

**BIRCHWOOD RESERVE
SUBDIVISION**

**Declaration of Conditions, Covenants,
Restrictions and Easements**

THIS DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, AND EASEMENTS (this "Declaration"), is made by B&L Development LLC, a Wisconsin limited liability company ("Developer").

RECITALS

WHEREAS, Developer owns the real property described on Exhibit A attached hereto (the "Property"), located in the Town of Burlington (the "Town"), County of Racine, State of Wisconsin;

WHEREAS, the Property shall be known as the Birchwood Reserve Subdivision (the "Subdivision"), which is comprised of sixty-six (66) lots (the "Lots") and four (4) outlots (the "Outlots"), as shown on the Plat of Birchwood Reserve Subdivision (the "Plat"); and

WHEREAS, Developer desires to subject Lots 1 – 39 and 41 - 66 of the Subdivision to the conditions, covenants, restrictions, and easements (hereinafter collectively referred to as the "Covenants") set forth in this Declaration, each and all of which are for the purpose of creating a desirable utilization of the Property in an aesthetically pleasing residential environment and for the benefit of each owner of any part of the Property (individually, an "Owner" and collectively, the "Owners"), Developer, and the Town.

DECLARATION

NOW, THEREFORE, Developer hereby declares that Lots 1 – 39 and 41 - 66 of the Subdivision shall be held, used, transferred, sold, conveyed and improved subject to the Covenants hereinafter set forth. The word "Property" shall hereinafter be defined to include Lots 1 – 39 and 41 - 66 of the Subdivision but shall specifically exclude Lot 40 of the Subdivision, which is not subject to this Declaration or the Covenants contained herein.

**ARTICLE 1
PROPERTY SUBJECT TO THIS DECLARATION**

- 1.1 Existing Property. The Property shall be held, used, transferred, sold, conveyed and improved subject to this Declaration and the Covenants contained herein.
- 1.2 Additions to Existing Property. Additional residential property, including, without limitation, lots and outlots, that are not presently part of the Plat may be attached to the development and made subject to this Declaration and the Covenants contained herein by executing and recording an amendment to this Declaration with the Racine County Register of Deeds office.

ARTICLE 2

Recording Area

Name and Return Address

B&L Development LLC
1280 Serena Lane
Burlington, WI 53105

Tax Parcel Numbers: 002-03-19-22-020-200
002-03-19-22-023-020

GENERAL PURPOSES AND CONDITIONS

- 2.1 General Purpose. The intention of this Declaration and the Covenants contained herein is to achieve the best use and the most appropriate development and improvement of the Property and each Lot therein; to protect the Owners against such improper use of the Property as will depreciate the value thereof; to preserve, so far as practicable, the natural beauty of the Property; to provide for entrances to the Property; to guard against erection of poorly designed or proportioned structures, and structures built of improper or unsuitable materials; to guard against an excess of similar architectural styles, colors and elevations within proximity to adjacent and nearby housing units and thereby avoid housing monotony; to obtain harmonious color schemes; to insure the highest and best development of the Property; to encourage and secure the erection of attractive, substantial homes, with appropriate location on Lots; to prevent haphazard and inharmonious improvement of Lots; to secure and maintain proper setbacks from street and adequate free space between structures; to encourage, secure and maintain attractive and harmonious landscaping of the Lots and the Outlots; and in general to provide adequately for a high type and quality for improvement in the Property and thereby to enhance the value of investments made by purchasers of Lots.
- 2.2 Initial Construction of Stormwater, Drainage and Retention Areas. Notwithstanding anything contained herein to the contrary, Developer shall be responsible for the initial construction, installation and landscaping of the stormwater, drainage and retention areas. Nothing contained herein shall constitute a waiver by Developer to subsequently assess the costs of all, or a portion thereof, of the above-mentioned construction, installation and landscaping to the Birchwood Reserve Homeowners Association, Inc. (the "Association") pursuant to a separate agreement.
- 2.3 Land Use and Building Type.
- (a) Lot numbers 1- 39 and 41 - 66 shall be used for single-family residential purposes as defined by the Town and Racine County Zoning. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one single-family dwelling not exceeding two (2) stories or thirty-five (35) feet in height, and a private attached garage for not less than two (2) cars as further described herein. Architectural styles that are deemed by an architectural control committee of the Association (the "ACC"), in the ACC's sole opinion, to be unusual, extraordinary, out of character with the subdivision or lacking sufficient exterior design elements or components are prohibited. Notwithstanding anything contained herein to the contrary, Developer and any subsequent purchaser of a Lot may use such Lot for purposes of building model homes open to the public for inspection and /or sale subject to the requirements set forth herein.
 - (b) Professional home occupations are permitted subject to the ordinances of the Town and Racine County (collectively, the "Ordinances") and shall be further limited to the residents of the dwelling.
 - (c) Notice is given that as of the date of recording of these Covenants, Restrictions and Easements that adjacent lands are actively involved in farming operations that involve long hours of work, dust from harvesting and disking, odors from farm animals and the movement of slow moving farm equipment along the adjacent highways.
- 2.4 Architectural Control. The Board of Directors of the Association shall appoint three (3) representatives to the ACC. Notwithstanding anything to the contrary, as long as Developer owns one or more Lots, Developer reserves the right, but not the obligation, to exclusively control and carry out the functions of the ACC. No building, fence, wall, swimming pool, driveway, deck, landscaping, or other structure or improvement of any type (including antennae of any size or shape, whether freestanding or attached to another structure) shall be commenced, or erected upon any Lot, nor shall any exterior addition or improvement to or change or alteration of any Lot be made until the plans, specifications and plot plan showing the nature, kind, shape, height, materials, color and location of the same and the landscape plan and layout shall have been submitted to and approved in writing by the ACC. The ACC shall consider such factors as quality, materials, harmony of exterior design and location in relation to other structures, topography and compliance with the provisions

