

**ICE AGE FALLS**

**Declaration of Conditions, Covenants and Restrictions**

**Part A**

**PREAMBLE AND ASSOCIATION MATTERS**

Declaration made this 1st day of August, 2003, by IAF Development, LLC, a Wisconsin Corporation (hereinafter "Developer").

**WHEREAS**, Developer is the owner of real property located in Dane County, Wisconsin and further described in Exhibit "A" attached hereto and incorporated herein by reference, and desires to build thereon a planned development with housing units and shared common property (the "Development"); and

**WHEREAS**, Developer desires to provide for the maintenance and enhancement of property values, amenities, environment and opportunities in said Development, and for the preservation of the properties and improvements thereon, as well as for the preservation of said Development's distinctive style, and to prevent the erection, or maintenance of poorly designed or constructed improvements; and

**WHEREAS**, to the above end Developer desires to subject said real property, to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

**WHEREAS**, Developer has thought it desirable for efficient maintenance and preservation of the values of said Development to create an association to which should be delegated and assigned the powers of owning, maintaining and administering the common property and facilities, as set forth below, and administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges as hereinafter or in the future created or established, and promoting the health, welfare and recreation of the Development's residents. Developer will incorporate Ice Age Falls Homeowners Association, Inc., a non-profit, non-stock corporation, under the laws of the State of Wisconsin (the "Association"); and

**NOW, THEREFORE**, the Developer declares that the real property described in Exhibit "A" will and shall be sold, transferred and conveyed subject to the easements, covenants, restrictions, assessments, charges and liens hereinafter set forth.

006907

Record this document with the Register of Deeds

Name and Return Address:

Kay Millonzi, Esquire  
IAF Development, LLC  
6709 Raymond Road  
Madison, WI 53719

062/0608-023-8000-0

062/0608-023-8500-4

062/0608-023-9000-7

(Parcel Identification Number)

19/47

**A-1) Definitions.**

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A) "Association" shall mean and refer to Ice Age Falls Homeowners Association, Inc., and its successors and assigns.

B) "Common Property" includes all those areas located in the Subdivision which are not contained within a Lot and which are intended for common use or are necessary or convenient to the existence, maintenance or safety of the Subdivision. Common Property may also include any additions thereto designated by the Developer or the Association in any subsequent amendment to this Declaration, and all improvements located on said property, which are intended to be devoted to the common use and enjoyment of members, Owners and Occupants. Developer may, by subsequent amendment or easement, designate parts of certain private lands within the Development as Common Property, rendering the Association responsible for maintenance thereof, without subjecting the same to the ownership provisions contained in Section A-3, below.

C) "Developer" shall mean and refer to IAF Development, LLC, a Wisconsin Corporation, or its successor and assigns.

D) "Lot" shall mean and refer to the lands described as The Plat of Ice Age Falls in Exhibit "A", now owned by Developer, but which Developer in the future intends to convey to purchasers who shall thereupon become members of the Association. The term "Property" or "Properties" shall be synonymous with the term Lot.

E) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any of the Properties described in Exhibit "A". A purchaser of any of said Properties by land contract shall be referred to as "Owner" instead of the land contract vendor.

F) "Occupant" shall mean and refer to the occupant of any of the Properties who shall either be an Owner or a lessee who holds a written lease having an initial term of twelve months or more.

G) "Subdivision" shall refer to the lands described as The Plat of Ice Age Falls in Exhibit "A". The term "Subdivision" is synonymous with the term "Development".

H) Reference to a "Phase," followed by a numeral, shall refer to a series of sections of the property, all of which constitute the entire Property. Developer reserves the right to change, without the consent of the Association or any other Owner, Occupant or their mortgagees, the Lots designated in any particular Phase by a written instrument specifically referring to this Declaration and stating the amendment with respect to the definition of any Phase.

I) "Book of Regulations" shall mean and refer to the document containing the resolutions setting forth the rules, regulations and policies established and adopted by the Board of Directors as the same may be from time to time adopted, recorded and/or amended.

**A-2) Membership and Voting Rights.**

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**A) Members.** Developer will incorporate the Association. Each Owner of a Lot, excepting lot 129, shall automatically become a member of the Association. By acceptance of the Deed or other instrument of conveyance, the Owner(s) of each Lot consent to such Owner's membership in the Association. Membership in the Association is appurtenant to each Lot. Each Owner of a Lot shall automatically be entitled to the benefits and subject to the burdens relating to such membership in the Association. The Association shall have authority to manage the Common Property. Persons or entities, including a land contract vendor, who hold an interest merely as security for the performance of an obligation, shall not be members of the Association. Tenants of Properties who are not Occupants shall not be members of the Association. To the extent that Developer owns any Lot, Developer shall be a member of the Association until such ownership terminates.

**B) Voting Rights.**

1) Each member shall be entitled to one vote for each Lot owned except as set forth in A-2(B)(2) below.

2) When there is more than one Owner of a Lot, said Owners shall only be entitled to one collective vote for each Lot. There shall be no fractional votes or voting. When there is more than one Owner of any Lot, the vote attributable to such ownership must be cast unanimously by all the Owners of that Lot, or it shall not be considered for any purpose.

**C) Proxies.** Any Member may vote by proxy. All proxies shall be in writing and signed by the Owner, or in cases where there is more than one Owner, by all Owners of the Lot.

