaration.
- 2.06 **Association of Unit Owners.** All of the Unit Owners acting as a group in accordance with the Bylaws and Declaration.
- 2.07 **Building.** A structure containing two Units and comprising a part of the property.
- 2.08 **Common Areas and Facilities.** The common areas and facilities shall consist of all of IRISH PINES CONDOMINIUMS except the individual units and limited common areas and facilities as each of the aforementioned is herein described, including without limitation the following:
- (a) The land on which the buildings are located subject to the limitation hereinafter set forth governing the use of certain lands which are reserved as a limited common area;
 - (b) The foundations, columns, girders, beams, supports, main walls, roofs and entrances and exits of the buildings;

- (c) The grounds, yards, parking areas, storage spaces and recreational facilities;
- (d) Equipment and materials relating to central services such as power, light, gas, water, and septic systems.
- (e) Any tanks, pumps, motors, fans, compressors, ducts, wiring, and in general all apparatus and installations existing for common use, or located beyond the interior surfaces of the walls, ceiling, and floors of the Units;
- (f) The sidewalk, any retaining wall and the green area along the McClaren Road, State Hwy 33 and County Hwy F streets. The Association of Unit Owners is required to maintain these Common Elements;
- (g) The wells, septic systems, drainage fields, holding tanks and any other materials or equipment required to maintain the common wells and septic systems;
- (h) All other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

2.09 **Common Expenses.**

- (a) All sums lawfully assessed against the Unit Owners by the Association of Unit Owners; and
- (b) Expenses declared common expenses by the Act or by the Declaration or Bylaws or Association.
- (c) Expenses related to the Common Areas and Facilities described in Section 2.08

2.10 **Common Profits.** The balance of all income, rents, profits and revenues from the common areas and facilities, if any, remaining after the deduction of the common expenses.

2.11 **Driveways, Streets and Roads.** The surface portion of the property set aside for use for travel by foot or vehicle to and from the buildings to the public streets or highways.

2.12 **Limited Common Areas and Facilities.** The common areas and facilities designated in the Declaration as reserved for use of a certain Unit or Units to the exclusion of the other Units in the building, or to the exclusion of the other Units in the Condominium.

2.13 **Majority or Majority of Unit Owners.** The Unit Owners with more than fifty percent (50%) of the votes in accordance with the votes assigned in the Declaration to the Units for voting purposes.

2.14 **Person.** Individual, corporation, partnership, association, trustee, other legal entity, or combination thereof.

2.15 **Occupant.** Person or persons, other than a Unit Owner, in possession.

2.16 **Plat.** The Plat of Survey of the Property, Buildings and of all Units in the Property submitted to the provisions of the Act, together with that area of possible expansion described on the Plat, which Plat is attached hereto as Exhibit "B" and by reference expressly incorporated herein and made a part hereof and registered and filed concurrently with the registration of this Declaration in the Office of the Register of Deeds for La Crosse County, Wisconsin.

ARTICLE III

PROPERTY AND UNITS: SUBMISSION TO ACT

3.01 **Submission of Property to the Act.** The Developer hereby submits the Property described in Section 1.01 hereof to the provisions of the Act.

3.02 **Units: Description.** The legal description of each Unit shall consist of the identifying number or symbol of such Unit as shown on the Plat. Each unit shall consist of the space enclosed and bounded by the horizontal and vertical planes of the interior wall, floor and ceiling surfaces, as set forth on the Plat and the floor plans.

3.03 **Units: Ownership.** Every deed, lease, mortgage or other instrument may legally describe a Unit by its identifying number and symbol, and every such description shall be deemed good and sufficient for all purposes, as provided in the Act. Except as otherwise provided by the Act, no Unit Owner shall, by deed, plat or otherwise, subdivide or in any manner cause such Owner's Unit to be separated into any tracts or parcels different from the whole Unit as shown on the Plat.

3.04 **Certain Structures Not Constituting Part of a Unit.** No Unit Owner shall own any pipes, wires, conduits, public utility lines or other structural components running through such Owner's unit and serving more than such Owner's Unit.

