

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR LOTS
1 - 50 AND OUTLOTS 1 -6 OF THE COTTAGES
AT HIDDEN CREEK

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**CHERYL BERKEN
BROWN COUNTY
REGISTER OF DEEDS
GREEN BAY, WI
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Bay Title & Abstract, Inc.
345 S. Monroe Avenue
Green Bay, WI 54301

Drafted by: Ryan P. Radue

Declaration of Covenants for The Cottages at Hidden Creek, Village of Howard, Brown County, WI

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR LOTS ONE (1) THROUGH FIFTY (50) AND OUTLOTS ONE THROUGH SIX (1-6) OF THE COTTAGES AT HIDDEN CREEK

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR LOTS ONE (1) THROUGH FIFTY (50) AND OUTLOTS ONE THROUGH SIX (1-6) OF THE COTTAGES AT HIDDEN CREEK is made by DAYBREAK DEVELOPMENT, LLP a Wisconsin Corporation, (the "Declarant").

WITNESSETH:

WHEREAS, the Declarant is the owner of that certain real property, more particularly described as follows:

LOTS ONE (1) THROUGH FIFTY (50) AND OUTLOTS ONE THROUGH SIX (1-6) OF THE COTTAGES AT HIDDEN CREEK Village of HOWARD, Brown County, Wisconsin

(collectively the "Property"); and

NOW, THEREFORE, the Declarant hereby declares that the Property and each of the Lots shall be subject to the Covenants set forth in this Declaration.

1. **Purpose.** The purpose of these Covenants is to ensure the use of the Property and the Lots for attractive residential purposes only, to prevent nuisance and the impairment of the attractiveness of the Subdivision, to seek the use of quality materials and workmanship, to maintain the desired atmosphere and appearance of the Subdivision, and thereby, to secure to each Lot Owner the full benefit and enjoyment of their home with no greater restriction on the

free and undisturbed use thereof, than is necessary, to ensure the same advantages to the other Lot Owners.

2. **Land Use.** Except for Outlot Two (2) and Outlot Four (4), no Lot, whether alone or in combination with one (1) or more other Lots, shall be used for any purposes other than residential purposes.

3. **Architectural Standards.** All dwellings constructed upon the Lots (individually a "Dwelling" and collectively the "Dwellings") shall be subject to the following minimum architectural standards:

a. The exterior surface of all Dwellings shall be covered with materials selected by the Declarant. Alternate materials are permitted only with the prior written approval of the Declarant, which approval shall be subject to the sole and absolute discretion of the Declarant.

- b. Rear yard storage sheds and outbuildings shall not be permitted.
- c. Rear yard decks appurtenant to the Dwellings, if any, may not utilize wood decking material, wood side rails, or wood handrails. Only synthetic wood, composite, stone, aluminum railing, stamped concrete or brick may be utilized.
- d. No animal houses, kennels, runs, cages, coops, sleeping quarters, or any other kind of outside housing for animals, shall be permitted on the Property.
- e. No satellite dishes shall be permitted on the front half of a Dwelling.
- f. No fences (other than invisible type fences) shall be permitted on any part of the Property without written consent of Developer.
- g. No pools are allowed on any lot other than lot 31 for the clubhouse.

4. **Landscaping.** All landscaping shall be completed within ten (10) months after issuance of occupancy permit. The Declarant reserves the right to complete landscaping that has not been completed within the above timeframe. Any costs incurred by the Declarant to complete landscaping (including, but not limited to, attorney's fees and court costs) shall become a lien on the Lot.

5. **Garbage and Refuse.** All trash and other debris shall be kept in garbage and/or recycling bins or containers, which shall be screened from view from the streets and adjacent Lots.

6. **Vehicles.** No boats, recreational vehicles, campers, trailers, tractors, motorcycles, all-terrain vehicles, buses, or lawn maintenance equipment will be permitted to be stored on any Lot for more than four (4) consecutive days and for a total of twelve (12) days during any twelve (12) month period, unless stored within a garage.