**D) Articles of Incorporation and By-Laws.** The purposes and powers of the Association and the rights and obligations with respect to the members thereof, shall be governed by the Articles of Incorporation and By-Laws of the Association; provided, however, that such Articles of Incorporation and By-Laws shall be subject to, and shall not contravene, the terms, conditions, benefits and burdens set forth in this Declaration.

**E) First Year's Operating Expenses.** Commencing on the date established for the payment of assessments under Section A-4(B)(1), Developer shall pay to the Association an amount equal to the estimated operating expenses of the Association for a period of one (1) year, less assessments on Lots owned by Developer actually paid to the Association for the one (1) year period of time. Said payment may be made in a lump sum or in twelve (12) monthly installments, at Developer's option. Prior to said date, Developer shall be solely responsible for payment of all maintenance expenses.

**A-3) Common Property.**

**A) Common Property.** The Common Property includes all those areas located in the Subdivision which are not contained within a Lot and which are intended for common use or are necessary or convenient to the existence, maintenance or safety of the Subdivision.

**B) Responsibility for Assessments.** At the present time, the Declaration is applicable to all Lots located in the Development, as that term is defined in the Declaration. Developer shall turn over to the Association at the time control is turned over to the Members any surplus received by the Association of income over expenses. The following table describes the number of assessment units (an "Assessment Unit"), which are assigned to various Lots in the Development based upon their intended use at the present time. The number of Assessment Units for a particular Lot will be divided by the total number of Assessment Units in the Development to arrive at a particular Lot's percentage share of assessments for common area maintenance and other expenses, which the Association is permitted to assess to members under the Declaration. The Developer shall be responsible for payment of assessments attributable to all Lots owned by Developer, whether in a phase of the Development that has been developed, is currently being developed, or will be developed in the future. For the purposes of the following table, a single family residence shall be deemed a Dwelling Unit. With respect to multi-family residential apartments, duplex homes and townhouses, each apartment, duplex unit or townhouse unit, shall be considered a Dwelling Unit. By way of example and not limitation, if a townhouse has six separate apartments, each such apartment shall be considered a Dwelling Unit and each such apartment shall be assigned one Assignment Unit. With respect to condominiums, each individual condominium unit shall be considered a Dwelling Unit.

	Use	Number of Assessment Units
1)	Single Family:	One (1) per Dwelling Unit.
2)	Multi-Family Residential Apartments:	Seventy-five/100ths (.75) per Dwelling Unit.
3)	Multi-Family Condominiums:	Seventy-five/100ths (.75) per Dwelling Unit.
4)	Multi-Family Townhouse Homes:	One (1) per Dwelling Unit.

**C) Percentage Interest for Condemnation or Insurance Proceeds.** For the purposes of establishing an Owner's percentage of insurance proceeds or condemnation awards in the event any portion of the Common Property is completely destroyed or taken by eminent domain and is not reconstructed, each Owner shall have a percentage interest in the insurance or condemnation proceeds equal to the Percentage Interest of such Owner in the Common Property.

**D) Conveyance, Lease or Encumbrance of Percentage Interest.** Any deed, mortgage, lease or other instrument purporting to convey, encumber or lease any Lot shall be deemed to include the Owner's Percentage Interest in the Common Property and in the insurance proceeds or condemnation awards even though such interest is not expressly described or referred to therein. The conveyance, encumbrance or lease of an Owner's Percentage Interest in the Common Property independent of the appurtenant Lot and the conveyance, encumbrance or lease of an appurtenant Lot independent of the Owner's Percentage Interest in the Common Property shall be prohibited.

**E) Ownership.**

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1) The Common Property shall be initially owned by the Developer until conveyed as provided below.

2) At the time of purchase, legal title to a percentage interest in the Common Property shall be conveyed with each Lot to an Owner. Taxes, assessments or other charges on the Common Property may be divided according to each Owner's Percentage Interest by the taxing authority or may be an assessment by the Association against each of the Lots in an amount equal to the Percentage Interest attributable to such Lot.

3) Any portion of the Common Property not previously conveyed to Owners shall be conveyed to the Association at such time as seventy-five percent (75%) of the Lots have been conveyed to purchasers. The Association shall be responsible for the payment of any and all present and future general taxes, assessments or other charges against any portion of the Common Property owned by the Association. General property taxes, assessments and other charges shall be prorated between the Developer and the Association based on the date of conveyance by the Developer to the Association.

4) Developer, the Association and all Owners of a percentage interest in the Common Property hereby waive notice and protest of any tax or assessments levied by the City of Madison against such Owners or any part of the Property attributable to the Common Property in which such Owners, the Association or the Developer may have an interest.

F) **Damage or Destruction of Common Property by Owner.** In the event any Common Property is damaged or destroyed by an Owner or any of his guests, lessees, tenants, licensees, agents or member(s) of his family, including pets, said Owner does hereby irrevocably authorize the Association to repair said damage. The Association shall repair and restore any damaged area to its former condition. The amount necessary for said repair shall become a special assessment upon the Property of said Owner.

**A-4) Maintenance of Common Property**

**A) Maintenance.**

1) Developer shall initially provide for the care, operation, management, maintenance and repair of the Common Property, until the Common Property is conveyed as provided herein.

