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364171

OFFICE OF COUNTY RECORDER
COUNTY OF BROWN, MN

I hereby certify that the within instrument
was filed in this office for record on

this 31st day of December
20 07 at 9:00 o'clock A. M.
Beth Kamoly
County Recorder

By _____ Deputy
Dave O/a

Reserved for Recording Information City of ulm

DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this 1st day of AUGUST, 2007, by and between Ronald Smith and Susan Smith, husband and wife, (hereinafter jointly referred to as "Developer"), and the City of New Ulm, Minnesota, a municipal corporation, (hereinafter referred to as "City"):

RECITALS:

A. Developer desires to subdivide and plat as Dacotah West Addition the following described real estate:

(See Exhibit A attached hereto)

(hereinafter referred to as "Subdivision");

B. Developer has filed with the City a Final Plat dividing the Subdivision into a variety of lots and the contents of this Final Plat are specifically incorporated herein by reference;

C. The property comprising the Subdivision is zoned as R-1 (Single Family Residence District);

D. All of the parties hereto wish to provide for the orderly use and development of the entire Subdivision; and

E. The City has approved the Final Plat of the Subdivision subject to additional conditions as set forth by the City Council.

the owner's effort and expense before the commencement of construction of the Public Improvements, and the City shall not be responsible for the cost of such removal or subsequent replacement.

- f. All driveways within the rights-of-way of any street within the Subdivision shall be of such dimensions, number and location as are approved by the City Engineer pursuant to the City's design standards for the same, and any driveway which does not so conform shall be removed at the sole expense of the affected property owner.
- g. Developer's engineer will certify to the City that the design of the pond shown on the grading plan provided to and approved by the City is in compliance with Phase II of the National Pollutant Discharge Elimination System (NPDES) Storm Water regulations in effect at the date of the grading plan. The City shall be entitled to withhold performance of any obligation assumed by it under this agreement until it is reasonably satisfied that Developer has complied with the terms of this paragraph.
- h. The City shall secure the necessary NPDES permit for construction of the Public Improvements. The Developer shall secure the NPDES construction storm water permit which includes developing a storm water erosion control plan and Storm Water Pollution Prevention Plan for the Subdivision and remain in compliance with the same during the entire residential build-out of the Subdivision.
- i. No structure on any lot within Block 4 of the Subdivision shall exceed 23 feet in height about the first floor elevation for such lot as approved pursuant to Section 3.1

Section 2.2. Maintenance of Mature Trees. The Parties acknowledge and agree that, (i) the Subdivision contains a number of Mature Trees (i.e. trees with a diameter of six inches or greater), (ii) the Mature Trees are a substantial contributing factor to the value of the lots within the Subdivision, (iii) the Mature Trees contribute to the physical and aesthetic health and welfare of the neighborhood and of the City, and (iv) regulation of the development of the Subdivision to ensure maximum retention of the Mature Trees is in the best interest of the Subdivision and the City.

- a. The development of each lot shall require the preparation and submission to the City Engineer for approval before the issuance of a building permit a Mature Tree retention plan. Such plan shall be calculated and prepared with the purpose of maximizing the retention of Mature Trees upon the lots of the Subdivision and shall at a minimum designate: (i) the location, type and size of each Mature Tree upon such lot; (ii) the proposed location, size and type of each proposed improvement upon the property; (iii) each Mature Tree proposed to be removed during development of the lot; and (iv) the proposed location, type and size of each replacement tree proposed for such lot in accordance with this section. No building permit may be issued for such lot until the plan required by this subsection is reviewed and approved by the City. The City shall be entitled to withhold the approval of such plan if it reasonably

- (4) **Toe of Bluff.** The point of a bluff where there is, as visually observed, a clearly identifiable break in the slope from steeper to gentler slope above. If no break in the slope is apparent, the toe of bluff shall be determined to be the lowest end of the lowest fifty (50) foot segment measured on the ground with an average slope exceeding eighteen (18) percent.

b. **Standards.**

- (1) **Construction.** The Top of Bluff shall be delineated in plans by an applicant and verified to the City prior to issuance of any development approvals. In addition, a site development plan for a lot subject to these regulations shall include the proposed locations of the structure(s) in proximity to the Top of Bluff, the existing and proposed site elevations, the height of the structure, the locations of utilities and a construction erosion control plan shall be submitted for review and approval.

- A. All structures including fences must be located outside the Bluff Impact Zone.
- B. No tower shall be located within one-quarter (1/4) mile of the Bluff Impact Zone, except for water reservoirs owned and constructed by the City.
- C. Impervious surface coverage of lots must not exceed twenty-five (25) percent of lot area.
- D. Grading, filling or excavating is not permitted within the Bluff Impact Zone.