7. **Animals.** No animals of any kind shall be raised, bred or kept upon any Lot, with the exception of dogs and/or cats, which shall be limited in number to a total of two (2) in any one (1) Dwelling, provided that such dogs and/or cats may not be raised, bred or kept for any commercial purpose. Pets within Outlot 1 or 2 must be kept on a leash at all times. Owners must pick up after their pets at all times whether on their own lot or with an outlot area. The Club at Spring Lake Neighborhood Association restricts Akita, Pit Bull, Chow, Doberman Pincher, Presa Canario, Rottweiler, Shar-Pei, German Shepherd, Huskie, Alaskan Malamute and any mixed breed dog that includes these breeds. These breeds are not allowed to be housed inside or outside the home nor on the common areas. Owners are responsible to control excessive barking of all pets.

8. **Rules and Regulations.** Rules and regulations promulgated by the Board of Directors of the Association (defined below) as to the use and enjoyment of the Property shall be observed by the Lot Owners and all occupants thereof. Such rules and regulations may involve such matters as multi-family structures, air conditioning units, signs, mailboxes, temporary structures, noisy mufflers or other nuisances, garbage and trash disposal, clotheslines, parking, vehicle traffic and the state of repair of vehicles, tree removal, gutters, pets, game and play structures, swimming pools, television antennas, driveways, walkways, sight distance at intersections, garages, and fences. These matters are set out by way of illustration only and shall not be construed to limit the authority of the Board of Directors to promulgate and enforce rules and regulations. Such rules and regulations may augment or clarify the terms of this Declaration or any provision, covenant or restriction herein contained. Copies of such rules and regulations shall be made available to each Lot Owner prior to the time same become effective.

9. Structure, Powers and Duties of, and Membership and Voting Rights in, the Homeowners' Association.

a. The Hidden Creek Neighborhood Association, Inc. (the "Association") shall be a non-stock corporation organized under the laws of the State of Wisconsin. The Association shall be charged with the duties and vested with the powers prescribed by law and set forth in the Articles of Incorporation, the Bylaws and this Declaration. Neither the Articles of Incorporation nor the Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. In the event of any such inconsistency, the provisions of this Declaration shall prevail. The officers and directors of the Association shall be required to be Members (defined below) of the Association. The directors of the Association, and such officers as the directors may elect or appoint, shall conduct the affairs of the Association in accordance with this Declaration, the Articles of Incorporation and the Bylaws.

b. Each Lot Owner, including future lots created in Outlots 1,3,5,and 6 but excluding Outlots 2 and 4 shall be a member (individually a "Member" and collectively the "Members") of the Association. The Association membership of each such Lot Owner shall be appurtenant to the Lot giving rise to such membership and shall not be transferred except upon the transfer of title to said Lot and then only to the transferee of title thereto. Any prohibited separate transfer shall be void. Any transfer of title to a Lot shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Lot Owner thereof.

c. The Association shall have two (2) classes of Members:

i. Class "A" Members shall be all Lot Owners other than Daybreak Development, LLP, Inc. (the "Developer"). Class "A" Members shall be entitled on all issues to one (1) vote for each Lot in which they hold the interest required for membership.

ii. Class "B" Members shall be the Developer and any successor of the Developer that the Developer explicitly designates in writing, as a Class "B" Member. The Class "B" Members shall be entitled to twenty (50) votes for each Lot owned by a Class "B" Member.

d. Each vote in the Association must be cast as a single vote, and fractional votes shall not be allowed. In the event that joint or multiple Lot Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Lot Owner or Lot Owners cast a vote on behalf of a particular Lot, it shall thereafter be conclusively presumed for all purposes that he/she was, or they were, acting with the authority and consent of all other Lot Owners thereof. In the event more than the appropriate number of votes are cast for a particular Lot, none of said votes shall be counted and all of said votes shall be deemed void.

e. The Association shall have all the powers of a non-profit corporation organized under the laws of the State of Wisconsin, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles of Incorporation, the Bylaws, or this Declaration. The Association shall have the power to do any and all lawful things which may be authorized, assigned, required or permitted to be done by this Declaration, the Articles of Incorporation and the Bylaws, and to do and perform any and all acts which may be necessary or

proper for, or incidental to, the exercise of any of the duties or powers of the Association for the benefit of the Lot Owners and for the maintenance, administration, and improvement of the Common Property (defined below).