ARTICLE IV

COMMON ELEMENTS

4.01 **Ownership of Common Elements.** Each Unit Owner shall be entitled to and own and undivided interest in the Common Elements as a Tenant in Common with all other Unit Owners of the property, and except as otherwise limited in this Declaration, shall have the right to the use and occupancy of such Owner's Unit and such other incidental uses permitted by this Declaration, which right shall be appurtenant to and run with such Owner's Unit. The undivided interest in the common areas and facilities shall not be separated from the Unit to which it appertains and not be deemed to be leased, conveyed or encumbered with the Unit even though such interest is not expressly mentioned or described in the conveyance of other instrument.

4.02 **No Partition of Common Elements.** There shall be no partition of the Common Elements through judicial proceedings or otherwise until this Declaration is terminated and the property is withdrawn from its terms or from terms of any statute applicable to condominium ownership.

ARTICLE V

RESTRICTIONS ON USE

5.01 **No Severance of Ownership.** No Owner shall execute any deed, mortgage, lease or other instrument affecting title to such Owner's Unit without including therein both such Owner's interest in the Unit and such Owner's corresponding percentage of ownership in the Common Elements, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, lease or other instrument purporting to affect the one without including also the other shall be deemed and taken to include the interest so omitted, even though the latter is not expressly mentioned or described therein.

5.02 **Use of the Common Elements.** Each Unit Owner shall have the right to use the Common Elements in common with all other Unit Owners, as may be required for the purpose of ingress and egress to, and use, occupancy and enjoyment of respective Unit owned by each Unit Owner, and to the use and enjoyment of common facilities. Such rights shall extend to the Unit Owner and the members of the immediate family and guests and other authorized occupants and visitors of the Unit Owner. The use of the Common Elements and the rights of the Unit Owners with respect thereto shall be subject to and governed by the provisions of the Act, the Declaration and the Bylaws and Rules and Regulations of the Board of Directors (hereinafter described and for convenience hereinafter sometimes referred to as the "Board").

5.03 **Easements.**

(a) **Encroachments.** In the event that, by any reason of the duly authorized construction or repair, or settlement or shifting of any Building, or the design or construction of any Unit, any part of the Common Elements encroaches or shall be hereinafter encroach upon any part of any Unit, or any part of the Unit encroaches or shall hereafter encroach upon any part of the Common Elements or any other Unit, or if by reason of the design or construction of utility systems, any main pipes, ducts or conduits serving more than one Unit encroach or shall hereafter encroach upon any part of any Unit, valid easements for maintenance of such encroachment are hereby established and shall exist for the benefit of such Unit and the Common Elements, as the case may be, so long as all or any part of the Building containing such Unit shall remain standing; provided, however, that in no event shall a valid easement or any encroachment be created in favor of the Owner of any Unit or in favor of the Owners of the Common Elements if any encroachment occurred due to the willful misconduct of said Owner or Owners.

(b) **Easements for Utilities.** The Century Telephone Company of Wisconsin, Vernon Electric Company, The Town of Shelby, and all other public utilities, their successors and assigns serving the property, are hereby granted the right to install, lay construct operate, maintain renew, repair or replace conduits, cable pipes, and wires and other equipment into, over, under, along and on any portion of the

Common Elements for the purpose of reasonable right of ingress to and egress from the property for said purpose. The Declarant, prior to the creation of the Board, and Board thereafter, may grant other or additional temporary or permanent easements for utility or other purposes over, under, along and on any portion of said Common Elements, and each Unit Owner hereby grants the Declarant, prior to the creation of the Board, and the Board thereafter, an irrevocable power of attorney to execute, acknowledge and record or register for and in the name of such Unit Owner, such instruments as may be necessary or appropriate to effectuate the foregoing. Easements are also hereby declared and granted to install, lay, operate, maintain, repair and replace any pipes, wires, ducts, conduits, public utility lines or structural components running through the walls of a Unit, whether or not such walls tie in whole or in part within the Unit boundaries.

(c) **Easements to Run with the Land.** All easements and rights described herein, including easements for the benefit of Unit Owners in Irish Pines Condominiums, are easements, appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any Unit Owner, purchaser, mortgagee or other person having interest in the Property, or any part or portion thereof. Reference in any deed of conveyance or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Article, or described in any other part of this Declaration, shall be sufficient to create and preserve such easements and rights to the respective grantees, mortgagees and trustees of such parcels as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

(d) **Easements for Police and Fire Protection.** A perpetual easement is hereby granted for the free and uninterrupted access to the grounds hereinbefore described for any and all legally designated law enforcement agencies and fire departments for the performance of their duties.

