

3299712

03-22-2001 4:47 PM

Trans. Fee

Rec. Fee 44.00
Pages 18

DRAFTED BY AND RETURN TO:
ATTORNEY ROGER W. BOETTCHER
17 APPLGATE COURT, SUITE 201
MADISON, WI 53713

PARCEL NUMBERS: SEE EXHIBIT "A"

282-0811-044-8000-3
282-0811-044-9000-1
282-0811-044-8500-8
282-0811-041-9502-7

001810

**DECLARATION
OF
PROTECTIVE COVENANTS AND RESTRICTIONS FOR
THE PLAT OF GARDENS AT WILLOWBROOK
CITY OF SUN PRAIRIE, DANE COUNTY, WI.**

WHEREAS, Midland Builders, Inc., (hereinafter the "Developer") as the Owner of all lots described in Exhibit "A" attached hereto and made a part hereof (hereinafter the "Subdivision") for the purpose of preserving the value of the lots in the Subdivision, does hereby covenant, grant, declare, and provide that all of the lots in the Subdivision shall be used for the purpose and in the manner set forth herein.

1. **GENERAL PURPOSE.** The purpose of these Protective Covenants and Restrictions (the "Covenants") is to insure the best use and the most appropriate development and improvement of each lot in the Subdivision; to protect each owner of a lot against improper use by any other owner; to preserve, so far as practicable, the natural beauty of the Subdivision; to guard against the erection thereon of poorly designed or poorly proportioned structures, or structures built of improper or unsuitable material; to obtain harmonious use of material and color schemes; to insure the highest and best residential development of the Subdivision; to encourage and secure the erection thereon of attractive, adequate-sized homes, which conform and harmonize in external design; to secure and maintain proper setbacks from streets, and adequate free spaces between structures; to maintain and administer common property and facilities; and in general, to provide for high-quality improvements which will protect the investments made by purchasers of such lots.

2. **LAND USE AND BUILDING TYPES.** No lot shall be used except for single family, residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached, single-family dwelling, not exceeding two and one-half stories in height and an attached private garage for not more than four cars, and other outbuildings incidental to residential use of the premises.

18/44

Received:

Date:

3. DWELLING TYPES AND SIZES.

On all Estate Lots, (All lots identified on Exhibit "B" attached hereto with minimum lot square footages of 10,500 square feet), no one-story home less than 1500 sq. ft., no tri-level with less than 1150 sq. ft. on the first and second floors combined and a total of not less than 1600 sq. ft. and no two-story home less than 1900 sq. ft. with first floor area not less than 950 sq. ft. shall be constructed on any lot. Brick or stone shall be required on some portion of the face of the front elevation of each home.

On all Premier Lots, (All lots identified on Exhibit "B" attached hereto with lot square footages of 9,000 to 10,449 square feet), no one-story home less than 1250 sq. ft., no tri-level with less than 950 sq. ft. on the first and second floors combined, and a total not of not less than 1400 sq. ft. and no two-story home less than 1400 sq. ft. with first floor area not less than 700 sq. ft. shall be constructed on any lot. Brick or stone shall be required on some portion of the face of the front elevation of each home.

On all Classic Garden Lots, (All lots identified on Exhibit "B" attached hereto with lot square footages of 7,200 to 8,999 square feet), no one-story home less than 1080 sq. ft., no tri-level with less than 950 sq. ft. on the first and second floors combined, and a total of not less than 1400 sq. ft. and no two-story home less than 1400 sq. ft. with first floor area not less than 700 sq. ft. shall be constructed on any lot.

For purposes of determining floor area, stair openings shall be included, but open or screened porches, attached garage, and basement shall be excluded. All raised ranch homes constructed shall be construed as one-story structures for the purpose of this paragraph.

These minimum square footage requirements may be waived by the Architectural Control Committee, in the event the proposed architecture of the home is such as to present a pleasing appearance, compatible with other homes in the Subdivision. In addition to style of architectural appearance, the Architectural Control Committee shall consider type and quantity of brick or stone, positioning of home on the lot, type of siding, decorator panels and general perception of size of the home in relation to homes on adjacent lots.

A waiver granted under this section does not constitute a waiver of any minimum square footage required in any applicable laws, ordinances, rules or regulations of the City and does not relieve the Lot Owner from complying with any applicable laws, ordinances, rules or regulations of the City of Sun Prairie.

