

**DECLARATION  
OF  
COVENANTS, EASEMENTS AND RESTRICTIONS  
FOR ASPEN CREEK**

THIS DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS FOR ASPEN CREEK (the "Declaration") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2003, by Aspen Creek, LLC, a Wisconsin limited liability company (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant, as the owner thereof, desires to provide for the preservation of the values and enhancement of certain property consisting of fifty (50) residential lots located in the Town of Oak Grove, Pierce County, Wisconsin (hereinafter referred to individually as a "Lot", collectively as the "Lots" or, alternatively, as the "Premises"), through the recording of certain covenants, easements and restrictions thereon, which certain property is more particularly described as:

See **Exhibit A** attached hereto and incorporated herein.

NOW, THEREFORE, Declarant hereby declares that the Premises shall hereafter be held, sold, and conveyed subject to the following covenants, restrictions, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Premises, and be binding on all parties having any right, title or interest in the described Premises or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

## SECTION 1 DEFINITIONS

The following words when used in the Governing Documents shall have the following meanings (unless the context indicates otherwise):

1.1 "Association" shall mean The Aspen Creek Home Owners' Association, Inc., a Wisconsin non-stock corporation which has been created and whose members consist of all Owners as defined herein.

1.2 "Board" shall mean the Board of Directors of the Association.

1.3 "Common Expenses" shall mean and include all expenditures made or liabilities incurred by or on behalf of the Association and incident to its operation, including without limitation, expenses incurred in the maintenance and repair of the Drainage Facilities and in the performance of the Association's obligations hereunder (including payment of the costs of Road Striping), insurance coverages maintained pursuant to Section 7 hereof, and those items specifically identified in this Declaration or the Bylaws.

1.4 "Drainage Facility" shall refer to the storm water ponding, drainage and erosion control facilities constructed within the drainage easements shown on the plat of Aspen Creek and the Certified Survey Maps identified on **Exhibit A**.

1.5 "Eligible Mortgagee" shall mean any Person owning a First Mortgage and which has requested the Association, in writing, to notify it regarding any proposed action which requires approval by a specified percentage of Eligible Mortgagees.

1.6 "First Mortgage" shall mean a mortgage encumbering a Lot which has been recorded so as to give constructive notice thereof, and the lien of which is prior to the lien of any other mortgage on the real property described therein.

1.7 "Governing Documents" shall mean this Declaration, and the Articles of Incorporation and Bylaws of the Association, as amended from time to time, all of which shall govern the use and operation of the Property.

1.8 "Member" shall mean all persons who are members of the Association by virtue of being Owners as defined in this Declaration. The words "Owner" and "Member" may be used interchangeably in the Governing Documents.

1.9 "Occupant" shall mean any person or persons, other than an Owner, in possession of or residing in a dwelling constructed on a Lot.

1.10 "Owner" shall mean a Person who owns a Lot, but excluding land contract sellers, mortgagees and other secured parties. The term "Owner" includes, without limitation, land contract buyers and holders of a life estate.

1.11 "Road Striping" shall mean striping the edge of the travel lane on 566th Avenue, and re-striping same from time to time, to mark the separation of the vehicular travel lane from

the adjacent pathway on said public road.

1.12 "Subsequent Amendment" shall mean an amendment to this Declaration which may be executed solely by Declarant in accordance with Section 9.6 hereof.

## **SECTION 2 ASSOCIATION MEMBERSHIP: RIGHTS AND OBLIGATIONS**

Membership in the Association, and the allocation to each Lot of a portion of the votes in the Association and a portion of the Common Expenses of the Association, shall be governed by the following provisions:

2.1 Membership. Each Owner shall be a Member of the Association by virtue of ownership of a Lot, and the membership shall be appurtenant to and may not be separated from ownership of any Lot. An Owner's membership shall terminate when the Owner's ownership interest in a Lot terminates. When more than one Person is an Owner of a Lot, all such Persons shall be Members of the Association, but multiple ownership of a Lot shall not increase the voting rights allocated to such Lot nor authorize the division of the voting rights.

2.2 Voting Rights. The Association shall have two (2) classes of voting membership:

(a) Class A. Class A Members shall be all Members with the exception of Declarant. Subject to Section 2.5 below, Class A Members shall be entitled to one (1) vote for each Lot owned.

(b) Class B. The Class B Member shall be the Declarant who shall be entitled to four (4) votes for each Lot owned. The Class B Membership shall cease and be converted to Class A Membership upon the happening of the first to occur of the following events:

(i) when the total votes of Members outstanding in the Class A Membership equal the total votes outstanding in favor of the Declarant in the Class B Membership;

(ii) on December 31, 2011; or

(iii) upon the voluntary conversion of the Class B Membership by the Declarant to Class A Membership.

2.3 Common Expenses. Common Expense obligations are allocated equally among the Lots; except that special allocations of Common Expenses shall be permitted as provided in Section 4.1.

2.4 Appurtenant Rights and Obligations. The ownership of a Lot shall include the voting rights and Common Expense obligations described in Sections 2.2 and 2.3. Said rights, obligations and interests, and the title to the

Lots, shall not be separated or conveyed separately.

2.5 Authority to Vote. The Owner, or some natural person designated to act as proxy on behalf of the Owner, and who must be an Owner or an agent of the Owner if the Owner is not a natural person, may cast the vote allocated to such Lot at meetings of the Association, so long as the Owner is in good legal and financial standing with the Association and provided, that if there are multiple Owners of a Lot, only the Owner or other Person designated pursuant to the provisions of the Bylaws may cast such vote. The voting rights of Owners are more fully described in Section 3 of the Bylaws.

### **SECTION 3 ADMINISTRATION**

The administration and operation of the Association, including but not limited to the acts required of the Association, shall be governed by the following provisions:

3.1 General. The operation and administration of the Association shall be governed by the Governing Documents. The Association shall be responsible for the maintenance and repair of the Drainage Facilities and shall have all powers described in the Governing Documents. All power and authority of the Association shall be vested in the Board, unless action or approval by the individual Owners is specifically required by the Governing Documents. All references to the Association shall mean the Association acting through the Board unless specifically stated to the contrary.