10. Property Rights in the Common Property.

a. For purposes of this Declaration, the term "Common Property" shall mean and refer to all real property and any improvements located thereon, and all personal property, from time to time intended to be devoted to the use and enjoyment of all Members of the Association and maintained by the Association at Common Expense (defined below).

b. The Developer may retain the legal title to all or any portion or portions of the Common Property until such time as it has completed improvements thereon and until such time as, in the opinion of the Developer, the Association is able to maintain the same. Upon conveyance of the Common Property to the Association, the Association shall be responsible for the exclusive management and control of the Common Property and all improvements thereon.

c. The Declarant hereby reserves to itself, and to the Developer and its successors and assigns, such licenses, rights, privileges and easements in, through, over, upon and under all Common Property, including, but not limited to, (1) the right to use the said properties for rights-of-way and easements to erect, install, maintain, inspect and use electric and telephone poles, wires, cables, conduits, sewers, water mains, pipes, telephone, and electrical equipment, gas, cable television, drainage facilities, ditches or lines, walls, berms, fences, landscaping or other utilities or services and for any other materials or services necessary or convenient for the completion, marketing, and use and enjoyment of the Property; (2) the right to cut any trees, bushes or shrubbery, make any grading of the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, convenience, safety and appearance; (3) the right to locate thereon wells, pumping stations and irrigation systems and lines; (4) the right and easement of ingress and egress for purposes of development, construction and marketing; and (5) such other rights as may be reasonably necessary to complete in an orderly and economic manner the development of the Property; provided, however, that said reservation and right shall not be considered an obligation of the Declarant or the Developer and its successors and assigns to provide or maintain any such utility, development, or service. The Declarant also reserves to itself and to the Developer and its successor and assigns the right to connect with and make use of the utility lines, wires, pipes, conduits, cable television, sewers and drainage and other utility lines which may from time to time be in or along the streets and roads, or within the Common Property, easements, or to grant such rights to others. The easements and rights-of-way herein reserved shall continue in existence in favor of the Declarant and the Developer and its successors and assigns after conveyance of Common Property to the Association. This Section may not be amended without the written consent of the Declarant.

d. The easements, licenses, rights and privileges established, created and granted by this Declaration shall be for the benefit of the Association, the Declarant, the Developer, and the Lot Owners, all as more specifically set forth elsewhere in this Declaration, but the same are not intended nor shall they be construed as creating any rights in or for the benefit of the general public.

e. In the event that any portion of any roadway, walkway, parking area, driveway, water lines, sewer lines, utility lines, sprinkler system, building or any other structure or improvement as originally constructed encroaches on any Lot or Common Property, it shall be

deemed that the Lot Owner of such Lot or the Association, as the case may be, has granted a perpetual easement to the Lot Owner of the adjoining Lot, or the Association, as the case may be, for the continuing maintenance and use of such encroaching improvement or structure. The foregoing shall also apply to any replacements of any such improvements or structures if same are constructed in substantial conformity with the original structure or improvement.

11. **Insurance and Casualty Losses.** The Association's Board of Directors shall have the authority but not the duty to obtain insurance for insurable improvements on the Common Property owned by it, against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief, and to obtain public liability policies covering the Association, the Declarant and/or its designee, the Developer and/or its designee, and its Members, for damage or injury caused by the negligence of the Association, Declarant and/or its designee, Developer and/or its designee, or any of its Members or agents, and, if reasonably obtainable, directors' and officers' liability insurance, and to obtain any and all other types of insurance coverage with respect to such risks or persons as shall be deemed necessary or appropriate by the Board of Directors. Any insurance obtained shall include such coverage, contain such deductible provisions and be in such limits as shall be determined by the Board of Directors. Premiums for insurance shall be a Common Expense if for the benefit of the Association, its officers or directors, the entire membership as a group, or relate to the Common Property.