4. LOT AREA. No dwelling shall be erected or placed on any lot having an area of less than 7200 square feet.

5. **BUILDING LOCATION/LOT DIVISIONS.**

- A. All buildings in the Subdivision shall be located in compliance with all side yard or setback lines established in any applicable laws, ordinances, rules or regulations of the City of Sun Prairie.
- B. No lot or lots as platted shall be re-subdivided except as authorized in writing by the Architectural Control Committee. Such authorization does not relieve the Lot owner from complying with applicable laws, regulations, rules and ordinances or from obtaining any required approval of the City of Sun Prairie or other governmental agency. This covenant shall not be construed to prevent the use of more than one lot as one building site, except however, if the building is to be constructed across property lines the lots must first be consolidated into one lot in accordance with City of Sun Prairie land division ordinances.

6. **GARAGES AND DRIVEWAYS** Each home shall have an on-site garage designed to store not less than two nor more than four cars. If a four-car garage is built, no more than a two car garage door can face the street. Garages shall be attached to the house and harmonize with the house as to design, materials, and finished floor elevations. Garages shall be connected to the street or alleyway by a hard surface driveway of either concrete or asphalt.

7. **NUISANCES**. No noxious odors shall be permitted to escape from any lot and no activity which is or may become a nuisance or which creates unusually loud sounds or noises shall be permitted on any lot site. No garage or driveway shall be used for any business related activity such as auto or motorcycle repairs other than for personal purposes.

8. **TEMPORARY STRUCTURES**. No structure of a temporary character and no trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.

9. **ANIMALS AND POULTRY**. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot, except that dogs, cats, or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purposes, or allowed to annoy neighbors.

10. **GARBAGE AND REFUSE DISPOSAL**. No lot shall be used or maintained as a dumping ground. Rubbish, trash, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition, and suitably screened from view from the street.

11. **WATER SUPPLY AND SEWER DISPOSAL**. No individual water supply system or sewage disposal system shall be permitted on any lot. All houses shall be connected to the municipal water system and sewage system.

12. **SWIMMING POOLS.** No above ground swimming pools shall be allowed.
13. **SATELLITE DISHES – SOLAR PANELS – RADIO TOWERS.** No satellite dishes over 24 inches in diameter, solar panels, or radio towers shall be allowed except within the interior of the building without the written approval of the ACC.
14. **PARKING.** Parking shall be prohibited on any portion of the lot except the driveway and garage. Parking of service vehicles owned or operated by guests residents of the home shall be prohibited unless such vehicles are kept in the garage. Storage of boats, travel trailers, mobile homes, campers, and other recreational vehicles shall be prohibited unless kept in the garage. This shall not prohibit the temporary storage of such vehicles for the purpose of loading or unloading.
15. **FOREST PRESERVATION RE LOTS 25, 26, 31, 32, 33, AND 34.** In order to protect existing trees a minimum 50 foot wide "no build zone" shall be enforced on the above lots which border Cardinal Crest Subdivision. Said "no build zone" is included within the "50 Foot Wide Building Setback Line" depicted on the recorded Subdivision plat. Other than landscaping, storm water drainage and underground utilities and their appurtenances, no accessory buildings, structures, or other improvements shall be constructed or placed in said "no build zone". In addition each lot owner for the lots specified in this section shall, at each lot owner's expense and within one year of the date of closing of the purchase from Developer, plant an additional 5-10 trees in the "no build zone" described above. The species of these trees shall be approved by the forestry division of the Sun Prairie Parks and Recreation Department.
16. **75 FOOT WIDE GAS MAIN.** A seventy-five foot (75') wide Gas Main Easement (the Pipeline Easement) is located on all or parts of Lots One (1), Two (2), Three (3), Five (5) through Twenty (20) and Twenty-seven (27) through Thirty-two (32) of the Subdivision. ANR Pipeline Company, as owner of the Pipeline Easement has mandated that no buildings, septic tanks or fields, swimming pools, ponds or any permanent structures may be constructed within the Pipeline Easement. Sheds, decks, light poles, fences or fence poles or similar items, even though considered removable, shall be designated as permanent structures and not permitted within the Pipeline Easement. Planting of shrubbery and trees within the Easement Area are not permitted except with the express written permission of the Architectural Control Committee, the Association and the ANR Pipeline Company, or its successors or assigns. Owners of the lots identified in this Section 16 of the Covenants are encouraged to consult with the Developer, Architectural Control Committee, or the Association prior to installing any improvements or landscaping other seeding or sodding of grass within the Easement Area. The Association shall maintain on file the "Guidelines for Property Development" as published by the ANR Pipeline Company so as to be available to all lot owners.
17. **FENCES.** On lots other than those designated in Section 16 above, no fence over four (4') feet in height from ground to uppermost part of fence shall be permitted (with the exception of compliance with local ordinances with respect to enclosing private swimming pool areas) unless such fences are approved by the ACC or its designated approving authority. No chain link fences of any type are permitted.