3.2 Bylaws. The Association shall have Bylaws. The Bylaws and any amendments thereto shall govern the operation and administration of the Association.

3.3 Association Assets; Surplus Funds. Any funds and other assets, if any, acquired by the Association shall be held and used for the benefit of the Owners for the purposes stated in the Governing Documents. Surplus funds remaining after payment of or provision for Common Expenses and reserves shall be credited against future assessments or added to reserves, as determined by the Board.

### **SECTION 4 ASSESSMENTS FOR COMMON EXPENSES**

4.1 General. Assessments for Common Expenses shall be determined and assessed against the Lots by the Board, in its discretion; subject to the limitations set forth in Sections 4.2 and 4.3, and the requirements of the Bylaws. Assessments for Common Expenses shall include annual assessments and may include special assessments. Assessments shall be allocated equally among the Lots according to Section 2.3, subject to the following qualifications:

(a) Reasonable attorneys' fees and other costs incurred by the Association in connection with (i) the collection of assessments and (ii) the enforcement of the Governing Documents against an Owner or Occupant or their guests, may be assessed against the Owner's Lot.

(b) Fees, charges, late charges, fines and interest, as well as insurance deductibles and costs related to damages caused by an Owner, may be assessed against the Owner's Lot.

(c) If any damage to the Drainage Facilities is caused by the act or omission of any Owner or Occupant, or their guests, the Association may assess the costs of repairing the damage exclusively against the Owner's Lot to the extent not covered by insurance.

Assessments levied by the Association shall be used exclusively for the maintenance, repair and replacement of the Drainage Facilities, payment of costs of Road Striping, and the other affairs of the Association. No claim shall be made against Declarant or Lots owned by Declarant in connection with or based on Declarant's construction of the Drainage Facilities, the Road Striping, or construction of other improvements in the Premises to the extent such construction was completed in substantial conformity with then applicable County requirements or otherwise accepted upon completion by Pierce County.

4.2 Annual Assessments. Annual assessments shall be established and levied by the Board, subject only to the limitations set forth hereunder. Each annual assessment shall cover all of the anticipated Common Expenses of the Association for that year. Annual assessments may, but shall not be required to, provide, among other things, for contributions to a separate reserve fund in an amount reasonably anticipated to cover the periodic cost of maintenance and repair of the Drainage Facilities and the cost of the Road Striping. After a Common Expense assessment is levied, the Board may modify the annual assessment upward or downward from time to time, during such year in which the assessment is payable, subject to the limitations set forth in this paragraph. Written notice of any modification of the annual general assessment shall be sent to every Owner subject to this Declaration.

4.3 Special Assessments. In addition to annual assessments, and subject to the limitations set forth hereafter, the Board may levy in any assessment year a special assessment against all Lots for the purpose of defraying in whole or in part: (i) the cost of any unforeseen, unbudgeted or non-regular Common Expense; (ii) the cost of maintenance, repair and replacement of the Drainage Facilities, and any fixtures or other property related thereto, and the cost of the Road Striping; and (iii) general or specific reserves for such maintenance, repairs, and replacements.

4.4 Commencement of Annual Assessments; Due Date. The obligations of an Owner to pay assessments hereunder shall commence as to any Lot, on the conveyance of the Lot to an Owner other than Declarant. Each annual

assessment shall cover all of the anticipated Common Expenses of the Association for that year, except that the first annual assessment for any Lot shall be adjusted according to the number of months then remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto; provided, however, during the period of Declarant control of the Association, if the Association budget remains the same from the previous year, no notice will be sent an Owner. The due date shall be established by the Board.

4.5 Liability of Owners for Assessments. The Owner at the time an assessment is payable with respect to the Lot shall be personally liable for the share of the Common Expenses assessed against such Lot. Such liability shall be joint and several where there are multiple Owners of the Lot. The liability is absolute and unconditional. An Owner shall not be exempt from liability for payment of his or her share of Common Expenses for any reason, including without limitation, by right of set-off, by waiver of use or enjoyment of any part of the Property, by absence from or abandonment of the Lot, by the waiver of any rights, or by reason of any claim against the Association or its officers, directors or agents, or for their failure to fulfill any duties under the Governing Documents. The Association may invoke the charges, sanctions and remedies set forth in Section 4.7, in addition to any remedies provided elsewhere in the Governing Documents or by law, for the purpose of enforcing its rights hereunder.

4.6 Assessment Lien. The Association has a lien on a Lot for any assessment levied against that Lot from the time the assessment becomes due. Fees, charges, late charges, fines and interest charges imposed by the Association are liens, and are enforceable as assessments under this Section. Recording of this Declaration constitutes record notice and perfection of any lien under this Section, and no further recordation of any notice of or claim for the lien is required.

4.7 Foreclosure of Lien; Remedies. If an assessment against a Lot becomes more than thirty (30) days past due, such installment shall bear interest from the due date at the rate set by the Board which shall be less than or equal to the maximum rate allowed by law. If such assessment becomes more than sixty (60) days past due, then the Association may, upon ten (10) days prior written notice to the Owner, foreclose the lien for unpaid assessments against a Lot in accordance with the foreclosure procedures in that portion of Wisconsin law relating to the foreclosure of mechanic's liens that is codified in Wisconsin Statutes. The Association, or its authorized representative, shall have the power to bid in at the foreclosure sale and to acquire, hold, lease, mortgage and convey any Lot so acquired. The Owner and any other Person claiming an interest in the Lot, by the acceptance or assertion of any interest in the Lot, grants to the Association a power of sale and full authority to accomplish the foreclosure. The Association shall, in addition, have the right to pursue any other remedy at law or in equity against the Owner who fails to pay any assessment or charge against the

Lot.

4.8 Lien Priority; Foreclosure. A lien under this Section is prior to all other liens and encumbrances on a Lot except (i) liens and encumbrances recorded before the Declaration, (ii) any First Mortgage on the Lot, and (iii) liens for real estate taxes and other governmental assessments or charges against the Lot. Any holder of a first mortgage on a Lot or any purchaser of a first mortgage at a foreclosure sale, that comes into possession of a Lot by foreclosure of the first mortgage or by deed or assignment in lieu of foreclosure, takes the Lot free of any claims for unpaid assessments or other charges or liens imposed against the Lot by the Association which have accrued against such Lot prior to the acquisition of possession of the Lot by said first mortgage holder or purchaser, except that any unpaid assessments or charges may be reallocated equally among all the Lots.