of this Declaration. Owners must submit to the ACC three (3) identical copies of all plans, specifications, surveys, plats and other required documents, including, without limitation, a plat of survey showing the placement of the proposed dwelling with the existing and proposed ground grade elevation together with all easements (as required in Section 2.7(b) below) and a landscape plan (as required in Section 2.9(a) below). Owners shall submit a \$300.00 review fee payable to Developer for the initial home construction. No Owner shall request or obtain a building permit for a Lot from the Town without first obtaining the written approval of the plans and specifications from the ACC. The ACC shall have the right to waive minor infractions or deviations from these restrictions in cases of hardship or as otherwise determined by the ACC in its sole discretion. The provisions of this Declaration are minimum requirements and Developer, or ACC, may in its discretion, require stricter standards or, conversely, may relax standards on a case by case basis if it reasonably determines that such modified standards are required for the benefit of the entire Property, provided such variance is not in conflict with the dedications and restrictive covenants running with the land as described on the Plat or the obligations imposed by the Declaration on Owners or the requirements of the Ordinances. Further, Developer may require reasonable alterations to be made to any of the plans to be submitted under this Declaration and said requirements shall be binding upon each and every Owner. In the event of ACC approval, no plans shall be altered or changed prior to submittal to the Town without ACC re-approval.

2.5 Construction. During construction of a dwelling or any other improvement on a Lot, the construction site shall be kept free of refuse and litter, and rubbish and construction materials shall be stored on the site only as long as reasonably necessary under the circumstances. Any natural vegetation and tree debris removed during the stripping of the building pad shall be removed from the construction site immediately. Construction sites shall remain as organized and neat in appearance as possible throughout the construction period. Any dwelling constructed on any Lot shall be enclosed and under roof with the finished exterior material in place within twelve (12) months after the commencement of construction.

2.6 Dwelling Size. No dwelling shall be erected on any Lot having a ground area within the perimeter of the main building, or at or above finish grade elevation (exclusive of garages, porches, patios, breezeways and similar additions), measured along the exterior walls, of less than the following areas:

- (a) Not less than 1400 square feet for a one-story dwelling.
- (b) Not less than 1800 square feet for a one and a half or two-story dwelling with a minimum first floor area of 1000 square feet.

However, the ACC, in its sole discretion, reserves the right to make any deviation from the above requirements provided such variance is not in conflict with the requirements of the Ordinances.

2.7 Grading, Building, Location and Lot Area.

- (a) Any grading of a Lot must conform to the last approved Master Grading and Drainage Plans (“Grading Plans”) on file with the Town. All Lots shall have setbacks from the front lot line and from the interior lot lines of distances no less than that set forth on the Plat and provided by applicable Ordinances.
- (b) Within each set of building construction plans submitted to the ACC for approval, shall be a plat of survey showing the placement of the proposed dwelling with the existing and proposed ground grade elevation together with all easements. The ACC reserves the right to make modifications as to the final first floor grade of the building. The landscaping and drainage of the Lot shall conform to the approved Grading Plans.
- (c) Each Owner shall be responsible for ensuring that drainage from said Owner’s Lot adheres to the existing drainage patterns as set forth in the Grading Plans and that the Owner’s construction and other building activity does not interfere with or disrupt the existing or planned drainage patterns. The existing drainage pattern on a Lot shall not be changed significantly, and no change to the drainage pattern on other lands within the Property of

the Subdivision shall be caused by an Owner which varies from the Grading plans as these plans are amended by Developer from time to time, subject to Town approval. Minor changes from the Grading Plans, where these changes do not violate the purpose, spirit and intent of the Grading Plans shall be reviewed and may, if for good and sufficient reasons, be approved by the ACC and the Town; in all other cases, the approved grades shall be strictly adhered to. Owners shall be held responsible for any violation that will cause additional expense to Developer or any other Owner to correct any grading problems.

- (d) Upon the approval of the building grades by the ACC, the Owner shall file the approved grades with the Town for its review and approval prior to commencing any grading.
- (e) Any excess fill from excavations shall, at the option of Developer, be hauled, at the Owner's sole cost and expense, to a location approved by Developer within the Property. In the event of excess material that needs to be hauled off the site, the Owner shall, at their sole cost and expense, arrange for a location suitable for disposing of the material.
- (f) During construction of a dwelling on a Lot, the Owner shall take adequate measures to comply with applicable Ordinances. The topography and ground elevation of each Lot shall be finished as required by the plans and specifications approved by the Town engineer for the efficient discharge and drainage of surface groundwater and sump pump discharge throughout the Subdivision. Final grading of a Lot shall be completed within two (2) months following the date of occupancy of a dwelling thereon.