18. **MAIL BOXES.** All mailboxes will be provided by the developer and are the only approved mailbox that can be used in the subdivision. Lot owners shall pay the Developer \$50 at the time of the initial closing of the lot purchase from the Developer for said mailbox and \$50 for each replacement mailbox provided by Developer.

19. **SLOPES.** The graded slopes as established by the Developer shall remain as permanent. No structure, planting or other material shall be placed or permitted to remain, or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels or obstruct or retard the flow of water through drainage channels. The established graded slopes of each lot and all drainage improvements in said graded slopes shall be maintained continuously by the owner of a lot, except for those improvements for which a public authority or utility company is responsible.

20. **PUBLIC STORM SEWER, WATER DRAINAGE AND UTILITY EASEMENT LOCATED ON LOTS 5 AND 6 OF THE SUBDIVISION.** There exists a twenty-five foot (25') easement along the common boundary line between Lots Five (5) and Six (6) as depicted on the recorded Subdivision Plat. It shall be the joint obligation and responsibility of the owners of said Lots Five (5) and Six (6) to keep the grass mowed to a height of not more than three (3) inches so as to permit drainage of surface waters within the easement area. No landscaping, construction of improvements, or other obstructions shall be permitted within said easement area.

21. **ARCHITECTURAL CONTROL COMMITTEE ("ACC").**

- A. **Architectural Control.** No structure, whether residence, accessory building, tennis court, swimming pool, antenna (whether located on a structure or on a Lot), flag pole, wall, landscaping or other improvements, including exterior colors and materials to be applied to said improvements, shall be constructed, maintained or performed upon any Lot and no alteration or repainting of the exterior of a structure shall be made unless complete plans, specifications and plot plans therefore shall have been submitted to and approved in writing by a majority of the ACC. Approval shall also be required for location of improvements with respect to topography and finish grade elevation. Said plans, specifications and plot plans shall show the exterior design, height, building materials and color scheme thereof, the location of the structure plotted horizontally and vertically, the location and size of driveways, the plans for required landscaping, and the grading plan. A copy of such plan specifications, and plot plan as finally approved shall be deposited with the ACC.
- B. **Membership.** The ACC is composed of the following persons, who are also the initial Directors of the Association:

Jeffrey Rosenberg 6709 Raymond Road
Madison, WI 53719

Michael Terrien 6709 Raymond Road
Madison, WI 53719

James Bourne

6709 Raymond Road
Madison, WI 53719

A majority of the Committee may designate a representative to act for it. The initial designated representative shall be Jeffrey Rosenberg. In the event of the death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor.

- C. **ACC Action.** Decisions of the ACC shall be by majority vote of the committee members and all approvals or disapprovals shall be in writing.

If the Architectural Control Committee fails to render its decision within thirty (30) days after submission of all plans and specifications, approval shall be deemed to have been obtained. Notwithstanding any failure of the ACC to act, any building to be constructed in the Subdivision shall conform to all minimum requirements of these Covenants as to building type, size and location and shall further conform to all applicable Ordinances of the City of Sun Prairie.

- D. **Successor to Committee.** Developer may turn over control of the ACC to the Members of the Association at any time, and shall turn over control when Developer no longer has any ownership interest in the Property. At such time as Developer turns over control, the Association's Board of Directors shall designate not less than three (3) or more than five (5) Members of the Association to serve and act as the ACC for all purposes hereunder.
- E. **Committee Liability.** Neither the ACC nor any member thereof shall be liable for damages to any person submitting request for approval or to any owner of any Lot by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove with regard to such requests.

22. **COMPLETION TIME.** All homes must be completed and occupancy permits obtained within six (6) months from the date of issuance of a building permit and in within twelve (12) months from the date of closing of the purchase of the lot. The private gardens on any lot shall be installed within 6 months of the date of the occupancy permit for the home on such lot.

23. **USE OF OUTLOTS.**

- A. Outlot Three (3) has been dedicated to the public for park purposes and shall be maintained by the Gardens at Willowbrook Homeowners Association, Inc. Said Outlot shall remain as open space for the use and enjoyment of the public and members of the Association. Decorative landscaping and plantings shall be permitted. No structural improvements shall be permitted. Grass areas shall be mowed and kept free of noxious weeds.