- (2) **Vegetative Alterations.**

In Bluff Impact Zone limited clearing of trees and shrubs and cutting, pruning and trimming trees is allowed to provide a view. Removal of more than ten (10) percent of existing trees greater than six (6) inches in diameter at four (4) feet in height is prohibited. The above provisions are not applicable to the removal of trees, limbs or branches that are dead, diseased or pose safety hazards.

SECTION 3.1. Grading Plan and Implementation. Developer understands and agrees that the City will not issue any building permit for any lot in the Subdivision until Developer has prepared and submitted to the City for its review and approval a grading plan ("Grading Plan") for the Subdivision. Such grading plan shall, at a minimum, include (a) existing and proposed elevations and contours, (b) proposed drainage patterns for the Subdivision, (c) vegetation removal and replacement plans, (d) temporary and permanent erosion control methods and

SECTION 3.4. Owners' Association. Developer shall establish an owners' association (Association) comprised of all of the owners of all private property within the Subdivision. The Association shall, among other things, become the owner of and be responsible for the maintenance, repair and management of commonly owned, private property within the Subdivision.

- a. Commonly owned property (the "Common Property") of the Association shall consist of at least that parcel designated as Outlot A of the Subdivision.
- b. The organizational documents of the Association shall, at a minimum, provide, (a) a mechanism by which all members of the Association will contribute to and be responsible for the total cost of maintenance, repair and management of the Common Property including the storm water quality pond on Outlot A; (b) a mechanism for enforcing the rules and assessments of the Association; and (c) that the City is a third-party beneficiary of the Association's activities and is entitled to enforce the terms of the organizational documents against the Association and each individual member thereof.
- c. The organization documents of the Association shall be subject to the review and approval of the City, and shall be implemented and recorded in the office of the Brown County Recorder against all privately owned lots within the Subdivision prior to the issuance of any building permit for the Subdivision.

SECTION 4.1. Public Improvements and Special Assessments. By reason of this Agreement, Developer shall be deemed to have petitioned the City for installation of all public improvements ("Public Improvements") necessary to serve the Subdivision, including: (i) street grading, aggregate base, (ii) concrete curb and gutter, bituminous surfacing, sidewalks, concrete driveways and street lighting, (iii) sanitary sewer, storm sewer collection and treatment facilities and water mains, (iv) water and sanitary sewer end services, and (v) boulevard trees. Such Public Improvements have been or are to be constructed within and upon Cottonwood Street, Settler Trail, Dacotah Drive and Benz Circle.

SECTION 4.2. Except as otherwise set forth herein, all assessments for Cottonwood Street Public Improvements or for Public Improvements to serve property within the Subdivision shall include the full cost of installation of such improvements, including associated engineering costs, and shall be calculated and imposed on a unit basis of proration based upon a unit value for each such lot set forth in Exhibit B to this Agreement to be prepared and submitted by Developer. Such allocation shall be subject to final approval by the City.

- a. Each lot within the Subdivision shall be assessed for the actual cost of construction of concrete driveway improvements to serve such lot.

SECTION 4.3. Developer hereby waives for itself and all subsequent owners of any lot within the Subdivision any and all right to appeal from: (i) the determination of the City as to the

be effective until and unless a properly approved final plat of Dacotah West Addition is filed in the office of the County Recorder in and for Brown County, Minnesota.

SECTION 6.2. This Agreement shall be permanent and run with the real estate comprising the Subdivision as described above, and the rights granted and responsibilities assumed thereby shall inure to, and be binding upon, the parties hereto, their heirs, successors and assigns.

SECTION 6.3. The City shall cause this Agreement to be simultaneously recorded with the Brown County Recorder, at Developer's expense, at the time of the filing of the Final Plat for Dacotah West Addition.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first written above.

DEVELOPER:



Ronald Smith



Susan Smith

CITY OF NEW ULM

By 

Brian D. Gramentz
City Manager

By 

Reginald Vorwerk
Finance Director/City Clerk-Treasurer

EXHIBIT A

LEGAL DESCRIPTION

Lot 3, Block 1, Jungkans First Addition, City of New Ulm, Brown County, Minnesota, according to the plat thereof on file and of record with the Brown County Recorder, containing 20.55 acres.

Also that part of Boundary Street adjacent to and southerly of Lot 3, Block 1, Jungkans First Addition, City of New Ulm, Brown County, Minnesota, described as:

Beginning at the southeast corner of Lot 3, Block 1, Jungkans First Addition; thence South 89 degrees 55 minutes 40 seconds West, (Minnesota County Coordinate System – Brown County Zone – NAD 83 – 1986) along the south line of said Lot 3, Block 1, Jungkans First Addition, a distance of 718.39 feet; thence South 00 degrees 04 minutes 20 seconds East, 10.00 feet; thence North 89 degrees 55 minutes 40 seconds East, along a line parallel with and distant 10.00 feet south of the south line of said Lot 3, Block 1, Jungkans First Addition, a distance of 714.88 feet to the point of intersection with the southerly extension of the easterly line of said Lot 1, Block 3, Jungkans First Addition; thence North 19 degrees 16 minutes 09 seconds East, along said extension, 10.60 feet to the point of beginning. Containing 0.16 acres.