2) The Association shall provide for the care, operation, management, maintenance and repair of the Common Property and shall keep the Common Property maintained in good and safe condition. Maintenance shall include, but not be limited to, responsibility for landscaping and lawn care, snow shoveling, with particular attention being paid to cross walk ramps and islands, improvements to common areas, common property lighting and/or other common property utility charges and any special street design features or traffic calming features. Several streets within the Property may include special traffic islands and traffic calming measures within the public right-of-way. The Association shall be

responsible, at the Association's sole cost and expense, for the maintenance and upkeep of such physical traffic measures. Such maintenance and upkeep shall be performed at the discretion of the Association except to the extent required by the City of Madison, and shall include landscaping. If the landscaping is not maintained, the City of Madison will give notice to the Association that it is not being maintained. If the Association does not respond to the notice within sixty (60) days, the physical traffic measures will be topped with an asphalt pavement. The Association and persons involved with the maintenance and upkeep of the special traffic measures shall indemnify and hold harmless the City of Madison and its boards and commissions, and their officers, agents and employees from and against all claims, demands, loss or liability of any kind, type or description.

3) In order to carry out its maintenance obligations, the Association shall enter into a long-term contract (i.e., no less than ten (10) years) with a reputable property management company ("Management Company"), pursuant to which contract the Management Company shall assume the maintenance obligations of the Association as provided herein.

4) Any and all expenses incurred by the Management Company, on behalf of and pursuant to its contract with the Association, in connection with the management and maintenance of the Common Property and administration of the Association shall be deemed to be common expenses ("Common Expenses"), including, without limitation, expenses incurred for: landscaping and lawn care; snow shoveling and plowing; improvements to the Common Property; common grounds security lighting; municipal utility services; enforcement of this Declaration (including attorneys' fees) and maintenance and management salaries and wages.

**B) Assessments.**

1) The Management Company, on behalf of and pursuant to its contract with the Association, shall levy monthly general assessments ("General Assessments") against each Lot for the purpose of maintaining a fund from which Common Expenses may be paid. The General Assessments against each Lot shall be assessed according to their Percentage Interests in the Common Property. General Assessments shall be due in advance on the first day of each month, or in such other manner as the Association may set forth in the Bylaws. Any General Assessment not paid when due shall bear annual interest at a rate of ten percent (10%) until paid and, together with interest, collection costs, and reasonable attorneys' fees, shall constitute a lien on the Lot on which it is assessed. General Assessments shall commence on the first day of the 6<sup>th</sup> complete calendar month after the sale of a Lot to a third party purchaser who is not the Developer or an affiliate thereof.

2) The Management Company, on behalf of and pursuant to its contract with the Association, may, whenever necessary or appropriate, levy special assessments ("Special Assessments") against the Lots for deficiencies in the case of destruction or condemnation, for defraying the cost of improvements to the Common Property or for any other purpose for which the Association/Management Company may determine a Special Assessment is necessary or appropriate for the improvement or benefit of the Subdivision. Special Assessments shall be paid at such time and in such manner as the Association/Management Company may determine. Any Special Assessment or installment not paid when due shall bear annual interest at a rate of ten percent (10%) until paid and, together

with the interest, collection costs and reasonable attorneys' fees, shall constitute a lien on the Lot on which it is assessed.

3) The Management Company, on behalf of and pursuant to its contract with the Association, shall have the right to collect all General and Special Assessments and such sums shall constitute a lien on such Lot. The Owner of a Lot, or any portion thereof, shall be personally obligated to pay such charges which were assessed or accrued upon the land owned during the period of Ownership. The Management Company, on behalf of and pursuant to its contract with the Association, may commence an action against any Owner personally obligated to pay the charges or to foreclose the lien for such charge against any Lots. Any such foreclosure action may be brought at the Management Company's election, either in the same manner as an action to foreclose a real estate mortgage, or as a proceeding to enforce a statutory maintenance lien as provided in Section 779.70, Wis. Stats., to the extent said Section is applicable. Any lien in favor of the Association/Management Company securing unpaid charges arising by virtue of this Declaration shall be subject and subordinate to the lien of any mortgage whether the mortgage is executed or recorded prior to or after the creation of such lien.

C) **Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Property shall not release the assessment lien. However, the sale or transfer of any Property pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment(s) as to payments which become due prior to such sale or transfer. No sale or transfer pursuant to foreclosure or proceedings in lieu thereof shall relieve such Property from liability from any assessments thereafter becoming due or from the lien thereof.

D) **Joint and Several Liability of Grantor and Grantee.** Upon a voluntary conveyance, the grantee of a Property shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor as provided in this Declaration up to the time of conveyance, without prejudice to the grantee's right to recover from the grantor the amount paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the Association setting forth the amount of such unpaid assessment and any such grantee shall not be liable for, nor shall the Property conveyed be subject to a lien for, any unpaid assessments against the grantor pursuant to this Declaration in excess of the amount therein set forth.

E) **Waiver of Notice and Protest.** DEVELOPER, THE ASSOCIATION AND ALL OWNERS OF ANY LOTS OR COMMON PROPERTY HEREBY WAIVE NOTICE AND PROTEST OF ANY TAX OR ASSESSMENTS LEVIED AGAINST SUCH LOTS OR COMMON PROPERTY PURSUANT TO THIS ARTICLE B.

## **Part B**

### **CONDITIONS, COVENANTS AND RESTRICTIONS**

B-1) **Fully-Protected Residential Area.** The following provisions in this Part B shall apply to all Lots and Outlots, as described in Exhibit "A" and such other Lots or Outlots as may, in the future, be subjected to this Declaration, as the same may be amended from time to time, by Developer in the sole exercise of Developer's discretion.