2.8 Zoning Laws, Etc. In addition to the provisions contained within this Declaration, all Lots and improvements thereon shall be subject to the Ordinances and applicable state and federal laws, as may be amended from time to time. No Lot shall be further divided, adjusted, or combined without the approval of the Town. The requirements under the Ordinances are not stated herein and, therefore, it shall be the sole responsibility of every Owner to understand and ensure compliance with the Ordinances as the same may be amended from time to time. In the event of a conflict between the provisions of this Declaration and the Ordinances and any of the Ordinances are stricter than the provision contained herein, the Ordinances shall control. Failure to mention a requirement, with respect to any Lot or other necessary approval in this Declaration, shall not imply that no such requirement exists with the Town and shall not constitute a waiver of such Town requirement and/or approval.

2.9 Landscape Requirements.

- (a) All plans for dwellings shall include a landscape plan which shall be subject to the approval of the ACC, shall be submitted in three (3) copies for approval prior to submission to the Town building inspector of the building plans for the dwelling. Such landscape plan shall include driveway, deck, patio, retaining walls, walkways and plantings such that a pleasing park-like appearance shall ultimately be accomplished in the Property and a uniform line of planting is avoided. Landscape planting for any dwelling as approved by the ACC shall be completed within one (1) year from the date of issuance of a temporary occupancy permit by the Town, except as set forth herein, and shall be properly maintained thereafter. Any alterations to the approved landscape plan for a Lot shall be subject to the approval of the ACC.
- (b) Each Owner, as part of their landscape plan shall install two (2) trees with a minimum two and one-half inch (2 ½") diameter approximately twelve inch (12") up the trunk from the ground, in the front yard in accordance with their approved landscape plan. Each Owner shall maintain the trees and should a tree(s) die, the Owner shall promptly replace the tree(s) with a similar species, minimum of two and one-half inch (2 ½") in diameter at the base the same approximate location within their front yard.

- 2.10 Nuisances, Etc. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be or may become a nuisance to the neighborhood or which may cause any noise which disturbs or might disturb the peace, quiet, comfort or serenity of the occupants of surrounding property.
- (a) Trash, garbage, or other wastes shall not be kept except in sanitary containers and all such materials or other equipment for disposal of same shall be properly screened from public view. No Lot shall be used or maintained as a dumping area for trash, garbage, refuse or debris of any kind. Outside incinerators are prohibited.
 - (b) No solar panels, external antennae, including satellite dishes, excepting satellite dishes of not greater than twenty-four inches (24") in diameter, television antenna or radio towers of any type for any purpose, shall be permitted on any Lot at any time without the prior written approval of the ACC.
- 2.11 Mailboxes. Owner's shall purchase at Lot closing, and the Owner shall thereafter maintain, one (1) mailbox with newspaper box, which shall be installed at the street in clusters and at locations approved by the Town and United States Postal Service. Individual newspaper boxes or other apparatus are prohibited in the parkway.
- 2.12 Roofing Material and Construction.
- (a) All dwellings proposed to be erected, altered, or modified shall specify on the construction plans roofing materials acceptable in quality to the ACC and the construction shall be carried out with such roofing material as approved by the ACC.
 - (b) All dwellings shall have minimum roof pitches of six (6) feet in height for each twelve (12) feet in length (6:12) or as approved by the ACC.
- 2.13 Exterior Building Materials and Dwelling Quality.
- (a) All dwellings proposed to be erected, altered or modified shall, on the construction plans, denote natural exterior material(s), i.e. 15% brick or stone on the front elevation, and EIFS, stucco, composite cement board, vinyl or aluminum or other similar materials acceptable to the ACC and the construction shall be carried out in accordance with the material as approved by the ACC. Aluminum, steel, wood or vinyl are permitted for soffits, windows and doors.
 - (b) The design, layout and exterior appearance of each dwelling proposed to be erected, altered, or modified shall be such that, in the opinion of the ACC at the time of approving of the building plans, the dwelling will be of a high quality and will have no substantial adverse effect upon property values. The ACC reserves the right to deny a building plan where the same or similar plan was previously approved on the Property.
 - (c) The proposed color schemes for a dwelling to be erected, altered, modified, or repainted with a new color scheme shall be submitted to the ACC for approval. It shall be the aim of the ACC to harmonize colors for not only the dwelling proposed, but to consider the effect of these colors and materials as they relate to other dwellings.
 - (d) All color schemes, including the color of siding, roof, brick, or stone samples must be submitted for approval before construction commences.
- 2.14 Fences. Only fences standing no more than six (6) feet in height will be permitted. Plans including size, shape, material and location of such fences must be approved by the ACC prior to installation.
- 2.15 Pools. Above ground and in ground swimming pools of any style or type, temporary or otherwise are permitted only with ACC prior written approval, which may be withheld if the proposed pool poses an

adverse effect to existing trees, topography or neighborhood. The construction and installation of an ACC permitted swimming pool shall be governed by the Ordinances.