5.04 **Separate Mortgage of Units.** Each Unit Owner shall have the right to mortgage or encumber such Owner's own respective Unit, together with such Owner's respective ownership interest in the Common Elements. No Unit Owner shall have the right or authority to mortgage or otherwise encumber in any manner whatsoever the Property or any part thereof except such Owner's own Unit, and such Owner's respective ownership interest in the Common Elements as aforesaid.

5.05 **Separate Real Estate Taxes.** It is intended and understood that real estate taxes are to be separately taxed to each Unit Owner for such Owner's Unit and such Owner's corresponding fractional ownership of the Common Elements, as provided in the Act. If the event that, for any year, such taxes are not separately taxed to each Unit Owner, but are taxed on the property as a whole, then each Unit Owner shall pay such Owner's proportionate share thereof in accordance with such Owner's respective fractional ownership interest in the Common Elements.

5.06 **Use of Units.** Each Unit shall be used for residential purposes only, and no trade or business of any kind may be carried on therein. Each Unit or any two or more adjoining Units used together shall be used as a residence for a single family or such other uses permitted by this Declaration and for no other purpose. That part of the Common Elements separating any two or more adjoining Units used together as aforesaid may be altered to afford ingress and egress to and from such adjoining Units in any such manner and upon such conditions as shall be determined by the Board in writing.

ARTICLE VI

SERVICE OF PROCESS

6.01 **Service of Process.** All legal notices and service of process which may be made or give to the Unit Owners, Board or the property shall be served upon Irish Pines Homeowners Association, Inc., Wendy Stachowitz, 3104 MacHarley Lane, La Crosse, WI 54601. The Unit Owners shall designate such successors as may be required to the aforementioned part at an annual meeting or a special meeting called in accordance with the provisions of Section 2.04 of the Bylaws. The number of voting members present to constitute a quorum and the number of votes required to approve such successors shall be in accordance with the provisions of the Bylaws.

ARTICLE VII

EXPANSION OF CONDOMINIUM

7.01 **Expansion.**

(a) Pursuant to the Act, and subject to the limitations and requirements herein and therein set forth, the Declarant shall have the absolute right, but not obligation, to be exercised with seven (7) years from the date of, to annex to the land and improvements described in Section 1.01 hereinabove, the additional parcel of

land, or contiguous portions thereof, and any improvements hereafter constructed thereon, which is described as follows:

**Lots 1 and 2 of Certified Survey Map filed May 1, 2000, in Volume 9 of Certified Survey Maps, page 56, as Document No. 1250426, being part of the NE 1/4 of the NE 1/4 of Section 12, Township 15 North, Range 7 West, Town of Shelby, La Crosse County, Wisconsin.
Subject to the following:**

Covenants, conditions and restrictions contained in Declaration of Restrictions to the Oak Point Estates Addition to the Township of Shelby, recorded in the Office of the Register of Deeds for La Crosse County, Wisconsin, on September 14, 1995, in Volume 1099 of Records, page 785, as Document No. 1139500.

Easement set forth in a Warranty Deed dated February 16, 1988, and recorded in the Register of Deeds' Office for La Crosse County, Wisconsin, on February 17, 1988, in Volume 812 of Records, page 364, as Document No. 1005400.

A 20 foot utility easement along the said westerly R.O.W. line of County Road "F", and subject to a 10 foot utility easement along the southerly R.O.W. line of McLaren Road as shown on a survey made by Solberg & Associates and revised on December 8, 1995.

Any such expansion or annexation shall be accomplished by the recordation, in the same manner and with the same requirements and formalities as this Declaration, of an Amendment or Amendments to this Declaration.