**B-2) Land Use And Building Type.** Only the following designated uses for Lots and Outlots shall be permitted:

**A)** The Lots, excepting lots 167, shall be used for residential purposes, including gardens. No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single family dwelling unit not to exceed two and one-half stories in height. Each dwelling unit shall have an attached or detached garage of a size to be approved by the Committee, as that term is defined below. The size of a dwelling unit to be constructed on specific Lots shall not be less than the minimum size to be established pursuant to Design Guidelines, as that term is defined below, to be recorded by Developer for this purpose.

**B)** Notwithstanding anything to the contrary contained herein, Lots 167 shall be used for multi-family residential purposes.

**C)** Notwithstanding anything to the contrary contained within, Lot 129 shall be retained as a farmstead by the original owners and shall not be a member of the Association. Lot 129 may be subdivided for future residential development. In the event Lot 129 is subdivided for residential development, resulting lots shall be subject to subsection (A) above.

**(D)** Outlots 4, 5, 13, 14 and 15 are to be used solely for private park purposes and common area features and/or amenities may be located thereon. Outlots 4, 5, 13, 14 and 15 shall be deemed a part of the Common Property which the Association is obligated to maintain under Section (A) of the Declaration, the cost of which maintenance of said Common Property shall be an assessment against all of the Property in the subdivision in accordance with the Declaration, for so long as such maintenance is necessary or required.

**(E)** Outlot 7 is to be used only for private green space and stormwater conveyance purposes. A subdivision entry sign and water feature, as determined by Developer in its sole and absolute discretion, may be located thereon. Outlot 7 shall be deemed a part of the Common Property which the Association is obligated to maintain under Section (A) of the Declaration, the cost of which maintenance of said Common Property shall be an assessment against all of the Property in the subdivision in accordance with the Declaration, for so long as such maintenance is necessary or required.

**(F)** Outlots 10 and 11 are to be conveyed to Dane County for the purpose of including the same in the Ice Age Trail Corridor.

**(G)** Outlots 1, 2, 3, 6, 8, 9 and 12 are to be conveyed to the City of Madison for public park, open space, parkway, greenway and stormwater management purposes.

**(H)** Outlots 16 and 17 are to be reserved for future residential development. In the event Outlots 16 and 17 are used for residential development, they shall be subject to subsection (A) above.

**J)** Uses, other than the uses set forth in this Section B-2, shall not be permitted on the Lots or Outlots, as applicable, without the prior written approval of the Association or Developer, as appropriate.



K) Except as otherwise provided herein, no buildings, other than signs or other structures incidental to the use of any Outlot which have been approved in advance by the Committee (defined in Section B-3 below), may be constructed on any Outlot.

L) All rights-of-way noted on the Development shall be dedicated as permanent public easements of conveyance and shall be improved in accordance with applicable law.

**B-3) Architectural Control.** No building shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure have been approved by a majority of the Architectural Control Committee (the "Committee") as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. There shall be a variation in building elevations on adjacent Lots. Approval shall be as provided below.

**B-4) Dwellings And Landscaping.** The landscaping to be installed on all Lots in must meet or exceed the minimum number of points for foundation planting and cumulative total landscaping points, including foundation planting points to be established pursuant to an amendment to this Declaration to be recorded by Developer for this purpose. The structure and the minimum landscaping requirements shall be completed within nine (9) months after issuance of a building permit. All driveways shall be of concrete and shall be installed within nine (9) months after substantial completion of the structure. No outbuilding or accessory building of any nature shall be erected on any Lot. No above-ground swimming pools shall be permitted. All Lot areas not used as a building site, or under cultivation as a family garden, shall be planted with grass seed or shall be sodded, and shall be maintained on a regular seasonal basis, including mowing of a frequency of not less than once every 14 days during the lawn growing season. Maintenance of all improvements on a Lot shall be performed by the Owner. Maintenance shall include, but not be limited to, watering, pruning and routine fertilizing and mulching of all plantings and plant beds, replacement of dead, dying and/or diseased trees and shrubs, prompt removal of weeds, trash and debris from plant beds and areas adjacent to shrubs and trees so as to keep said landscaping in a healthy, attractive and neat condition.

If the Owner of any Lot, after reasonable notice, fails or refuses to install landscaping as described herein, or maintain it as required above, the Committee, through its duly authorized agents or employees, shall have the right to enter upon said Lot at reasonable hours to perform said landscaping and/or maintenance. The costs of the materials and labor to perform such landscaping and/or maintenance shall be assessed against said Lot in accordance with the terms of Section A(B)(1), above, which assessment may be foreclosed or collected in accordance with the terms hereof or collected as provided herein.

**B-5) Vehicle and/or Equipment Storage.** No inoperable, dilapidated or junk vehicles of any nature may be kept upon any Lot except in a fully enclosed garage. The exterior storage of boats, trailers, travel trailers, campers, motorcycles, recreational vehicles, automobiles or trucks (collectively, without limitation by reason of enumeration "Equipment"), of any nature is prohibited whether or not screened from public view. No Equipment shall be parked or stored on lawns. The temporary storage of vehicles in a drive area for the purpose of loading or unloading for a period not to exceed twelve (12) hours is permitted. No

commercial vehicles, including trucks, semi-trailers or trailers, may be stored or parked overnight on or in front of said Lots except in an enclosed garage.