Said hereinbefore-described parcel to be surveyed and platted as Dacotah West Addition.

- Block 1, Lots 1 – 2
- Block 2, Lots 1 – 8
- Block 3, Lots 1 – 8
- Block 4, Lots 1 – 16
- Block 5, Lots 1 – 5
- Outlot A

CONSENT AND SUBORDINATION

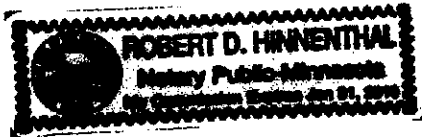
The undersigned hereby consent to the foregoing Development Agreement and subordinate whatever interests the undersigned may have in and to the property described therein to the terms of such Development Agreement, and agree to be bounds by all of the terms and conditions therein contained.

In witness whereof Arlin L. Jungkans, as Trustee of the Arlin L. Jungkans and Gloria A. Jungkans Charitable Remainder Unitrust, fee owners, has caused these presents to be executed on this 13th day of August, 2007.

Arlin L. Jungkans
Arlin L. Jungkans, as Trustee of the Arlin L. Jungkans and Gloria A. Jungkans Charitable Remainder Unitrust

STATE OF MINNESOTA)
) ss.
COUNTY OF BROWN)

On this the 13th day of August, 2007, before me a Notary Public within and for said County, personally appeared Arlin L. Jungkans, as Trustee of the Arlin L. Jungkans and Gloria A. Jungkans Charitable Remainder Unitrust, fee owners, known by me to be the person named in the foregoing instrument and who did acknowledge said instrument to be his free act and deed.



Robert D. Hinnenthal

In witness whereof Richard A. Wichinski, Vice President of the WELS Foundation, Inc., as Trustee of the Arlin L. Jungkans and Gloria A. Jungkans Charitable Remainder Unitrust, fee owners, has caused these presents to be executed on this 16th day of AUGUST, 2007.

Richard A. Wichinski

Richard A. Wichinski, Vice President of the WELS Foundation, Inc., as Trustee of the Arlin L. Jungkans and Gloria A. Jungkans Charitable Remainder Unitrust

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OFFICE OF COUNTY RECORDER
COUNTY OF BROWN, MN

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I hereby certify that the within instrument was filed in this office for record on

this 28th day of August
20 09 at 4:45 o'clock P. M.

Beth Karmaly
County Recorder

By _____ Deputy
B,R:O'C KC

(above space reserved for recording)

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR DACOTAH WEST ADDITION, NEW ULM, BROWN COUNTY, MINNESOTA

THIS DECLARATION (the "Declaration") is made this 3rd day of December, 2008, by James A. Holm (for the WELS Foundation, Inc.), and Arlin L. Jungkans, as Trustees of the Arlin L. Jungkans & Gloria A. Jungkans Charitable Remainder Unitrust (the "Declarant")

RECITALS

WHEREAS, Declarant is the owner of certain real property located in the City of New Ulm, County of Brown, State of Minnesota legally described and now duly platted as "Dacotah West Addition" as such plat is now filed and of record as document No. 364173 in the records of the Office of the County Recorder, Brown County, Minnesota ("Property").

WHEREAS, Declarant desires to subject the Property to the covenants, conditions, and restrictions set forth in this Declaration for the benefit of the Property and each owner thereof and to preserve the values and appearances of this residential development.

NOW, THEREFORE, Declarant hereby declares that the Property described hereof is and shall be held, transferred, sold, conveyed and occupied subject to the terms of this Declaration and its covenants, conditions, and restrictions (sometimes referred to as "Covenants"), which covenants and restrictions shall run with the real property and be binding on all parties having any right, title or interest in the Property, their heirs, successors, and assigns, and shall inure to the benefit of each owner.

**ARTICLE 1
DEFINITIONS**

The following words, when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

1.01 "Dacotah West Addition" means the property at any time subject to this Declaration.

1.02 "Architectural Review Committee" or "ARC" means the committee created to establish and enforce criteria for the construction of improvements within the Property.

1.03 "Declarant" refers to Arlin L. Jungkans and the WELS Foundation, Inc., as trustees of the Arlin L. Jungkans and Gloria A. Jungkans Charitable Remainder Trust,

1.04 "Declaration" means this instrument, and all exhibits hereto, as the same may be amended or supplemented from time to time.

1.05 "Dwelling" or "Living Unit" means any structure on a Lot or Lots intended for use as a single family Dwelling.

