

DECLARATION OF RESTRICTIONS FOR CREEKSIDE PRESERVE

KNOW ALL PERSONS BY THESE PRESENTS; that Creekside Preserve LLC, a Wisconsin Corporation duly organized and existing under and by the virtue of the laws of the State of Wisconsin, (herein referred to as "*Developer*" which term shall also include the duly authorized agent of Developer). Developer intends to develop the premises described as follows (herein referred to as "*Creekside Preserve*").

CREEKSIDE PRESERVE, being a subdivision of that part of the East 1/2 of Section 15, Town 7 North, Range 19 East, City of Pewaukee, Waukesha County, Wisconsin. "Developer", intending to establish a general plan for the use, occupancy and enjoyment of "Creekside Preserve" does hereby declare that, for the mutual benefit of present and future homeowners, "Creekside Preserve" shall be subject to the following restrictions:

1. **General Purposes** The purpose of this Declaration is to insure the best use and most appropriate development and improvement of each building site in the development; to protect owners of building sites against such use of surrounding building sites as will detract from the residential value of their property, to disallow, as far as practicable, poorly designed or proportioned structures; to obtain harmonious use of material and color schemes, to insure a quality residential development; to encourage and secure the construction of attractive homes in appropriate locations on building sites; to secure and maintain proper setbacks from streets and adequate free spaces between structures; and in general to provide adequately for a high type and quality of improvement in the Development.
2. **General Applicability** Unless specifically stated otherwise within this Declaration, all of the restrictions stated in this Declaration are applicable to all lots in Creekside Preserve.
3. **Building Restrictions, Single-Family Lots** The following restrictions are applicable to all single-family lots:
 - a. Only one, 1-story, 1½-story, 2-story, split-level or bi-level single-family residential building and attached garage may be erected per lot.
 - b. A single story residence shall have a minimum of 1700 square feet of total living area on the first floor.
 - c. A story and one-half residence shall have a minimum of 2200 square feet of total living area, with a minimum of 1500 square feet of total living area on the first floor of the residence.
 - d. A two-story residence shall have a combined minimum of 2200 square feet of total living area on the first and second floors of the residence.
 - e. A split-level, bi-level or tri-level residence shall have a combined minimum of 2200 square feet of total living area on the upper two floors of the residence.
 - f. Attached garages must be attached to the home directly, by breezeway, or in the basement of the home, and must be constructed at the same time as the home.
 - g. The exterior walls of the home and attached garage must be constructed of brick, stone, wood, or other high quality materials as deemed acceptable by Developer.
 - h. The house, garage and paved driveways to the garage must be completed within one year after the date of issuance of lot owners building permit.
 - i. The minimum setback from any abutting street right of way is 35 feet for all lots except for lots 16 and 17 which have 45 foot front setbacks and lots 20, 21, 22, 23, 24, 46, 47, 48 and 50 which shall

have 50' front setbacks with side yard setbacks for all lots 10', except the southeast corner of lot 15, lots 16-21 and the south side of lot 22, are 14'. Rear yard setbacks shall be 25 feet, except for corner lots which are 10'. City of Pewaukee standards for rear yard setback on corner lots will prevail.