4.9 Conveyances; Statement of Assessments. In a voluntary or involuntary conveyance of a Lot, the buyer shall not be personally liable with the seller for any unpaid assessments and other charges made by the Association against the seller or the seller's Lot prior to the time of conveyance to the buyer, unless expressly assumed by the buyer. However, the lien of such assessments shall remain against the Lot until released. The Association shall, upon demand and for a reasonable charge, furnish a statement signed by an officer or agent of the Association setting forth the amount of the unpaid assessments against a specified Lot, payable in the Association's current fiscal year, which statement shall be binding on the Association as of the date of its issuance. The seller shall be required to provide such statement to the buyer prior to closing.

## **SECTION 5 RESTRICTIONS ON USE OF PROPERTY**

5.1 Land Use and Building Type: No Lot shall be used except for residential purposes, except that a purchaser of a Lot from Declarant who erects a dwelling may use such dwelling as a model home for a period not exceeding eighteen (18) months from the date of completion of such dwelling. No dwelling shall be erected, other than one detached single-family dwelling, not to exceed two stories in height, as measured from grade at the front door. In the event the dwelling includes a walkout basement, the basement shall not be counted as a story. All structures constructed or placed on the property shall be totally completed on the exterior thereof within twelve (12) months after commencement of construction. No composting site may be established within twenty (20) feet of any Lot line within the plat.

5.2 Minimum Size of Dwelling: No dwelling shall be erected, altered, placed, or permitted to remain on any Lot, unless such dwelling meets the following square-foot area requirements, exclusive of the area, if any, included within garages, decks, open or unconditioned porches, and basements:

(a) For all Lots:

- (i) Two-story Dwelling - - Total of not less than 2,200 finished square feet;
  - (ii) One and one-half story Dwelling - - Total of not less than 1,900 finished square feet;
  - (iii) One-story (Rambler) Dwelling - - Ground floor area of not less than 1,500 finished square feet; or
  - (iv) Other - - Discretion of Architectural Control Committee. Splits and modifieds must be approved by the "Committee" (as defined in Section 5.4(a) hereof), and generally shall comply with the square footage requirements for two-story dwellings.
- (b) The Architectural Control Committee may, in its sole discretion, provide area credit for two story space such as a vaulted ceiling or like feature which extends from one story of a house to another.

5.3 Minimum Size of Garages. Each Lot shall be improved with at least a two-car garage attached to the dwelling structure. Locating the vehicle doors of the attached garage so that those vehicle doors do not face toward the street on which the Lot is located is preferred if the garage will be visible from the street, but not required. Unattached garages are also permitted to the extent provided by the terms of Paragraph 5.19 herein below.

5.4 Architectural Control Committee:

- (a) There is hereby created an Architectural Control Committee ("Committee") which shall initially be composed of the following:

Name:

Daniel V. Rooney, Chairman and a representative of Declarant.

In addition to said initial member, the Declarant shall have the right to appoint additional members of the Committee; provided, the total number of members of the Committee shall not exceed five (including the Chairman). Declarant shall also have sole discretion to allocate differing degrees of voting power upon matters decided by the Committee to any members designated by Declarant.

- (b) The Committee shall appoint one member of the Committee to be its Chairman. The Chairman shall call meetings of the Committee, from time to time at his or her discretion. During periods in which the Committee consists of only one individual, all acts of the Committee shall be determined, and memorialized, by that individual. During periods in

which the Committee consists of two or more individuals, a quorum of the Committee shall consist of, and the Committee may act upon the vote or written consent of, any two of its members that, collectively, can exercise a majority of the voting power of all of the members. The Chairman of the Committee is authorized to execute certificates of approval, notices of disapproval, and similar instruments effectuating or memorializing decisions of the Committee.

- (c) In the event of death or resignation of any member of the Committee, the remaining member or members shall have full authority to designate a successor or successors, except that the Declarant shall have the sole right to designate a successor or successors to any member that had been designated by Declarant. Neither the members of the Committee nor any of its designated representatives shall be entitled to any compensation for services performed pursuant to this Declaration. Notwithstanding the foregoing, at any time after, and subject to the condition that, all of the Lots affected by this Declaration have been sold by the Declarant or its successors and assigns, to owners who reside in dwellings constructed on said Lots, and at such time as Declarant no longer owns or holds any right, title, lien or interest, whether legal or equitable, in any Lot, then such owners of a majority of all of the Lots affected by this Declaration shall have the power to change the membership of the Committee and the allocation of voting power among and between such members of the Committee, eliminate the Committee, or modify its powers and duties. Such action shall be effective only when evidenced by an instrument which has been executed by such owners of a majority of the Lots (with one vote for each Lot), and recorded in the office of the Register of Deeds in and for Pierce County, Wisconsin;
- (d) No building, structure, fence, wall, kennel, antenna or other improvement shall be erected, placed, or altered on any Lot until the plans and specifications, including exterior materials and exterior colors, and a plan showing the location of the structure, elevations, and finished grade-levels, along with name of the builder or contractor who will actually perform the work, have been approved as provided in subparagraph (f). The following is a non-exclusive list of items that may be considered by the Committee in reviewing all such plans, specifications and documentation:
  - (1) Reputation and experience of builder or contractor;
  - (2) Quality and type of workmanship and materials;
  - (3) Nature of external design and colors and harmony with any existing structures on the subject Lot and on other Lots;
    - (i) SIDING – Siding shall be wood, brick, stone, or stucco.