1.06 "Lot" means any Lot identified as part of the Property described in Article 2 hereof, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use and occupancy as a residence for a single family. The term shall refer to the land which is part of the Lot as well as any improvements thereon. The term shall include within its meaning, by way of illustration but not limitation, single-family detached houses on separately platted Lots, as well as vacant land intended for development as such, but shall not include property dedicated to the public. A Lot shall contain only one Dwelling.

1.07 "Owner" means the record owner or contract for deed purchaser of the fee title to any Lot, and excludes contract for deed sellers, mortgagees or any others having such interest merely as security for the performance of an obligation. For purposes of voting or other rights, such as amending this Declaration, there shall be considered only one "Owner" for each Lot, such that each Lot will receive only one vote and be considered one unit for purposes of joining in any amendment hereto, no matter the number of fractional or joint owners to any particular Lot.

1.08 "Property" or "Subject Property" shall mean and refer to all properties that are subject to this Declaration as defined in Article 2, including areas dedicated to public use.

1.9 "City" means New Ulm, Minnesota.

**ARTICLE 2
PROPERTY SUBJECT TO THIS DECLARATION**

The real property subject to this Declaration is located in New Ulm, Brown County, Minnesota, legally described and now duly platted as Lots 1 & 2, Block 1, Lots 1 – 8, Block 2, Lots 1 – 8, Block 3, Lots 1 – 16, Block 4, Lots 1 – 5, Block 5, and Outlot A, Dacotah West Addition, New Ulm, Brown County, Minnesota, as such plat is now recorded as document No. 364173 in the records of the office of the County Recorder, Brown County, Minnesota.

**ARTICLE 3
SITE DESIGN AND ARCHITECTURAL REVIEW**

3.01 **Architectural Review Committee.** In order to preserve the high architectural quality of the

Dwellings, Lots and Common Areas in Dacotah West Addition, an Architectural Review Committee (sometimes referred to herein as the "ARC") is hereby created by the Declarant. The purpose of the ARC shall be to create and help maintain architectural and site design quality, appropriate diversity, design compatibility and property values. So long as the Declarant owns any undeveloped Lot in the Property, Declarant shall appoint the members of the ARC. The Declarant may contractually delegate ARC appointment authority. At such time as Declarant no longer owns any Lot in the Property, or upon abdication of authority by written notice to all of the lot owners, the ARC shall consist of the board of directors of the Dacotah West Owners' Association, Inc.

A majority of the Committee may designate a representative to act for it. Neither the members of the Committee, nor its designated representative, shall be entitled to any compensation for services performed under this Declaration.

Wherever in this Declaration reference is made to "approval" of the ARC, such approval shall be in writing and shall be obtained by the person seeking such approval, prior to initiation of the action as to which such approval is sought.

3.02 Original Construction. A site plan, landscaping plan, name of builder serving as the General Contractor, and plans and specifications for the construction of a Dwelling and other buildings and site improvements on any Lot shall be submitted to the ARC for its written approval, in accordance with the procedures set forth in Section 3.04, before any construction activity is begun.

3.03 Review of Modifications. After the completion of an original Dwelling on a Lot, the construction or modification of any building or structure, including fences, retaining walls and monuments, including those constructed by the Declarant, shall require the prior written approval by the ARC of the plans and specifications for the construction, in accordance with the standards set forth in Section 3.04.

(a) **Exceptions to Review.** No permission or approval shall be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of the Owner's Dwelling.

3.04 Standards of Review. The ARC may promulgate detailed standards and procedures to guide its areas of responsibility, judgment and practice. The ARC standards may include, without limitation, the quality of workmanship, architectural style, design and harmony of the external design with existing structures, topography, finish grade elevation, and overall conformity with the type and quality of construction in Dacotah West Addition. The following procedures shall govern the review of plans and specifications by the ARC:

(a) **Construction Plan.** Construction plans submitted must specifically define and include the size of the building, complete building floor plans, all elevations, the nature and kind of materials, topographic grade plans showing final finish grades of all improvements on the Lot and location of the Dwelling on the property. Any additional features proposed, such as accessory structures, pool, retaining walls, and similar features, shall be included on the plans submitted to the ARC.

(b) **Minimum Landscape Plan.** Each Owner shall, prior to commencement of construction of a Dwelling, submit a landscape plan to the ARC for approval (the Minimum Landscape Plan) which will specify the areas to be planted, sodded or seeded, mulched, or retained as natural areas within 90 days after substantial completion of the Dwelling (except that with respect to Dwellings completed from November to March of each year, the Owner shall have until the following June to carry out such Minimum Landscape Plan).

(c) **Prior Construction.** If any Owner commences construction prior to the approval of the plans and specifications by the ARC hereunder, the Declarant, ARC, or any Lot owner may resort to any and all remedies available to them, at law or in equity, including any remedies found elsewhere in these covenants.