- 2.16 Hot tubs. Outdoor hot tubs are permitted subject to ACC prior written approval. Above ground hot tubs shall be screened from public view. Inflatable or otherwise temporary hot tubs are prohibited.
- 2.17 Conveyance Fee. At the time of initial conveyance of a Lot by the Developer, the new Owner shall deliver a non-refundable and one-time conveyance fee in the amount of Two Hundred Fifty Dollars (\$250) to Developer. Following the initial conveyance of a Lot by Developer to an Owner, all future buyers of such Lot shall have no obligation to pay such a conveyance fee to any Owner at the time of conveyances of such Lot.

ARTICLE 3

DEDICATION AND EASEMENT PROVISIONS

- 3.1 Easements-General. Certain easements affecting the Property are being dedicated and recorded on the Plat as recorded in the office of the Register of Deeds of Racine County, Wisconsin. Each Lot shall be subject to any easement, dedication, restrictive covenant, or any other restriction granted (and/or retained) on the Plat or hereafter to be granted (and/or retained) by Developer or its successors and assigns to the Town, or the Association, or public or semi-public utility companies, for the erection, construction and maintenance of all poles, wires, pipes and conduits for the transmission of electricity, telephone and for other purposes, and for sewers, storm water drains, gas mains, water pipes and mains, and similar services, for performing any public or quasi-public utility function or for any other purpose that Developer or its successors and assigns may deem fit and proper for the improvement and benefit of the Property and for any other purpose as set forth in dedications and restrictive covenants on the Plat. The Owner of any Lot on which such easement area(s) are located may use such areas, together with the area between the roadway and their lot, for grass, plantings, driveways and other such uses as are described on the Plat and shall otherwise care for and maintain such area provided such uses shall not interfere with the improvements described in this paragraph and their uses and purposes; nor shall any other improvements be placed within such areas without the prior written consent of Developer, Town and/or any other party having an interest in the respective easement areas.
- 3.2 Dedicated Public Streets. The fee interest in the areas shown as a “Dedicated Public Street” on the Plat (Mila Way, Casen Court, Cora Court, Emma Lane, Jeffrey Drive and Belaire Drive) shall be dedicated, given, granted and conveyed by Developer to the Town.
- 3.3 Dedicated Utility Easements. Developer hereby declares, creates and reserves “Utility Easements” over each Lot, Outlot, and Dedicated Public Street in the Subdivision for purposes of underground installation and maintenance of electric, gas, water, and such other utilities or lines and equipment as may be necessary and desirable to service Lots within the Subdivision. These easements shall also include the right to trim or cut down trees, bushes, branches, and roots as reasonably required so as not to interfere with the use of the easement areas by the easement holder. To the extent possible, all such utility and communications lines and facilities shall be installed underground. Upon the installation of the utility cables and related appurtenances, the elevation of the existing ground surface within the easement areas shall not be altered by more than four (4) inches of final grade without the written approval of the easement holder. Developer further reserves the right to sign and record specific grants of easements to utilities or similar entities on standard terms and conditions, which easements shall in all cases be located as described in the instruments or reserved on the Plat or on a separate easement instrument.
- 3.4 Dedicated Storm Sewer System Easements. Developer hereby declares, creates and reserves easements shown on the Plat as “Drainage Easements” over Lots and Outlots in the Subdivision, for the purpose of operating, repairing, maintaining and replacing from time to time, facilities and improvements used in connection with storm water drainage and storm sewer facilities. These facilities and improvements include, but are not limited to, ponds, basins, ditches, swales, berms, drains, culverts and drainage pipes. No buildings or other improvements, pavement or landscaping may be placed in, upon or over the Drainage Easements or improvements comprising the drainage system. The Association shall be responsible for maintenance of all elements and improvements of the storm water drainage system. Such maintenance shall include, without

limitation and as needed, grading, seeding or sodding, maintaining erosion control methods to protect the drainageways; ditching to reestablish design capacity; removing of trash, debris, leaves and brush; clearing, repairing and replacing inlets, outlets and catch basin structures; mowing; and weeding to prevent nuisance conditions. The Town has the right to inspect the storm water drainage and in the event any system facilities or improvements have become polluted or non-functional with regard to water quality or storage capacity, and in the event the Association fails to correct such problem(s) after notification by the Town, the Town may hire a contractor to correct the problem(s) and fractionally assess each Owner in the Subdivision for the costs associated with those efforts. Each Owner of a Lot encumbered by a Drainage Easement shall be responsible for maintaining the landscaping in that easement, including but not limited to cutting the grass, weed control and debris removal. The Association shall be responsible for maintaining the landscaping in Drainage Easement areas located in the Outlots.