- B. Outlots Five (5) and Six (6) shall be conveyed to the Gardens at Willowbrook Homeowners Association, Inc. for the purpose of a private alley providing ingress and egress to and from all lots within the subdivision abutting on said Outlots. The Developer shall construct the alley to meet City of Sun Prairie standards. Thereafter, the alleys shall be maintained, repaired and replaced by the Association. Snow removal shall be the responsibility of the Association. The alley shall at all times be used and maintained to allow free and unobstructed vehicular and pedestrian traffic through out said Outlots Five (5) and Six (6). Parking of vehicles in said Outlots shall be prohibited except for emergency vehicles and service vehicles providing services to residences abutting the Outlots.

24. **PRIVATE GARDENS.** Each lot owner acknowledges that the creation and maintenance of a *Botanical Garden* theme by the location of a garden plot on each lot in the subdivision was an integral part of the approval of the Subdivision by the City of Sun Prairie. At the time of the construction of the initial home on each lot the Developer shall install and plant the original botanical garden within six (6) months of the issuance of the occupancy permit for said home. Each garden shall contain a mix of at least 20 annual and perennial blooming plants. The Developer shall file with the Gardens of Willowbrook Homeowners Association, Inc., a plan (the "Garden Plan") for each botanical garden as installed. Thereafter, each lot owner will be required to maintain the botanical garden at the minimum level of plantings as initially installed. Each owner may modify the type of plantings from the initial Garden Plan so long as the minimum number of plantings are maintained and the garden reflects the intent and spirit of the Botanical Garden Theme as determined in the absolute discretion of the Association. The Association shall have oversight and enforcement responsibility to assure the proper planting, care, maintenance and presentability of the garden in the interests of maintaining the Botanical Garden Theme of the Subdivision.

In the event of the failure to maintain the lot owner's garden as required herein, the Maintenance officer shall give the lot owner written notice of the failure to maintain and of the required action necessary to bring such garden into conformance with the requirements set forth in this section. The failure of the lot owner to correct the deficiencies in the garden within ten (10) days from the date of such notice shall subject the owner to a Special Assessment by the Association as set forth in Section 25.J. 4. below.

25. **GARDENS AT WILLOWBROOK HOMEOWNERS ASSOCIATION, INC.**

- A. **The Association.** The Gardens at Willowbrook Homeowners Association, Inc., (hereinafter the "Association") a Wisconsin non-profit, non-stock corporation has been incorporated by the Developer for the purpose of performing the obligations and responsibilities hereinafter set forth, including but not limited to owning, maintaining and administering common property and facilities within the subdivision as hereinafter set forth, administering and enforcing the covenants, collecting and disbursing assessments and charges as hereinafter or in the future created or established, and generally promoting the health, welfare and recreation of the residents of the Subdivision.

B. Association Obligations & Responsibilities. The Association shall have the following obligations and responsibilities:

1. The maintenance, repair and replacement (including snow removal) of the private alley located on Outlots Five (5) and Six (6).
2. The maintenance of the public park located on Outlot Three (3).
3. The maintenance of the 30' wide public accessway between Lots Thirty-two (32) and Thirty-three (33) of the Subdivision for the purpose of providing access to public parks located on Outlot Three (3) of this Subdivision and on Outlot One (1), Cardinal Crest Estates lying to the North of this Subdivision. The accessway shall be maintained so as to provide free and unobstructed pedestrian traffic to and from the parks and shall include mowing of all lawns and grass areas necessary to keep the same in good weed free and attractive condition.
4. The oversight of the Botanical Gardens initially installed by the Developer according to the Garden Plan filed with the Association and the enforcement of proper maintenance of said gardens by lot owners. Enforcement authority and responsibilities are hereinafter set forth.
5. The maintenance of plantings and landscape within the visibility triangles and planting easements on Lots 48, 63, 80 and 81, as such easements and triangles are depicted in detail on the recorded Subdivision Plat.
6. The maintenance of plantings, flower beds, and Subdivision entry signs constructed and installed by the Developer within the sign and planting strip easements on Lots Thirty-nine (39) and Fifty-five (55) within the Subdivision as depicted on the recorded Subdivision Plat. Maintenance shall include electrical charges, sign repair and maintenance of landscaping including mowing of all lawns and grass areas within the easement areas.
7. The obligation to levy, collect and disburse such assessments, including special assessments, including special assessments against all lots in the Subdivision as may be necessary for the improvement, maintenance and operation of the property which the Association is obligated to maintain.