3.05 **Procedure.** If the ARC fails to approve or disapprove plans and specifications within 60 days after the submission of the same to it, approval will be deemed to have been granted. In the event of disapproval by the ARC, the requesting Owner may give written notice that the Owner wishes to appeal the ARC decision and request a hearing by the ARC. Such notice must be furnished to the ARC within 10 days of its decision. The hearing shall be at a special meeting of the ARC to be held within 30 days of the receipt of the Owner's notice of appeal. The ARC's determination following the appeals hearing shall be final and binding upon Owner.

3.06 **Variances.** Reasonable variances to the regulations of the ARC may be granted by the ARC after review in order to overcome practical difficulties or to prevent unnecessary hardship. A variance may only be granted if it is not detrimental to other property and shall not defeat the purpose of this Declaration. No variance shall apply other than to the specific Lot and the specific ARC action on the particular issue, and shall have no effect as precedent in any other ARC proceeding.

**ARTICLE 4
LOT USES AND RESTRICTIONS**

4.01 **Use.** No Lot shall be used except for residential purposes. No Dwelling shall be erected, altered, placed or permitted to remain on any Lot other than one single family Dwelling, not to exceed 3 stories in height, and an attached garage for at least 2, but no more than 3 cars. Any and all initial construction, or alteration to the exterior, of any structure within Dacotah West Addition shall first be approved by the ARC prior to any construction or alteration, subject to and in accordance with Article 3.

4.02 **Subdivision.** No Lot shall be subdivided or split by any means whatsoever into any greater number of Lots, nor into any Lots of smaller size without the express written consent of the Declarant or the ARC and appropriate government units. However, if the Owner of a full Lot desires to construct a Dwelling using an area larger than the area of any one single Lot as originally platted, then the adjoining Lot may to the extent permitted by other law, be divided and part thereof added to any one or more adjoining single Lots solely for the purpose of increasing the area on which the single-family Dwelling will be erected. No Dwelling shall be erected on a Lot which contains a smaller area than the original Lot as platted.

4.03 **Detached Structures.** No building or structure detached from the Dwelling shall be permitted, except structures that conform architecturally, using the same building materials and

style as the Dwelling and with the approval of the ARC. Storage of firewood, refuse, rubbish, and cuttings, will be contained within the garage or screened to prevent view from adjacent streets, from the side and rear yards of adjacent Lots.

4.04 Governmental Standards. All uses of the Lots shall, at a minimum, comply with zoning and other applicable ordinances and regulations of appropriate governmental units. Such regulations shall be considered as requirements in addition to any requirements contained in these covenants or promulgated by the ARC.

4.05 Minimum Square Footage, Design, and Setback Provisions. The Architectural Review Committee shall have the right to specify a reasonable minimum square footage for any Dwelling and to increase minimum setbacks from those otherwise specified under applicable governmental ordinances to help overall sight lines, streetscape and rear Lot appearances. In computing square footages, the dimensions shall be taken to the outside of the foundation wall, exclusive of garages, porches, decks, terraces and patios. Notwithstanding the ARC's discretion provided by this paragraph, the ARC specifications shall comply with the following minimum specifications:

(a) Any Dwelling erected wholly or partially on any of the Lots shall have the following required square footage:

- (i) A rambler style home must have a minimum of 1,400 square feet of living area on the main floor;
- (ii) A two-story home, must have a minimum of 1,050 square feet of living area on the first floor, and a combined minimum of 2,000 square feet of living area on the first and second floors;
- (iii) Split level homes and other style homes must receive specific case-by-case written approval.

(b) Earth homes, log homes, dome/geodesic homes, foam homes, manufactured homes, prefabricated homes, modular homes and other uncommon types of homes are not permitted, except that prefabricated homes shall be permitted by approval of the ARC so long as said home otherwise substantially complies with the provisions hereof.

(c) Rooflines, excluding porch areas, shall have a minimum 5/12 pitch, and shingles equal to "Land Mark" brand asphalt shingles rated at 225 pounds or greater.

(d) All Dwellings or other structures constructed or placed on the Property shall be completely finished on the exterior thereof within 12 months after commencement of construction.

(e) No Dwelling or other permitted detached structure shall be located on any Lot nearer to a front Lot line, a rear Lot line, an interior Lot line or nearer to a side street right of way line, if any, than the applicable governmental ordinances shall allow. For purposes of the covenants and restrictions set forth in this Article, eaves, steps, fireplaces and open porches shall not be considered as part of a building; provided, however, that this shall not be construed to permit any eave, step, fireplace, or open porch on a Lot to encroach further into a setback area than any applicable ordinance allows.

