

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
STRAWBERRY CREEK OF KENOSHA**

This Declaration of Covenants, Conditions and Restrictions of Strawberry Creek of Kenosha (this “Declaration”) is made and entered into by Strawberry Creek of Kenosha, LLC, (“Declarant”) a limited liability company duly organized and existing under and by virtue of the laws of the State of Illinois authorized to transact business in the State of Wisconsin as a foreign limited liability company with its offices at 7600 – 75th Street, Kenosha, Wisconsin.

RECITALS

A. Declarant owns certain real property which is described and depicted on the attached Exhibit A, upon which Declarant intends to construct, or sell to third parties for the development of: (1) a Golf Course and related amenities, including a clubhouse with dining facilities, swimming pool, and tennis courts; (2) single family residences consisting of approximately 326 lots; (3) multi-family residences consisting of approximately 336 units; (4) apartment buildings with residential units consisting of approximately 264 units; (5) certain commercial and/or retail buildings to service the development and the public at large; (6) certain public roads; (7) certain private drives; (8) certain open spaces; and (9) other related improvements.

B. Declarant has an overall plan of development for all of the real estate described on Exhibit A attached hereto pursuant to a map and Preliminary Plat of the Property that was approved by the City of Kenosha on January 6, 2003, and a Developer’s Agreement between the Declarant, the City of Kenosha, and the City of Kenosha Water Utility. Thereafter, the Declarant received approval from the City of Kenosha to subdivide the property into seventeen (17) outlots with public roads pursuant to a map and Final Plat of Strawberry Creek Subdivision. Thereafter, the Declarant received further approval from the City of Kenosha to further subdivide Outlot 2, Outlot 3 and Outlot 4 with further public roads pursuant to a map and Final Plat of Strawberry Creek Addition #1 Subdivision. It is anticipated that the property will be further subdivided at various times pursuant to the approved map and Preliminary Plat of the Subdivision.

C. By this Declaration, Declarant intends to submit all of said property, and all of the buildings and other improvements on said Property, except for what is described as “Outlot 8” on the Final Plat of Strawberry Creek to certain easements, rights, restrictions, and obligations with respect to the ownership, construction, use and maintenance of such property, the buildings it has constructed thereon, and all other improvements and components thereof.

NOW, THEREFORE, Declarant, as fee owner of the property, by this Declaration (i) establishes and imposes certain provisions, restrictions, conditions, easements and uses upon such property; and (ii) specifies that the provisions of this Declaration shall constitute covenants running with the land which shall be binding upon Declarant, its successors and assigns, and all subsequent owners and occupants of all or any part of such property.

ARTICLE 1. - DEFINITIONS

The following terms shall have the assigned definitions:

1.1 Association. The “Association” shall mean the “Strawberry Creek of Kenosha Home Owners Association, Inc.”, a Wisconsin non-profit non-stock corporation, the members of which shall be (i) all owners of Lots and Units in the Property, and (ii) all owners of Outlots on the Property.

1.2 Association Insurance. “Association Insurance” shall mean all policies of insurance as may be maintained by the Association under this Declaration.

1.3 Board. The “Board” or “Board of Directors” shall be the governing body of the Association elected in conformance with its Bylaws.

1.4 Strawberry Creek of Kenosha Documents. The “Strawberry Creek of Kenosha Documents” shall consist of this Declaration and the Bylaws of the Association.

1.5 Building. A “Building” shall be any free standing structure located in the Property.

1.6 Bylaws. The “Bylaws” shall mean the Bylaws of the Association as adopted by the Board.

1.7 Common Areas. The “Common Areas” shall consist of all traffic islands and boulevards in the public streets located on the Property, and any other areas, the title to which is conveyed to the Association, due to the unbuildable nature of said areas.

1.8 Common Improvements. The “Common Improvements” shall consist of the following, whether or not located in Common Areas: all signs on the Property generally identifying the Property as Strawberry Creek Subdivision (but not including signs installed by Declarant, the Golf Course Owner, the Owner or tenants of what is described as “Outlot 8” on the Final Plat of Strawberry Creek, any signs advertising the sale of any Lots or Units, the Golf Course, or the uses of “Outlot 8”), and any other improvements made by the Association in the Common Areas.

1.09 Declarant. The “Declarant” shall mean Strawberry Creek of Kenosha, LLC, and any of its successors and assigns pursuant to an assignment in conformance with Section 17.6 of this Declaration.

1.10 Declaration. “Declaration” shall mean this Declaration as the same may be amended from time to time in the manner and recording to the procedures set forth at Article 12.

1.11 Developer’s Agreement. “Developer’s Agreement” shall mean the developer’s agreement between Strawberry Creek of Kenosha, LLC, the City of Kenosha, and the Kenosha Water Utility filed with the Kenosha County Register of Deeds on January 30, 2004, as amended from time to time, and all subsequent Developer’s Agreements between any other parties for any portion of the Property.

- 1.12 Director. A “Director” shall mean a member of the Board.
- 1.13 Drawings. “Drawings” shall mean the required submittal for ACC approval per Article 5 of any single family Building.
- 1.13 Expansion Area. The “Expansion Area” is any real estate that is contiguous to the Property that the Declarant determines to subject to this Declaration.
- 1.14 Final Plat of Strawberry Creek. The “Final Plat of Strawberry Creek” is a certain subdivision of the Property that was approved by the City of Kenosha on August 4, 2003 per Ordinance No. 03-03 and recorded with the Register of Deeds on January 30, 2004 as Document No. 1372644.
- 1.15 Final Plat of Strawberry Creek Addition 1. The “Final Plat of Strawberry Creek Addition 1” is a certain subdivision of the Property that was approved by the City of Kenosha on December 15, 2003 per Ordinance No. 142-03 and recorded with the Register of Deeds on June 16, 2004 as Document No. 1392095.
- 1.16 Golf Course Rules. The “Golf Course Rules” shall mean the conditions, requirements, limitations and observances of play and usage of the Golf course as established by the Golf Course Owner, or its agent, from time to time.
- 1.17 Golf Course. The “Golf Course” shall mean Outlots 1, 6, 7, 14, and 16 of the Final Plat of Strawberry Creek.
- 1.18 Lift Station. The “Lift Station” shall mean the land and improvements located on Outlot 17 that will be utilized by the City of Kenosha Water Utility for the delivery of sanitary sewer services for the Property.
- 1.19 Lot. “Lot” shall mean a lot intended for construction of a single family residence as shown on the Plat. The Lots do not include the Outlots or any subdivided lots in Neighborhoods 7, 8, 9 & 10 (as defined in the Preliminary Plat of Subdivision)
- 1.20 Mortgagee. “Mortgagee” shall mean the holder of a recorded first lien mortgage against a Lot or the vendor under a recorded land contract.
- 1.21 Occupant. “Occupant” shall mean any other person residing in an improved Lot or Unit, with the Owner’s permission whether under a lease, or otherwise.
- 1.22 Outlot. “Outlot” shall mean an outlot as shown on the Final Plat of Strawberry Creek, and any subsequent plats. The reference to an Outlot by a number shall mean that particular Outlot as shown on such Plat.
- 1.23 Owner. “Owner” shall mean the fee simple owner of a Unit, a Lot or an Outlot and the vendee of a Unit, a Lot or an Outlot under a recorded land contract. The Declarant is an Owner with respect to Units, Lots and Outlots to which it holds title.

1.24 Owner-Occupant. “Owner-Occupant” shall mean an Owner who also resides in an improved Lot or Unit, or an Owner that has purchased an improved Lot or Unit for the purposes of leasing said Lot or Unit.

1.25 Parcel. “Parcel” shall mean a Parcel as shown on the Preliminary Plat of Subdivision. The reference to a Parcel by a letter shall mean that particular Parcel as shown on the Preliminary Plat of Subdivision.

1.26 Preliminary Plat of Subdivision. The “Preliminary Plat of Subdivision” shall mean the Preliminary Plat of Subdivision that was approved by the City of Kenosha on January 6, 2003 per Ordinance No. 03-03, which said Preliminary Plat of Subdivision is attached hereto as Exhibit A.

1.27 Property. “The Property” shall mean all of the real estate subject to this Declaration, as described and depicted on Exhibit A (not including “Outlot 8”) and all improvements constructed or to be constructed thereon. “Outlot 8” shall not be considered part of the Property and shall not be subject to this Declaration, except as specifically provided.

1.28 Rules. The “Rules” shall mean the rules and regulations established by the Association.

1.29 Sidewalks. A “Sidewalk” shall mean a pedestrian walkway along the street side of a Lot or an Outlot, intended for pedestrian traffic from one side property line to the other.

1.30 Unit. A “Unit” shall mean an individual unit in a condominium, or an individual apartment in an apartment building, or an individual residence in a multi-family residence, whether said condominium building, apartment building, or multi-family residence is built, or not. Every separate residential unit that is constructed in Neighborhoods 7, 8, 9, & 10 (as defined in he Preliminary Plat of Subdivision) shall be deemed a “Unit” as defined herein.

ARTICLE 2. - ASSOCIATION OF OWNERS

1. **Establishment of Association.** The Association is hereby created for purposes of:
 - A. managing and controlling the common affairs of the Property,
 - B. owning, managing, controlling and maintaining the Common Areas and Common Improvements in the Property, and,
 - C. enforcing compliance of the owners of Lots, Units, Outlots and the Golf Course with the applicable provisions of this Declaration and Developer’s Agreement.
 - D. performing other duties as set forth herein for the common benefit of the Residential Owners.
2. **Common Areas.**
 - A. All Common Areas shall be maintained and used for the common benefit of the Owners and Occupants in the Property. Such Common Areas shall not be used for recreational or other activities unless in accordance with the terms, conditions and restrictions contained herein

or as are hereafter adopted or otherwise approved by the Association. The Declarant and Neumann Homes of Wisconsin LLC shall have the right to erect signs in the Common Areas to promote the sale of Lots, Units, or Outlots in the Property. The Declarant may, but is not required, to grant permission to any other Owner to erect such a sign. Any signs, monuments, structures or other common facilities constructed by the Declarant or the Association on any Common Areas shall be operated and properly maintained and repaired by the Declarant or the Association (as the case may be) so as to be neat and attractive in appearance. The Association shall properly maintain the Common Areas so that they are neat and attractive in appearance (including, without limitation, proper landscaping and cutting of grass). The cost of such maintenance shall be shared as hereinafter provided. Any portion of the Common Area within any public street right-of-way may only be improved or altered with the consent of the appropriate public authorities.

3. **Board of Directors.** The Association shall initially be governed by a Board of Directors, hereinafter referred to as the **"Board of Directors"** or **"Board,"** which shall be solely responsible for the activities of the Association. The initial members of the Board will be Barry S. Shiffman, Jay W. Hilgenberg, and J. Michael McTernan. After the term of the Initial Directors, as provided below, the Board shall consist of not more than seven (7) directors, with at least one (1) director being an Owner or duly designated officer, agent or representative of an Owner who owns property in either Neighborhood 8, 9 or 10 as identified in the Preliminary Plat of Subdivision and at least one (1) director being an Owner or duly designated officer, agent or representative of an Owner who owns property in Outlot 9 as identified in the Final Plat of Strawberry Creek, to be elected pursuant to the By-laws of the Association.

4. **Qualifications of Directors.** With the exception of the initial directors, a person must be either an Owner or a duly designated officer, agent or representative of an Owner to qualify as a member of the Board.