**B-6) Construction On Adjoining Lots.** Nothing contained herein shall be construed to prohibit the construction of a residential dwelling or private garage partially on one Lot and partially on an adjoining Lot without regard to side yards between adjoining Lots, provided that all such Lots are owned by the same person or persons.

**B-7) Easements.** No structure, planting, or other materials shall be placed or permitted to remain within any easement of record which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easement, or which may obstruct or retard the flow of water through drainage channels in the easement. The easement area of each Lot and all improvements in it shall be maintained continuously by the owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

**B-8) Backyard Planting Zone.**

**A)** Lots 12 through 47 and Lots 130 through 161 are subject to backyard planting zone requirements as identified in the High Point-Raymond Neighborhood Development Plan ("Backyard Planting Zone"). The Backyard Planting Zone shall be forty (40) feet in depth extending perpendicular from the rear Lot line of the applicable Lot. The purpose of the Backyard Planting Zone is to provide a screen of vegetation to soften the edge between the open space areas and urban uses, to use plant materials that are aesthetically and ecologically appropriate for the urban-natural edge and to avoid plants which may invade and cause management problems in the public open space areas.

**B)** Developer, at its sole cost and expense, shall plant buffer trees and shrubs as detailed in the approved Backyard Planting Zone Planting Plan. The plant species allowed within this Backyard Planting Zone shall include: red, white and burr oaks, shagbark hickory, evergreens, flowering crabs, hawthorns, American hazelnut, American plum, elderberry, smooth and staghorn sumac and other oak woodland or oak savannah species approved by the ACC pursuant to Section 5.2 herein

**C)** Owners, at their sole cost and expense, shall maintain trees and shrubs in healthy condition within the Backyard Planting Zone for each Lot within the zone.

**D)** The list of plants prohibited in the Backyard Planting Zone include: buckthorns, honeysuckle, Norway maples, amur maple, Mexican bamboo, ajaga, pampas grass, blue spruce and other species which may be invasive into the adjacent open space areas. Individual Owners shall be required to remove any of the prohibited species from their applicable Lot at their sole cost.

**E)** Ground cover shall consist of natural material including grass turf or wood mulch.

**F)** Retaining walls shall be constructed with natural stone material. Modular block retaining walls shall be prohibited in the Backyard Planting Zone.

G) Fencing, building structures, playground equipment and other structural items are prohibited within the Backyard Planting Zone.

H) Backyard plantings required in the Backyard Planting Zone are in addition to the landscaping requirements set forth in Section B-4 above.

**B-9) Slope and Swale Areas.**

A) The graded slopes and swales as established by Developer shall remain as permanent. Within these slopes and swales, 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 and swale 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 slopes and swales of each Lot and all improvements in them shall be maintained continuously by the Owner of a Lot, at the Owner's sole expense, except for those improvements for which a public authority or utility company is responsible.

B) In order to control run off, all down spouts and down spout extenders are to drain into a permeable area such as grass or a planting bed.

C) Developer and the City of Madison have agreed to a certain Storm Water Management Plan. In the event of conflict between any plans and such Storm Water Management Plan, the Storm Water Management Plan shall control. Developer and the Association shall each have the right to enter upon any Lot at any time for the purpose of inspection, maintenance or correction of any drainage condition and the Lot Owner shall be responsible for the cost thereof.

D) Any disputes relating to drainage swales, drainage or other surface water issues, shall be resolved by the Board of Directors of the Association, which may seek the advice of the City Engineer of the City of Madison. The Association shall establish procedures by which such decisions can be heard by the Board of Directors and decided by said Board.

**B-10) Nuisances.** No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood or which may have a detrimental effect on the value of other Lots and/or improvements.

**B-11) Temporary Structures.** No structure of a temporary character, 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.

**B-12) Signs.** No sign of any kind shall be displayed to the public view on any Lot except, one professional sign of not more than one square foot, one sign of not more than six square feet advertising the property for sale or rent or signs without regard to size used by the Developer, a builder or licensed real estate broker to advertise the property during the construction and sales period or to identify the subdivision and/or its Developer.

**B-13) Animals.** 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 purpose. No animal enclosure,

house, pen or fences or similar device shall be placed on any Lot without the prior written approval of the Committee which may require special landscaping and screening.

**B-14) Garbage And Refuse Disposal.** No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. No incinerators shall be permitted. Other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No trash, building materials, debris, leaves, lawn clippings, rocks or earth shall be placed in any Outlot.

**B-15) Sight Distance At Intersections.** No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 30" and 72" above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

**B-16) Fences.** All fences must be approved by the Committee or its designated approving authority, and shall comply with any requirements for fences set out in the Design Guidelines, as that term is defined in Section C-3, below. The Committee may require the installation and maintenance of landscape materials for screening and aesthetic purposes.

**B-17) Outbuildings.** No outbuilding or accessory building of any nature shall be erected on any Lot.

**B-18) Antennae/Wind Powered Electric Generators.** No wind powered electric generators, exterior television, radio receiving or transmission antennae, satellite signal receiving station or dish shall be placed or maintained upon any portion of a Lot without prior written approval of the Committee.

**B-19) Firewood Storage.** No firewood or woodpile shall be kept outside a structure unless it is neatly stacked, placed on a non-street side or rear yard and screened from street view by plantings or a fence approved by the Committee.