4.07 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot within the Property, except dogs, cats and other common house pets. No more than two (2)

domesticated dogs and two (2) cats, but in no case more than the maximum number of pets allowed by the then current governmental ordinances, may be kept by any Owner on the Owner's Lot, provided that they are not kept, bred or maintained for any commercial purposes. Any person owning or keeping pet dogs or cats shall be responsible for and shall at all times clean up waste or excrement from such pet(s). No detached dog kennels, dog runs or enclosures shall be permitted. Attached kennels are permitted on the rear side of the home only, or to a complying accessory structure.

4.08 Business Use. No trade or business may be conducted in or from any Lot, except that an Owner or occupant residing in a Lot may conduct business activities within the Lot so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity conforms to all zoning requirements for the Property; (c) the business activity does not involve persons coming onto the Property who do not reside in the Property or door-to-door solicitation of residents of the Property; and (d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board.

The terms "business" and "trade", as used in this section shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods and services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether such activity is engaged in full or part-time; such activity is intended to or does generate a profit; or a license is required therefore. Notwithstanding the above, the leasing of a Lot shall not be considered a trade or business within the meaning of this Section. This Section 4.08 shall not apply to any activity conducted by the Declarant with respect to its development and sale of the Property or its use of any Lots which it owns within the Property.

4.09 Nuisances. No portion of the Property shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept upon any portion of the Property that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on upon any portion of the Property, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to any person using any portion of the Property. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Property.

4.10 Storage.

- (a) All sporting equipment, toys, outdoor clothes lines and other equipment and supplies necessary or convenient to residential living shall be enclosed or screened from view.
- (b) All commercial vehicles, recreational vehicles, sporting equipment, toys, trailers, boats, snowmobiles and wheeled or tracked vehicles or commercial equipment of any kind (not including any equipment used in construction or repair of the Property) shall be stored within a garage or enclosure, and shall not be visible from the street or adjacent Lots, except that

temporary storage of not more than fourteen (14 days) shall be permitted for recreational vehicles.

(c) Without limiting the generality hereof, all motor vehicles shall display current licenses and be maintained in proper operating condition so as not to be a hazard or a nuisance by noise, exhaust emissions or appearance.

4.11 Exterior Construction Materials and Color. Exteriors must be fiber-cement board, brick, stone, steel or vinyl siding, or wood or other material of such design, character, and quality as the Architectural Review Committee deems appropriate and fitting with the overall architectural theme as shown below in 4.23. The Architectural Review Committee may approve other materials the Committee considers appropriate for the plans design. Exterior painted surfaces shall be of earth tones.

4.12 Fences and Boundary Walls. No fence or boundary wall shall be constructed on any Lot until the height, type, design, and location have been approved in writing by the Architectural Review Committee. Wood rail, split cedar or similar type fencing shall be preferred. Chain link fencing shall be discouraged. Wire fencing, including, but not limited to, barbed wire, and electrical wire fencing, shall be prohibited. All fencing actually installed shall be regularly maintained, repaired and painted by the Owner.

4.13 Storage Tanks. No permanent storage tanks of any kind shall be erected, placed or permitted on any Lot.

4.14 Temporary Structures. No structure of a temporary character, trailer, mobile home, basement, tent, shack, garage, barn or other building shall be used on any Lot at any time as a Dwelling.

4.15 Driveways. Driveways must be constructed of concrete, bituminous paving or other hard surface material. Material and installation shall be subject to approval of the Architectural Review Committee. Driveways must be installed within one year of the date of a certificate of occupancy issued for any Dwelling constructed upon a Lot.

4.16 Exterior Lighting. All exterior lighting on the Lots will be subject to regulation by the ARC to limit direct illumination and minimize glare onto adjacent property.

4.17 Exterior Ornaments. Exterior ornaments including, without limitation, pre-cast concrete, plastic or wood figurines, wishing wells and windmills shall be prohibited unless approved by the ARC prior to installation or construction.

4.18 Antennas. Radio and traditional television aerials must be located within the Dwelling or garage so as not to be visible from adjacent Lots. No television or other antennas that are more than one meter in diameter or diagonal measurement, such as large C-band satellite dishes, shall be permitted. A television antenna that is one meter or less in diameter or diagonal measurement, such as a mini-satellite or DBS dish and MMDS antenna, may be located on a Lot.

4.19 Completion of Construction of Improvements. All construction work shall, upon approval of plans by the ARC, be carried on with dispatch; all improvements shall be constructed in conformity with the then existing building codes of the relevant

municipality; and all building plans shall be prepared by or under the supervision of a registered architect, builder or qualified design professional. Any structure begun after approval of the ARC shall be completed within 12 months after the commencement of construction such that the appropriate governmental authority may issue a certificate of occupancy.

4.20 Drainage Systems. Catch basins and drainage areas are for the purpose of the natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner other than Declarant may obstruct or re-channel the drainage flows after location and installation of drainage swales, storm sewers or storm drains.