- j. There will be no outside storage of boats, trailers, buses, trucks, campers or other vehicles or items deemed unacceptable by the Developer.
- k. In order to maintain harmony in appearance and to protect the owners of the lots in the Subdivision, no building, home, fence, sign, wall, swimming pool, children's play structures or other structure shall be erected, constructed or maintained upon any lot nor shall any change or alteration be made thereon unless the complete plans and specifications thereof, a plot plan showing the exact location of such building, garage, decorative fence, decorative wall, or other structure, the elevation thereof and the grade of the lot and a sketch or view of such building or structure or changes, shall have been submitted to and approved in writing by the Architectural Control Committee (A.C.C.) as appointed by the Developer. No above ground pools or garden sheds will be allowed in Creekside Preserve. The decision of the A.C.C. with respect to any such matter shall be final and binding upon all parties. The A.C.C. shall have the right to refuse to approve any such plan or specifications which, in the conclusive judgment of a majority of its members, are not in conformity with these restrictions or are not desirable for aesthetic or any other reason. In passing upon such plans and specifications, the A.C.C. may take into consideration the suitability of the proposed building or other structure, its design, elevation and the materials of which it is to be construct on the proposed site; the harmony thereof with the surrounding buildings and the view from the adjacent property. All decisions of the A.C.C. on such matters shall be final. The A.C.C. shall have the right to waive minor infractions or deviations from these restrictions in case of matters of the best interest to the subdivision. **Each lot purchaser should be fully aware of the restrictions that are contained herein and the building and zoning codes of the City of Pewaukee before purchasing a lot in Creekside Preserve.**
- l. Landscaping. Lots shall be landscaped and seeded or sodded within six months after completion of a dwelling. Landscaping shall include the area between the front lot line and the edge of the street pavement. Landscaping must include a concrete drive. All drainage ways or swales shall be graded in conformance with the master grading plan and seeded or sodded within 30 days of completion of home construction. All landscaping must be of a conventional nature.
- m. One outdoor electric post-mounted lamp with photoelectric controls and at the discretion of the Developer, one mailbox, must be installed on each lot in a location designed by the US Post Office, at the time of construction of a residential building on that lot. The design of the lamp, post and mailbox is subject to approval of the Developer. The Homeowner must maintain the lamp in proper operating manner. If the lamp is not maintained, Creekside Preserve Homeowner's Association will perform maintenance and the cost of such maintenance will be an assessment against the lot owner, payable within ten (10) days after the assessment.

4. **Building Restrictions, Duplex Condominium Area** The following restrictions are applicable to the future duplex condominium units to be built on Outlot 3 in Creekside Preserve or future additions. "Unit" shall mean that portion of a two family building to be occupied by a single family.

- a. The placement, number of units, and all other material factors of the construction of residential buildings in the duplex area must be in compliance with the provisions of the Rd-2 zoning of the City of Pewaukee applicable now, or in the future, to such lots and other conditions as may be established by the City.

- b. The minimum size of an individual unit shall be 1500 square feet in area (two units per building).
- c. The minimum front yard setback is 40 feet, side yard setback is a minimum of 10 feet on both sides. Rear yard building setbacks are 30 feet.
- d. The house, garage and paved driveways to the garage must be completed within one year after the first start of construction.
- e. There will be no outside storage of boats, trailers, buses, trucks, campers or other vehicles or items deemed to be unacceptable by the Developer.
- f. Garage must be attached to the duplex directly or by attached breezeway. Each duplex unit shall have a minimum of one two-car garage. Side entry garages are encouraged and may be required by Developer.
- g. The exterior walls of a duplex must be constructed of brick, stone, wood or other high quality materials as deemed acceptable by the Developer.
- h. All building plans, the exterior design of each building and basic site features such as landscaping, lighting, fences, garden structures, satellite dishes, swimming pools, additions and other temporary or permanent structures or elements which affect the overall environment of the Development, must be approved by the A.C.C. in writing prior to construction, and prior to application for a building permit when one is required.
- i. One outdoor electric post-mounted lamp with photoelectric controls, and at the discretion of the Developer, one mailbox must be installed on each duplex lot in a location designated by the Developer, at the time of construction of a residential building on that lot. The design of the lamp, post and mailbox is subject to approval of the Developer. The lamp must be maintained by the owner of the unit or the condominium association, as applicable in a proper operating manner. If the lamp is not maintained, Creekside Preserve Homeowner's Association will perform maintenance and the cost of such maintenance will be an assessment against the building owner or condominium association payable within ten (10) days after the date of the assessment.

5. **Wetlands Preservation** A "Wetland" area is delineated in an outlot owned by the H.O.A. located to the rear of lots 16,17,18 and 19 in Creekside Preserve. The following restrictions apply to the wetland:

- a. Grading and filling shall be prohibited.
- b. The removal of topsoil or other earthen materials shall be prohibited.
- c. The removal or destruction of any vegetative cover, i.e., trees, shrubs, grasses, etc., shall be prohibited, with the exception of the removal of dead, diseased or dying vegetation at the discretion of the H.O.A. or Silva cultural thinning upon the recommendation of a forester or naturalist and the approval of the City of Pewaukee.
- d. Grazing by domesticated animals, i.e., horses, cows, etc. shall not be permitted.
- e. The introduction of plant materials not indigenous to the existing environment of the wetland preservation shall be prohibited.
- f. Ponds/ Wetland areas are subject to rules established by the City of Pewaukee and if applicable, the Wisconsin Department of Natural Resources, and the Army Corp. of Engineers.
- g. Construction of buildings within the wetland preservation areas is prohibited.