Log homes will also be permitted. Masonite and other hardboard products, 4' x 8' sheeting, and untreated wood, will not be permitted; however, a material commonly known under the brand name HardiPlank will be permitted. Aluminum and vinyl will be permitted (subject to (iii) and (iv) below). Any other siding materials will require the prior written approval of the Committee;

- (ii) **COLORS** – The homes constructed on the Premises should be distinguished by their architecture and landscaping, not by bold colors. The Committee may require that the homes be finished in tan, taupe, brown, gray, or other soft earth tones. Purple, pink, “lime” green and similar bold colors are, without limitation, specifically excluded.
- (iii) **FRONT ELEVATIONS** – Notwithstanding Subsection (3)(i) above, each home constructed on the Premises shall have brick, stone or stucco (or other material if approved for the subject home by the Architectural Committee, in its sole discretion) covering at least thirty percent (30%) of the area of the front elevation of the house (i.e., the side of the house primarily facing the street), including for purposes of such calculation the front elevation of the attached garage. The Architectural Committee may, in their sole discretion, approve a partial or whole exception for such 30% requirement if a distinctive design feature, such as a wrap-around porch, makes the 30% requirement impractical to satisfy.
- (iv) **REAR ELEVATIONS** - Notwithstanding Subsection (3)(i) above, each home which has a rear elevation (i.e., the side of the house facing the back yard of the Lot) which is visible from a street serving any of the Lots, shall have brick, stone or stucco (or other material if approved for the subject home by the Architectural Committee, in its sole discretion) covering at least thirty percent (30%) of the area of the rear elevation of the house, including for purposes of such calculation the rear elevation of the attached garage. The Architectural Committee may, in their sole discretion, approve a partial or whole exception for such 30% requirement if a distinctive design feature, such as a wrap-around porch, makes the 30% requirement impractical to satisfy.
- (v) **CHIMNEY, ROOF, ATTIC VENTS** – Exposed metal chimney stacks and flues are permitted only at the rear of roof ridge lines (i.e., non-street facing) and flues must be

enclosed by a chase compatible with the dwelling's materials and proportions, with the metal flue extending not more than 16 inches above said chase (or such greater amount as may be required by applicable codes). All efforts shall be made to locate roof, attic, box vents at the rear side of the dwelling unit (i.e., facing away from the street) and not exposed to view fronting the street.

- (4) Location with respect to topography and finish-grade elevation.
- (5) Location of septic system.

- (e) Plans, specifications, and all documentation shall be mailed to:

ASPEN CREEK ARCHITECTURAL  
CONTROL COMMITTEE  
Attn: Daniel V. Rooney  
N5224 1090th Street  
Prescott, WI 54021,

and shall be deemed to have been received by the Committee upon personal delivery or three (3) days after the same is deposited in United States mail with postage paid, properly addressed to the Committee. All exterior elevations, materials and colors, including the manufacturer, type and color of all shingles, shall be specified in such plans, specifications, and documentation and the name and address of the party to whom approval or disapproval is to be mailed shall also be included. Approval or disapproval will be effective on the date of postmark when mailed by first class, mail, postage prepaid, and addressed to the named party.

- (f) The Committee's determinations concerning such plans, specifications and documentation shall be conclusive and shall be reached in the Committee's sole discretion. If the Committee disapproves of the builder or contractor, the plans and specifications or any other aspect of the documentation submitted to it, it shall state in writing the reason for such disapproval and, in the case of the plans and specifications, the deficiencies which must be cured to obtain approval. In the event the Committee fails to approve or disapprove the plans and specifications and site plans within thirty (30) days after the entirety of same have been submitted to it, no further approval will be required, and the restrictions, covenants, and conditions set forth in this document shall be deemed to have been complied with.
- (g) In no event shall the Committee or any member of the Committee be liable to an Owner or any other person or entity for damages or compensation of any nature or amount whatsoever, incurred or allegedly

incurred due to any action or inaction of the Committee, and each Owner and every person and entity who would, but for this provision, have or allege a right to such damages, hereby waives any and all such rights and agrees to release, and hereby releases, the Committee from any and all claims for such damages and compensation; it being acknowledged, however, that this waiver and release shall not affect or impair any right or claim an aggrieved Owner or other person or entity may have for injunctive relief, declaratory judgment, or other equitable relief.

- (h) The Committee, in its sole discretion, hereby reserves the right to grant a reasonable variance or adjustment of conditions and restrictions contained in the Declaration in order to overcome practical difficulties and prevent unnecessary difficulties from arising by reason of the application of such conditions and restrictions. Such variances or adjustments shall be granted only in cases where the granting thereof shall not be materially detrimental or injurious to other Owners or their improvements in the neighborhood and shall not defeat the general intent and purpose of these restrictions.

5.5 Structure/Septic System Location:

- (a) The Committee may require a structure to be located farther from the side, rear and front lot lines than the minimum building setback requirements of the Ordinances of the Town of Oak Grove or Pierce County. No structure shall be located on any Lot nearer than (i) 100' from the centerline of the road or street abutting upon or adjacent to the front (street-facing side) of the subject Lot, (ii) 25' from a side lot line, and (iii) 10' from the rear lot line. The foregoing setback requirements shall be subject to any more restrictive distance requirements as may be provided for in the applicable Ordinances of the Town of Oak Grove, Pierce County or in other private restrictions or covenants applicable to any given Lot.
- (b) All septic systems, including tanks, drain fields, mounds and other facilities associated therewith (collectively, "Septic System Facilities"), shall be located at the rear of the Lot so as to be substantially screened from view from the street abutting the Lot by the dwelling structure on the Lot. In case such placement is not allowed pursuant to any applicable ordinance of the Town of Oak Grove or Pierce County, or if such placement would be substantially impractical due to the topography of the Lot, then the Owner of the Lot shall submit to the Architectural Control Committee an alternative location for the Septic System Facilities serving the Lot which minimizes the visibility of such Septic System Facilities from the street on which the Lot abuts; the approval of which alternative location by the Architectural Control Committee shall not be unreasonably withheld.

5.6 Driveways: A driveway for each Lot shall be paved with brick,

asphalt or concrete for a minimum of two hundred feet (200') commencing at the improved surface of the adjacent road or street providing public access to the Lot and continuing toward the home on the Lot. The remainder of the driveway may be surfaced with gravel. The driveway, including the required paving, shall be installed within twenty-four (24) months following the date construction of the dwelling structure on the Lot is commenced.