4.21 Landscaping. Each Lot shall be sodded or seeded within 90 days of completion of the Dwelling, weather and season permitting, or as soon as possible in the subsequent growing season, if the Dwelling is completed during winter months. All landscape materials shall be of known hardiness in Minnesota and shall conform to general planting guidelines as set by the Architectural Review Committee or the Declarant, and shall be maintained in good faith.

4.22 Signage. Except as hereinafter provided for the Declarant and Builders, no sign shall be placed on any Lot or within the Property without the express written consent of the Architectural Review Committee, except that one "for sale" sign of typical size and proportion not greater than 8 square feet may be placed on a Lot by an Owner without ARC approval.

Entrance monuments identifying the development may be installed by the Declarant, and entrance and advertising signs may be installed by the Declarant and maintained until the Declarant no longer owns any Lot in the Property. During the construction and sales period the Declarant and any Builder may place such directional and advertising signs as they deem necessary or desirable for the sale of Lots.

4.23 Permitted Architectural Styles. In order to establish a predominant theme throughout the subdivision, construction of homes will be limited to the following architectural styles: Craftsman, Arts & Crafts, Shingle, Prairie, Traditional, Farmhouse, French Country, and Cape Cod. Any other styles or variations of the above styles will require the written approval of the ARC. Interpretation of the style of a proposed Dwelling and the determination of acceptance or rejection of the proposed Dwelling will be at the sole discretion of the ARC.

**ARTICLE 5
OWNER'S RESPONSIBILITIES**

5.01 In order to preserve the uniform and high-standard appearance of the Property, each Owner undertakes responsibility for maintenance and repair of the exterior of his Dwelling, exterior yard area and driveway on the Lot. Such responsibility for maintaining the Lot and improvements thereon shall include, without limitation, the maintenance and repair of exterior surfaces of all buildings on the Lot. In maintaining exterior yard areas and private driveways an Owner shall be required to mow, trim, water or otherwise care for grass, trees or other plants located on a Lot and shall be required to remove snow from the private driveways, parking areas and walkways to the Dwelling. Maintenance, painting and construction shall be in the original colors and materials, or according to approved color boards, if any, on file with the ARC. Other colors and materials shall require written approval by the Architectural Review Committee.

5.02 By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners to carry blanket "all-risk" property insurance on the Owner's Lot(s) and structures thereon providing full replacement cost coverage less a reasonable deductible.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Lot, he shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with this Declaration. Alternatively, the Owner shall clear the Parcel of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition. The Owner shall pay any costs which are not covered by insurance proceeds.

**ARTICLE 6
HOMEOWNERS ASSOCIATION**

6.01 Ownership of a Lot in the Dacotah West Addition entitles and subjects the owners thereto to membership in the Dacotah West Owner's Association, Inc. Specifically, the property is subject to assessment for the maintenance, repair and management of the "commonly owned property" designated as Outlot A of the Dacotah West Addition (which includes the storm water quality pond), pursuant to Article IX of the By-Laws of the Dacotah West Owners' Association, Inc. Additionally, the Dacotah West Homeowners' Association, Inc., shall have any other authority set out in these covenants.

**ARTICLE SEVEN
DEVELOPMENT AGREEMENT**

7.01 The terms and conditions of the Development Agreement dated August 1, 2007, and recorded December 31, 2007, as document no. 364171 in the Office of the County Recorder, Brown County, Minnesota, are hereby incorporated herein by reference thereto.

7.02 Pursuant to Section 3.3 of said Development Agreement, notices provided to each buyer of lot within the subdivision that the City requires that the finish grading of each lot will conform to the grades along each lot line and match grades at the street right-of-way both within 0.1 feet as established by the City and that the finish grade of the lot will not block the planned drainage from adjoining lots. The City will require certification from a licensed civil engineer that grades match the grades established by the City before a Certificate of Occupancy is issued. The City may modify the grading plan to accommodate unknown or unanticipated field conditions.

- (a) Prior to the issuance of a binding building permit as to any lot within the subdivision, applicants shall deposit with the City the sum of \$1,000.00. Such sum will be held by the City to ensure compliance with this subsection by the applicant. Upon the timely filing of the required engineer's certification as to the lot within the subdivision, the City shall release to the applicant the sum of \$1,000.00 without interest. Should such certification not be filed as and when required hereby, the applicant shall forfeit to the City \$1,000.00 for each lot for which such certification is not made. The City will not issue a Certificate of Occupancy for any lot prior to the filing of such certification.

7.03 Reproduction of any specific provision of said Development Agreement herein shall not be construed as an exclusion of incorporation or relevance of any other provision of the Development Agreement.