12. **Covenant for Maintenance and Assessments.**

a. Each Lot Owner by acceptance of a deed to any Lot included in the Property, and whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to and hereby does covenant and agree to pay to the Association: (1) annual assessments or charges, (2) special assessments, and (3) individual assessments. Said assessments shall be fixed, established and assessed to the Lot Owners as hereinafter provided. The assessments together with interest thereon, late charges, lien charges and costs of collection thereof, including court costs and reasonable attorneys' fees (including fees and costs upon appeal), shall be a charge and a continuing lien upon the Lot against which each such assessment is made from the date on which each such assessment is due. Each such assessment, together with interest, late charges, lien charges, costs and attorneys' fees, as herein provided, shall also be the personal obligation of the person who was the Lot Owner of such Lot at the time when the assessment fell due. Notwithstanding the foregoing, the following property shall be exempt from the assessments, charges and liens created herein:

- i. All Common Property, including but not limited to Lot 31; and

ii. Any Lot owned by the Declarant or the Developer for which an original occupancy permit has not yet been issued.

Except as set forth in this subsection, no land or improvements in the Property shall be exempt from assessments, charges or liens. No Lot Owner may avoid the obligation for the payment of assessments by virtue of non-use or abandonment of such Lot Owner's Lot or the Common Property.

b. Each Lot Owner (if more than one Lot Owner, jointly and severally), by acceptance of a deed for such Lot, whether or not it is expressed in the deed, agrees to pay assessments as provided in these Covenants

c. The assessments levied by the Association may be used for the purpose of promoting the recreation, health, safety, and welfare of the Lots and the Lot Owners, for the performance by the Association of its duties and the exercise of the powers conferred upon it, for the improvement and maintenance of properties, services and facilities which have been or will be constructed, installed or furnished upon, and which are devoted to the purpose and related to the use and enjoyment of, the Common Property, and for such other purpose as may be deemed desirable or appropriate from time to time by the Board of Directors, including but not limited to:

- i. Payment of operating expenses of the Association; and
- ii. Payment of all real and personal property taxes and assessments (if any) separately levied upon or assessed against the Association or the Common Property; and
- iii. Management, maintenance, improvement and beautification of landscaping and stormwater drainage and retention features on Common Property; and
- iv. Repayment of deficits previously incurred by the Association, if any, in making capital improvements to or upon the Common Property, and in furnishing services to or for the Members of the Association; and
- v. Funding of appropriate reserves for future repair and replacement; and
- vi. Doing any other thing necessary or desirable in the judgment of said Association to keep the Property, including the Common Property, neat and attractive or to preserve or enhance the value thereof, or to eliminate fire, health or safety hazards, or which, in the judgment of the said Association, may be of benefit to the Lot Owners or occupants of the Lots.

13. **Determination of Assessments.**

a. It shall be the duty of the Board of Directors, by majority vote, at least forty-five (45) days prior to the end of the Association's fiscal year, to prepare and approve a budget covering the estimated costs of operating the Association during the coming year, including but not limited to operational items such as overhead and indirect costs, insurance, utilities, taxes, repairs, reserves, maintenance and other operating expenses, as well as charges to cover any deficits from prior years, and such capital improvements budget items as approved by the Board of Directors as set forth in Subsection (b) below.

b. The Board of Directors shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board of Directors shall set the required annual capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect to both amount and timing. The annual capital contribution required shall be fixed by the Board of Directors and included within the annual operating budget and assessments. A copy of the capital budget shall be distributed to each Member as an Appendix to the operating budget. Additionally, new capital improvements in the budget shall be approved not by the Board of Directors, but by a majority of the Lot Owners or Members by separate written ballot.

c. The Board of Directors shall cause a copy of the budget and the projected assessments to be levied for the following year, to be delivered to each Member at least forty-five (45) days prior to the end of the Association's fiscal year. The budget and the assessments shall become effective unless and until disapproved at a special meeting of the Members held on or before thirty (30) days after the proposed budget and assessments are mailed to the Members, by a vote of two-thirds (2/3) of the Members of the Association. In the event that the Members so disapprove of the proposed budget for the succeeding year, or in the event the Board of Directors shall fail to propose a budget, then and until such time as a new, acceptable budget shall have been determined, the budget in effect for the preceding year shall continue for the succeeding year.