5. **Initial Term of Office of Directors.** Declarant shall have the right to appoint and remove directors of the Association in accordance with the provisions set forth in this Section:

- (a) Prior to the later to occur of: (i) conveyance to Owner-Occupants of a total of 150 Lots, or (ii) acceptance by the City of Kenosha of the public improvements to be installed in the Property, the Association shall hold a meeting and the Owner-Occupants other than Declarant shall elect at least twenty percent (20%) of the Board;
- (b) Prior to the later to occur of: (i) conveyance to Owner-Occupants of a total of 300 Lots, or (ii) acceptance by the City of Kenosha of the public improvements to be installed in the Property, the Association shall hold a meeting and the Owner-Occupants other than Declarant shall elect at least thirty-three and one third (33-1/3) of the Board which may include the Director(s) elected under subparagraph (a) above. For example, if the Board is comprised of three (3) Directors, the election of one director pursuant to subparagraph (a) above shall also satisfy the requirements of this subsection and no additional special meeting need be held nor additional director elected under this subparagraph (b).
- (c) Directors elected by the Owner-Occupants pursuant to subparagraphs (a) and (b) shall serve terms of two (2) years. At the end of such terms, the Association shall

hold a meeting and the Owner-Occupants other than the Declarant shall elect a new director to replace the outgoing director for a new term of two (2) years.

- (d) Upon the earlier to occur of the expiration of (i) fifteen (15) years from the date that the first Lot is conveyed to any person other than Declarant, or (ii) thirty (30) days after the conveyance to Owner-Occupants of a total of 323 Lots (the "Turnover Date"), all remaining Directors appointed by Declarant shall tender their resignations and the Owner-Occupants, including Declarant, shall elect replacements to such Directors.

6. **Subsequent Terms of Office of Directors.** After the Initial Term as provided above, the term of office of Directors shall be for two (2) calendar years. If any Director shall die, resign, be unable to act or cease to be qualified to be a Director, the unexpired term of such Director shall be filled pursuant to the provisions set forth in the By-laws of the Association.

7. **Membership and Voting Rights.** The Association shall have two (2) classes of voting Membership. Class A Members shall be all the Owners, other than the Declarant. Class A Members shall have one (1) vote for each Lot or Unit owned (whether the Lot is owned singularly or collectively). For the purposes of clarification, Neumann Homes of Wisconsin LLC, as an Owner, shall have one (1) Class A vote for every Lot, Unit and Outlot owned by Neumann Homes of Wisconsin LLC. Every Owner, upon acquiring title to a Lot or Unit under the terms of the Declaration shall automatically become a Member of the Association and shall remain a Member thereof until such time as the ownership of such Lot or Unit ceases for any reason, at which time Membership in the Association shall automatically cease. In the event a Lot or Unit is owned by more than one (1) person or entity, the person or entity who shall be entitled to vote for the Lot or Unit shall be the person or entity named on a certificate executed by all of the co-owners of the Lot or Unit and filed with the Secretary of the Association. In the event any given Unit is not yet built, the Owner shall have one vote for each Unit that was approved pursuant to the Preliminary Plat of Subdivision. The Class B Member shall be Declarant. So long as Declarant shall own at least one Lot, Unit, Outlot, or the Golf Course, Declarant shall have one (1) vote in affairs of the Association for each Lot, Unit, or Outlot the Declarant owns, plus one (1) vote for every vote entitled to be cast by the Class A Members. In the event of an assignment of Declarant's rights under this Declaration, whether for collateral purposes or otherwise, such Class B Membership shall be transferable to the assignee, provided such transfer of membership is evidenced in writing by an agreement executed by Declarant. The Declarant (and the Association, prior to the Turnover Date) is prohibited from making any substantive changes to this Declaration or to the budget as set forth in Exhibit B attached hereto without the written consent of Neumann Homes of Wisconsin LLC provided Neumann Homes of Wisconsin LLC owns any Lots, Units or Outlots on the Property.

8. **Meetings of the Board of Directors and the Association.** All meetings of the Board shall be open to Owners, and shall be held upon not less than three (3) days prior written notice to all Directors and Owners. A Majority of the Directors then in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. Actions of the Board shall be taken by majority vote of the Directors. The Board shall call a meeting of all the members of the Association no less than one (1) time per calendar year.

9. **Duties of the Board of Directors.** In addition to any duties of the Board set forth in the By-laws of the Association, the Board shall have the following duties:

- A. To provide for the maintenance Common Improvements and the Common Areas;
- B. To establish budgets and levy assessments;
- C. To establish dates and procedures for the election of members to the Board;
- D. To promulgate operating procedures for the conduct of the Association's and the Board's affairs;
- E. To appoint members of the Architectural Control Committee;
- F. To establish and adopt the Rules;
- F. To enforce the terms, conditions and restrictions contained in this Declaration according to the terms thereof; and
- G. To fulfill any other duties as set forth herein.

10. **Board Powers.** In addition to any powers of the Board set forth in the By-laws of the Association, The Board shall have the following powers:

- A. To enter into contracts and to employ agents, attorneys or others for purposes of discharging its duties and responsibilities hereunder; and
- B. To do any thing or take any other action which is incidental to or necessary for the Board to perform its duties and discharge its obligations under and enforce this Declaration.

11. **Budget and Assessments.**

A. The Board of Directors shall annually adopt a budget of common expenses ("General Assessment") and levy assessments on Outlots, Lots, and Units as provided in this Declaration and in the Bylaws. The budget shall include (i) amounts to be paid for the annual and routine maintenance of the Common Areas and the storm water facilities, as set forth herein in Article 3, (iii) amounts necessary to pay real estate taxes, insurance, accounting and related services to manage the Association, and (iv) a replacement reserve which shall constitute part of the General Assessments. Attached hereto as Exhibit B is an estimated budget for the first fiscal year beginning January 1, 2005. The Association may also levy special assessments on all Owners of Lots for any purpose for which a general assessment may be levied and special assessments or fines on particular Lot Owners for the purpose of collecting any amounts due the Association or enforcing compliance of such Owners with any provision of this Declaration, the Bylaws or any Rules. The Board may adopt a rule to impose uniform charges for services which the Association provides related to transfer of Outlots, Lots and Units. The Board may adopt an initial budget showing the anticipated amounts necessary to cover common expenses but the portions of such expenses relating to matters which have not been completed by Declarant as of the time of adoption of such budget, such as landscaping, shall not be assessed until such matters have been completed and control relinquished to the Association by Declarant.

B. The pro rata share of said General Assessment for each Owner of a Lot, Unit or Outlot shall be as follows:

(i) The Owner of the Golf Course shall be responsible for ten percent (10%) of the total General Assessment;

(ii) The Owner or Owners of what is described on the Final Plat of Strawberry Creek as Outlot 9 (also described as Neighborhood 7 on the Preliminary Plat of Subdivision) shall be responsible for twenty percent (20%) of the total General Assessment;

(iii) The Owner of what is described as Neighborhoods 8, 9 & 10 on the Preliminary Plat of Subdivision shall be responsible for thirty percent (30%) of the total General Assessment. The Prorata Share of said Owner of individual Lots or Units in said Outlots shall be a fraction of said thirty percent (30%), the numerator of which shall be one and the denominator of which shall be equal to the total number of Lots or Units in said Outlots, as shown in the Preliminary Plat of Subdivision; and

(iv) The Owners of the remaining Lots in the Property (also described as all Lots in Neighborhoods 1, 2, 3, 4, 5 & 6 on the Preliminary Plat of Subdivision) shall be responsible for forty percent (40%) of the total General Assessment, and the Prorata Share of each individual Owner shall be a fraction, the numerator of which shall be one and the denominator of which shall be equal to the total number of the Lots or Units in such Neighborhoods as shown in the Preliminary Plat of Subdivision.

Declarant, Strawberry Creek Development Corporation and Neumann Homes of Wisconsin LLC will not be responsible for any General Assessments (as provided for in this Article 2, paragraph 11.B) assessed against any Lot, Unit or Outlot that either Declarant, Strawberry Creek Development Corporation or Neumann Homes of Wisconsin LLC own. Declarant, Strawberry Creek Development Corporation and Neumann Homes of Wisconsin LLC agree that in the event the Association has an operating deficit, Declarant, Strawberry Creek Development Corporation and Neumann Homes of Wisconsin LLC shall make up said operating deficit based on its prorata share of the respective Lots, Units, and/or Outlots (as calculated based on the Preliminary Plat of Subdivision) that Declarant, Strawberry Creek Development Corporation and Neumann Homes of Wisconsin LLC own as of the date of each deficit incurred until December 31, 2007. Thereafter, none of Declarant, Strawberry Creek Development Corporation or Neumann Homes of Wisconsin LLC shall have any obligation to make up any operating deficit.

C. The Board shall determine when notice of said assessments shall be sent. Written notice of an Assessment shall be personally delivered to each Owner subject to the assessment or delivered by regular mail addressed to the last known address of such Owner;

D. Assessments shall be due and payable on or before thirty (30) days after the mailing or personal delivery of the notice, as the case may be.

E. In addition to the General Assessment described above, which pro-rata share shall be paid by an Owner-Occupant upon conveyance of an improved Lot or Unit to such Owner-Occupant, the Owner-Occupant of every improved Lot or Unit shall, upon the conveyance of said improved Lot or Unit, deposit the sum of One Hundred Dollars (\$100.00) for each such improved Lot or Unit, into the Association's replacement reserves. Said deposits for Neighborhood 7 (as identified in the Preliminary Plat of Subdivision) shall be due and payable on occupancy of each said Unit in Neighborhood 7. Said replacement reserves shall not be used for annual or routine maintenance or annual or routine expenses, but rather may only be used for extraordinary expenses, as determined by a two-thirds (2/3) majority vote of the Board. Notwithstanding any language to the contrary herein, neither Declarant nor Neumann Homes of Wisconsin LLC shall be responsible for payment of any portion of the Association's replacement reserves.

F. Assessments not paid when due shall bear interest at the rate of twelve percent (12%) per annum from the date due until paid, and such unpaid Assessments and the interest thereon shall constitute a continuing lien on the real estate against which it was assessed until they have been paid in full. The Assessments and interest thereon shall also be the personal obligation of any current or subsequent Owner of the Lot against which the Assessment was made.

G. The Board may record a document with the Register of Deeds in Kenosha County, Wisconsin, giving notice of a lien for any such unpaid Assessment and upon payment or satisfaction of the amount due record a document canceling or releasing any such lien. The failure to file any such notice shall not impair the validity of the lien. All recording and attorney fees relating to any such document or the collection of an Assessment shall be borne by the affected Owner.

H. Upon application by any Owner, any Director may, without calling a meeting of the Committee, provide to such Owner a statement in recordable form certifying (1) that the signer is a duly elected or appointed member of the Board, and (2) as to the existence of any unpaid assessments or other amounts due to the Association.

I. Any lien for Assessments may be foreclosed by a suit brought by the Board, acting on behalf of the Association, in a like manner as the foreclosure of a mortgage on real property. The affected Owner shall be responsible for all of the Association's costs in collecting the Assessment, including, but not limited to, attorneys' fees.

12. **Common Improvements.** During the term of the initial Directors, the Board shall not have the power to make improvements to the Common Area in addition to those then in existence (herein referred to as "**Additional Improvements**") without the written approval of the Declarant. After the expiration of the term of initial Directors, the Board shall not have the power to make Additional Improvements having a cost in excess of Twenty Thousand Dollars (\$20,000.00) without the consent of sixty-six and two-thirds percent (66-2/3%) of the then current Owners.

13. **Liability of Committee Members.** Directors shall not be liable for any action taken by them in good faith in discharging their duties hereunder, even if such action involved a mistaken judgment or negligence by the member or agents or employees of the Board. The Association shall indemnify and hold the Directors harmless from and against any and all costs or expenses, including reasonable attorney's fees, in connection with any suit or other action relating to the performance of their duties hereunder.