8. Such other responsibilities and activities as the Association may from time to time adopt so as to further the interests of the owners of lots in the Subdivision.

As used hereinabove in this Declaration, the term maintenance shall include repair, reconstruction and if necessary, replacement.

- C. **Membership.** The owner(s) of a lot shall automatically become a member of the Association. Said membership is appurtenant to the lot of said owner and the ownership of the membership for a lot shall automatically pass with fee simple title to the lot. Each owner shall automatically be entitled to the benefits and subject to the burdens relating to such membership. Membership in the Association shall be limited to the owners of lots in the Subdivision.
- D. **Board of Directors.** The affairs of the Association shall be managed by a Board of Directors consisting of at least three (3) directors which may delegate any portion of its authority to an executive committee subject to applicable law. Notwithstanding anything to the contrary provided for herein, until Developer has sold all 133 lots in the Subdivision or such earlier time as determined by the Developer, the members of the Board of Directors shall be appointed by Developer, its successors or assigns, and need not be owners of lots. After the Developer no longer owns an interest in any lot in the Subdivision or has relinquished its right to appoint the Directors, all Directors shall be elected at the Annual Meeting of the Association and all directors shall then be an owner of a lot in the Subdivision. Developer's waiver of right to appoint the Board of Directors shall be effective upon the recording of a notarized statement of waiver in the office of the Dane County Register of Deeds. All actions of the Board shall be by majority vote of the Directors. Directors shall serve for a term of one (1) year or until their successor(s) is duly elected by the membership. Vacancies on the Board shall be filled by the vote of the remaining Directors.
- E. **Officers.** The Board of Directors shall elect from the member of the Board the following officers to carry out the duties and responsibilities of the Association, to wit:

President: The President shall be the principal executive officer of the Association and, subject to the control of the Board of Directors, shall in general supervise the affairs of the Association. He shall, when present, preside at all meetings of the shareholders and of the Board of Directors.

Secretary/Treasurer: The Secretary/Treasurer shall: (a) keep the minutes of the meetings of the Association and of the Board of Directors in one or more books provided for that purpose; (b) see that all notices are duly given in

accordance with the provisions of these Covenants; (c) be custodian of the Association records; (d) keep or arrange for the keeping of a register of the post office address of each Association Member; (f) have general charge and (g) have charge and custody of and be responsible for all funds of the Association, (h) receive and give receipts for moneys due and payable to the Association from any source whatsoever, and deposit all such moneys in the name of the Association in such banks, or other depositories as shall be selected by the Board of Directors and (i) in general perform all duties incident to the office of the Secretary/Treasurer and have such other duties and exercise such authority as from time to time may be delegated or assigned to him or her by the President or by the Board of Directors.

Garden Maintenance Officer: The Maintenance Officer shall be responsible for oversight, inspection and administration of the Association obligation and responsibilities with respect to maintenance of all Botanical Gardens, entryway signs and planting easements, private alleyways and park accessways and the public park on Lot Three (3). The Maintenance Officer shall maintain in Association files all initial garden plans installed by Developer for all Botanical Gardens; shall issue notices of deficiencies, if any, to lot owners; shall report on deficiencies to the Board of Directors for purposes of levying Special Assessments; shall obtain bids for all required maintenance obligations and responsibilities and shall submit a report to the Board of Directors on all maintenance costs required for the Budget and in general perform all duties incident to the office of Garden Maintenance Officer and have such other duties and exercise such authority as from time to time may be delegated or assigned to him by the President or by the Board of Directors.

- F. **Annual Meeting.** An annual meeting of the Association shall be held at 7:00 P.m. on the second Monday of December of each year at a location in the City of Sun Prairie to be determined by the President. A written Notice of the time and place of the meeting shall be given to each lot owner in the Subdivision at least ten (10) days prior to the scheduled meeting.
- G. **Special Meetings.** A special meeting of the Association may be called by the Board of Directors or by written request to the Association President from at least the owners of ten (10) lots in the Subdivision. The request shall set forth the matters to be presented at the special meeting. The President shall set a date, time and place for such special meeting to be held within thirty (30) days of the date of the request. Notice shall be given to all lot owners of the subdivision as to the time, place, date and agenda at least ten (10) days prior to the scheduled meeting.
- H. **Voting of Owners.** The owner or owners of each lot shall be entitled to one (1) vote as members of the Association for each such lot owned by said owner or owners. Where more than one person or persons are owners of one lot, all

shall be members of the Association, but they shall be cumulatively entitled to only one vote and they may cast their total one vote in proportion to their ownership of the lot.