- (b) The consent of the Unit Owners, Mortgagees having liens against Units and the Board shall not be required for any such expansion and the Declarant may proceed with such expansion at its sole option.
- (c) The Declarant may add portions of such additional parcel of land at different times.
- (d) The types and approximate locations of improvements that may be located on the additional lands are shown on Exhibit B attached hereto; however, the Declarant reserves the right to change the types and locations of such improvements if, in its sole opinion, such changes are required to achieve the best development.
- (e) The Declarant reserves the right to change the size, design, and mix of the Units in order to meet requirements of the market.
- (f) The Declarant reserves the right to create Common Elements and Limited Common Elements in the additional lands and to change the designation of existing Common Elements to Limited Common Elements.

- (g) Upon the addition of any such additional parcels, the allocation of fractional ownership of the Common Elements and voting rights shall be amended as further specified hereinafter.

7.02. **Phase I.** The premises described in Section 1.01 shall be referred to as "Phase I".

7.03. **Phases II--VI** The addition or annexation of the land so designated in Section 7.01 hereinabove shall be referred to as Phases II--VI

7.04. **Reallocation of Ownership of Common Elements and Voting Rights.** Upon the addition or annexation of Phases II--VI or any portions thereof, the Unit Owners' ownership interests in the Common Elements and voting rights shall be automatically reallocated pro tanto as stated in the Amendment to the Declaration adding the property, and the Bylaws automatically amended to conform with the reallocation.

- (a) Such reallocation shall be determined by the Declarant based on the interests and obligations of existing units of the same type, or in the event that the added Units are of a different type, based upon the ratio of the square footage of the added unit to the square footage of all units in the condominium.
- (b) The total number of votes of all Voting Members shall be equal to the sum of the total number of units after the addition or annexation.
- (c) Rights and responsibilities in and for common expenses shall be automatically reallocated in conformity with the reallocation of ownership of the Common Elements.

7.05. **Power of Attorney.** There is hereby reserved unto the Declarant an irrevocable Power of Attorney, coupled with an interest, to execute, acknowledge, deliver and record any such instruments as may from time to time be required in order to carry out the purposes and provisions of this Article. Each Owner and each mortgagee of a Unit shall be deemed to have acquiesced in the amendments to this Declaration and to the Condominium Plat made in the manner set forth in this Article, and covenants and agrees to execute such further instruments, if any, as may be required to properly accomplish such amendments.

7.06. **Deed.** Any deed for any Unit shall be delivered subject to the conditional limitations that the fractional ownership interests in the Common Elements and voting rights may be amended as provided herein.

ARTICLE VIII

GENERAL PROVISIONS

8.01. **Votes.** As further provided by the Bylaws, the Owner(s) of each Unit shall be entitled to one (1) vote, which shall be appurtenant to each Unit. The Developer shall vote for each of the unsold units on the basis of one (1) vote for each unit.

8.02. **Damage, Destruction or Condemnation.**

(a) **Sufficient Insurance.** Subject to the provisions of Section 8.02(d), in the event the improvements forming a part of the Property, or any portion thereof, including any Unit, shall suffer damage or destruction from any cause and the proceeds of any policy or policies insuring against such loss, or damage, and payable by reason thereof shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken and the insurance proceeds shall be applied by the Board or the payee of such insurance proceeds in payment therefore; provided, however that in the event, within sixty (60) days after such damage or destruction shall occur, a majority of the Unit Owners elect either to sell the property or to withdraw the property from the provisions of the Act, as therein provided, then such repair, restoration or reconstruction shall not be undertaken.

(b) **Insufficient Insurance.** Subject to the provisions of Section 8.02(d), in the event the Property or the improvements thereon so damaged are not insured against the risk causing the loss or damage, or the insurance proceeds are not sufficient to pay the cost of repair, restoration or reconstruction, and a majority of Unit Owners and all other parties in interest do not voluntarily make provisions for reconstruction of the improvements within ninety (90) days after said damage or destruction shall occur, then the provisions of the Act in such event shall apply.

(c) **Additional Insurance.** Any Owner may, at said Owner's option, carry additional insurance on such Owner's Unit including coverage for any substantial improvements made therein and the contents thereof.