14. **Failure to Enforce.** Failure of the Declarant, the Association or the Board to enforce any terms, conditions or restrictions contained in this Declaration, upon the violation thereof, shall not be deemed to be a waiver of the rights to do so, or an acquiescence in any subsequent violation.

A. Administration. Contemporaneously with or prior to the first conveyance of a Lot to an Owner-Occupant, Declarant shall establish the Association. The Association shall be incorporated and shall adopt Bylaws for its governance and administration of the Common Areas and Common Improvements. The Board shall administer and enforce the Common Areas; the provisions of this Declaration and the Bylaws; and all other uses of and restrictions on the Property. Pending establishment of the Association, all powers of the Association shall be exercised by Declarant.

B. Management. The Association shall employ a professional management agent or company for the Subdivision and Common Areas, with such experience and qualifications and on such terms and conditions as are acceptable to the Board. Any such agreement must be terminable by the Association, acting through the Board, without cause upon ninety (90) days notice without payment of any penalty.

C. Approvals. The Board may approve or disapprove any proposal submitted by an Owner which would affect the Common Areas or Common Improvements after considering one or more of the following concerns and any additional concerns as the Board deems prudent: (i) freedom and safety of access and convenience to other Lots; (ii) the costs to be paid by the Owner for restoration of Common Areas to their prior physical condition upon the completion of work or use contemplated by the proposal; and (iii) a fair and reasonable monthly charge to be paid by the Owner to the Association for any encroachment on any common Areas resulting from the proposal. The Board may at its discretion impose further conditions upon its consent to any proposal as it deems appropriate. Approval of a proposal shall be deemed given if the Association president indicates approval in writing. Proposals to affect the Common Areas or Common Improvements require approval of the Board, not the Architectural Control Committee. If the result of a proposal would be to cause an encroachment on any public street or utility, or any easement area or would affect the storm water drainage system on the Property, the prior express written consent of the City of Kenosha and, in the case of any easement for the benefit of the Golf Course or any portion of the storm water drainage system, the Golf Course Owner is also required, and may be withheld for any reason including payment of review fees.

15. **Separate Condominium Association(s).** The Owners of Neighborhoods 8, 9 & 10 shall have the right to form a condominium association (or associations) in conjunction with the further development of Neighborhoods 8, 9 & 10. Said right to form any such condominium association(s) does not in any way extinguish or otherwise relieve said Owners from its obligations to the Association.

ARTICLE 3. - MAINTENANCE AND ALTERATIONS OF COMMON AREAS AND STORMWATER FACILITIES

3.1 Owner Responsibility. Each Owner, at the Owner's sole cost, shall repair and replace any portion of the Common Areas damaged through the fault or negligence of such Owner or such Owner's family, guests, invitees or tenants.

3.2 Golf Course Owner Responsibility. The Golf Course Owner shall have responsibility to maintain all surface stormwater facilities as provided in the Developer's Agreement, including detention and retention basins and culverts (whether said culverts are located on the Property or under streets), located on the Property, including without limitation maintenance of landscaping, routing, dredging and cleaning to assure adequate performance thereof ("Stormwater Facilities"). However, the reasonable costs of maintaining said Stormwater Facilities shall be paid by the Association, and shall be charged back to the Owners as part of the General Assessment. Easements associated with said maintenance are set forth at Article 16 herein.

3.3 Association Responsibility. The Association shall at its sole cost maintain in good condition and repair, replace and operate all of the Common Areas and common improvements, including landscaping, trees and plantings in the Common Areas and trimming of such trees for sight lines, except as expressly provided at Section 3.1 above. The Association may, but is not obligated to, enter into a contract with the Golf Course Owner to perform this maintenance.

3.4 Additional Stormwater Improvements. If applicable governmental authorities require that additional modifications or improvements to the Storm Water Facilities are necessary, including but not limited to a "resizing" of such improvements (such as dredging) (the "Additional Storm Water Control Improvements"), such Additional Storm Water Improvements shall be constructed by the Declarant or Owners of the Lots or Outlots affected by such modification or improvements, as applicable, and the costs attributable to subsequent maintenance thereof shall be that of the of the Association, and shall be allocated in accordance with Article 2.

3.5 Retained Rights. Nothing contained herein shall prevent or prohibit the Golf Course Owner from taking any water stored in Storm Water Control Improvements on the Golf Course for purposes of watering the golf course located on the Golf Course.

ARTICLE 4. - RESTRICTIONS ON USE AND OCCUPANCY

The Property is subject to various municipal and zoning ordinances and agreements entered under them, various easements for the distribution of utility and municipal services, and various building and use restrictions and covenants (collectively referred to as "Additional Restrictions"), that are all either referenced and/or in addition to those set forth herein. In the event any Additional Restrictions are more onerous than those set forth herein, those restrictions that are more onerous shall control. The Property is further restricted as follows:

4.1 Purposes. (a) Each Lot and each Unit shall be occupied and used for residential purposes only, and for no other purposes, except as provided herein.

(b) The Golf Course may only be used for the operation of a golf course, including the clubhouse facility and related uses and/or for swimming, tennis, health club activities, dining and banquet facility activities, and other recreational businesses or similar uses until December 31, 2029.

4.2 Right to Add Single Family and Multi-Family Areas. Notwithstanding anything contained herein to the contrary and as provided for in Article 2 paragraph 15, the Owners of Neighborhoods 8, 9 & 10 shall have the right to form a condominium association(s) (or any

expansion condominium(s) on said Neighborhoods) in conjunction with the further development of Neighborhoods 8, 9 & 10. Said right to form any such condominium association(s) does not in any way extinguish or otherwise relieve said Owners from its obligations to the Association.

4.3 Leases of Units or Buildings on Lots. Declarant may lease any Building on a Lot or an Outlot on such terms and conditions as it desires in its sole discretion. The Owner of any other building or Unit may lease said building or Unit, upon such terms as it deems appropriate, provided that all such leases shall be for terms of not less than six (6) months or more than one (1) year. In addition, each lease shall provide that the lessee is bound by this Declaration, and that a breach of the Strawberry Creek of Kenosha Documents shall be deemed a default under the lease. Notwithstanding the foregoing, an Owner shall be responsible to the Association and each other Owner for any breach of any provision of the Strawberry Creek of Kenosha Documents caused by an Occupant. The Association shall not be obligated to address any breach with the offending Occupant, but rather, may elect to hold the Owner responsible. Individual rooms in dwelling units contained within a Building on a Lot shall not be rented and no transient tenants shall be accommodated.

4.4 Pets. Except for the Golf Course Owner, who may keep animals on the Golf Course for its own purposes, Owners and Occupants may keep no more than two (2) pets per Lot or Unit; provided, however, that:

- (a) the pet is under twenty-four inches (24”) in height when measure from the base of its fore-paw to the top of the corresponding shoulder, and provided further that the Board may in its sole and absolute discretion permit the keeping of a pet greater than twenty-four inches (24”) in height measured as above if the Board believes that such pet will not pose a threat to safety, or quiet enjoyment of the Property by the Owners;
- (b) the pet is not permitted on any of the Common Areas while unattended or unleashed and at no time is permitted on the Golf Course (including the maintenance or administrative areas or the nursery areas);
- (c) the individual attending the pet shall immediately dispose of any and all of the pet’s solid waste in the manner prescribed by the Board;
- (d) the owner of the pet shall comply with such further rules of pet ownership as may be promulgated by the Board;
- (e) the pet is licensed by the City of Kenosha, if required under applicable ordinances;
- (f) no reptiles or uncaged birds shall be permitted;
- (g) the pet must immediately and permanently be removed from the Property if, in the sole judgment of the Board or the Golf Course Owner, the pet is or becomes vicious, dangerous, offensive, a nuisance, or harmful in any way to the Property or any Owner or Occupant, or otherwise violates the terms of the Section 5.3 or Rules promulgated by the Board under this Section;

- (h) No livestock, poultry, waterfowl, horses, goats, pigs, or sheep regardless of their size, may be permitted, under any circumstances; and
- (i) No animals may be kept for commercial purposes.

Any and all costs of repairing damage caused by a pet shall be borne by its owner. Any Owner or Occupant failing to comply with this Section or any part thereof shall, absent unusual circumstances under which the Board determines that some lesser or other remedial action is appropriate, be assessed a monthly pet fee in amount of Five Hundred Dollars (\$500.00) per month or part thereof until the Owner or Occupant has complied, in addition to any other remedy including the revocation of the license to maintain a pet. Such pet fees shall be a special assessment and may be collected in the same manner as assessments under Article 3. Notwithstanding anything to the contrary herein, possession of pets shall be considered a property right.

No exterior attached or detached dog house or other pet kennel or house shall be constructed or maintained on any Lot or Outlot. No Owners or Occupants shall keep any pet or pets which create a nuisance.

4.5 Vehicles.

- (a) With the exception of vehicles owned or used by the Owner of the Golf Course in connection with the maintenance or operation of said Golf Course, no outdoor parking of vehicles shall be permitted anywhere on the Property except in driveways or marked parking spaces, if any, except for parking as necessary in connection with the maintenance or use of the Golf Course and/or with the construction or reconstruction of a residence on a Lot. No person shall occupy, park or otherwise use a vehicle as to block access. Exterior storage of trailers, campers, camping trucks, boats or other marine craft, house-trailers, motorcycles, mopeds, motorized bicycles, snowmobiles, land vehicles, inoperative or unlicensed vehicles or the like shall not be permitted on the Property, except as is reasonably necessary by the Owner of the Golf Course in connection with the maintenance or operation of the Golf Course. With the exception of vehicles owned or used by the Owner of the Golf Course, no vehicle maintenance or lubrication shall be permitted anywhere on the Property, except washing of cars in driveways or maintenance performed within a garage. No playground equipment, bicycle racks or other obstructions may be placed on the Common Areas except as the Board permits by Rule.
- (b) No commercial or recreational vehicles shall be parked in driveways in the Property, except commercial vehicles temporarily parked in the ordinary course of business. Commercial vehicles include both vehicles licensed as such and vehicles otherwise licensed but which contain commercial advertising as part of the finish or as an attachment. Recreational vehicles include boats, trailers, campers and vehicles licensed as recreational vehicles.
- (c) In the event an Occupant violates the foregoing parking restrictions, the Declarant or Association may, upon three (3) days prior written notice to the Occupant for the initial violation in each calendar year and immediately without notice for each

additional violation in such calendar year, assess such Occupant \$1,000 per violation and \$100 per day for each day thereafter that the violation continues; provided, however, in the event the Occupant cures an initial violation in any calendar year within the foregoing three (3) day period, the Association shall not have the right to assess the Occupant for such violation (but the violation shall constitute an initial violation in such calendar year for the purposes of determining notice requirements for any subsequent violations in such calendar year). Any assessment levied hereunder shall be a Special Assessment as provided in Article 2 hereof.

- (d) No snowmobiles will be permitted to be operated anywhere on the Property.
- (e) No driveway on a Lot may be any wider than five (5) feet greater than the total width of the garage doors installed on any one side of a home constructed on a Lot.

4.6 Waste. Accumulations of waste, litter, excess or unused building materials or trash other than in appropriate receptacles is prohibited. Lots shall be kept free of debris during construction of improvements thereon by maintenance or dumpstor on-site. Trash, garbage, refuse, debris or other waste kept on any Lot in preparation for removal from such Lot shall be kept in sanitary covered containers, which are stored out of sight of the street and adjacent property, except for regularly scheduled garbage collection days.

