

**HERON BAY**

**DECLARATION OF COVENANTS AND RESTRICTIONS**

The undersigned, Town of Beloit, hereinafter called "Declarant",

WITNESSETH:

WHEREAS, Declarant is the owner in fee simple of the plat of the HERON BAY Subdivision located in the Town of Beloit, Rock County, Wisconsin,

WHEREAS, Declarant desires to create within the Subdivision a residential community for the mutual benefit of the owners of the lots within the plat, and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities of said community and for the maintenance thereof, and desires to subject the real property of said plat to the Easements, Covenants, Conditions and Restrictions hereinafter set forth, each and all of which are for the benefit of the property and each owner thereof; and

WHEREAS, for the purpose of enhancing and protecting the value, attractiveness and desirability of the lots constituting the HERON BAY Subdivision, Declarant hereby declares that all of the real property described within the Subdivision, and each part thereof, with the exceptions noted as to Lot Ten (10) of the Subdivision which existed prior to the creation of the Subdivision, shall be held, sold and conveyed only subject to the following Easements, Covenants, Conditions and Restrictions, all of which shall constitute Covenants running with the land and shall be binding on all parties having any right, title or interest in the above described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I - USE RESTRICTIONS

1. Each lot shall be used as a place of residence for a single family and for no other purpose. No building shall be erected, maintained or used on any lot for manufacturing, commercial, industrial or business purposes and no noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon which may be or become an annoyance or nuisance.

2. The single family dwelling shall consist of not less than Eighteen Hundred (1,800) square feet of habitable, above grade, floor area and shall not exceed two and one-half (2 -1/2) stories in height. Each home shall have a garage for not less than two (2) nor more than three (3) motor vehicles.

3. One accessory building on a concrete foundation, not to exceed 300 square feet in total area, shall be allowed on each lot so long as it conforms to the style, appearance, materials and general character of the home on the property.
4. No lot shall be subdivided so as to permit more than one dwelling to be erected or placed on any one lot.
5. No animals, livestock or poultry of any kind may be raised, bred or kept on any lot, however, dogs and other household pets may be kept on lots for non-commercial purposes, subject to such rules and regulations of the Town of Beloit. The operation of kennels or training facilities is prohibited.
6. No rubbish, trash, garbage or other waste material shall be kept or permitted on any lot in the common areas except in sanitary containers located in appropriate areas. No visible tank for the storage of oil, gas, or any other material shall be erected or maintained on any lot.
7. No commercial vehicle or truck, trailer, mobile home, camper, snowmobile, recreational vehicle, boat or horse carrier, inoperable vehicle, or similar item may be kept or stored on any lot or on the surrounding premises of any lot unless fully enclosed within the garage.
8. No vehicle shall be parked on the street in front of a lot for more than twenty-four (24) total hours in any seventy-two (72) hour period.
9. No advertising sign or billboard, other than a temporary sign advertising the property on which it is located for sale, shall be erected or maintained on any lot.
10. No satellite dishes, fences, gazebos, accessory buildings or similar appurtenances shall be constructed upon any lot until the plans and specifications for the same have been approved by the Architectural Control Committee.
11. All homes shall include a standard rural mailbox and post as required by the United States Postal Service.
12. Easements for installation and maintenance of utilities are reserved as shown on the recorded plat. All telephone, electric and cable television utilities shall be installed underground, and no above ground wiring of any kind shall be permitted in any portion of the Subdivision at any time covered by these restrictions.
13. All buildings, of any sort, to be erected on any lot shall be completed within one (1) year of the issuance of a building permit.
14. No noxious, illegal 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.

15. 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.

16. No fence, wall, hedge, or mass planting shall be allowed except upon approval by the Architectural Control Committee, as hereinafter provided. Permitted materials for fences are limited to chain link, decorative masonry or block, wrought iron, brick, natural stone ( dressed or undressed), wood of proven exterior durability such as cedar and redwood, and plastic fencing manufactured to look like wood or wrought iron fencing. All fence owners shall maintain their fences in a state of good repair and appearance, and not allow the fence to become a safety hazard or nuisance. That side of the fence considered to be the face or facing as applied to fence posts, shall front abutting property (good side out). All fences constructed in a floodplain area shall be of an open type, and shall not obstruct the free-flow of flood waters, either by its construction or through the collection of debris during periods of flooding. No fence shall be connected to, or charged by, an electrical system. The use of barbed wire, "ribbon wire" or similar materials is prohibited.