- I. **Articles of Incorporation.** The purpose and powers of the Association and the rights and obligations with respect to owners set forth in these Covenants may and shall be amplified by provisions of the Articles of Incorporation, and any bylaws adopted by the Association not inconsistent with these Covenants.
- J. **Certain rights of the Association.** The Association shall have and may exercise any right or privilege given to it expressly by these Covenants or the Articles or bylaws, or reasonably to be implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges including the power and authority to levy assessments and charges as hereinafter set forth. The Association shall have the right in its discretion to contract certain of its obligations to third party agents or contractors.

IT IS EXPLICITLY UNDERSTOOD THAT ALL COSTS, FEES AND EXPENSES OF ANY KIND RELATED DIRECTLY OR INDIRECTLY TO THE OBLIGATIONS AND RESPONSIBILITIES OF THE ASSOCIATION SET FORTH ABOVE SHALL BE PRIVATELY FUNDED AND PAID FOR BY THE ASSOCIATION AS HEREINAFTER SET FORTH AND THE OWNERS OF THE LOTS IN THE SUBDIVISION. THE CITY OF SUN PRAIRIE WILL NOT MAINTAIN NOR CONTRIBUTE TO ANY COSTS TO CARRY OUT SUCH OBLIGATIONS AND RESPONSIBILITIES OF THE ASSOCIATION.

1. **Assessment for Common Expenses.** Subject to the conditions and limitations set forth in Subparagraph 2 and 3 below, all owners, including Developer, shall be obligated on an annual basis to pay the estimated assessments imposed by the Board of Directors to meet the common expenses. "Common Expenses" means and includes all sums lawfully assessed against a lot by the Association necessary to fulfill all Association obligations and responsibilities set forth in this Section 25 of these Covenants. Subject to the limitations in subparagraph 2 and 3 below the assessments shall be allocated among the lots on an equal basis. Assessments for the estimated Common Expenses shall be due in advance, on the first day of January of each year. Prior to the annual meeting the Board of Directors shall prepare and deliver or mail to each Owner an itemized annual statement showing the various estimated or actual expenses for which the assessments to be made. The budget made for Common Expenses shall be based upon the requirements deemed to be such aggregate sum as the Board of Directors shall determine is to be paid to provide for the payment of all expenses growing out of or connected with the Association obligations and responsibilities, which

sum may include, but is not limited to: expenses of management, taxes and special assessments, premiums for insurance; landscaping and care of grounds; repairs and renovations; legal and accounting fees; capital expenditures; deficits remaining from a previous period; and other costs and expenses relating to the operation of the Association. At each annual meeting following review of the proposed budget, the membership of the Association shall, by majority vote of the lot owners present, adopt the budget for the following year and shall establish the assessment for each lot in the Subdivision. The omission or failure of the Board of Directors to fix the assessment for any reason shall not be deemed a waiver, modification or a release of the owners from their obligation to pay same based upon the annual lot assessment in effect for the prior year until a new budget is adopted. At the end of the calendar year, the Board of Directors may, but shall not be required to refund to each owner his, her or their proportionate share of funds then held by the Association which are not deemed to be necessary to meet the Common Expenses or apply such excess funds to the budget for the following year. The assessments against lots, except as to Developer, shall be equal in amount.

2. **Initial Assessments:** The Annual Lot Assessment for any lot in the subdivision for the calendar years 2001 and 2002, shall be \$250.00 per year for each lot other than any lots owned by the Developer. The Developer shall contribute to the budget as set forth in subparagraph 3 below. Annual Lot Assessments for the year of purchase of a lot from the Developer shall be prorated on a calendar year basis as of the date of closing of the purchase.
3. **Developer Contributions in lieu of Assessments:** In lieu of annual assessments, Developer shall contribute the following sums to the annual budget of the Association:
 - a) Developer shall contribute the sum of \$10,000.00 for each of the calendar years 2001, 2002, and 2003.
 - b) Commencing with calendar year 2004, developer shall contribute the sum of \$50.00 per lot per year for all lots owned by Developer as of January 1 of each year.
4. **Special Assessments for Botanical Gardens:** In the event of the failure of any lot owner to maintain the Botanical Garden or correct deficiencies in the maintenance thereof on such lot owner's respective lot as required in Section 24 of these Covenants following written notice from the Maintenance Officer, and the Association, by determination and action of the Maintenance Officer, is required to perform plantings and

maintenance of such owner's garden, then, in such event, the lot owner shall be assessed a Maintenance Fee of \$50.00 per hour for performing maintenance on such garden plus actual costs incurred for planting materials. The Board of Directors, at its sole discretion, shall have the right to increase the Maintenance Fee by no more than five per cent (5%) per year during the term of these Covenants. It is expressly understood that any Maintenance Fee assessed under this subparagraph 4 is the sole responsibility of the individual lot owner and is not to be a Common Expense of the Association.