4.7 Temporary Structures. Except as provided herein, no structure, trailer, tent, shack or barn, temporary or otherwise, shall be placed or maintained on any portion of a Lot without written approval of the Board, except for construction trailers maintained by the Association or Declarant and its successors and assigns. This subsection shall not apply to any portion of the Golf Course.

4.8 Quiet Enjoyment. Each Owner shall have the right to use its Lot in accordance with this Declaration and applicable law, free from unreasonable interference from each other Owner, all Occupants and other invitees. No person shall cause or permit the Common Areas to be used so as to deny any Owner or Occupant the full use of the Common Areas.

4.9 Noxious Activity. No use or practice shall be allowed in the Property, or the Common Areas which is illegal, immoral, improper, or offensive in the opinion of the Board or which is in violation of the Strawberry Creek of Kenosha Documents. By way of example and not limitation, offensive activity shall include excessive amplification of musical instruments and/or audio or audio visual equipment. Each Owner shall keep its Lot free of any "noxious weeds" as defined by the State of Wisconsin, Department of Natural Resources and/or the City of Kenosha from time to time. This subsection shall not apply to uses or practices that are incidental to the operation and maintenance of the Golf Course.

4.10 Owners' Consent to Golf Club and Golf Club Activities. By acceptance of a deed to a Lot or Unit, each Owner acknowledges that the Lot is adjacent to or in the vicinity of the Golf Course and each Owner consents and agrees to permit every act reasonably necessary and/or incidental to operating and maintaining the Golf Course, including, but not limited to, the creation of the usual and common noise level during the Golf Course Hours of Operation associated with the playing of the game of golf, the creation of the usual and common noise level associated with the operation, maintenance and use of banquet, swimming pool and tennis court and other related club facilities, the creation of the usual and common noise level associated with maintaining the Golf

Course, the driving and operation of machinery and equipment used in connection with maintaining the Golf Course over and upon the streets and the Golf Course, the application of fertilizer and pesticides as allowed by law together with all such other common and usual activities associated with the game of golf and with all the normal and usual activities associated with the maintenance and operation of the Golf Course.

4.11 Prohibited Activities near the Golf Club Property. No Owner or Occupant is allowed on the Golf Course at any time for any reason without the expressed consent of the Golf Course Owner. Owners of Lots adjacent to the Golf Course, as well as their family members, guests, agents and invitees, shall refrain from any actions or activities during the Golf Course Hours of Operation (as established from time to time by the Golf Course Owner) which would unreasonably distract from the play of golf on the Golf Course or which would create a nuisance. During the Golf Course Hours of Operation, such prohibited activities shall include, without limitation, entrance onto the Golf Course, running or walking on the Golf Course and its fairways and cart paths, burning materials where the smoke would cross the Golf Course, maintenance of dogs or other pets which interfere with any persons who have the privilege to be on the Golf Course due to their barking or odors, playing of loud radios, televisions, stereos or musical instruments and picking up golf balls or similar interference with play. Notwithstanding the foregoing, nothing contained herein shall be construed to restrict any of the Owner's activities or his or her property during other than the Golf Course Hours of Operation.

4.12 Owners' and Occupants' Acknowledgement of Risks. By acceptance of a deed to a Lot or Unit, and/or by entering into a lease or otherwise obtaining permission to reside on a Lot or in a Unit, each Owner and each Occupant acknowledge that the Lot or Unit is adjacent to or in the vicinity of the Golf Course and that inherent in the location of said Lot or Unit is the danger that persons or property may be struck by errant golf balls. Each Owner and each Occupant of a Lot or Unit acknowledges (i) a probability that persons or property may be struck by errant golf balls, (ii) that this risk is an open and obvious danger and, (iii) that he or she agrees to assume this risk. Each Owner and each Occupant acknowledges that said risk can be lessened by the location of the improvements to be constructed on the Lot or Outlot, and the materials from which these improvements will be constructed and agrees to exercise reasonable care in the selection of the location of the improvements and the materials utilized in construction.

4.13 Patios, Decks, Balconies and Yards. Patios, decks, balconies, yards and any area outside a Building shall not be used for (i) storage of any kind, including, but not limited to, the storage of motorcycles, baby carriages, bicycles or wagons, or (ii) the drying or airing of laundry, carpets, rugs or clothing.

4.14 Mail Boxes. In the event the governing municipality requires each Owner to have a mailbox and/or newspaper box installed on a post on the parkway, the design (including materials) and location of each mailbox and/or newspaper box and associated post(s) shall be selected by the Declarant, in Declarant's sole discretion.

4.15 Signs. No sign shall be placed in any yard or in any structure or improvement located in a Lot or Unit. No Owner may erect, post or display posters, signs or advertising material on the Common Areas or at locations within a Unit or Building which are visible from the public streets or Common Areas without the prior written consent of the Board, except (i) Declarant may do so without such approval and (ii) an Owner may erect or post in the front yard of said Lot, a temporary sign of customary and reasonable dimension relating to the sale or lease of said Lot. The

Board may at its discretion delegate the duty to enforce this regulation to the Architectural Control Committee described in Article 5. Where Board consent is sought and obtained, the permitted signs will be erected and maintained in accordance with all ordinances, rules, regulations and conditions applicable thereto. "Signs" as used herein shall be construed and interpreted in the broadest possible sense and shall include any placard, posters or other such devices as may be affixed to the interior of any exterior windows so as to be visible from the exterior of the building.

4.16 Environmental Matters. Each Owner and Occupant shall comply with all applicable governmental or Association statutes, ordinances, regulations or rules relating to the storage, transport and release to, from, on or in such Lot of any substance or compound governed by any one or more of Wis. Stats. Chap. 144; CERCLA; TOCSA; RCRA; City of Kenosha ordinances and similar laws relating to the storage, transport or release of substances, compounds or recyclable materials.

4.17 Lots Abutting Golf Course. Nothing can be installed, erected, planted, otherwise attached to any Lot, Unit, or Outlot that is within twenty-five feet of any portion of the Golf Course without the written consent of the Golf Course Owner, which consent can be unreasonably withheld.

4.18 Antennas. No satellite dish for television or radio reception which is greater than 24" in diameter, and no outside antenna or aerial of any height or dimension shall be erected or installed on or in any roof of any building or any other portion of a Lot, except as erected or installed by Declarant.

4.19 Minimum Home Size Requirements. Only one single-family home may be Constructed on each Lot. The following types of homes on Lots in the Property shall have the following minimum sizes:

For all Lots in that portion of the Property known as "Outlot 15" in the Final Plat of Strawberry Creek (also identified as Neighborhood 1 in the Preliminary Plat of Subdivision):

<u>Home Type</u>	<u>Minimum Size</u>
One story	2000 Square Feet
One and one-half story	2500 Square Feet, with at least 1500 Square Feet on first floor
Two Story	2500 Square Feet, with at least 1500 Square Feet on first floor

For all other Lots in the Property:

<u>Home Type</u>	<u>Minimum Size</u>
One story	1800 Square Feet

One and one-half story	2000 Square Feet, with at least 1100 Square Feet on first floor
Two Story	2000 Square Feet, with at least 1100 Square Feet on first floor

The number of square feet shall be determined on a uniform basis by the Architectural Control Committee and shall not include basement areas in the computation.

4.20 Garages. Each residence on a Lot shall have a garage for not less than two (2) cars attached to the home. Driveways shall be paved with a material acceptable to the Architectural Control Committee and, within its jurisdictional limits, the City of Kenosha.

4.21 Certain Exterior Features. The following shall apply to all Buildings or other improvements to all Lots in Outlot 15 (also identified as Neighborhood 1 in the Preliminary Plat of Subdivision) only, that are in addition to all other restrictions set forth herein including 4.22 below:

- (a) A residence shall have a roof made of materials approved by the Architectural Control Committee;
- (b) Exterior walls of residences shall be constructed of brick, stone, stucco or other natural materials. No artificial stone or siding shall be permitted;
- (c) Exterior fireplaces and chimneys shall be constructed of masonry, stucco or stone materials. Exterior materials shall be consistent on all levels. Color selections, and paint, stone, stucco or other finish must be approved by the Architectural Control Committee;
- (d) Roofs shall have dimensional shingles made of wood shakes, tile, natural or artificial slate or asphalt.

If any restriction set forth in 4.21 above is more restrictive than any other restriction set forth herein, paragraph 4.21 above shall control.

4.22 Certain Exterior Features. The following shall apply to all Buildings or other improvements to all Lots or Outlots, other than the Golf Course except as provided below:

- (a) If masonry materials, vertical siding or the like is used on the exterior walls of a residence, the same shall terminate only at an inside corner or other suitable break in the residence's architecture as the Architectural Control Committee shall approve;
- (b) Except for Buildings that are constructs on what are labeled as Neighborhoods 7, 8, 9 & 10 on the Preliminary Plat of Subdivision, exterior walls of residences shall be constructed of brick, stone or other natural materials and no artificial siding shall be permitted;

- (c) All fireplace chases shall be terminated with the use of a decorative chimney cap;
- (d) Each Lot and Outlot that abuts the Golf Course shall have as part of the Owner's landscape plans, as a minimum, one (1) three inch (3") caliper hard wood tree and sufficient shrubbery designed to conceal the utility boxes installed on the Lot or Outlot;
- (e) If shutters are used on windows or divided-life windows are used, in either case on the front of a residence, then they shall be used on such of the side and rear windows as the Architectural Control Committee shall require;
- (f) The Architectural Control Committee shall be acting reasonably if it disapproves the Drawings for a residence because such residence would be similar in appearance to other residences in close proximity;
- (g) Roofs shall have dimensional shingles made of wood shakes, tile, natural or artificial slate or asphalt.
- (h) No fences shall be permitted except in connection with an approved in-ground swimming pool. A fence itself must be approved by the Architectural Control Committee. Except for those fences installed by the Golf Course Owner on the Golf Course, all fences shall be of the same uniform style. No fence shall be installed within twenty-five (25) feet of any lot line that abuts the Golf Course without the express written consent of the Golf Course Owner, which consent can be unreasonably withheld;
- (i) No fence shall be permitted on any portion of any Property that abuts the Golf Course, except for fences in connection with an approved in-ground swimming pool, which fences shall be subject to approval as to style, size, dimensions, location, material, and manner of construction by the Golf Course Owner. Fences erected on Property that does not abut the Golf Course must be approved by the Architectural Control Committee;
- (j) No soil shall be removed from any Lot or Outlot unless contemplated by the approved Drawings. Even if so approved, the final grades of a Lot or Outlot must conform to grading plans approved by the City of Kenosha;
- (k) Except for what are labeled as Outlots 6 & 9 on the Final Plat of Strawberry Creek, no tennis courts shall be installed on any Lot or Outlot without the Declarant's written consent;
- (l) No above-ground pools shall be installed anywhere on the Property; in-ground pools may be installed only with approval of the Architectural Control Committee;