5.7 Easements for Utilities and Drainage: Utility and drainage easements are reserved or dedicated as and to the extent as expressly shown on the recorded plat of Aspen Creek and the Certified Survey Maps identified on **Exhibit A**. Within such easements, no building, structure, fill or other material shall be placed or permitted to remain, which may damage or interfere with the installation and maintenance of utilities, or which may change the direction or impede the flow of water over the drainage easements, affect the holding capacity of ponds within such drainage easements, or otherwise negatively affect the operation of the Drainage Facilities.

5.8 Business Activities: No business may be continuously conducted or operated in or from a Lot which causes inconvenience, excessive traffic, excessive parking congestion or undue annoyance to occupants of other Lots in the Premises (e.g., high volume, public day care services); provided, those businesses which are in the business of first-time sales of the Lots and homes in the Premises are exempt from the requirements of this Paragraph 5.8. Model homes are also exempt from the requirements of this Paragraph 5.8. Automobile, recreational vehicle, truck and farm equipment repair and auto body businesses are expressly prohibited.

5.9 Nuisances: No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which is or may become an annoyance or nuisance to any owner of any Lot.

5.10 Signs: No sign of any kind shall be displayed to the public view on any Lot except one non-illuminated sign of not more than four (4) square feet (a) advertising business activity permitted pursuant to Section 5.8 of this Declaration above (provided such business sign shall be mounted on the dwelling structure or on an outbuilding), or (b) advertising a Lot or home for sale or rent (signs used by Declarant or a builder to advertise the availability of Lots or dwellings upon the Premises during the construction and sales period are exempt). This restriction shall also not apply to any model home or any sign or logo for any model home.

5.11 Pets: No animals (other than dogs, cats, birds and other small household pets) may be kept within the dwelling structure or otherwise on a Lot. No more than two dogs and no more than two cats shall be kept, bred or raised on any Lot; provided, pups or kittens born to a dog or cat of an Owner who routinely resides on the Lot may be maintained inside a structure on the Lot for up to six months after birth. Commercial kennels are not allowed on any Lot. Animals

must at all times be controlled by the Owner or a member of the Owner's family or designee thereof. When off of the Owner's Lot, each animal must be leashed or under direct physical control of the Owner or Owner's designee. Animals shall not be allowed to run free or roam the area or create a disturbance to the neighborhood. Owners are encouraged to use invisible fencing to contain their pets. Breeds of hounds commonly known for their barking, baying or howling, and pit bull terriers shall not be kept, bred or raised on any Lot and are prohibited. Any shelters designated for animals must adequately protect the animal from the elements. The location, size, color and materials comprising any exterior kennels or other such shelter and fenced runs must be screened from view from the street and are subject to the prior written approval of the Committee. Animals kept on any Lot shall not be kept, bred or maintained for any commercial business. Livestock such as cows, pigs, horses, goats, sheep, poultry, elk, red deer, ostrich, llamas, emus and fowl may not be kept on any Lot.

5.12 Garbage and Refuse Disposal: Trash, garbage, or other wastes shall be kept in sanitary containers. All equipment for storage or disposal of such materials shall be kept in a clean and sanitary condition, and screened from public view. During construction upon any Lot, each builder must provide on-site sanitation (i.e., portable facility for all workmen at the Lot, adjacent to the site of construction). Additionally, no "hog fence" refuse is allowed during construction. All construction debris must be placed in a job-site construction dumpster or container of at least ten (10) cubic yards in size. If the Town of Oak Grove or other governmental entity charges the Declarant a fee (a "Street Cleaning/Repair Fee") for street cleaning or repair made necessary by the movement of construction equipment in and around a certain Lot upon which construction activities are being conducted (the "Subject Lot"), Declarant shall have the right to assess the Subject Lot in an amount equal to the amount of such Street Cleaning/Repair Fee charged to Declarant. Such assessment shall, together with interest, costs and attorneys' fees: (i) be the personal obligation of the owner of the Subject Lot as of the date such assessment is levied, and shall be binding upon such owner's successors, assigns, heirs, devisees and personal representatives; and (ii) a lien on the Subject Lot and any other Lot that may then be owned by the person or entity that was the owner of the Subject Lot as of the date the assessment was levied. If the payment of any such assessment becomes delinquent, then: (i) a money judgment may be obtained against the parties liable therefore; or (ii) the lien may be foreclosed and said Subject Lot (and/or any other Lot encumbered by such line) sold in accordance with the foreclosure procedures in that portion of Wisconsin law relating to the foreclosure of mechanic's liens that is codified in Wisconsin Statutes. The assessment shall be deemed levied upon the earlier of the delivery of written notice thereof to the owner of the Subject Lot or the recording of a written notice thereof against the title to the Subject Lot, and the priority of such lien vis-a-vis any other liens or encumbrances against a Lot shall be established as of the occurrence of the recording of written notice of the assessment thereof against such Lot.

5.13 Antennae: Except with the prior written approval of the

Committee, no exterior television, radio, satellite, or microwave antenna of any sort shall be erected or maintained upon any Lot other than satellite dishes to be mounted on the dwelling structure and located out of public view from the street in front of the Lot and having a diameter of not greater than two feet. The Committee may choose to prohibit only certain kinds and locations of antennae, and to change its regulations from time to time, all in its sole discretion. Without limiting the generality of the foregoing, it shall not be deemed arbitrary or an abuse of such discretion if the Committee were to:

- (a) Permit existing antennae to continue to be maintained while at the same time banning new antennae of the same type or location;
- (b) Prohibit antennae to be placed so as to be visible from the street side of a Lot, but permit the same antennae if not so visible; or
- (c) Place height or size restrictions on antennae.

No commercial antennae or other communication facilities, including but not limited to cell phone towers, are allowed on any Lot.

5.14. Parking and Outside Storage: No campers, motor homes, recreational vehicles, horse trailers, other trailers, boats, snowmobiles, ATVs and other wheeled or tracked vehicles (not including passenger vehicles or any equipment used in the initial construction of a structure on a Lot) or unlicensed or inoperable vehicles shall at any time be stored or parked on any Lot outside of a garage for in excess of seven (7) consecutive days and, at all times that they are not in use and it is otherwise reasonably practicable, garage doors shall remain closed. Firewood shall be stacked neatly and screened from the sight of any other Lot or the street. Overnight parking of commercial vehicles on any Lot is prohibited.