- 3.5 Dedicated Public Sanitary Sewer Easements. Developer hereby declares, creates and reserves easements shown on the Plat as “Sanitary Sewer Easements” over Lots, Outlots and Dedicated Public Streets in the Subdivision, for the purpose of operating, repairing, maintaining and replacing from time to time, facilities and improvements used in connection with sanitary sewer facilities. These facilities and improvements include, but are not limited to, mains, laterals, manholes, lift or pumping stations, and metering or sampling facilities. If Browns Lake Sanitary District allows for the placement of fencing, parking areas, driveways or landscaping within the Sanitary Sewer Easements granted to Browns Lake Sanitary District and in the event that the Browns Lake Sanitary District exercises its rights to maintain, repair or replace said sanitary sewer main, and related appurtenances, the Owner(s) of such fencing, parking areas, driveways or landscaping within the Sanitary Sewer Easements, not Browns Lake Sanitary District, shall be responsible for any and all costs associated with the removal and or replacement of such fencing, parking areas, driveways or landscaping. The Sanitary Sewer Easements shall be exclusive, except for: (1) such other easements as may be dedicated on the Plat with respect to the same area or any portion thereof and (2) such planting, care, and maintenance of the easement area by the Owners on which the easement is located as will not interfere with the improvements, uses and purposes of Browns Lake Sanitary District.
- 3.6 Dedicated Vision Triangle Easements. Nonexclusive easements coextensive with the areas shown as a “Dedicated Vision Triangle Easement” on the Plat are hereby dedicated, given, granted and conveyed by Developer to the Town for the purposes of preserving and maintaining a clear field of vision, from a standpoint of motorists, over and across such areas. The rights of the Town, pursuant to these easements shall take precedence over the rights of any other persons, associations or entities in these vision triangle easement areas. There shall be no obstructions, such as, but not limited to, structures, signage, fences or vehicular parking, or vegetation, within the Dedicated Vision Triangle Easement between the heights of 2’ and 10’ unless approved by the Town. This restriction is for the benefit of the public and shall be enforceable by the Town.
- 3.7 Outlots. Developer hereby dedicates, gives, grants and conveys a fee interest in the area shown on the Plat as Outlots to the Association, its successors and assigns and its successors-in-title, “as is” and without warranty, express or implied, of condition, quality of construction, fitness for a particular use or otherwise. Developer shall be responsible for the initial costs associated with the installation of the storm water drainage, retention basin, open space areas, and landscape areas contained within Outlots, and the Association shall be responsible for all maintenance and repairs thereafter. The Association shall be responsible for obtaining adequate liability insurance for the all portions of the Subdivision that are outside of the Lots, including without limitation, all improvements thereon (the “Common Areas”). Developer shall have no liability for damage or injury to any persons or property arising from the existence or use of the Common Areas. The Association shall indemnify and hold Developer harmless against any and all claims relating to the Common Areas.
- 3.8 Ponds. Storm water retention facilities located within Outlots have been designed as a storm water management and water quality device and are not intended as a recreational feature. Swimming, fishing, boating, ice skating and any other activity other than described herein is prohibited.

ARTICLE 4
HOMEOWNERS ASSOCIATION AND MEMBERSHIP

- 4.1 Homeowners Association. The Developer shall create a non-profit Wisconsin corporation to be known as Birchwood Reserve Homeowners Association, Inc., referred to herein as the "Association," which corporation is to be formed for the purpose of maintaining any Subdivision entrance signs, monuments, landscaping, Drainage Easements and related improvements, storm water retention ponds, utility or other easements and improvements thereon, and the Outlots, and any other real or personal property for which the Association is responsible together with any other amenity that may be provided by Developer or the Association from time to time. The Association shall assess the pro rata share of the operation expenses of the Association against the individual Owners, in accordance with terms set forth in the Articles of Incorporation and By-Laws of the Association.
- 4.2 Membership. Each Owner shall be a member of the Association (a "Member"). Such membership shall be appurtenant to and may not be separated from ownership of a Lot. Every Member of the Association shall have one (1) vote in the Association for each Lot owned by the Member. When more than one (1) person or entity hold an interest in a Lot, the vote shall be exercised as they themselves shall determine. So long as Developer, or its successors and assigns shall own one (1) or more Lots, the authority and functions of the Board of Directors and the ACC shall remain in and be exercised solely by Developer or its successors and assigns. Any Member who is delinquent in the payment of charges, assessments and special assessments charged to or levied against his Lot shall not be entitled to vote until all of such charges and assessments have been paid. Members shall vote in person or by proxy executed in writing by the Member. No proxy shall be valid after six (6) months from the date of its execution.
- 4.3 Directors and Officers of the Association. When Developer, or its successors and assigns, no longer owns one (1) or more Lots, or at the end of fifteen (15) years from the date of sale of the first Lot to be sold by Developer, or the date Developer elects voluntarily to turn over the Association to the Owners, whichever occurs first, Developer shall promptly select three (3) Owners to serve on the Board of Directors of the Association until the next annual meeting of Members or until their successors have been duly elected. The Board of Directors, thereafter, shall consist of three (3) members, shall be elected by the Members at each annual meeting of Members. Members of such elected Board of Directors shall serve for one (1) year or until their successors have been duly elected. The Board of Directors shall not be entitled to any compensation for their services as such directors. The Board of Directors will elect the officers of the Association annually.