6. **Signs** No sign or banner of any kind may be placed or displayed to public view on any lot, except: 1) One sign not more than six square feet advertising the property for sale, and 2) One standard sign (showing the lot owner's name) as may be approved by the City Common Council for uniform use in terms of size, design, appearance and location for each lot in the Development and 3) Such signs as the Developer or the

City may approve for placement on those lots affected by the entry landscaping for the purpose of advertising Creekside Preserve Subdivision.

7. **Grading Plan** A master surface drainage and house grade plan has been prepared by the Developer designating the manner in which each lot shall drain in relation to all other lots in Creekside Preserve, and designating the grade elevation of the dwelling to be constructed thereon. A copy of this plan is on file in the office of the Developer and in the office of the Engineer in the City of Pewaukee. At the time of plan approval by the A.C.C., the grade elevation of said dwelling shall be obtained from the A.C.C. and the dwelling shall be constructed accordingly. No deviation therefrom shall be permitted without the approval of the A.C.C. and the City of Pewaukee. Within 30 days after completion of a dwelling on any lot in Creekside Preserve, the owner of said dwelling shall grade the lot to conform to said drainage plan and from that time forward nothing shall be done which will impede or obstruct the flow of surface drainage water in accordance with the said plan. The owner shall also be responsible to seed or sod all drainage ways or swales within the 30 day period.
8. **Homeowner's Association (H.O.A.)** An unincorporated association of both the owners of single family lots in Creekside Preserve and the duplex condominium units in Creekside Preserve is hereby created for the purposes of managing and controlling Common Areas as defined below, and performing other duties as set forth herein for the common benefit of the Homeowners. This Homeowner's Association will formally be titled *Creekside Preserve Homeowner's Association* and is referred to herein as "*The H.O.A.*". The membership of The H.O.A. will be comprised of the homeowners or the authorized agents of the homeowners of lots (vacant or improved) or condominium units as permitted by the City of Pewaukee (built or unbuilt). Members of The Association are referred to herein as the "*Homeowners*".
9. **Management Committee** The H.O.A. will be governed by a management committee consisting of three members. This management committee is referred to herein as "*The Committee*". The Committee will conduct and manage all of the responsibilities of the Association. The members of the Committee will be selected as follows:
 - a. At any time that the Developer owns Fifty Percent (50%) or more of the lots or condominium units in the Development, including all future additions to the Development, all three of the Committee members will be appointed by the Developer.
 - b. At any time that the Developer owns between Twenty and Fifty Percent (20%-50%) of the lots or condominium units in the Development, including all future additions to the Development, two members of the Committee will be appointed by the Developer and one member will be chosen according to the procedure stated below.
 - c. At any time that the Developer owns between Five and Twenty Percent (5%-20%) of the lots or condominium units in the Development including all future additions to the Development one member of the Committee will be appointed by the Developer and two members will be chosen according to the procedure stated below.
 - d. At any time that the Developer owns fewer than Five Percent (5%) of the lots or condominium units in the Development, including all future additions to the Development all three members of the Committee will be chosen according to the procedure stated below.
10. **Election of Committee Members**