**B-20) Solar Collectors.** No active solar collector or apparatus may be installed on any Lot unless such installation is first approved in writing by the Committee which shall consider the aesthetic and sun reflection effects on neighboring structures. Solar collectors or apparatus installed flat against or parallel to the plane of the roof shall be preferred.

**B-21) Lighting.** Exterior lighting installed on any Lot shall either be indirect or of such controlled focus and intensity that such lighting will not disturb the residents of adjacent Lots.

**B-22) Mailboxes.** Mailboxes serving homes in the neighborhood, whether individual or multi-gang shall be as determined and as provided by the Developer at the Developer's sole cost and expense, and shall be replaced if necessary, with a mailbox identical in all respects with that originally provided, at the sole cost and expense of the Owner(s).

**B-23) Notices to Owners.** The following information is being put of record in order to give record notice to all Owners, mortgagees and other persons and entities having an interest in the Property:

**A)** Portions of the development in which the Property is located have been approved for multi-family apartments or condominiums as more particularly described in the recorded Plat of Ice Age Falls. By acceptance of a deed to a Lot, Owners hereby accept such uses and waive any objections to these uses.

**B)** Lot 129 may be subdivided for future residential development. By acceptance of a deed to a Lot, Owners hereby accept such uses and waive any objections to these uses.

**C)** Outlots 16 and 17 are to be reserved for future residential development. By acceptance of a deed to a Lot, Owners hereby accept such uses and waive any objections to these uses.

### **Part C**

### **ARCHITECTURAL CONTROL COMMITTEE**

**C-1) Membership.** Developer shall establish an Architectural Control Committee ("Committee") consisting of three (3) members. So long as Developer has title to any Lot subject to this Declaration, the Committee shall be appointed by Developer. After Developer no longer has title to any Lot within the Development, the initial members of the Committee shall resign and the Association shall elect three (3) Owners to serve on the Committee. At any time, Developer may elect to surrender the selection of the members of the Committee to the Association.

A majority of the Committee may designate a representative to act for it. 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.

The Committee appointed hereunder shall serve for the time period specified in paragraph C-10, below. Any Committee member may resign prior to said date. Such resignation shall be effective upon receipt. If a resignation shall occur, prior to turning over control of the Committee, then the remaining members of the Committee may appoint a replacement.

**C-2) 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 Committee. 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 plans as finally approved shall be deposited with the Committee.

**C-3) Plan Review.** The Committee shall review said plans and specifications as to quality of workmanship and materials, harmony of external design with existing or proposed structures and as to location with respect to topography and finish grade elevation. It is contemplated that the Development will be the subject of a comprehensive, written set of design guidelines (the "**Design Guidelines**"). The Design Guidelines shall be available to Owners, builders and others constructing improvements in the Development as an aid to such construction. The Committee shall use the Design Guidelines as an aid in exercising its architectural control responsibilities hereunder, but nothing contained herein or therein shall limit the Committee's discretion to grant variances from or make changes to, the Design Guidelines, as they shall determine in the sole exercise of their discretion.

**C-4) Procedure.**

**A)** Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant for the initial approval of a residential structure. Thereafter, said Committee may charge a "request for action" or "approval" fee not to exceed \$50.00 for each such request or approval. The Committee's approval or disapproval, as required in these Covenants, shall be in writing. In the event the Committee fails to approve or disapprove within thirty (30) days after plans and specifications or any other matters requiring approval have been submitted to it, approval shall not be required and the related covenants shall be deemed to have been complied with fully.

**B)** A submission will not be complete, and the thirty (30)-day approval time, as applicable, set forth above shall not commence until all documents required herein have been submitted. All such submissions shall be made to the Committee at the address set forth in this Declaration or to such other address that the Committee may designate.

**C)** The Committee shall have the sole right to reject any plans which, in the judgment and sole opinion of a majority of its members are not in conformity with this Declaration; or are not desirable for aesthetic reasons; or are not in harmony with buildings located on the surrounding Lots; or are not in conformity with the general purposes of this Declaration.

**D)** The Committee shall exercise its sole approval authority and discretion in good faith and each Owner, by acceptance of a deed to, or any other interest in, a Lot, agrees to hold the Committee harmless from any perceived discrepancies in the Committee's good-faith performance of its duties. Refusal of approval of plans by the Committee may be based on any grounds, including purely aesthetic grounds, which in the sole discretion of the Committee shall be deemed sufficient.

**E)** The Committee may set its own operating procedures consistent with this Declaration and any limitations hereafter imposed by the Association. The costs of operating the Committee shall be assessed by the Association as Common Property expenses, except as permitted below. The Committee may engage consultants (e.g., architects, engineers or attorneys) either on a general or on a case-by-case basis, and the costs thereof may be charged to an applicant. The members of the Committee shall not draw any compensation for

serving thereon but may be reimbursed for expenses incurred in performing their duties. All funds relating to the Committee shall be handled by the Association.

**C-5) Separate City Approval.** Matters which require approval of the Committee may also require approval of the City of Madison. Obtaining approval from the Committee and the City of Madison is solely the responsibility of the Owner desiring approval. Approval of Plans by the Committee shall not be deemed approval by the City of Madison and approval by the City of Madison shall not be deemed approval by the Committee.