ARTICLE 5 **ASSESSMENTS**

- 5.1 Creation of the Lien and Personal Obligation of Assessments. Developer hereby covenants and each Owner of any Lot by acceptance of the deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant, assume and agree to pay to the Association (1) annual general assessments or charges and (2) special assessments as provided herein. All such assessments, together with interest thereon and costs of collection thereof, including attorney's fees, shall be (a) a charge on the land and a continuing lien upon the Lot against which such assessment is made and (b) the personal obligation of the person who was the Owner of such property at the time of the assessment.

Notwithstanding any other provision in this Declaration to the contrary, Developer shall not be liable to the Association for the above-mentioned assessments. Every subsequent Owner, who has purchased a Lot from Developer or any other Owner, shall be subject to the entire amount of the assessment due and shall pay the same or prorated amount in the year of closing to the Association. In the event the assessments collected under this Article are insufficient to cover the cost of performing the obligations as are contained within this Declaration and as imposed by the Plat, and Developer continues to own Lots, Developer shall be responsible for up to one hundred percent (100%) of the extent necessary to cover the deficiency.

- 5.2 Annual General Assessment.
- (a) Purpose of Assessment. The annual general assessment levied by the Association each year shall be used exclusively to promote the recreation, health, safety and welfare of the

Owners and, in particular, for the improvement, construction, maintenance, policing, preservation and operation of the Common Areas, in accordance with the requirements set forth herein and those obligations and restrictive covenants set forth on the Plat including, but not limited to, the cost of labor, equipment, materials, insurance, management and supervision thereof and fees paid for auditing the books of the Association and for necessary legal and accounting services to the Board of Directors.

- (b) Determination of the Assessment. The Board of Directors shall prepare and annually submit to the Members a budget of expenses for the ensuing year for payment of all costs contemplated within the purposes of the annual general assessment described in Section 5.2(a). Upon adoption and approval of the annual budget by a majority of the Members, the Board shall determine the assessment by dividing the amount of the budget among all fully improved Lots equally. The rate of assessment shall not be limited by the amounts set forth in Wisconsin Statutes, § 779.70.
- (c) Method of Assessment. The assessment for each Lot shall be levied once in each year. The Board shall declare the assessments so levied due and payable at any time after thirty (30) days from the date of such levy (with an option for payment in monthly installments if approved by the Board), and the Secretary or other officer shall notify the Owner of every Lot so assessed of the action taken by the Board, the amount of the assessment of each Lot owned by such Owner and the date such assessment becomes due and payable. Such notice shall be mailed to the Owner at last known post office address by United States mail, postage prepaid.
- (d) Date Commencement of Annual General Assessments. Annual general assessments shall commence on the date as determined by Developer in its sole discretion.

- 5.3 Special Assessments. Developer and the Association shall have the right and power to levy Special Assessments in accordance with terms set forth in the Articles of Incorporation and By-Laws of the Association. Any Special Assessment for the general benefit of the Subdivision shall be levied against all Lots in equal shares, and a clear written explanation of which shall be delivered to all Owners. Adoption of a such a Special Assessment shall be subject to majority approval of the Owners. A Special Assessment may be levied against an individual Lot in order to properly maintain the Owner's Lot, dwelling, or Lot improvements, or to otherwise fulfill or satisfy an Owner's compliance with the terms, conditions and restrictions of these Protective Covenants.
- 5.4 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinated to the lien of any first mortgage on the lot.
- 5.5 Joint and Several Liability of Grantor and Grantee. Upon any sale, transfer, or conveyance, the grantee of a Lot shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor as provided in this Article up to the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amount paid by the grantee therefore. However, any such grantee shall be entitled to a statement from the Association setting forth the amount of such unpaid assessments and any such grantee shall not be liable for, nor shall the Lot be conveyed subject to a lien for, any unpaid assessment against the grantor pursuant to this Article in excess of the amount therein set forth. If the Association does not provide such a statement within fifteen (15) business days after the grantee's request, it is barred from claiming under any lien which was not filed prior to the request for the statement against the grantee.
- 5.6 Interest on Unpaid Assessment. Any assessment under this Article 6 which is not paid when due shall thereafter, until paid in full, bear interest at the rate of eighteen percent (18%) per annum. In addition to the interest charges, a late charge of up to Fifty Dollars (\$50.00) per day may be imposed by the Board of Directors against an Owner if any balance in common expenses remains unpaid more than thirty (30) days after payment is due.

- 5.7 Effect of Nonpayment of Assessments: Remedies of the Association. No Owner may waive or otherwise escape liability for assessments by non-use of the Common Areas or abandonment of their Lot. If the assessment levied against any Lot remains unpaid for a period of sixty (60) days from the date of levy, then the Board may, in its discretion, file a claim for maintenance lien against such Lot in the office of the Clerk of Circuit Court for Racine County within six (6) months from the date of levy. Such claim for lien shall contain a reference to the resolution authorizing such levy and date thereof, the name of the claimant or assignee, the name of the person against whom the assessment is levied, a description of the Lot and a statement of the amount claimed and shall otherwise comply in form with the provisions of Wisconsin Statute § 779.70. Foreclosure of such lien shall be in the manner provided for foreclosure of maintenance liens in said statute or any successor statute.