- (m) No living tree with a diameter of at least two (2) feet when measured at a height of two (2) feet above the ground shall be removed or shaped (other than routine pruning) without the approval of the Architectural Control Committee;
- (n) Portions of the following Lots are in the Shoreland District (as set forth in the Declaration of Protective Covenants dated August 29, 2002, recorded in the Register of Deeds for Kenosha County, Wisconsin as Document Number 10292920) and are governed by various rules and regulations of the City and County of Kenosha and any other governing body that maintain jurisdiction of property in a shoreland district, that include but are not limited to restrictions that prohibit and / or limit improvements that can be made to property in a shoreland district: Lots 9 & 10 of Neighborhood 1 as identified on the Preliminary Plat of Subdivision, Lots 17, 18, 19, 20 & 21 of Neighborhood 4 as identified on the Preliminary Plat of Subdivision, and Lots 23, 24 & 25 as described on the Final Plat of Strawberry Creek Addition 1 (also known as Lots 84, 85 & 86 of Neighborhood 6 as identified on the Preliminary Plat of Subdivision);
- (o) All Lots and Outlots shall be promptly graded upon completion of construction of a single-family residence, multi-family residence or apartment building in compliance with the all conditions and obligations set forth in the Developer's Agreement and pursuant to those rules and regulations promulgated from time to time by the City of Kenosha. The Landscape and Grading Plan for each Lot and Outlot shall be completed within six (6) months of occupancy of said Lot or Unit. Prior to commencement of any excavation, construction or grading work on a single-family residence, multi-family residence or apartment building, each Owner shall provide the Declarant with all documents that are required to be filed with all governmental agencies. The Landscape and Grading Plan shall comply with the Erosion Control Standards and with the City of Kenosha or County of Kenosha comprehensive grading plan for the Property (the "Comprehensive Grading Plan") and the Erosion Control Plan and the Storm Water Control Improvement Plans as reviewed and approved by the City and County of Kenosha pursuant to the Developer's Agreement and any other restrictions of record. In addition, each Owner shall prepare the Landscape and Grading Plan in such a manner as to avoid the concentration of surface water runoff and to maximize even sheet flow from the Lots and Outlots contiguous to the Golf Course to the extent reasonably possible (taking into account each Lots' and Outlots' existing grade). Strict compliance with such Landscape and Grading Plan, Erosion Control Plan and the Storm Water Control Improvement Plans shall be enforced by the Declarant and the Association to prevent the discharge or redirection of storm water onto any adjacent Lots, Outlots, or the Golf Course contrary to the Landscape and Grading Plan, Erosion Control Plan and the Storm Water Control Improvement Plans. The Owner shall not commence any excavation, construction or grading until the Declarant has

approved the Landscape and Grading Plan in writing in the Declarant's sole discretion.

4.23 Height. No Building on a Lot shall be greater than 35 feet in height, measured from the top of the concrete block to the highest point of the structure.

4.24 Reservation of Buffer Area. Declarant does hereby declare, establish and reserve for the benefit of the Golf Course a permanent and perpetual open buffer and drainage area (the "Buffer Area") over the twenty-five (25) foot strip of land along the common boundary of all Lots and Outlots that abuts the Golf Course to be free from any improvements of any nature, including, without limitation, any permanent structure, all fences, walls, berms, barriers, decks, terraces, patios, tennis courts, swimming pools, outdoor furniture, swing sets, outdoor recreational facilities and equipment or any other similar devices, equipment, tools or machinery). Said Buffer Area shall be landscaped and maintained by the Owner of said Property. Entry into the Buffer Area by members, guests or invitees of the Golf Course to recover errant golf balls is specifically prohibited.

ARTICLE 5. - ARCHITECTURAL CONTROL

5.1 Architectural Controls: Restrictions on Development

A. Architectural Control Committee. There shall be established an Architectural Control Committee consisting of three (3) members who shall have the duties as set forth in this Article. One or more Committee members may delegate their Committee duties to any one or more of the other Committee members. Each member of the Architectural Control Committee elected by the Board shall serve a term of two (2) years.

B. No Development Without Prior Approval. With the exception of construction, reconstruction, demolition, or development of any portion of the Golf Course, not less than five (5) business days (as it relates to Lots or Outlots owned by Neumann Homes of Wisconsin LLC), or not less than thirty (30) days (as it relates to all other Owners of Lots or Outlots), prior to:

- (i) commencement of construction of any Building, Unit, or other new improvements on any Lot or Outlot, or
- (ii) the reconstruction of any Building, Unit, or other improvements on any portion or portions of a Lot or Outlot following a casualty loss thereto, or
- (iii) the demolition of any Building, Unit or other improvements on any portion or portions of a Lot or Outlot, or
- (iii) the painting, decoration or alteration of the exterior of any Building, Unit or other improvement on a Lot or Outlot, or
- (iv) the installation on a Lot, Unit, or Outlot of an awning, shutter, enclosure, storm window or door, hot tub, deck, shuffleboard court, garden, below ground swimming pool (above ground swimming pools are strictly prohibited), grading, mailboxes, fixed grill, or other landscape features, or
- (v) the removal of any living tree within a diameter of two (2) inches or more, when measured at a height of two (2) feet above the ground,

the Owners(s) of such Lot or Outlot shall submit to the Architectural Control Committee for approval two (2) copies of written information (“Drawings”) showing:

- (i) the location, size, elevations and type of Building(s) and other improvements, including, but not limited to, homes, garages and fences or other matters proposed to be erected or reconstructed on the Lot or Outlot;
- (ii) detailed plans and specifications for construction or reconstruction, including building material, type and color and plans to screen the demolition, construction or reconstruction from view;
- (iii) the proposed landscaping, and
- (iv) the proposed location and specifications for waste receptacles and utilities servicing such improvements. The Architectural Control Committee shall require that the Drawings include a survey of the Lot.

The Architectural Control Committee shall have no authority with respect to any development, construction, maintenance, improvements, or landscaping of any portion of the Golf Course. The Architectural Control Committee shall have no right to assess any review fees to Neumann Homes of Wisconsin LLC with respect to the development on any property owned by Neumann Homes of Wisconsin LLC in the Property, nor shall it have any independent review authority over Neumann Homes of Wisconsin LLC’s development of Neighborhoods 8, 9 & 10 as identified in the Preliminary Plat of Subdivision. Neither Declarant nor the Association (through its Architectural Control Committee) shall have any independent review authority over Neumann Homes of Wisconsin LLC’s development, construction, maintenance, improvements, or landscaping of Neighborhoods 2, 3, 4, 5 and 6 as identified in the Preliminary Plat of Subdivision, except with respect to compliance with any monotony code affecting all of the Lots in the Property..

C. Standards and Procedural Matters of Approval. The Architectural Control Committee shall not unreasonably refuse to approve submitted Drawings provided that any fees imposed for review have been paid, and that all of the improvements and the lighting, exterior finishes (such as materials, decorations, and paint), landscaping and such other matters comply with the terms of this Declaration, the Developer’s Agreement, the City of Kenosha ordinances and all other governmental rules and regulations, and otherwise are, in the Architectural Control Committee’s sole opinion, in keeping with and do not detract from or depreciate any portion of the Property, whether then undeveloped, developed or in the process of development. Approval must be express and in writing; failure of the Architectural Control Committee to object to the Drawings shall not be deemed approval or waiver of approval. If the Architectural Control Committee objects to Drawings in whole or in part for any reason, the submitting Owner may thereafter resubmit Drawings to the Architectural Control Committee with such revisions as are required. Each time an Owner so submits the Drawings, the Architectural Control Committee shall have the right to approve or object to the Drawings as described above. Following the Architectural Control Committee’s approval of the Drawings, the improvements described therein shall be developed strictly in accordance with the approved Drawings. If the approved improvements are not completed within one (1) year of their initial approval, then such approval shall be deemed withdrawn and the same or different Drawings required to be submitted or resubmitted, as the case may be.

D. Prior Approval for Changes. If after the completion of the improvements to

any portion of the Property, the Owner thereof desires to construct any additional improvements or to substantially alter the then existing improvements, the Owner shall comply with the provisions of subsection (a) above. A proposed alteration will be deemed substantial if it affects the location or exterior appearance of the approved improvements.

E. Procedures and Budget. The Architectural Control Committee may set its own operating procedures consistent with this Declaration and any limitations hereinafter imposed by the Board. The costs of operating the Architectural Control Committee shall be assessed by the Association to the Owners as part of the General Assessment. The Architectural Control Committee may but need not require the payment of a reasonable review fee in connection with the submittal of any Drawings pursuant to a written policy. The Architectural Control 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 Architectural Control 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 Architectural Control Committee shall be handled by the treasurer of the Association.

F. Separate City Approval. Matters which require approval of the Architectural Control Committee may also require approval of the City of Kenosha. The City of Kenosha shall require that approval of the Architectural Control Committee be obtained first. Obtaining approval from the Architectural Control Committee and from the City of Kenosha shall be the responsibility of the Owner desiring approval. Approval of Drawings by the Architectural Control Committee shall not be deemed approval by the City of Kenosha and approval by the City of Kenosha shall not be deemed approval by the Architectural Control Committee.

G. Uniformity Standards. Certain standards of architectural control are set forth in the Developer's Agreement. The Architectural Control Committee may adopt additional written standards of uniformity, setback, grading, landscaping, basements, roofing, or exterior, whether generally or for certain types of improvements. The Architectural Control Committee may waive any such standard which it has adopted, but has no authority to waive any requirement set forth in the Developer's Agreement. In addition to the statements set forth in the Developer's Agreement, (i) no above-ground swimming pools may be installed anywhere on the Property; (ii) no tennis courts shall be installed anywhere other than on what is described as Outlots 6 & 9 on the Final Plat of Strawberry Creek without the express consent of Declarant; (iii) No fences shall be permitted except in connection with an approved in-ground swimming pool. A fence itself must be approved by the Architectural Control Committee. Except for those fences installed by the Golf Course Owner on the Golf Course, all fences shall be of the same uniform style. No fence shall be installed within twenty-five (25) feet of any lot line that abuts the Golf Course without the express written consent of the Golf Course Owner, which consent can be unreasonably withheld

H. Indemnification. Each member or former member of the Architectural Control 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 or 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 liability, loss, damage, costs and expenses incurred or suffered by the Association in connection with this indemnification shall be a common expense. Nothing in this subsection shall be deemed an indemnification of such person with respect to such person's status as an Owner, Occupant or otherwise.

ARTICLE 6. - SPECIAL FEATURES

6.1 Sidewalks. The Property as initially constructed features Sidewalks per the requirements of the City of Kenosha.

The actual costs of installation and subsequent maintenance of Sidewalks shall be the sole responsibility of the Owner of the Lot or Outlot. Any Sidewalk installed shall comply with the ordinances and other requirements of the City of Kenosha.

6.2 Mail Boxes. If the U.S. Post Office requires the installation of centralized mail boxes, the Association shall be responsible for maintaining and replacing said mail boxes at its cost.

6.3 Paths. (a) Various paths have been or will be installed across streets on the Property to accommodate golf carts using the Golf Course. Such paths shall be maintained by the Owner of the Golf Course at its cost. Occupants of the Property are prohibited from using the paths except in connection with the use of the Golf Course in accordance with the Golf Course Rules. The City of Kenosha shall maintain the streets between the paths, but shall not have responsibility or liability for the structural components of the paths except if damage thereto is caused by the acts of the City of Kenosha or its employees, agents or contractors.

6.4 Fences; Hedges or Mass Screening Plantings. In addition to being subject to review and approval by the Architectural Control Committee plans showing exact locations and construction details of fences, walls, hedges or mass screening plantings shall be submitted to the Declarant and must be approved by the Declarant in writing before they may be constructed or planted. Fence approvals are at the Declarant's sole discretion and will depend on such items as landscaping screening, functionality, location, and/or materials. No fences erected on any Lot affected by these declarations shall be higher than four (4) feet from the graded surface of the ground on which said fence is erected. No perimeter Lot fencing shall be permitted. Furthermore, no fences will be permitted which abut the Golf Course except with the express prior written consent of the Golf Course Owner, which may be withheld for any reason or no reason. In the event the fence restrictions and ordinances of the City of Kenosha are more restrictive from time to time than the restrictions contained herein, the City of Kenosha restrictions and ordinances shall control and supersede the terms and conditions contained herein. In the event an Owner installs, constructs or plants any of the foregoing without the consent of the Declarant, the Declarant may, upon fifteen (15) days notice, remove such fencing, hedges or mass screening plantings and be required to pay said cost pursuant to a Special Assessment as provided in Article 2 hereof (including the right of the Association or Declarant to file a lien against the Lot, Unit or Outlot as provided herein).