**C-6) Records.** Until such time as a replacement Committee is designated, all plans, applications and requests shall be submitted to said Committee at the following address:

Ice Age Falls Architectural Control Committee,  
6801 South Towne Drive  
Madison, Wisconsin 53713

**C-7) Committee Liability.** Neither the Committee 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.

**C-8) Indemnification.** Each member or former member of the Committee, together with the personal representatives and heirs of each such person, shall be indemnified by the Association against all loss, costs, damages and expenses, including reasonable attorney's fees, asserted against, incurred by or imposed in connection with or resulting from any claim, action, suit or proceeding, including criminal proceedings, to which such person is made or threatened to be made a party by reason of service as a member thereof, except as to matters resulting in a final determination of gross negligence or willful misconduct on the part of such member. In the event of settlement of such proceeding, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Association is advised by counsel that the person to be indemnified has not been guilty of gross negligence or willful misconduct in the performance of such person as a member in the matter involved. This right of indemnification shall be in addition to all other rights and defenses. All liabilities, losses, damages, costs and expenses incurred or suffered by the Association in connection with this indemnification shall be a Common Property expense. Nothing in this Section C-8 shall be deemed an indemnification of such person with respect to such person's status as an Owner, occupant or otherwise.

**C-9) Variance.** The Committee shall have the power and absolute discretion to authorize a variance from any of the requirements of these Restrictions and Covenants if it finds that the strict application thereof would, in its sole discretion and opinion, result in difficulties or undue hardship to the Lot owner or in the event the architecture of the proposed Lot improvement is such as to present in its opinion a particularly pleasing appearance compatible with other houses in the development.

**C-10) Successor to Committee.** Developer may turn over control of the Committee 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 Association 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 Committee for all purposes hereunder.

## **Part D**

### **GENERAL PROVISIONS**

**D-1) Term.** This Declaration shall run with the Property and Common Property, and shall be binding on Developer and all Members and their successors and assigns, and all persons claiming under them for a period of twenty-five (25) years from the date recorded, after which time said Declaration shall be extended automatically for successive periods of five (5) years each unless an instrument signed by a majority of the Members agreeing to change said Covenants in whole or in part or to terminate the same.

**D-2) Enforcement.** The Architectural Control Committee or any Owner shall have the right to enforce by any proceedings at law or in equity all restrictions, conditions and covenants created or imposed herein, against any person or persons violating or attempting to violate any covenant, by any action to either restrain violation or to recover damages, or both including reasonable attorney fees. Failure to enforce any covenant, condition or restriction herein shall in no event be deemed a waiver of the right to do so thereafter. In the event of a violation of this Declaration the Committee shall have the right to assess and collect from the violating party a fine for such violation equal to the greater of (i) the actual damages suffered on account of the violation, or (ii) the sum of \$100.00 per day for each day the violation remains outstanding plus (iii) all costs of collection and enforcement, including actual attorney fees.

**D-3) Severability.** Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

**D-4) Model Homes.** So long as Developer shall own any Lot in the Development, Developer shall be permitted to maintain model homes in the Development, including therein a sales office for the purpose of sales and marketing of its homes.

**D-5) Governing Law.** This Declaration shall be construed and enforced in accordance with the terms of the laws of the State of Wisconsin. The terms of this Declaration are not intended to replace or affect any applicable laws, ordinances, rules or regulations of the City of Madison. In the event any term contained in this Declaration conflicts with, or is incompatible with, applicable laws, ordinances, rules or regulations of the City of Madison, the City of Madison provisions shall control unless the specific terms contained in this Declaration are more restrictive, in which event the more restrictive requirements control.

**D-6) Notices.**

**A)** Notices to Developer shall be given to Developer at the following address:  
6801 South Towne Drive, Madison, WI 53713.



B) Notices to an Owner of any Lot within the Development shall be given in care of the street address of the Lot.

C) Any party may change its address by written notice given to the other parties. Either party, its successors and assigns, may change said addresses by notice properly given hereunder.

**D-7) Amendment.** At any time until Developer conveys all of the Lots which comprise the entire Property, including all Phases, or turns control of the Association over to its Members, whichever occurs first, Developer may modify, amend, alter and grant variances to this Declaration without the consent of any Member, Owner or Occupant, their Mortgagees or any other party, including the Association and its Board of Directors.

**D-8) No Waiver.** Whenever a waiver, consent or approval is required or permitted herein, it must be express and in writing; no waiver, consent or approval shall be implied. Failure to enforce any provision of this Declaration shall not operate as a waiver of any such provision or any other provision of this Declaration.

**D-9) Number and Gender.** Whenever used herein, unless the context shall otherwise provide, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

**D-10) Including.** Whenever used herein, the term "including" preceding a list of one or more items shall indicate that the list contains examples of a general principle and is not intended as an exhaustive listing.

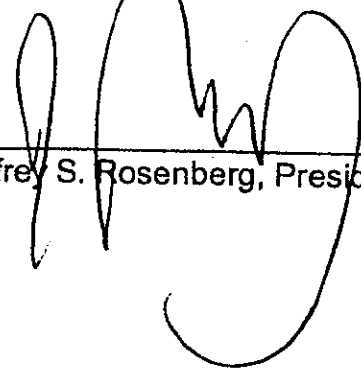
**D-11) Captions.** The captions and article and section headings in this Declaration are intended for convenience and reference only and in no way define or limit the scope or intent of the various provisions hereof.

**D-12) Remedies.** All remedies herein are cumulative.

IN WITNESS WHEREOF, the said IAF Development, LLC, a Wisconsin Corporation, has caused these presents to be signed and sealed this 1st day of August, 2003.