ARTICLE 6 **PROPERTY RIGHTS IN THE COMMON AREAS**

- 6.1 Title to Outlots. Outlots shall have 1/65th percent ownership conveyed to the Owners by quit claim deed from Developer. Members shall have the rights and obligations imposed by this Declaration with respect to such Common Areas.
- 6.2 Owner's Easements of Enjoyment. Subject to the provisions herein, every Owner shall have a right and easement of benefit and/or enjoyment in any Common Areas owned or acquired by the Association which shall be appurtenant to and shall pass with the title to every Lot. The rights and easements of benefit and/or enjoyment created hereby shall be subject to the following:
- (a) The right of the Association, but subject to the prior written approval of the Town to dedicate or transfer all or any part of any Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Board of Directors; and
 - (b) The right of the Association, but subject to prior written approval of the Town, to mortgage any or all of the Common Areas and facilities constructed on the Common Areas for the purposes of construction or maintaining improvements or repair to Association land or facilities pursuant to approval of the Board of Directors.

ARTICLE 7 **ENFORCEMENT**

- 7.1 Enforcement. Enforcement of this Declaration and the Covenants contained herein shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any provisions of these Covenants, either to restrain violation or to recover damages, or both. Any such action may be brought by the Association, any Owner possessing a vote in the Association, Developer or the Town. Enforcement of rules and regulations of the Association may also be accomplished pursuant to terms of the Association By-Laws. The Town shall have no obligation to enforce all or any portion of this Declaration or the Covenants contained herein.
- 7.2 Reimbursement. Any amounts expended by Developer and/or the Town in enforcing these covenants, including reasonable attorney fees, and any amounts expended in curing a default on behalf of any Owner or other party, shall constitute a lien against the subject real property until such amounts are reimbursed to Developer and/or the Town, with such lien to be in the nature of a mortgage and enforceable pursuant to the procedures for foreclosure of a mortgage.
- 7.3 Failure to Enforce Not a Waiver. Failure of Developer or assigns and/or the Town to enforce any provision contained herein shall not be deemed a waiver of the right to enforce these covenants in the event of a subsequent default.

- 7.4 Right to Enter. Developer and/or the Town shall have the right to enter upon any Lot within the Property for the purpose of ascertaining whether the Owner is complying with these Covenants or the purpose of performing obligations hereunder on behalf of a party in default hereof.

ARTICLE 8

TERM AND AMENDMENT

- 8.1 Term. This Declaration and the Covenants contained herein shall be in full force and effect for a period of forty (40) years from the date this Declaration is recorded, shall run with the Property and be binding upon Developer and all Owners, and shall automatically be extended for successive periods of forty (40) years unless an instrument signed by the Owners of two-thirds (2/3) of the Lots has been recorded, agreeing to terminate this Declaration in whole or in part. This Article shall not terminate, and shall not be interpreted to authorize termination of, any Drainage Easements, pond maintenance requirements, or other similar restriction herein that affects a public or governmental interest in real estate while the record title to the real estate or an interest in the real estate remains in the State of Wisconsin or a political subdivision or municipal corporation of the State of Wisconsin, including the Town, and the duration of any such restriction shall be unlimited and perpetual, unless terminated by the benefitted political subdivision by recorded document.
- 8.2 Amendment. For the first fifteen (15) years following the date this Declaration is recorded, this Declaration may be amended, at any time by written declaration, executed in such manner as to be recordable, setting forth such annulment, waiver, change, modification, or amendment executed: (a) solely by Developer until such time as Developer conveys all Lots to other Owners (other than by multiple sale of Lots to a successor Developer), and thereafter (b) by Owners of seventy-five percent (75%) of the Lots, provided the written consent of Developer or its successors and assigns is first obtained, so long as Developer, or its successors and assigns shall own any Lots. Subsequent to such fifteen (15) year period, this Declaration may be amended by written declaration executed by at least seventy-five percent (75%) of the Lots subject to this Declaration provided the prior written approval of the Town is obtained. Such written declaration shall become effective upon recording in the office of the Register of Deeds of Racine County, Wisconsin. All amendments shall be consistent with the general plan of development embodied in this Declaration.

ARTICLE 9

GENERAL PROVISIONS

- 9.1 Notices. Any notice required to be sent to any Owner under the provisions of the Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Owner on the records of the Association at the time of such mailings.
- 9.2 Disclaimer. Developer shall not be responsible for the damage, loss or destruction to any vegetation or trees as a result of any infrastructure installation or improvements including but not limited to sewer, water, storm drains, gas pipes, electric, cable, telephone, curb, gutter, paving, grading or any other improvement for the benefit of the properties.
- 9.3 Binding Effect. This Declaration and the Covenants contained herein shall run with the land and shall be binding upon and inure to the benefit of the Developer, all Owners and their heirs, successors, and assigns, and any party hereafter having any interest in any of the Lots in the Subdivision, for the full term of this Declaration and the Covenants contained herein.
- 9.4 Severability. Invalidation of any of the provisions of this Declaration, whether by court order or otherwise, shall in no way affect the validity or the remaining provisions which shall remain in full force and effect. Said invalid or illegal provision will be modified to reflect, as close as possible, the original intent of the former invalid or illegal provision, but in such a manner so as to make said provision valid and legal.