- a. The initial members of the Committee will be John C. Bergman, Brandon V. Bergman and William W. Carity. The initial members will serve until December 31, 2004.
 - b. No later than sixty (60) days before the expiration of any term of the Committee members a notice of the election of Committee members will be sent to all Homeowners. The notice will state the number of committee positions that are subject to election, according to the criteria stated in sections 9a, 9b, 9c and 9d and will solicit nominations for those positions. The notice will also state the date, time and place for a meeting of the Association, to be held no later than ten (10) days prior to the expiration of any term of the Committee members at which time an election of Committee membership will take place.
 - c. At the election meeting, the nominations for Committee membership will be announced and additional nominations may be taken from the floor. Only homeowners may be nominated for Committee membership except for the initial members named above, who may be reappointed to successive terms by the Developer, subject to the criteria of sections 9a, 9b, 9c and 9d.
 - d. Each homeowner is entitled to vote in person or by written proxy in elections for selecting members of the Committee. Homeowners will have one vote for each single-family lot owned and one vote for each condominium duplex unit permitted or built.
 - e. Committee membership will be assigned to those Homeowners receiving the greatest number of votes at the meeting.
 - f. Except for the initial members, Committee member's terms will be for two calendar years, beginning January 1 of the year immediately after the applicable election. If any member of the Committee dies, resigns, becomes unable to act or is no longer a Homeowner the unexpired term of such member must be filled by a special election or appointment by the Developer, if applicable, at a meeting called as soon as possible after the Committee vacancy exists.
11. **Committee Meetings** All meetings of the Committee will be open to Homeowners and will be held upon not less than three (3) days prior written notice to all of the Homeowners. Two (2) members of the Committee constitute a quorum. Actions of the Committee are by majority vote.
12. **Duties of the Committee** The Committee has the following duties:
- a. Provide for the maintenance of improvements in the Common Area, which it may deem necessary or desirable. Such improvements consist of entryway monuments, fencing, lighting, landscaping and such other improvements as may be approved by the Committee.
 - b. Inspect, maintain, dredge, keep clear through algae and weed control and keep in good operating condition all storm water retention and detention basins and storm water drainage easements on private lots.
 - c. Provide for the maintenance of all outlots, landscaped courts and boulevards.
 - d. Establish dates and procedures for the election of members of the Committee.
 - e. Promulgate operating procedures for the conduct of the H.O.A. affairs.
 - f. Enforce the provisions of this Declaration.
13. **Powers of the Committee** The Committee has the following powers:
- a. Cause the Common Areas to be maintained, repaired, landscaped and kept in good, clean and attractive condition.

- b. Enter into contracts and to employ agents, attorneys or other for purposes of discharging and its duties and responsibilities hereunder.
- c. Levy and collect assessments in accordance with the provisions of Section 14, below.
- d. Maintain, repair and operate services in conjunction with Common Areas, now existing and hereafter acquired, and to pay for those items.
- e. Pay for any insurance maintained by the H.O.A.
- f. Pay taxes, assessments and charges of any kind made or levied by any governmental authority against the H.O.A. or upon any property of the Association.
- g. Pay all costs and expenses for the operation and administration of the H.O.A. including legal, accounting and management fees and other costs incident to the exercise of any of its powers or obligations.
- h. Pay costs and expenses for additional improvements to Common Areas beyond those installed by Developer.
- i. Pay all items subject to Special Assessment which have not been collected from a lot Homeowner or condominium unit owner (built or unbuilt) at the time payment of such item is due, and to collect such amounts from that Homeowner, provided that upon collection of the Special Assessment from that lot or unit owner, all other lot or permitted unit owners will receive an appropriate adjustment, reimbursement or credit on future General Assessments, as the board may determine, for payments made under this paragraph.
- j. Pay 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.

14. **Assessments** The Committee shall levy and collect assessments from Homeowners as follows;

- a. The owner of each single-family lot (vacant or improved) and permitted condominium duplex unit, (built or unbuilt) is subject to a general annual charge or assessment for the purpose of defraying the costs of maintaining and administering the Common Area. Each Homeowner's annual assessment will be equal to the Association's total annual costs and expenses in performing its duties hereunder, divided by the total number of single-family residential lots and individual permitted duplex units in the Development. Said costs include, but are not limited to payment of taxes, insurance, repair, replacement and additions to the improvements made to the Common Area, the cost of labor, equipment, materials, management and supervision thereof, attorneys fees, engineering fees, reserve fees, and all costs of the Association reasonably incurred in conducting its affairs and enforcing the provisions of this Declaration.
- b. Assessments must be approved at a duly convened meeting of the Committee.
- c. Written notice of an assessment will be personally delivered to each Homeowner subject to the assessment or delivered by certified mail addressed to the last known address of such Homeowner.
- d. Assessments become due and payable thirty (30) days after the mailing or personal delivery of the notice, as the case may be.
- e. Assessments not paid when due bear interest at the rate of Twelve Percent (12%) per annum until paid, and such unpaid assessments and the interest thereon constitutes a continuing lien against the real estate which it was assessed until they have been paid in full. The assessment and interest thereon will also be the personal obligation of the Homeowner of the real estate against which the assessment was made.
- f. The Committee may record a document with the Register of Deeds in Waukesha County, Wisconsin,