IAF Development, LLC  
a Wisconsin Limited Liability Company

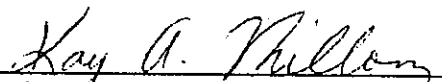
By: Midland Holdings, Inc.  
Its: Managing Member

  
\_\_\_\_\_  
Jeffrey S. Rosenberg, President

STATE OF WISCONSIN )  
                                  ) SS  
COUNTY OF DANE     )

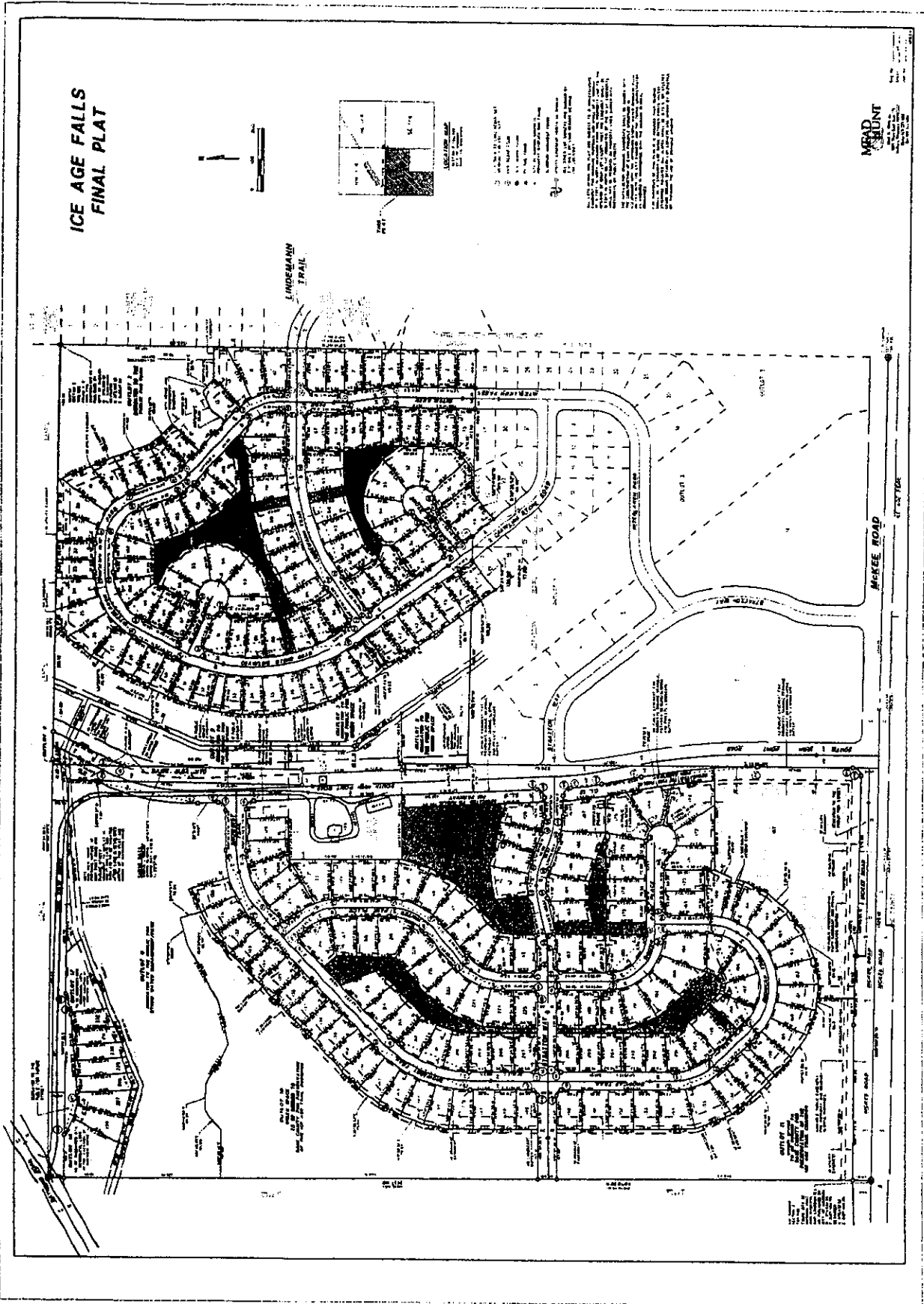
Personally came before me this 1st day of August, 2003, Jeffrey S. Rosenberg, President, of the above named corporation to me known to be the persons who executed the foregoing instrument as such officers as the deed of said corporation, by its authority.

Witness my hand and official seal.

  
\_\_\_\_\_  
NOTARY Public, State of Wisconsin  
My commission expires: Permanent

Prepared by:

Donald A. Esposito, Jr.  
Midland Builders, Inc.  
6709 Raymond Rd.  
Madison, WI 53719



NOTE: PLEASE BE ADVISED THAT THE DOCUMENT GRANTOR(S) HEREBY DIRECT VIEWERS TO IGNORE THE PRINTED TEXT MATERIAL ON THIS MAP. ONLY THE SPATIAL RELATIONSHIPS OF THE ILLUSTRATIONS ON THE MAP ARE BEING PRESENTED FOR YOUR INFORMATION.

Signed by grantor(s) or grantor(s) agent: Kay A. Millonzi Date (use black ink) \_\_\_\_\_

Name of grantor(s) or grantor(s) agent printed: (use black ink) Kay A. Millonzi