5. **Lien.** The Association shall have the sole right to collect all sums assessed by the Association but unpaid for the share of Annual Lot Assessments for Common Expenses or Special Assessments chargeable to any lot and such sums shall constitute a lien on such lot. If attorneys' fees, court costs and associated collection charges are incurred by the Association to collect an unpaid share of the Common Expenses, these shall be added to the amount due from the member. All unpaid charges shall be subject to 18% interest per year or the highest interest rate allowed by law per annum until paid in full. Liens for unpaid assessments or charges may be obtained or enforced in conformity with Section 779.70 Wis. Stats.
6. **Owners Obligation.** The amount of the Annual Lot Assessments for Common Expenses or Special Assessments assessed against each lot shall be the personal and individual debt of the Owner or Owners thereof at the time the assessment is made. Suit to recover a money judgment for unpaid Common Expenses, and costs of suit and attorney fees, shall be maintainable without foreclosing or waiving the lien securing same. No Owner may become exempt from liability for the contribution towards the Common Expenses by waiver of the use or enjoyment of any of the Outlots or by abandonment of a lot.
7. **Liability.** The grantee of a lot, shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for the proportionate share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

26. **LIMITED LIABILITY.** Obligations placed upon the Developer, the Association, its officers, directors, attorneys, agents, the Board, the Architectural Review Committee, and the Owners relative to the Outlots or other property owned by the Association or operation of the Association shall be limited to the cost required to perform the obligations. Neither the Developer, the Association, its officers, directors, attorneys, agents, the Board, the Architectural Review Committee nor any Owner nor any tenant of any Owner shall be liable for any damage, loss or expense incurred by reason of any occurrence arising out of or related to the operation of the Association and any

property owned by the Association. By acceptance of a conveyance, each Owner agrees to indemnify and hold the Developer, the Association, its officers, directors, attorneys, agents, the Board, the Architectural Review Committee, and every other Owner harmless from and against any loss, damage, or expense including reasonable attorneys' fees incurred by reason of any claim made by such Owner.

27. **TERM.** These Covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of 25 years from the date these Covenants are recorded, after which time said Covenants shall be automatically extended for successive periods of ten (10) years, unless amended pursuant to Section 30 of the Covenants.

28. **ENFORCEMENT.** Any lot owner may enforce these Covenants by proceedings at law or in equity against any person or persons violating or attempting to violate the same, whether to restrain the violation or to recover damages.

29. **NO WAIVER.** Failure to enforce any provision of these Covenants shall not operate as a waiver of any such provision or any other provision of these Covenants.

30. **AMENDMENT.** Any provision contained in these Covenants may be amended, or additional provisions may be added to these Covenants by the recording of a written instrument or instruments specifying the amendment or addition, executed by the owners, as shown by the records in the Office of the Register of Deeds of Dane County, Wisconsin, or at least sixty eight (68) lots within the Subdivision and provided further, that so long as Developer continues to own one or more Lots, which are held for sale, these Covenants may not be amended or modified without the written consent of Developer. Such action regarding these Covenants shall be, by written agreement, executed by the requisite number of owners and shall become effective when it is recorded in the Office of the Dane County Register of Deeds. Upon and after the effective date of any such change or changes, the same shall be binding upon all owners, and shall run with the land and bind all persons claiming by, through or under any one or more of them.

Notwithstanding anything in this Section 30 to the contrary, if Developer shall determine that any amendments to these Covenants or any amendments to the Articles or Bylaws of the Association shall be necessary (i) in order for existing or future Mortgages to be acceptable to the Federal National Mortgage Association, the Federal Home loan Mortgage Corporation, or other mortgage lender in Developer's discretion, or (ii) in order to clarify any apparently conflicting provision or to correct any mistakes or errors of a clerical nature resulting from typographical or similar errors, Developer shall have and hereby specifically reserves the right and power to make and execute any such amendment upon obtaining the express written approval of the City of Sun Prairie, but without obtaining the approval of any lot owners. Each such amendment shall be made, if at all, by Developer prior to the sale of the last lot owned by Developer.