5.15. Temporary Residences: No structure of a temporary character, recreational vehicle, trailer, tent, shack, garage, barn, playhouse, batting cage, or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

5.16. Landscaping Requirements:

- (a) All disturbed areas of any Lot upon which a home has been completed to a condition ready for occupancy between September 1 and March 30 must be seeded (and reseeded, as needed), fully sodded or restored to its natural condition and each such Lot shall, at a minimum, have foundation landscaping installed, all by the first June 30 following the date of such completion. All disturbed areas of any Lot upon which a home has been completed to a condition ready for occupancy between May 1 and August 31 must be seeded (and reseeded, as needed), sodded or restored to its natural condition and each such Lot shall, at a minimum, have foundation landscaping installed within ninety (90) days following the date of such completion. For purposes hereof, “foundation landscaping” shall refer to rock, mulch, bushes or other landscaping that shall be

installed between the foundation of a home and the drip line of the roof for such home. Notwithstanding the foregoing provisions of this Section, landscaping requirements of model homes will be governed by the Committee. Each Owner shall submit to the Committee, and the Committee, at its sole discretion, shall review and have the opportunity to approve or disapprove a landscape plan for each Lot prior to the start of any construction. All homes built on any Lot must have a minimum of \$1,000.00 of initial landscaping.

- (b) It shall be Owner's responsibility, at Owner's sole cost, to (i) remove all noxious weeds from the Lot and maintain the Lot free of noxious weeds; (ii) keep the Lot free of garbage, rubbish, trash and the like; and (iii) keep all grassy areas of the Lot mowed pending construction of a dwelling structure on the Lot; it being agreed that Declarant may, but shall have no obligation, to perform all or any part of an Owner's obligations under this Subsection (b) to the extent the Owner fails to do so, without notice or liability to the Owner or any other person with any interest in the subject Lot.

5.17. Mailbox: Developer intends to provide one mailbox on each Lot that is uniform in size shape, design, and exterior color, to all mailboxes in the Premises. It shall be the Owner's responsibility to perform all necessary maintenance, repair and replacement of the mailbox after installation. All such mailbox maintenance, repair and replacement shall be uniform in size, design, and exterior color to the Developer provided mailboxes in the Premises.

5.18. Fences/Walls: No fence or wall shall be erected, placed or altered on any Lot so as to be nearer to the street than 100 feet from the centerline of said street, without prior approval of the Committee. No fence or wall shall be erected which exceeds a height of six feet measured from grade.

5.19. Structures: No mobile homes, pre-manufactured homes, earth homes, dome homes, pole barns, trailer homes or basement homes shall be erected, placed or permitted to remain on a Lot. Except for the single dwelling house (with attached garage) contemplated in Section 1 of this Declaration, no building shall be erected, altered, placed or permitted to remain on any Lot excepting one outbuilding, which shall (a) not exceed 864 square feet in floor area, (b) be not greater than 36 feet in length or width, (c) not exceed in height the lesser of (i) seventeen (17) feet (measured from grade) or (ii) the height of the single dwelling house on the Lot, (d) be constructed of the same or comparable material used or to be used on the exterior of the dwelling house on the Lot, and (e) not be used for residential purposes; provided the foregoing shall not prevent use of a room therein as an office or studio by the occupant of the single dwelling house on the Lot. A single gazebo or playhouse of not more than 200 square feet in floor size and not greater than ten (10) feet in height (measured from grade) shall not be considered an outbuilding for the purposes of this section. The outbuilding on a Lot, if any, shall be located in the rear yard or side yard of a Lot,

provided that, if located in a side yard, the outbuilding shall be set back from the street a distance at least equal to the distance between said street and the front of the dwelling house. All utility lines providing service to an outbuilding shall be located underground.

5.20. Utilities: All utility connection facilities shall be located underground. Propane and any other fuel tanks shall be screened from public view.

5.21. Snowmobiles, All-Terrain Vehicles and Other Recreational Vehicles: Snowmobiles, all-terrain vehicles, so-called four-wheelers, dirt bikes, motorcross bikes and other like vehicles are not permitted to be operated on any Lot or the Premises except as expressly provided in this Section. Snowmobiles and four-wheel all-terrain vehicles may be operated on the paved street located in the public right-of-way or on the gravel shoulder, if any, immediately adjacent to such pavement and within said right-of-way, to the extent necessary to travel from an Owner's Lot to trails outside of the Premises, and then only as and to the extent permitted by law, and at a speed and in a manner so as not to unreasonably create an annoyance or disturbance to residents of the Premises. The foregoing notwithstanding, four-wheel vehicles may be used on an Owner's Lot, in a manner which does not constitute a nuisance.

5.22. Speed Limit: In order to ensure the safety of all persons in the Premises, the speed limit on all private roads serving the Premises shall be 25 miles per hour. Stricter speed restrictions may be imposed by the Committee.

5.23. Farming Operations: All prospective purchasers and Owners are advised that the Premises are adjacent to active farming operations. The rural character of the Premises is benefited by the surrounding land use and is also impacted by the sights, sounds and smells of rural agriculture. Wisconsin law provides protection of farming operations by severely restricting nuisance actions relating thereto. Reference is made to Wisconsin Statutes § 823.08 (regarding agricultural use).

5.24. Hunting: Bow hunting by an Owner or its permittees on the Owner's Lot will be permitted as and to the extent permitted by law but other hunting is not permitted on the Premises. Further, no firearms may be discharged anywhere on any Lot or elsewhere in the Premises.

5.25. Subdivision/Use for Access: Lots in the Premises may not be subdivided. No Lot, nor any part of any Lot, shall be used as or for an access road serving property adjacent to the Premises.

5.26. Tree Removal: Tree removal shall be subject to Committee approval and shall be approved only to the extent reasonably necessary to accommodate the siting of a dwelling house or outbuilding; provided, however, that diseased or dead trees may be removed at Owner's discretion without

Committee approval. Trimming or removal of trees to enhance views may be permitted by the Committee, but any such trimming or removal shall be completed in a manner which preserves privacy between adjacent Lots.