17. Children's play equipment such as swing sets, slides, climbing apparatus, basketball hoops, and the like are allowed on each lot without review by the Architectural Control Committee so long as they are located in the rear yard, located within required building set back areas, maintained in an attractive and functional manner and do not pose a hazard. Athletic facilities, including, without limitation, basketball courts, tennis courts, swimming pools or golf facilities require approval of the Architectural Control Committee prior to construction.

18. Within five (5) months of home occupancy all yard areas are to be covered with ornamental grass not exceeding twelve inches in height, decorative mulch, rock or flowers. Native species of grass, wild flowers and other native non-noxious vegetation of environmental benefit are allowed in rear yards being maintained as environmental preserves. A minimum of one (1) overstory deciduous shade tree shall be maintained in the front yard of each home site. No tree, shrub or other plant, except approved ground cover, shall be planted or allowed to grow in public road right-of-way. All lawn areas shall be kept maintained in good condition at all times.

19. All driveways shall be completely paved to the street with concrete, asphalt, brick or similar material prior to home occupancy, and maintained thereafter.

20. Declarant or the transferees or assignees of Declarant shall undertake the work of developing all lots included within the Subdivision. The completion of that work and the sale or other disposition of residential units is essential to the establishment and welfare of the Subdivision as an ongoing residential community. In order that such work may be completed and the Subdivision be established as a fully occupied residential community as soon as possible, nothing in this Declaration shall be understood or construed to prevent Declarant or the contractors or subcontractors of Declarant from doing such things as may be necessary in connection with the completion of the work of development including, but not limited to, the right to construct and maintain such structures as may be necessary, maintain such sign or signs as may be necessary, and do all things necessary for the sale of the lots and constructed residences thereon.

21. Structures and improvements on any lot within the Subdivision existing on the date these Covenants and Restrictions are recorded with Rock County, shall be allowed to be continued and maintained. Any future alteration, improvement, reconstruction or redevelopment of said structures or improvements shall be required to comply with these Covenants and Restrictions.

22. Because Lot Ten (10) of the Subdivision existed prior to the establishment of this Subdivision, its owners shall be permitted to have a trailer, mobile home, camper or other recreational vehicle upon the lot without having such items fully enclosed within the garage as required by Article I, Paragraph 7 of this Declaration; additionally, an antenna, a satellite dish and a propane tank and other building or structures which presently exist upon said Lot Ten (10) shall be permitted to exist in the same way or manner as they presently exist upon the premises; further, the other sections of these covenants notwithstanding, the owners of Lot Ten (10) shall be allowed to construct accessory buildings on such lot in the future as allowed and permitted by the regulations for the R-1 (Single Family Residential District) in existence as of the date of the recording of these Covenants and Restrictions.

23. It shall be the responsibility of each lot owner, in addition to complying with the terms and conditions of this Declaration, to also comply with all rules, regulations, laws and ordinances of the State of Wisconsin, County of Rock and Town of Beloit.

## ARTICLE II – ARCHITECTURAL CONTROL COMMITTEE

1. The Architectural Control Committee (ACC) shall have exclusive right to approve or disapprove the plans and specifications for any residence, accessory building, accessory structure, fence, hedge over twenty feet in length, swimming pool, athletic facility, satellite dish, gazebo, communications antenna, tower, permanent lawn ornamentation and driveway constructed on any lot within the Subdivision.

2. No building, structure or improvement under the purview of the ACC shall be installed, constructed, or erected on any lot within the Subdivision without prior written approval of the ACC.