6.5. No Tree Cutting. With the exception of trees located on the Golf Course, no living tree shall be destroyed having a diameter of at least two (2) feet when measured at a height of two (2) feet above the ground, without the express written consent of the Declarant. Each Owner shall be responsible for promptly cutting down and removing any dead trees from said Owner's Lot or Outlot..

6.6 Entryways. The City of Kenosha has or will grant an easement to the Association to install and maintain traffic islands, plantings and signage in the public streets at the entrances to the Property on 144th Avenue and 72nd Street as provided in the Developer's Agreement. Such entryway islands and improvements are Common Areas and Common Improvements and shall be maintained by the Association. Such signs may be repaired or replaced, but the design and content thereof may be changed without the expressed written consent of the Declarant.

ARTICLE 7. - SPECIAL PROVISIONS RELATED TO GOLF COURSE

7.1. The Club at Strawberry Creek. The Golf Course Owner intends to develop a **'Golf Club'** to be known as "The Club at Strawberry Creek" including an eighteen (18) hole golf course, tennis court, swimming pool, golf driving range, putting green, golf cart paths, club house, locker rooms, pro shop, food and beverage facilities, maintenance areas, buildings and any other additional and related facilities or amenities which may be built or constructed on the Golf Course from time to time. Only the provisions of this Declaration that, by their terms and specifications apply to the Golf Course, shall govern the Golf Course. Neither the Declarant, the Association nor any Owner or Occupant shall have any rights in and to the Golf Club, the Golf Club Property, or the Golf Course by virtue of this Declaration or by virtue of Ownership or occupancy of any Lot, Unit, or Outlot. The Golf Club is provided solely for the members and/or paying guests of the Golf Club.

7.2 Golf Course Property Owner & Residential Owner Responsibilities.

Landscape and Sign Expenses. The Owner of the Golf Course shall have the sole right to specify the design of landscaping, erect signage to advertise the Golf Course and Property, and dictate the maintenance of landscaping (which may be changed from season to season in the sole discretion of the Owner of the Golf Course) on all Outlots that can not be used for the construction of residential housing and Common Areas that are located in, on or adjacent to 72nd & 73rd Streets and 144th Avenue on the Property. The cost of installing, maintaining and / or replacing any said signage that advertises the Golf Course shall be solely paid for by the Owner of the Golf Course, however the cost of installing, maintaining and/or replacing any other said signage and all said landscaping shall be paid for by the Association pursuant to Article 2 herein.

7.3. Hours of Operation. For the purpose of this Declaration, the Golf Course hours of operation shall be those hours reasonably determined by the Golf Course Owner from time to time (the "Golf Course Hours of Operation").

7.4. Screening. Notwithstanding any provisions of this Declaration to the contrary, the Golf Course Owner shall be allowed to install fencing and landscaping along the boundary between

the Golf Course and the Property and Expansion Areas, as the Golf Course Owner deems necessary, in its sole discretion.

7.5 No Entry. Owners and Occupants may not enter on to the Golf Course except in connection with the Golf Course Rules. Owners and Occupants are cautioned that it may be dangerous to do so, and said violations will be trespassing on private property..

7.6 No Easments. While the Golf Course has been designed to minimize the errant flight of golf balls from the Golf Course to the Outlots, Lots and Units, Owners and Occupants acknowledge the possibility of such an occurrence. No easement is reserved for golfers to enter Lots to retrieve golf balls. The Golf Course Owner has no duty to enforce the provisions of this Section and shall have no liability for repairs necessitated by or damages caused by any errant golf balls or entry by golfers. Notwithstanding the foregoing, the Golf Course Rules shall specify that golfers may not enter Lots, and reasonable physical demarcations shall be placed on the Golf Course noting that Lots are out of bounds for the Golf Course.

7.7 No Rights in Golf Course. No Owner or Occupant shall have a property right in the existence of a Golf Course, the maintenance of the Golf Course when constructed, or the use thereof.

7.8 Golf Course Maintenance. Golf Course maintenance may occur at any time. The Golf Course Owner may use fertilizers, pesticides, herbicides, fungicides or other compounds in the ordinary course of maintenance.

7.9 No Pets. Without limiting Section 8.1, no pets are permitted on the Golf Course at any time. The Golf Course Owner, however, may keep pets on the Golf Course. Any Owner or Occupant violating this Section is subject to the sanctions and remedies provided herein, which the Association shall impose at the request of the Golf Course Owner for the benefit thereof.

7.10 Golf Carts. The operation of golf carts on public streets is prohibited by the City of Kenosha. The use of the paths on the Golf Course is regulated by the Golf Course Rules. No carts shall be operated on the Golf Course without the express written consent of the Golf Course Owner, which may be refused, for any reason or no reason. No Owner or Occupant, other than the Golf Course Owner, may keep, store or use a private golf cart for any reason on the Property.

ARTICLE 8. - INSURANCE

8.1 Association Insurance. The Association shall obtain and maintain comprehensive general public liability insurance for occurrences on the Common Areas (including areas which are included in such definition by virtue of easements granted herein) and with respect to Common Improvements and such other policies and/or coverages as the Board deems necessary or advisable.

8.2 Coverage of Association Insurance. The casualty insurance coverage shall be in an amount equal to the maximum insurable replacement value, with an “agreed amount” and a “replacement cost” endorsement, without deduction or allowance for depreciation. This coverage amount shall be annually reviewed and shall insure against loss or damage by fire and other hazards as commonly covered by a standard extended coverage endorsement and such other hazards as

customarily covered with respect to buildings similar in construction, location and use. Commercial general liability coverage shall be in such amounts as the Board determines annually, but not less than \$1,000,000 per occurrence.

8.3 Proceeds. Association Insurance proceeds for casualty loss shall be for the benefit of the Association in order to finance reconstruction of damaged Common Areas or Common Improvements. Liability coverage and other insurance proceeds shall be applied as the Association directs.

8.4 Cost. All premiums for Association Insurance and other Insurance obtained the the Association shall be a common expense, except that any increase in the rating or premium charged for any such Insurance caused by the character or use of a Lot shall be allocated solely to its Owner.

8.5 Waiver. The Association and each Owner acting both for themselves and for their respective insurers, waive any claim it or they may have against the other for any loss insured under any policy obtained by either to the extent of insurance proceeds actually received, however, the loss is caused, including such losses as may be due to the negligence of the other party, its agents or employees. All policies of insurance shall contain a provision that they are not invalidated by the foregoing waiver, but such waiver shall cease to be effective if the existence thereof precludes the Association from obtaining any policy of insurance at a reasonable and customary rate.

8.6 Acts Affecting Insurance. No Owner or Occupant shall commit or permit any violation of covenants or agreements contained in any of the Association Insurance, or do or permit anything to be done, or keep or permit anything to be kept, or permit any condition to exist, which might (i) result in termination of any such polices, (ii) adversely affect the right of recovery thereunder, (iii) result in reputable insurance companies refusing to provide such insurance, or (iv) result in an increase in the insurance rate or premium over the premium which would have been charged in the absence of such violation or condition, unless, in the case of such increase, the Owner responsible for such increase shall pay the same. If the rate of premium payable with respect to the Association Insurance or with respect to any policy of insurance carried by any Owner shall be increased over the rate charged for the lowest-rated Lot, (i) by the size, design or composition of the Lot, (ii) by reason of anything done or kept in a Lot, or (iii) the failure of any Owner or Occupant to comply with Association Insurance requirements, or (iv) the failure of any Owner or Occupant to comply with this Declaration or the Bylaws, then the particular Owner shall reimburse the Association for the resulting additional premiums. The Association reimbursement right is without prejudice to any other Association remedy, and may be enforced by special assessment against the particular Lot.

8.7 Exclusions From Coverage. Association Insurance coverage shall exclude (i) coverage on any residence or personal property located within or pertaining to the exclusive use of an Owner except to the extent included as a standard coverage in the policy of Association Insurance; and (ii) liability coverage on an Occupant or Owner, its guests, invitees, employees or tenants, arising out of any occurrences within a Lot and/or relating in any way to an Owner's personal property. It is the sole responsibility of each Owner to obtain such insurance coverages as are excluded from Association Insurance.

ARTICLE 9.

[This Article 9 has been intentionally omitted.]

ARTICLE 10.

[This Article 10 has been intentionally omitted.]

ARTICLE 11. STORMWATER FACILITIES

The storm water retention improvements located within the Property and the Golf Course were required by the City of Kenosha, County of Kenosha, and the Department of Natural Resources to assist in the removal of and detention of stormwater from the Property and the Golf Course (the “StormWater Control Improvements”). The engineering plans and specifications for the Storm Water Control Improvements (the “StormWater Control Improvement Plans”) and the Comprehensive Grading Plan approved by the City of Kenosha have been designed to provide for the drainage of storm water from the Property onto and over the Golf Course through storm sewer lines, natural and constructed drainage patterns, and swales and ditches installed in the front, rear, and side yards of lots of the Property. Owners are strictly prohibited from changing any Storm Water Control Improvements or the grade of any Lot contrary to the Comprehensive Grading Plan, Landscape and Grading Plan and Erosion Control Standards set forth in the Developer’s Agreement. The stormwater retention ponds portion of the Storm Water Control Improvements are not intended to be used for swimming or recreational facilities, and any use of the stormwater retention ponds for such use is strictly prohibited. Any persons entering into or using the storm water retention ponds either intentionally or accidentally do so at their own risk. By purchase of a Lot in the Property, each Owner and its respective successors, assigns, heirs and personal representatives thereby waive, to the fullest extent permitted by law, any and all claims for liability against the Declarant, the Golf Course, Association, and their respective agents, contractors, employers, officers, directors and shareholders, for injury or damage to person or property sustained in or about or resulting from the use or existence of the Stormwater Facilities.

ARTICLE 12. AMENDMENT OF DECLARATION

12.1 General. Except as otherwise provided herein, this Declaration may be amended only by the written consent of Owners representing at least fifty-one percent (51%) or more of the total votes of the Association then entitled to vote; provided that no amendment which would affect the use of the Golf Course, Outlot 8 as described on the Final Plat of Strawberry Creek, or the rights or liabilities of the Owner of any Outlot, shall be effective without the express written consent of such affected Owner(s). An amendment relating to the use of or any other restriction or easement on Outlot 8 as described on the Final Plat of Strawberry Creek or the Golf Course shall require only the written consent of the Owner of the Golf Course, and shall not require the consent of any other Owner. An amendment relating to the use of Outlots 19, 20, and 21 as described on the Final Plat of Strawberry Creek, shall require only the written consent of the

Association and golf Course Owner, and shall not require the consent of any other Owner. An Owner's written consent is not effective unless approved in writing by its Mortgagee, if any.

12.2 Procedures. Amendments shall be prepared and executed by the President of the Association (except that amendments relating to the use of the Golf Course shall require only the execution by the Owner of the Golf Course) and shall become effective when recorded in the Office of the Register of Deeds for Kenosha County, Wisconsin. No action to challenge the validity of an amendment shall be commenced more than one (1) year after the amendment is recorded. Declarant shall be deemed to be the Owner of all of the Lots and Outlots, except those conveyed of record to another person. No amendment shall adversely affect a special right or easement reserved to Declarant or the Golf Course Owner under this Declaration, or the rights of Mortgagees under Article 11, or the rights of the City of Kenosha under Article 16, without the express written consent of Declarant or Golf Course Owner, or fifty-one (51%) of the Mortgagees, or the City of Kenosha as the case may be.