5.27. Screening of Miscellaneous Equipment and Structures: All heat pumps, propane tanks, solar devices, hot tub pumps, swimming pool pumps, filtration systems, satellite dishes, and all similarly otherwise exposed mechanical equipment located on a Lot shall be aesthetically concealed from view on all sides and shall be shielded to minimize noise and safety concerns.

5.28 CSM Lot 3. The Lot labeled on Exhibit A as "CSM Lot 3" and legally described on Exhibit A as Lot 3 of Certified Survey Map filed \_\_\_\_\_, 2003, in Volume \_\_, page \_\_\_\_ in the Office of the Registrar of Deeds in and for Pierce County, Wisconsin, as Document No. \_\_\_\_\_ (and referred to for the purposes of this Subsection 5.28 as "CSM Lot 3") and the Owner of said CSM Lot 3 are not, and shall not be, subject to, bound by, or have enforced against said CSM Lot 3 or the Owner of CSM Lot 3, any of the foregoing terms, provisions, covenants, conditions and restrictions of this Section 5, and CSM Lot 3 and the Owner of CSM Lot 3 are and shall forever be unconditionally, permanently and absolutely exempted from all such terms, provisions, covenants, conditions and restrictions of this Section 5. In furtherance thereof, and notwithstanding any terms of Section 8 of this Declaration or any provision of the Bylaws of the Association to the contrary, in no event and under no circumstances whatsoever shall this Declaration or the Bylaws be modified or amended in any manner so as to terminate, modify or amend the foregoing terms of this Subsection 5.28 without the express prior written consent of the Owner of CSM Lot 3 and the consent of any Eligible Mortgagee owning a First Mortgage against CSM Lot 3. All parties benefited by this Declaration covenant and agree not to take any action or commence any suit, action or proceeding to enforce any of the foregoing terms, provisions, covenants, conditions and restrictions against CSM Lot 3 or the Owner of CSM Lot 3, or otherwise proceed against CSM Lot 3 or the Owner of CSM Lot 3 contrary to the foregoing terms and intent of this Subsection 5.28. Notwithstanding the foregoing terms of this Subsection 5.28, CSM Lot 3 and the Owner of CSM Lot 3 shall be subject to the terms of Subsection 5.7 of this Declaration (entitled Easements for Utilities and Drainage), which shall be enforceable by the Town of Oak Grove.

## SECTION 6 MAINTENANCE

6.1 Maintenance by Association. The Association shall provide for all maintenance, repair and replacement of the Drainage Facilities necessary to maintain the Drainage Facilities in working condition (collectively referred to as "maintenance"). The Association shall pay for the cost incurred by the Town from time to time in completing Road Striping; it being acknowledged that the Town, not the Association, will do the Road Striping work.

6.2 Enforcement by Town. The Town of Oak Grove, Wisconsin (the "Town") is an intended third party beneficiary of the obligations of the Association that are set forth in Section 6.1 hereof. In the event that the Association fails to perform all or any portion of such obligations in a timely

manner and, in any case, within 15 days after written notice to do so from the Town, the Town may (but shall have no obligation to) perform any such obligations and charge all costs reasonably incurred by the Town in the performance of such obligations as a special charge pursuant to Wis. Stats. § 66.0627, which shall then be charged back pro rata against the property tax bill of each Lot.

6.3 Easement Maintenance. The Association and the Town may enter upon any portion of the drainage easements shown on the Aspen Creek plat for purposes of performing the obligations contemplated in Section 6.1 hereof, and for purposes of the inspection and enforcement of the covenants set forth in Section 5.7 hereof, and may take whatever actions are reasonably necessary to carry out the Association's maintenance obligations as set forth herein.

6.4 Damage Caused by Owner. Notwithstanding any provision to the contrary in this Section 6, if, in the judgment of the Association, the need for maintenance of any part of the Drainage Facilities is caused by the willful or negligent act or omission of an Owner or Occupant, or their guests, the Association may cause such damage or condition to be repaired or corrected and the reasonable cost thereof may be assessed against the Lot of the Owner responsible for the damage, subject, however, to the limitations set forth in Section 4.1 above.

## **SECTION 7 INSURANCE**

7.1 Association Insurance. Commencing not later than the time of the conveyance of a Lot to any Owner other than Declarant, the Association may procure and maintain, at its sole discretion, commercial general liability, and other reasonable insurance coverage related to the Drainage Facilities and the Association's responsibilities hereunder. Each Owner hereby waives and releases Declarant from any and all claims, demands, injury, damages, liabilities and costs as may be suffered or incurred by the Owner, its spouse, children, guests or invitees, in connection with the Drainage Facilities.

## **SECTION 8 AMENDMENTS**

8.1. Owners. Any amendment of this Declaration (other than a Subsequent Amendment pursuant to Section 9 below) shall require the consent of: (i) Owners of Lots to which are allocated at least sixty-seven percent (67%) of the total voting power in the Association; (ii) the percentage of Eligible Mortgagees (based upon one vote per first mortgage owned) required by Subsection 8.2 as to matters prescribed by said Subsection; and (iii) as long as Declarant owns any unsold Lot, the Declarant. Consent of the Owners may be obtained in writing or at a meeting of the Association duly held in accordance with the Bylaws. Consents of Eligible Mortgagees and the Declarant shall be in writing. The Amendment shall be effective when recorded. An affidavit by the Secretary of the Association as to the outcome of the vote, or the execution of the foregoing agreements or consents, shall be adequate evidence thereof for all purposes, including without limitation, the recording of the amendment. Notwithstanding the foregoing to the contrary, the requirements for the Association's maintenance and repair of the

Drainage Facilities, payment of Road Striping costs, and the Town's rights in connection therewith, as set forth in Section 6 hereof, shall not be amended herein, or by an amendment to the Association Bylaws, without the consent of the Town.