**ARTICLE EIGHT
GENERAL PROVISIONS**

8.01 Utility Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat for Dacotah West Addition (the "Easement Areas"). No structure, planting or other materials shall be placed or permitted to remain upon or within the Easement Area which may damage or interfere with the installation and maintenance of utilities or which may change the direction of the flow or drainage channels within any Easement Area. In addition, no structures of any type shall be erected or installed in or in the drainage easements within any Lot except as may be specifically approved by the appropriate governing authority.

8.02 Enforcement. The provisions set forth in this Declaration shall run with the land and bind the parties and their successors and assigns. All parties claiming by, through, or under the parties shall be taken to hold, agree, covenant with the parties, their successors and assigns, and with each of them to conform to and observe the restrictions as to the use of Lots and the construction of improvements thereon. The Declarant (so long as Declarant owns any unimproved Lot within the Property), ARC, or Owner(s) of any Lot within the Property shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the restrictions, as well as to maintain any ordinary legal action for damages or other remedies and relief that are available in law and equity. The failure of the Declarant, ARC or any Lot owner to enforce any provisions of this Declaration at the time of its violation shall in no event be deemed to be a waiver of a right to do so subsequently.

8.03 Gender and Grammar. The singular, wherever used herein shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

8.04 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

8.05 Amendment. The Declarant may unilaterally amend this Declaration for any reason for a period of 3 years after the Declaration was filed for record. Thereafter, the Declarant may amend this Declaration so long as it still owns any of the Property, and so long as the amendment has no material adverse effect on any right of any Owner. The Declaration may be amended at any time by an instrument signed by a simple majority of the Owners. For purposes of amending this declaration, the owner(s) of Outlot A of Dacotah West Addition shall not be entitled to vote. Any amendments must be properly recorded and shall be effective when filed for record with the Brown County Recorder or Registrar of Titles, as appropriate.

No amendment may remove, revoke or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege.

8.06 Duration of Covenants and Easements. The covenants, conditions and restrictions of this

Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Declarant (so long as Declarant owns any unimproved Lot within the Property), ARC or the Owner of any Lot subject to this Declaration, or their respective representatives, heirs, successors and assigns. The covenants, easements, restrictions, conditions and reservations imposed and created by this Declaration shall continue and be binding on the parties and their successors and assigns for a period of 30 years from the date this Declaration is filed for record in the office of the County Recorder, Brown County, Minnesota, and shall automatically be extended after that date for successive periods of 10 years.

8.07 Rights of Declarant. Until all of the Lots have been improved by completion of construction of a Dwelling thereon, the following activities by Declarant, or any other person with the written consent of the ARC, will not be deemed violations of restrictions contained in this Declaration:

- (a) **Construction Activities.** The storage of a construction trailer, equipment, materials and earth during the construction of new Dwellings.
- (b) **Sales Facilities.** To construct, operate and maintain a sales office, model homes and other development, from time to time, located anywhere on the Property.
- (c) **Signs.** To erect and maintain signs and other sales displays offering the Lots for sale or lease, in or on any Lot owned by Declarant.
- (d) **Maintenance.** Maintenance of temporary fencing, walkways, landscaping and berming in the vicinity of model and sales units.
- (e) **Consent to Certain Amendments.** As long as Declarant owns any unsold Dwelling or Lot for sale, Declarant's written consent shall be required for any amendment to their Declaration which directly or indirectly affects or may affect Declarant's rights.
- (f) **Relocate Boundaries.** To relocate boundaries between Lots and to alter Lots owned by it.

(The rest of this page has intentionally been left blank.)

IN WITNESS WHEREOF, the undersigned, Trustees of the Arlin L. Jungkans and Gloria A. Jungkans Charitable Remainder Unitrust have executed the Declaration of Easement, Covenants, Conditions and Restrictions this 3rd day of December, 2008.

ARLIN L. JUNGKANS, TRUSTEE

Arlin Jungkans
Arlin L. Jungkans, Trustee

STATE OF MINNESOTA)
)ss.
COUNTY OF BROWN)

The forgoing instrument was acknowledged before me this 3rd day of December, 2008, by Arlin L. Jungkans as Trustee of the Arlin L. Jungkans and Gloria A. Jungkans Charitable Remainder Unitrust.



Jeremy Berg
Notary Public

THE WELS FOUNDATION, INC., TRUSTEE

By: James A. Holm
James A. Holm

Its: EXECUTIVE DIRECTOR

STATE OF Wisconsin)
)ss.
COUNTY OF milwaukee)

The forgoing instrument was acknowledged before me this 8th day of December, 2008, by James A. Holm for the WELS Foundation, Inc., as Trustee of the Arlin L. Jungkans and Gloria A. Jungkans Charitable Remainder Unitrust.

Patricia A. Behmke
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

Jeremy M. Berg
BERENS, RODENBERG & O'CONNOR, CHTD.
519 Center Street
P.O. Box 428
New Ulm, MN 56073
507-233-3900