each giving notice of a lien for any such unpaid assessments and upon payment or satisfaction of the amount due record a document canceling or releasing any such lien. The failure to file, any such notice does not impair the validity of the lien. All recording and attorney fees relating to any such document will be borne by the affected Homeowner.

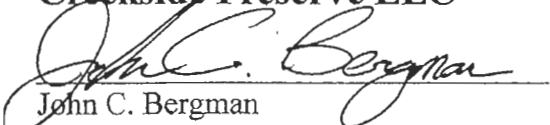
- g. Upon application by any Homeowner, any member of the Committee may, without calling a meeting of the Committee, provide to such Homeowner a statement in recordable form certifying (1) that the signer is a duly-elected member of the Committee and (2) as to the existence of any unpaid assessments or other amounts due to the Association. Such statement shall be binding upon the Committee and shall be conclusive evidence to any party relying thereon of the payment of any and all outstanding assessments or other amounts due to the H.O.A..
 - h. Any lien for assessment may be foreclosed by a suit brought by the Committee, acting on behalf of the H.O.A., as a foreclosure of a mortgage on real property.
15. **Committee Liability** Members of the Committee are not liable to the Homeowners or any other party for any action taken by them in good faith in discharging their duties hereunder, even if such action involved a mistaken judgment or negligence by the member or agents of employees of the Committee. The H.O.A. shall indemnify and hold the members of the Committee harmless from and against any and all costs or expenses, including reasonable attorney's fees, in connection with any suit or other action relating to the performance of their duties hereunder.
16. **Owner's Easement of Enjoyment** Subject to the provisions herein, every Homeowner shall have a right and easement of benefit and/or enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot or unit owner (duplex condominiums).
17. **Common Areas Definition** Wherever used in this Declaration, the term Common Area means:
- a. All lawn and landscaped areas, and any entrance monuments including fencing and lighting, contained within any lot, outlot or City owned right of way or landscape easement area in the Development.
 - b. Any storm water retention and detention ponds or storm sewer easements contained on private lots within Creekside Preserve.
 - c. Any area within the Development that is designated as a Common Area by the Association or the Developer.
18. **Disclaimer** Developer shall convey the Common Areas to the H.O.A. 'as is'; all warranties regarding the Common Areas, express or implied, including warranties of condition, quality of construction and fitness for a particular use, are hereby disclaimed. The H.O.A. shall be responsible for obtaining adequate liability insurance for the Common Areas. Developer shall have no liability for damage or injury to any persons or property arising from the existence or continued use of the Common Areas. The H.O.A. shall indemnify and hold the Developer harmless against any and all claims relating to the Common Areas.
19. **No Agency for Other Homeowners** No Homeowner, other than members of the H.O.A Management Committee, has any authority to act for the H.O.A. or the other Homeowners as agent or otherwise, or to bind the Association or the H.O.A. to contracts, negotiable instruments or other obligations or undertakings of any kind.