12.3 Inclusion of Other Property. This Declaration may be amended in order to submit to the provisions hereof certain other property described in the Developer's Agreement, upon the satisfaction of the conditions described in herein. Such amendment shall be executed by the Association and by the owners of the properties being so submitted. Such amendment shall include a legal description of the property being so submitted. Upon such amendment, (i) such property shall be subject to all the terms and conditions hereof, except that the Architectural Control Committee shall not have power to require changes to any existing structures thereon until and unless circumstances occur which would require that such structures conform to the City of Kenosha Zoning Ordinances, if any such structure were a legal nonconforming use under the City of Kenosha Zoning Ordinance; (ii) each legal parcel in such property shall be deemed a Lot hereunder; (iii) each new Lot shall commence paying assessments to the Association as of the date of execution (with a proration for the month of admission); and (iv) each new Lot shall be entitled to vote as the Owner of any other Lot is entitled to vote in affairs of the Association.

ARTICLE 13. RIGHTS OF MORTGAGE HOLDERS

13.1 Notice. Any mortgage holder, insurer or guarantor of a mortgage on an Outlot, Lot or Unit who submits a written request to the Association, identifying the name and address of such holder, insurer or guarantor and the Outlot, Lot or Unit number or address, will be entitled to timely written notice of:

- (a) Any condemnation or casualty loss that affects a material portion of the Property;
- (b) Any thirty (30) day delinquency in the payment of assessments owned by the Owner of the Lot on which it holds a mortgage or any breach of the provisions of any of the Strawberry Creek of Kenosha Documents which is not cured by such Owner within thirty (30) days of such Owner's receipt of notice of such breach;
- (c) A lapse, cancellation or material modification of any Association Insurance, and
- (d) Any proposed action that requires the consent of a specified percentage of eligible mortgage holders as specified herein.

ARTICLE 14. FURTHER RIGHTS OF DECLARANT

14.1 Other Rights. Notwithstanding any provisions to the contrary, pending the sale of all Lots and Outlots, Declarant or its successors and assigns, acting alone and without the approval of the Association, or the Architectural Control Committee, may:

- (a) use the Common Areas and any unsold Lots and Outlots on the Property in any manner as may facilitate the sale or leasing of Lots including, but not limited to, maintaining a sales and/or rental office or offices, models and signs and/or showing the Lots and may delegate such rights to persons desiring to construct Buildings on Lots as model homes. In delegating such rights to other persons, (except as otherwise provided herein) Declarant shall not permit any such other person to locate a general office operation in any such model home, although use of a model home to facilitate sales of Lots, sales of Buildings on Lots, or sales of homes on other properties by such other person may be permitted for a period not to exceed twenty-four (24) months from the date of issuance of the certificate of occupancy therefore. In all circumstances, once a model home is used as a residence for an Occupant, it may not thereafter be used as a "model home". Construction materials shall not be delivered to or stored at a model home, except for construction of such model home, unless it is stored inside the model home.
- (b) without encroaching upon any easement granted herein to the City of Kenosha, have the right to (i) grant easements upon, over, through and across the Common Areas as may be required for furnishing any kind of utility services, including, but not limited to, cable television or master antenna service, which easements may be granted to itself or its nominee and as may be necessary for excavation and construction of any of the Buildings and (ii) grant easements upon, over, through or across the Common Areas for ingress and egress to and from the Property and other real property adjacent to it.
- (c) have the right to veto any proposed amendment to this Declaration for any reason or no reason, in which case it shall not be deemed, approved or effective.

14.2 Special Rights Regarding Assessments. If any assessment is not paid such that the unreceived revenues are required to be assessed to the members whether by special assessment or inclusion in the next budget, amounts in respect of assessments related to the maintenance referred to herein by the Golf Course Owner shall not be assessed against Declarant's Lots or Outlots. Notwithstanding anything to the contrary in the Strawberry Creek of Kenosha Documents, Declarant shall not be liable for any portion of an assessment which relates to budgeting for payments to the Golf Course Owner as to any Lot or Outlot owned by Declarant.

14.3 Declarant reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs

(or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages encumbering any Lot or Unit, or (iii) to correct clerical or typographical errors in this Declaration or any exhibit hereto or any supplement or amendment thereto. In addition, a Special Amendment shall also be deemed to include, until the Turnover Date, such amendment to this Declaration as Declarant elects to record at any time and from time to time for any other purpose, so long as such amendment will not conflict with the terms of Article 2, Section 7 herein, or otherwise materially impair the rights of the Owners or Owner-Occupants hereunder or materially increase the expenses to be borne by the Owners or Owner-Occupants hereunder. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot or Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservations of, the power to the Declarant to vote in favor of, make, execute and record Special Amendments. At the request of Neumann Homes of Wisconsin LLC, Declarant shall record a Special Amendment provided that the requested amendment complies with the requirements set forth above.

14.4 Notwithstanding any provisions to the contrary, pending sale of all Lots and/ or Units in Neighborhoods 2, 3, 4, 5, 6, 8, 9, & 10 of the Preliminary Plat of Subdivision, Neumann Homes of Wisconsin LLC or its successors and assigns, acting alone and without the approval of the Association or the Architectural Control Committee, may:

(a) use any unsold Lots or Units in Neighborhoods 2, 3, 4, 5, 6, 8, 9 & 10 of the Preliminary Plat of Subdivision in any manner as may facilitate the sale or leasing of Lots and/or Units in said Neighborhoods, including, but not limited to maintaining a sales and/or rental office or offices, models and signs and/or showings the Lots or Units. However, once a model home is used as a residence for an occupant, it may not thereafter be used as a model home. Construction materials and construction equipment shall not be delivered to or stored at a model home, except for construction of said model home.

(b) without encroaching upon any easement granted herein to the City of Kenosha, have the right to (i) grant easements upon, over, through and across the Common Areas as may be required for furnishing any kind of utility services, including, but not limited to, cable television or master antenna service, which easements may be granted to itself or its nominee and as may be necessary for excavation and construction of any of the Buildings and (ii) grant easements upon, over, through or across the Common Areas for ingress and egress to and from the Property and other real property adjacent to it.

(c) Neumann Homes of Wisconsin LLC (and its mortgagee) shall have the right (but not the obligation) to enforce and or exercise Declarant's rights hereunder as it pertains to any Lots, Units or Outlots owned by Neumann Homes of Wisconsin LLC; provided, however, that the enforcement or exercise by Neumann Homes of Wisconsin LLC of Declarant's rights hereunder shall in no way abrogate Declarant's rights hereunder.

ARTICLE 15. REMEDIES FOR VIOLATION BY OWNER

15.1 Remedies. If any Owner or Occupant fails to comply with this Declaration or the Bylaws, such Owner shall be liable for damages, subject to injunctive relief, subject to any other remedy provided by the Bylaws, or all of the above, as a result of such noncompliance. The

Association or, in a proper case, an aggrieved Owner, may bring an action because of such noncompliance.

15.2 Owner Violation: Association Right to Cure. In addition, to any other remedies provided herein, if any Owner fails to comply with this Declaration, the Bylaws or the Rules, which failure continues for a period of fifteen (15) days following written notice from the Association, the Association shall have the right, but not the obligation, to perform or cause to be performed such maintenance, replacement, restoration or other action as the Association deems necessary or appropriate. Expenses incurred therefore by the Association shall be assessed against the Owner and shall be subject to all rights and remedies reserved under this Declaration with respect to collection, expense, late payment penalties or interest, filing of a lien and/or foreclosure as reserved at Article 3 of this Declaration. Once the Association has taken such an action, it shall not be obligated to take any other or further action with respect to the same, similar or subsequent failure by the same or a different Owner or Occupant.

ARTICLE 16. EASEMENTS

16.1 Right of Entry. A right of entry to each Lot or Outlot is reserved to the Association and Golf Course Owner and the City of Kenosha to service utility installations located on, in or under the Lot provided request for entry is made in advance and such entry is limited in scope so as to extend only as is reasonably necessary to service such utility installations. In case of emergency, entry by the Association or the City of Kenosha onto a Lot or Outlot (subject to the limitations on the Association above) may be made immediately, whether the Owner or Occupant of the Lot or Outlot is or is not present and without liability to the Association or its agents if such entry is necessary for the safety or welfare of persons or property. Any damage or loss caused as a result of such emergency shall be the sole expense of the Owner if, in the reasonable judgment of those authorizing the entry, such entry was for emergency purposes.

16.2 Sanitary Sewer and Water Easements. Easements over all of the Lots and Outlots are reserved to the Golf Course Owner, City of Kenosha and the Association for the installation and maintenance of sanitary sewer and water lines as shown on the Plat. Upon exercise of its rights of entry pursuant to this easement, the City of Kenosha shall be required only to restore the ground disturbed by such entrance. The City of Kenosha shall not be liable for any loss of play to the Golf Course, the loss of any plantings over water lines, or the cost of restoration of a green to its prior playing condition.

16.3 Common Area Easements. The Association may grant easements over and through the Common Areas for such purposes as the Association deems reasonable for the benefit of the Owners.

16.4 Drainage. An easement is reserved to the Golf Course Owner and the City of Kenosha over all of the Lots and Outlots for the installation of drainage tile, streams or other storm water sewer and drainage system elements as shown on the Plat and on Exhibits to the DEVELOPER'S Agreement, for the maintenance or replacement of such elements by the Golf Course Owner at the cost to the Association. Affected Lot Owners may have their own plantings or other improvements in such easement areas disturbed in the performance of such maintenance without any obligation of the Golf Course Owner or the City of Kenosha to restore or replace such plantings or improvements. No Owner of any affected Lot or Outlot shall erect any improvements

in such easement areas or otherwise create any impediments to the operation of the drainage system as required by the Golf Course Owner and the City of Kenosha, and, because the operation of the drainage system is integral to the operation of the Golf Course, the Golf Course Owner and the City of Kenosha may enter such easement areas in order to remove any such improvements or other impediments to the operation of the drainage system.

16.5 Grant of Easement for Drainage and Storm Water Control Purposes. The Declarant and the Golf Course have constructed, installed, furnished and provided adequate facilities for surface and storm water drainage throughout the Property with adequate capacity to transmit the anticipated flow from the Property, the Golf Course, and adjacent property, in accordance with the approved Development Agreements and all applicable federal, state, county and City of Kenosha regulations, guidelines, specifications, laws and ordinances, and as reviewed and approved by applicable governmental authorities and on file in the City Clerk's office.

A. Grant of Easement. The Golf Course Owner does hereby establish and reserve for the Property a permanent and perpetual non-exclusive easement appurtenant, over, across, through and upon the areas of the Golf Course for the purpose of maintaining and replacing the existing Storm Water Control Improvements and the drainage of storm water from the Property onto and across the Golf Course Owner from the front, rear and side yards of Lots and Outlots of the Property over and through existing storm sewer lines, natural and constructed drainage patterns, swales and ditches to detention and retention areas and ponds on the Golf Course consistent with the Storm Water Control Improvement Plans, the Comprehensive Grading Plan, the Landscape and Grading Plans and the Erosion Control Standards.

B. Allocation and Payment of Expenses. The obligations of maintaining and improving the Storm Water Control Improvements, payment of and the costs attributable thereto are as set forth in Article 2.

16.6 Contractual Obligations of the Declaration. The requirements of this Declaration shall be considered contractual obligations on the part of the Declarant, the Association, and all Owners and Occupants, and shall be enforceable as such

16.7 Dedication. The Golf Course Owner shall have the right to dedicate or otherwise convey all or any portion of the Stormwater Facilities to the applicable municipality, subject to the acceptance thereof by the applicable municipality, in which instance the easement herein granted shall terminate and be of no further force or effect.