8.2 Rights of Eligible Mortgagees. The written consent of Eligible Mortgagees representing at least fifty-one percent (51%) of the Lots that are subject to First Mortgages held by Eligible Mortgagees (based upon one vote per Lot encumbered by a First Mortgage) shall be required for any amendment to the Governing Documents (other than a Subsequent Amendment pursuant to Section 9 below) which establishes, provides for, governs or regulates any of the following: (i) voting rights; (ii) assessments, assessments liens, or priority of assessment liens; (iii) responsibility for maintenance and repairs; (iv) imposition of any restrictions on an Owner's right to sell or transfer his or her Lot; (v) any provisions that expressly benefit Eligible Mortgagees, or insurers or guarantors of mortgages; (vi) change the allocations of voting rights or Common Expense obligations; or (vii) termination of the Association.

## SECTION 9 SPECIAL DECLARANT RIGHTS

Notwithstanding any provision contained herein or in the other Governing Documents to the contrary, Declarant shall have, and hereby reserves, exclusive and unconditional authority to exercise the following special Declarant rights from the date of this Declaration first set forth above through the date of Declarant's annexation of the "Annexation Property" pursuant to Section 9.6 below and thereafter for as long as it owns a Lot (including any Lot as may be created from any part of the "Annexation Property"):

9.1 Complete Improvements. To complete all improvements indicated on Declarant's development plans or allowed by the Declaration;

9.2 Sales Facilities. To construct, operate and maintain model homes or dwellings or a temporary sales office, and other development, sales and rental facilities within any Lots owned by Declarant from time to time.

9.3 Easements. To have and use easements, for itself, its employees, contractors, representatives, agents and prospective purchasers through and over the Lots for the purpose of exercising its special Declarant rights.

9.4 Control of Association. To control the operation and administration of the Association, including without limitation, the power to appoint and remove the members of the Board; provided that, following Declarant's annexation of the Annexation Property pursuant to Section 9.6 below, the special Declarant rights described in this Section 9.4 shall lapse when all Class B Memberships are terminated or extinguished.

9.5 Consent to Certain Amendments. Declarant's written consent shall be required for any amendment to this Declaration or any other of the Governing Documents, notwithstanding the terms of Section 8.1 hereof to the contrary.

9.6 Annexation of Additional Property. As the Owner thereof, or if not the Owner, with the consent of the Owner thereof, Declarant shall have the option, at any time and from time to time, to deliver notice (the "Annexation Notice") to the other Owners of the Declarant's intent to subject to the provisions of this Declaration all or any portion of the real property described in **Exhibit B** attached hereto and by reference made a part hereof (the "Annexation Property"). The Annexation Notice shall include the following:

- (a) The legal description of that portion of the Annexation Property that is the subject of such Annexation Notice; and
- (b) A designation of the number of additional Lots in the Annexation Property that is the subject of such Annexation Notice.

Such annexation shall be accomplished by a filing in the public records of Pierce County, Wisconsin, by Declarant as Owner of that portion of the Annexation Property that is the subject of such filing or, if Declarant is not the Owner, with the consent of the fee Owner thereof, a Subsequent Amendment to this Declaration annexing such property. Any Subsequent Amendment executed and recorded for the purpose of subjecting additional property to this Declaration pursuant to this Section 9.6 may, but is not required to, impose, expressly or by reference, additional restrictions and obligations on the real property that is submitted by such Subsequent Amendment to the provisions of this Declaration. Any such annexation shall be effective upon the filing for record of such Subsequent Amendment unless otherwise provided therein. From and after the filing of said Subsequent Amendment, the Annexation Property (or lesser portion thereof, as the case may be) identified in the Annexation Notice and described in the Subsequent Amendment shall become part of the Premises for all purposes of this Declaration.

9.7 Architectural Control Committee. To control the operation and administration of the Architectural Control Committee described in Section 5.4 hereof including, without limitation, the power to appoint and remove members of the Committee.

## **SECTION 10. MISCELLANEOUS**

10.1 Terms: These covenants, restrictions, and conditions are to run with the title to each Lot within the Premises and shall be binding on all parties and all persons owning any right, title or interest in any such Lot for a period of twenty-nine (29) years from the date these covenants, restrictions, and conditions are recorded, after which time the same shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then owners of a majority of the Lots has been recorded, agreeing to change the same in whole or in part. These covenants and restrictions are intended to constitute real covenants and the benefits and burdens thereof shall "run" with title to each Lot. Declarant shall have the non-exclusive right, but not the obligation, to pursue available legal or equitable remedies in the event of any breach of the provisions hereof. An Owner against whom enforcement is sought hereunder shall be responsible for the Committee's reasonable legal fees and costs in the

event the Committee prevails in any enforcement action brought hereunder.

10.2 Severability: Invalidation of any of these covenants, restrictions, or conditions by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

[Remainder of page intentionally left blank]

THIS DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS is executed and delivered as of the date first above written.

Aspen Creek, LLC, a Wisconsin limited liability company

By: \_\_\_\_\_  
Daniel V. Rooney  
Its President

STATE OF WISCONSIN    )  
  )ss.  
COUNTY OF PIERCE    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2003, by Daniel V. Rooney, the President of Aspen Creek, LLC, a Wisconsin limited liability company, on behalf of the limited liability company.

\_\_\_\_\_  
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

Fabyanske, Westra & Hart, P.A.  
920 Second Avenue South, Suite 1100  
Minneapolis, MN 55402  
612-338-0115

**Exhibit A**

Legal Description

Aspen Creek Platted Lots

Lots 1 through 47, Aspen Creek, according to the recorded plat thereof on record in the Office of the County Registrar of Deeds in and for Pierce County, Wisconsin.

CSM Lots 1 and 2

Lots 1 and 2 of Certified Survey Map filed \_\_\_\_\_, 2003 in Volume 9, page 136, in the Office of the Registrar of Deeds in and for Pierce County, Wisconsin, as Document No. 449827.

CSM Lot 3

Lot 3 of Certified Survey Map filed \_\_\_\_\_, 2003 in Volume \_\_, page \_\_\_\_\_, in the Office of the Registrar of Deeds in and for Pierce County, Wisconsin, as Document No. \_\_\_\_\_.

(Parcel labels are for reference only and are not part of the legal description.)

**Exhibit B**

Annexation Property

None