[REMAINDER OF PAGE IS INTENTIONALLY BLANK; SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, this Declaration has been duly executed this _____ day of February, 2024.

B&L Development LLC

By: _____
Chris Conigliaro, Member

State of Wisconsin)
) ss.
Racine County)

Personally came before me this _____ day of February, 2024, the above named, to me known to be such person(s) who executed the foregoing instrument and acknowledge that they executed the same as Member of Developer.

Print name _____
Notary Public, State of Wisconsin
My Commission Expires _____

This instrument was drafted by:

Peter Turke
Turke & Strauss LLP
613 Williamson Street, Suite 201
Madison, Wisconsin 53703

Exhibit A

Legal Description of Birchwood Reserve Subdivision

Parcel 1:

Lot 2 of Certified Survey Map No. 3347 recorded in the office of the Register of Deeds for Racine County, Wisconsin on May 13, 2019 as Document No. 2519993, being a redivision of Lot 2 of Certified Survey Map No. 2769 as recorded in the office of the Register of Deeds for Racine County, Wisconsin as Document No. 2076005 on March 13, 2006 and being located in part of Government Lots 6 and 7 and part of the Southeast ¼ and the Northeast ¼ of the Southwest ¼ of Section 22, Township 3 North, Range 19 East of the Fourth Principal Meridian in the Township of Burlington, County of Racine, and State of Wisconsin.

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Parcel 2:

Lands being part of the Southwest 1/4 of the Southeast 1/4 part of the Southeast 1/4 of the Southeast 1/4 and part of the Northeast 1/4 of the Southeast 1/4 of Section 22, Town 3 North, Range 19 East, Town of Burlington, Racine County, Wisconsin and being more particularly described as follows: Commencing at the South 1/4 corner of said Section 22; thence North 02 degrees 03 minutes 14 seconds West 576.88 feet along the West line of said Southeast 1/4 to the point of beginning; thence continuing along said West line North 02 degrees 03 minutes 14 seconds West 749.74 feet to the North line of the Southwest 1/4 of the Southeast 1/4; thence North 88 degrees 07 minutes 28 seconds East 1,314.11 feet along said North line to the West line of the Northeast 1/4 of the Southeast 1/4; thence North 02 degrees 01 minutes 57 seconds West 652.88 feet along said West line to the Southerly right-of-way line of C.T.H. "A"; thence along the Southerly right-of-way line of C.T.H. "A" the following courses; 1) North 69 degrees 37 minutes 42 seconds East 25.96 feet; 2) North 20 degrees 22 minutes 18 seconds West 35.00 feet; 3) North 69 degrees 37 minutes 42 seconds East 100.00 feet; 4) South 20 degrees 22 minutes 18 seconds East 10.00 feet; 5) North 69 degrees 37 minutes 42 seconds East 100.00 feet; 6) North 20 degrees 22 minutes 18 seconds West 10.00 feet; 7) North 69 degrees 37 minutes 42 seconds East 183.00 feet; thence South 20 degrees 22 minutes 18 seconds East 307.14 feet to the beginning of a curve; thence Southeasterly 43.83 feet along a curve to the right, having a radius of 366.00 feet and a chord which bears South 16 degrees 56 minutes 28 seconds East 43.80 feet, through a central angle of 06 degrees 51 minutes 39 seconds; thence North 82 degrees 28 minutes 45 seconds East 218.36 feet; thence South 02 degrees 00 minutes 39 seconds East 1,571.14 feet; thence North 82 degrees 32 minutes 26 seconds West 116.29 feet; thence South 02 degrees 03 minutes 14 seconds East 200 +/- feet to the centerline of Ketterhagen Road; thence North 73 degrees 11 minutes 21 seconds West 244.85 feet along said centerline; thence North 02 degrees 03 minutes 14 seconds West 200.00 feet; thence North 73 degrees 11 minutes 21 seconds West 358.15 feet; thence North 85 degrees 49 minutes 21 seconds West 941.85 feet; thence South 02 degrees 03 minutes 14 seconds East 200.00 feet to said centerline of Ketterhagen Road; thence North 85 degrees 49 minutes 21 seconds West 66.00 feet along said centerline; thence North 02 degrees 03 minutes 14 seconds West 200.00 feet; thence North 85 degrees 49 minutes 21 seconds West 333.46 feet to the point of beginning. Excepting therefrom lands conveyed for highway purposes. Further excepting therefrom lands described in Trustee's Deed recorded as Document No. 2486399. Further excepting therefrom lands described in Trustee's Deed recorded as Document No. 2505884. Said land being in the Town of Burlington, County of Racine and State of Wisconsin.

Tax Parcel #002-03-19-22-023-020