(d) **Classification of Project by Federal Home Loan Mortgage Corporation.** Until such time as the Condominiums are classified as a Class III Condominium Project by the Federal Home Loan Mortgage Corporation, (or any successor entity), in the case of condemnation or substantial loss to the Units and/or Common Elements of the Condominiums, the following actions shall not be taken unless at least three quarters of the Unit Owners (other than the Declarant) and of the first mortgagees (based on one vote for each first mortgage owned) give their consent thereto:

- (1) Seek to abandon or terminate the Condominiums by act or omission;

- (2) Change the pro rata interest or obligations of any Unit in order to levy assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards or determine the pro rata share of ownership of each Unit in the Common Elements except to the extent necessary to allow the expansion of the Condominiums in accordance with Article VII;
- (3) Partition or subdivide any Unit;
- (4) Except as set forth in Article VII, Expansion of Condominium, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements by act or omission. (The granting of easements for public utilities or other public purposes consistent with the intended use of the common elements is not a transfer within the meaning of this clause.); and
- (5) Use hazard insurance proceeds for losses to any condominium property (whether units or Common Elements) for other than the repair, replacement, or reconstruction of the condominium property.

8.03. **Substantial Restoration.** Repair, restoration or reconstruction of the improvements as used in this Article, means restoring the improvements to substantially the same condition in which they existed prior to the fire or other disaster, with each Unit and the Common Elements having the same vertical and horizontal boundaries as before.

8.04. **Covenants to Run With the Land.** Each grantee of the Declarant by the acceptance of a deed of conveyance, or each purchaser under Articles of Agreement for Warranty Deed or Land Contract or any Contract for any deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such owner in like manner as though the provisions of the Declaration were recited and stipulated at length in each and every deed of conveyance.

8.05. **Non-Waiver of Covenants.** No covenants, restrictions, conditions, obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur or any time lapse.

8.06. **Waiver of Damages.** Neither the Declarant, nor its beneficiaries, nor their respective representatives or designees, shall be liable for any claim whatsoever arising out of or by reason of any actions performed pursuant to any authorities, reserved, granted or delegated to it by, or pursuant to, this Declaration, or in the Declarant's capacity as developer, contractor, Owner, manager or seller of the Property, whether or not such claim (a) shall be asserted by any Owner, Occupant, the Board of the Association, or by any person or entity claiming through any

of them; or (b) shall be on account of injury to person or damage to or loss of property wherever located and however caused; or (c) shall arise in contract or in tort. The Declarant shall be responsible only for written representations made by the Developer, sales agents, or other parties. Without limitation, the generality of the foregoing enumeration includes all claims for, or arising out of repair or concerning any patent or latent defects, or by reason of any act or neglect of any Owner, Occupant, the Board, the Association, and their respective agents, employees, guests and invitees, or by reason of any neighboring property or personal property located on or about the Property, or by reason of the failure to function or disrepair of, any utility services (heat, air conditioning, electricity, gas, water, sewage, etc.).

8.07. **Amendments to Declaration.** The provisions of this Declaration may be changed, modified or rescinded by instrument in writing and setting forth such change, modification or rescission, signed and acknowledged by the Board, and 75% of the Owners and mortgagees having bona fide liens of record against Units, except Sections 8.06 and 8.12, which may never be changed without the written consent of the Declarant and the Developer/General Contractor. Such change, modification or rescission shall be effective upon recording of such instrument in the office of the Register of Deeds of La Crosse County, Wisconsin, provided, however, that no provision in this Declaration may be changed, modified or rescinded so as to conflict with the Provisions of the Act.

8.08. **Severability.** The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration or any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration.

8.09. **Perpetuities and Restraints on Alienation.** If any of the options, privileges, covenants or rights created by this Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing some time limits, then such provision shall continue only until the day preceding the termination of the permissible period prescribed by the rule.

8.10. **Interpretation of Declarations.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a first class condominium.

8.11. **Failure to Comply.** Any Unit Owner failing to comply with the Act, this Declaration or the Bylaws may be sued for damages or injunctive relief or both by the Association or by any Unit Owner.

8.12. **Disclaimer of Warranties.** The Declarant, its beneficiaries, their respective representatives or designees, and the Developer/General Contractor expressly disclaim all warranties, either express or implied, including, but not limited to, any warranties relating to the condition or function of any Unit or of the Common Areas and Facilities. Upon the sale and occupation of any Unit, the responsibility of the Declarant and the Developer/General Contractor