16.9 Grant of Easement over Private Roadways. Declarant does hereby establish and reserve for the Golf Course a permanent and perpetual non-exclusive easement appurtenant, over, across, through and upon the private roadways located within said Exhibit A real estate for the purpose of providing pedestrian and vehicular (including, without limitation, golf carts, and machinery and equipment used in maintaining the Golf Course) ingress to and egress from the Golf Course and for the parking of vehicles of the members, guests and invitees of the Golf Course. This easement appurtenant shall apply to the Golf Course. The Declarant and the Association shall maintain, repair, replace and keep in good condition all private roadways. Maintenance as used herein shall include snow removal and sanding, or such other action as may be reasonably required to make the roadways reasonably safe for pedestrian and vehicular use. The Declarant or the

Association shall have the right to dedicate or otherwise convey all or any portion of a private roadway to the applicable municipality, subject to the acceptance thereof by the applicable municipality, in which instance the easement herein granted for all or any portion of the private roadways shall terminate and be of no further force or effect.

16.10 Electric and Other Utility Easements; Access Easements. The Golf Course Owner and the Declarant do hereby establish, reserve and grant to each other, for their mutual benefit, those certain utility and water main easements as are set forth on the Plat of the Property. The Golf Course Owner and the Declarant hereby agree to cooperate in the future to locate additional water main or utility easements to accommodate the Expansion Areas. The Golf Course Owner and the Declarant do hereby establish, reserve and grant to each other, for their mutual benefit, those certain access easements set forth on the Plat of the Property.

16.11 Nature of Easements. The easements, covenants and restrictions provided herein are appurtenant to and shall run with and bind the Property and shall be enforceable only by the Declarant or the Association and the Golf Course Owner and may not be enforced by any Residential Owner.

ARTICLE 17. TERMINATION

Termination. This Declaration shall be in effect until December 31, 2029 and automatically renewed for successive periods of ten (10) years each thereafter, unless terminated at the end of the original or any extended term by: (i) Declarant (if during the period of Declarant control of the Association), or (ii) the written consent of the owners of at least ninety percent (90%) of the aggregate Lots, provided that (A) no vote shall effect an amendment to any provision hereof conferring on or reserving a special right or easement to Declarant or the Golf Course Owner without the express written consent of Declarant or the Golf Course Owner, as appropriate, and (B) no vote shall effect an amendment to any provisions of Article 16 or any easement in favor of the City of Kenosha without the express written consent of the City of Kenosha. Voluntary termination of this Declaration must be express and shall be effective upon recording a written instrument to such effect in the Office of the Register of Deeds for Kenosha County, Wisconsin.

ARTICLE 18. ARBITRATION

Arbitration. All claims, disputes and other matters in question arising out of or relating to these Declarations or the breach of the provision therein which are not otherwise waived shall be decided by binding arbitration in accordance with this arbitration clause.

A. Arbitration shall be initiated by a demand served by certified mail, return receipt requested, upon the other party within one (1) year after the facts underlying the claim, dispute or other matter in question have occurred.

B. Failure to serve the demand for arbitration in a timely manner shall constitute a waiver of the claim, dispute or other matter in question and there shall be no further right to pursue it by arbitration or otherwise.

C. The parties shall follow the rules of American Arbitration Association. The fees of the arbitrator and other costs shall be borne equally by the parties.

D. This arbitration clause shall be specifically enforceable under the Federal Arbitration Act or the Wisconsin Arbitration Act, and the award of the arbitrator shall be final and binding and may be reduced to judgment pursuant to the Federal Arbitration Act or the Wisconsin Arbitration Act. Should any party challenge the validity or enforceability of this arbitration clause or the award of the arbitrator and not prevail, that party shall indemnify the other party for all costs and expenses, including attorneys' fees, incurred related to that challenge or enforcing this right to indemnity.

ARTICLE 19. CONSTRUCTION AND EFFECT

19.1 Name 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.

19.2 Captions. The captions and article and section headings in this Declaration are intended for convenience and reference only and in no way defines or limits the scope or intent of the various provisions hereof.

19.3 Severability. If any portion of this Declaration or its application to any person or circumstance is held to be invalid or unenforceable, the remainder of this Declaration, or the application of such provision, or any part thereof, to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby. The remainder of this Declaration shall be valid, and enforced, to the fullest extent permitted by law.

19.4 Remedies. All remedies are herein are cumulative.

19.5 Waivers. 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. A waiver, consent or approval to any one matter shall not be deemed a waiver, consent or approval to any subsequent matter whether similar or not.

19.6 Successors and Assigns. References in this Declaration to “successors and assigns” as it pertains to Declarant or Neumann Homes of Wisconsin LLC shall be deemed to refer only to a person or entity (including their respective mortgages) to whom Declarant or Neumann Homes of Wisconsin LLC expressly assigns all of its respective rights and benefits by an instrument in writing which is recorded in the Office of the Register of Deeds for Kenosha County, Wisconsin.

Executed at Kenosha, Wisconsin, this 12th day of August, 2004.

STRAWBERRY CREEK OF KENOSHA, LLC

BY: [Signature]
Barry Shiffman, Member



Signature of Barry Shiffman authenticated
this 12 day of August, 2004.

By: [Signature]
Name: Robert J. DuMez
State Bar of Wisconsin # 1015870

This Document Drafted By:
J. Michael McTernan
O'Connor, Willems, DuMez,
Alia & McTernan, S.C.
6633 Green Bay Road
Kenosha, WI 53142

PARCEL I:

Part of the Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 3, Township 1 North, Range 21 East in the City of Kenosha, County of Kenosha, and State of Wisconsin, bounded and described as follows:
Commencing at the Southeast corner of said Southeast $\frac{1}{4}$ section; thence North 02 degrees 26 minutes 26 seconds West along the East line of said Southeast $\frac{1}{4}$ section 432.85 feet to the point of beginning; thence South 88 degrees 21 minutes 44 seconds West and parallel with the South line of said Southeast $\frac{1}{4}$ section 526.42 feet to a point; thence South 02 degrees 16 minutes 12 seconds East and parallel with the West line of the Southeast $\frac{1}{4}$ of said Southeast $\frac{1}{4}$ section 82.83 feet to a point; thence South 88 degrees 21 minutes 44 seconds West and parallel with the said South line 275.00 feet to a point; thence South 02 degrees 16 minutes 12 seconds East and parallel with said West line 350.00 feet to a point on said South line; thence South 88 degrees 21 minutes 44 seconds West along said South line 66.00 feet to a point; thence North 02 degrees 16 minutes 12 seconds West and parallel with said West line 280.50 feet to a point; thence South 88 degrees 21 minutes 44 seconds West and parallel with said South line 233.50 feet to a point; thence North 02 degrees 16 minutes 12 seconds West and parallel with said West line 538.75 feet to a point; thence South 88 degrees 21 minutes 44 seconds West and parallel with said South line 212.00 feet to a point on said West line; thence North 02 degrees 16 minutes 12 seconds West along said West line and the East line of County Trunk Highway MB 510.34 feet to a point on the North line of the Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ section; thence North 88 degrees 36 minutes 32 seconds East along said North line 1310.34 feet to a point on the East line of said Southeast $\frac{1}{4}$ section; thence South 02 degrees 26 minutes 26 seconds East along said East line 891.15 feet to the point of beginning. Subject to the right of the public over and across the Southerly 33.00 feet for State Trunk Highway 50 Right of Way.

NOTE: Tax Key No.: 35-4-121-034-0400 (Old)
3-4-121-03-470-400 (New)

PARCEL II:

The South 40 acres of the South $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of Section 2, Township 1 North, Range 21 East of the Fourth Principal Meridian, in the City of Kenosha, County of Kenosha and State of Wisconsin.

NOTE: Tax Key No.: 35-4-121-021-0400 (Old)
3-4-121-02-101-400 (New)

-CONTINUED-

LEGAL DESCRIPTION CONTINUED-

PARCEL III:

The Southwest $\frac{1}{4}$, the South $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ and part of the West 84 acres of the Southeast $\frac{1}{4}$ of Section 2, Township 1 North, Range 21 East in the City of Kenosha, Kenosha County, Wisconsin, bounded and described as follows:

Commencing at the Southwest corner of said Southeast $\frac{1}{4}$ section of said Section 2; thence South 89 degrees 27 minutes 27 seconds West along the South line of said $\frac{1}{4}$ section 2650.19 feet to the Southwest corner of said $\frac{1}{4}$ section; thence North 02 degrees 26 minutes 26 seconds West along the West line of the Southwest $\frac{1}{4}$ section 2648.00 feet to the Northwest corner of said Southwest $\frac{1}{4}$ section; thence North 02 degrees 30 minutes 06 seconds West along the West line of said Northwest $\frac{1}{4}$ section 1326.47 feet to a point on the North line of the South $\frac{1}{2}$ of said Northwest $\frac{1}{4}$ section; thence North 89 degrees 15 minutes 48 seconds East along said North line 2669.27 feet to a point on the East line of said Northwest $\frac{1}{4}$ section; thence South 02 degrees 34 minutes 31 seconds East along the East line of said Northwest $\frac{1}{4}$ section 1331.32 feet to the Northeast corner of said Southwest $\frac{1}{4}$ section; thence North 89 degrees 23 minutes 26 seconds East along the North line of said Southeast $\frac{1}{4}$ section 1381.02 feet to a point on the East line of the West 84 acres of said Southeast $\frac{1}{4}$ section; thence South 01 degrees 59 minutes 07 seconds East along said East line 2140.90 feet to a point; thence South 89 degrees 16 minutes 35 seconds West and parallel with the South line of said Southeast $\frac{1}{4}$ section 750.00 feet to a point; thence South 01 degrees 59 minutes 07 seconds East and parallel with the East line of the West 84 acres of said Southeast $\frac{1}{4}$ section 508.00 feet to a point on the South line of said Southeast $\frac{1}{4}$ section; thence South 89 degrees 16 minutes 35 seconds West along said line 630.96 feet to the point of commencement. Subject to the rights of the public over and across the Southerly 33.00 feet for State Trunk Highway 50 Right of Way

NOTE: Tax Key No.: 35-4-121-023-0310 (Old)
3-4-121-02-330-310 (New)

NOTE: SAID LAND TO BE KNOWN AS OUTLOTS 1 THROUGH 17 OF STRAWBERRY CREEK, A SUBDIVISION TO BE RECORDED IN THE KENOSHA COUNTY REGISTER OF DEEDS OFFICE AS DOCUMENT NO. _____ ON _____.

Strawberry Creek
Estimated Home Owners' Association Budget
Fiscal Year Beginning January 1, 2005

Electric	\$3,000.00
Insurance	\$6,500.00
Landscape Maintenance	\$35,000.00
Legal Fees	\$5,000.00
Management Fees	\$20,000.00
Meetings	\$5,000.00
Mowing	\$15,000.00
Pond Maintenance	\$25,000.00
Taxes Common Area	\$2,500.00
Wetland Management	\$5,500.00
Reserve	\$20,000.00
Miscellaneous Allowance	\$10,000.00
TOTAL	\$152,500.00

Number of Lots/Units: 929

Subsequent to the first year, all fees will be billed annually.

Miscellaneous Allowance does not include the \$100.00 Reserve Fund Fee that will be charged on every lot/unit closing or rental completion that will be deposited into the Reserve Fund Account. When fully funded, the Reserve Fund account will be $929 \times \$100 = \$92,900.00$.

Each homeowner/occupant will be required to pay the \$100.00 "Reserve Fund" fee when they close on their home, which will be applied to the Reserve Fund. At closing, they will also pay their first year's dues, which will be pro-rated depending on the closing date of the home.