3. The ACC shall be composed of five (5) Town of Beloit residents appointed by the Beloit Town Board until such time as the subdivision is fully developed and there is a home constructed on each lot. The Town Board shall appoint residents of the Subdivision to the ACC under the following minimum schedule:

- a. One resident after five (5) homes are built.
- b. Two residents after ten (10) homes are built.
- c. Three residents after fifteen (15) homes are built.
- d. Four residents after twenty (20) homes are built.

4. Following full development of the Subdivision, the property owners within the Subdivision shall elect the ACC annually at an Association meeting held in the month of May for two (2) year, staggered terms. The owners of each lot shall have one (1) vote per lot, and must be present at the meeting to vote. The terms of office for the members of the ACC shall be determined at the first

meeting of the Association following full development of the Subdivision, and continue until a successor has been appointed.

5. The ACC shall appoint a Chairperson annually from among their membership and notify each property owner within the Subdivision of the name and address of the Chairperson by written notice presented or mailed to each residence within the Subdivision.
6. All applications, correspondence and communications to the ACC shall be made through their Chairperson.
7. All meetings of the ACC shall be made upon call of their Chairperson, and a quorum shall consist of three (3) members. A positive vote of three (3) members is required to approve each application.
8. The ACC shall notify each applicant and all other lot owners within the Subdivision of the date, time and place that they shall meet to consider the application. The applicant and other interested parties shall be allowed to be present during deliberations on the application. The ACC need not allow any other person but the applicant to speak for or against the application.
9. The ACC shall use due diligence to review and act upon all applications within fourteen (14) calendar days of their receipt. The decision of the ACC shall be in writing.
10. Applications to the ACC shall include such site plans, construction plans, specifications, drawings and other material related to the dimension, location, materials, colors, appearance and topography of the proposed project as may be required by the ACC to enable the ACC to determine the application's conformance with these Covenants and Restrictions, as well as the general harmony of the Subdivision.

### ARTICLE III – IMPLEMENTATION, AMENDMENT AND ENFORCEMENT

1. Each grantee of Declarant, by acceptance of a deed of conveyance, accepts the same subject to all the Easements, Covenants, Conditions and Restrictions set forth in this Declaration, and to the jurisdiction, rights and powers of Declarant created or reserved by this Declaration. All of the impositions and obligations imposed under this Declaration shall run with the land and bind every owner of any interest in each lot or part of any lot in the Subdivision and inure to the benefit of every owner in like manner.
2. Invalidation of any one of these covenants or restrictions by judgment, court order, or other lawful means shall not in any way affect the other provisions contained herein, all of which shall remain in full force and effect.
3. No breach of any of the conditions contained herein or any action by reason of such breach shall defeat or render invalid the lien of any mortgage made in good faith and for value as to any lot or residence thereon; provided, however, that such conditions shall be binding upon any owner whose title is acquired by foreclosure, trustee's sale or otherwise.

4. The Covenants and Restrictions of this Declaration shall run with and bind the land and shall inure to the benefit and be enforceable by the Heron Bay Home Owners Association or any owner of any lot within the Subdivision.
5. These Covenants and Restrictions shall be binding for a period of twenty-five (25) years from the date this Declaration is recorded, after which time said Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years.
6. These Covenants and Restrictions may be amended at any time by recording an amending instrument with the Register of Deeds for Rock County, Wisconsin, signed by the owners of at least a two-thirds (    ) majority of the then lot owners in said Subdivision. Such amendment shall become effective sixty (60) days after such amendment is recorded.
7. No amendment shall be authorized or considered valid which shall reduce or increase the membership of the Architectural Control Committee nor which shall terminate the original Covenants or Restrictions in their entirety at any time sooner than the initial term as provided herein.
8. It is impossible to measure in money the damages that may accrue to a party by reason of a failure to honor a Covenant or Restriction contained herein. Therefore, if any lot owner shall institute an action or proceeding to enforce the provisions of these Covenants and Restrictions, the party against whom the action is brought, if found to have violated these Covenants and Restrictions, shall be responsible, in addition to all other things, to pay the reasonable attorneys fees and costs incurred to enforce the Covenants and Restrictions against them.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

OF BELOIT