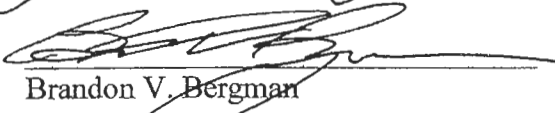
20. **Service on Association** Service of process upon the H.O.A. for all matters must be made upon one of the members of the management committee of the Association or such legal counsel as the H.O.A. may designate to receive service of process by recording such designation with the Register of Deeds for Waukesha County, Wisconsin.
21. **No Waiver of Rights** Any failure of the H.O.A. or the Committee to enforce any provisions contained in this Declaration will not be deemed to be a waiver of the rights to do so, or an acquiescence in any subsequent action.
22. **Enforcement of Obligation by City** If the Committee fails to discharge its duties under this Declaration within sixty (60) days of written demand to do so by the City, the City may discharge the duties of the Committee. The City's costs incurred in connection therewith will be charged to the Owners of the properties affected by such actions of the City by adding to each Owner's real estate tax statement incurred a pro-rata share, based on the portion of cost of total charges incurred with respect to the individual Owner's lot(s) or condominium units.
23. **Storm Water Retention Ponds** The storm water retention ponds located in Creekside Preserve have been created by the Developer and were required by the City of Pewaukee to assist in the removal and retention of storm water from Creekside Preserve. The storm water retention ponds are not intended to be used for swimming or recreational facilities, and any use of the storm water retention ponds for such use is strictly prohibited. Any persons entering or using the storm water retention ponds either intentionally or accidentally do so at their own risk. By purchase of a lot or condominium unit in Creekside Preserve, each Homeowner and its respective successors, assigns, heirs and personal representatives thereby waives to the fullest, extent permitted by law, any and all claims for liability against the Declarant, the Developer, Creekside Preserve Homeowner's Association, The City of Pewaukee, and their respective agents, contractors, employees, officers, directors and shareholders, for injury or damage to person or property sustained in or about or resulting from the use or existence of the storm water retention ponds. In addition, each Homeowner (and its successors, assigns, heirs and personal representatives) agrees to indemnify, defend and hold harmless the Declarant, the Developer, Creekside Preserve Homeowner's Association, The City of Pewaukee and their respective agents, contractors, employees, officers, directors and shareholders, from and against and all liabilities, claims, demands, costs and expenses of every kind and nature (including attorney's fees) including those arising from any injury or damage to any person (including death) or property damage sustained in or about or resulting from the use or existence of the storm water retention ponds.
24. **Utility Easements** Developer has the right to grant and convey easements to the City or to any public or private utility company upon, over, through or across those portions of any lot in the Development 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 or lots or through any portions of the Subdivision or for purposes of facilitation 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 or unit 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-Owner. No buildings or fences shall be constructed in easements. No trees or bushes which would grow more than 4' in height shall be planted within said easements without the approval by City of Pewaukee Engineer.

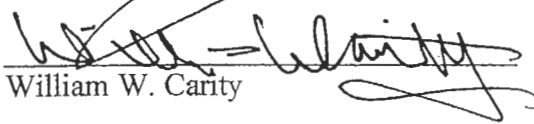
25. **Amendments** This Declaration may be amended by recording in the office of the Register of Deeds for Waukesha County, Wisconsin a document to that effect executed by the owners of at least sixty percent (60%) of all then-existing platted lots and permitted condo units in the Development, and their mortgagors, with all signatures duly notarized. Such amendment will become effective only upon recording. Notwithstanding the foregoing provisions of this Section, The Developer may amend this Declaration without the consent of any of the lot Owners or permitted condominium Owners solely to effect an expansion of Creekside Preserve to include contiguous parcels of real estate as may be acquired by Owner from time to time, or to amend the Declaration for subsequent phases of Creekside Preserve.
26. **Duration of Restrictions** These restrictions will be in force perpetually from the date hereof and will be deemed to run with the land, to bind the Homeowner and their heirs, successors and assigns and be enforceable by any Homeowner and to the extent permitted by Section 22, above, the City.

This Declaration is executed by the Owner's signature below and is effective upon recording by the Waukesha County Register of Deeds.

Creekside Preserve LLC

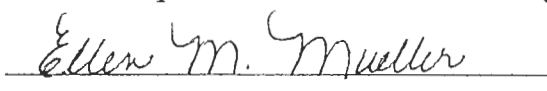

 John C. Bergman


 Brandon V. Bergman


 William W. Carity

STATE OF WISCONSIN }
 } ss.
 WAUKESHA COUNTY }

Personally came before me this 15th day of June, 2004, the above-named John C. Bergman, Brandon Bergman and William W. Carity to me known to be the persons who executed the foregoing instrument and acknowledged the same.



Notary Public, Waukesha County, Wisconsin

My Commission Expires 11-5-2006.

This document drafted by:
 William W. Carity
 12720 W. North Ave.
 Brookfield, WI 53005