Also, notwithstanding anything in this Section 30 to the contrary, **NO AMENDMENT OF THESE COVENANTS SHALL BE EFFECTIVE WITHOUT THE WRITTEN CONSENT AND APPROVAL OF THE CITY OF SUN PRAIRIE.**

IT IS EXPRESSLY UNDERSTOOD THAT THE CITY OF SUN PRAIRIE HAS NO ENFORCEMENT AUTHORITY CONCERNING THESE COVENANTS EXCEPT AS TO THE MATTERS SET FORTH IN THE SECTIONS 15, 20, 23, 25B, 25J AND 30 OF THESE COVENANTS.

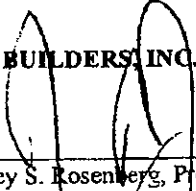
31. **CONFLICTS:** The terms of these Covenants are not intended to replace or affect any applicable laws, ordinances, rules and regulations of the City. In the event that any term contained in the Covenants conflicts with or is incompatible with applicable laws, ordinances, rules or regulations of the City of Sun Prairie, the City provisions would control unless the specific terms contained in these Covenants are more restrictive, in which event the more restrictive requirement controls.

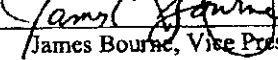
32. **SEVERABILITY.** Invalidation of any of these covenants by judgment or court order shall in no way affect any of the other provisions, which provisions shall remain in full force and effect.

33. **MODEL HOMES.** Subject to applicable City of Sun Prairie Zoning Ordinances, so long as Developer shall own any lot in the Subdivision, Developer shall be permitted to maintain model homes in the subdivision, including therein a sales office for the purpose of sales and marketing of its homes.

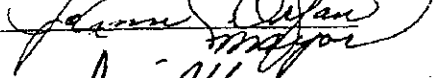
34. **AUTHORITY.** Developer represents and warrants that the individuals executing these Covenants are properly authorized to do so on behalf of the Developer.

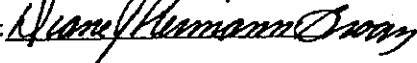
MIDLAND BUILDERS, INC.

BY: 
Jeffrey S. Rosenberg, President

ATTEST: 
James Bourne, Vice President

APPROVED:
CITY OF SUN PRAIRIE

BY: 

ATTEST: 

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Personally came before me this 6th day of May, 2001,
Jeff Rosenberg, President, and James Bourne, Vice President, of the above named corporation,
to me known to be the persons who executed the foregoing instrument as such officers as the deed
of said corporation, by its authority.

Denise Yontz
Denise Yontz
Notary Public, Dane County, WI
My Commission Expires 3/21/01

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Personally came before me this 21st day of March, 2001,
Ann C. Orfan and Diane J. Hermann-Brown of the above named corporation,
to me known to be the persons who executed the foregoing instrument as such officers as the deed
of said corporation, by its authority.



Virginia Ziegler
*Virginia Ziegler
Notary Public, Dane County, WI
My Commission Expires 9-5-04

001826

EXHIBIT "A"

LEGAL DESCRIPTION

Lots One (1) through One Hundred thirty-three (133), inclusive, and Outlots One (1) through Seven (7), inclusive, The Gardens at Willowbrook, City of Sun Prairie, Dane County, Wisconsin

PARCEL NUMBERS:

(Underlying)

282-0811-044-8000-3
282-0811-044-9000-1
282-0811-044-8500-8
282-0811-041-9502-7

EXHIBIT "B"

001827

DWELLING LOTS FOR GARDENS AT WILLOWBROOK

<u>55 ESTATE LOTS</u>		<u>49 PREMIER LOTS</u> <i>village</i>		<u>29 CLASSIC GARDEN LOTS</u>
1	108	6	123	58
2	109	7	124	59
3	110	8	125	60
4	111	9	126	61
5	112	10	127	72
14	116	11	128	73
15	117	12		74
16	118	13		75
17	119	47		76
18	120	48		77
19	121	49		78
20	122	52		79
21		53		82
22		56		83
23		57		84
24		62		87
25		63		88
26		64		89
27		65		90
28		66		92
29		67		93
30		68		94
31		69		95
32		70		96
33		71		129
34		80		130
35		81		131
36		85		132
37		86		133
38		91		
39		97		
40		98		
41		99		
42		100		
43		101		
44		102		
45		103		
46		104		
50		105		
51		106		
54		113		
55		114		
107		115		