d. The amount necessary to fund the operating budget of the Association shall be assessed against all non-exempt Lot Owners and non-exempt Lots in proportions based upon an equal pro rata assessment against each Lot.

e. In addition to the annual assessments established above, the Board of Directors of the Association may levy at any time a special assessment for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement upon the Common Property, including the necessary fixtures and personal property related thereto, for the purpose of covering any insufficiency of assessments to fund the actual monetary needs of the Association over and above the budgeted annual assessments, or for any other use or purpose deemed desirable or appropriate by the Board of Directors; provided, however, that any such special assessment shall have the approval of a majority of the votes of the Members (without regard to class) who are in attendance and voting in person or by proxy at a meeting duly called for said purpose. The Board of Directors shall determine the date when such special assessment is to be paid.

f. The Association may levy an individual assessment upon any Lot Owner to cover the costs incurred by the Association due to that Lot Owner's failure to maintain its Lot, or the improvements thereon, pursuant to the standards set forth in this Amended and Restated Declaration, or to reimburse the Association for any damage to any Common Property caused by any Lot Owner or its invitee, or for any other purpose permitted by this Declaration.

g. Annual assessments shall be due, in advance, on or before the commencement of the year for which imposed; provided, however, the Board of Directors shall have the discretion to collect assessments in installments over the year for which imposed at such payment intervals as it shall determine. In the event of such deferred payments, the Board of Directors shall also be permitted to charge a uniform rate of interest upon the amounts from time to time remaining unpaid at any rate deemed appropriate by the Board of Directors; provided, however, such rate shall not exceed the statutory usury limit then existing. The Board of Directors may accelerate the unpaid balance of any assessment upon default in the payment of

any installment thereon. Upon request, the Association shall furnish to any Lot Owner liable for assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence in favor of third parties of payment of any assessment therein stated to have been paid.

h. If any assessment is not paid on the date when due, then such assessment shall become delinquent and the delinquent assessment, together with interest thereon and/or late charges as shall be imposed by the Board of Directors at its discretion, and the cost of collection thereof, as herein provided, shall be secured by a continuing lien on the lands and improvements located thereon with respect to the ownership of which the assessment accrued which shall bind such lands and improvements in the hands of the then Lot Owner, its heirs, successors, personal representatives and assigns. Such lien shall be prior to all other liens hereinafter created except taxes or assessments levied by governmental authority, and except as to the lien of any mortgage as hereinafter provided in Subsection (i) below. If the assessment or installment thereon is not paid within thirty

(30) days after the due date, same shall bear interest the Association may bring an action at law for collection against the Lot Owner personally obligated to pay the same and/or to foreclose the lien against the lands and improvements, and there shall be added to the amount of such assessment the aforesaid interest, late charges, if any, costs of collection and court costs, and reasonable attorneys' fees, including court costs and attorney's fees upon appeal, and the said costs of collection shall be recoverable whether or not suit be brought. Costs of collection shall include not only costs of a legal action or legal representation, but shall include costs incurred by the Association for collection.

i. The lien of the assessments provided for by this Declaration shall be subordinate to the lien of any first mortgage now or hereafter placed upon any Lot held by a commercial or savings bank, savings and loan association, trust company, credit union, industrial loan association, insurance company, pension fund, or business trust, including but not limited to a real estate investment trust, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such lender, or any private or governmental institution or agency which has insured the loan of any such lender, or any combination of any of the foregoing entities, or any of same constituting an institutional mortgage; provided, however, that a sale or transfer of any Lot pursuant to a decree of foreclosure, or pursuant to any proceeding in lieu of foreclosure, shall not relieve such Lot from liability for any assessments which thereafter become due, nor from the lien of any subsequent assessment.

14. Exterior Maintenance of Lot and Improvements.

a. It shall be the affirmative duty of each Lot Owner at all times to keep and maintain the improvements and landscaping upon such Lot Owner's Lot in good and presentable condition and repair. The Association shall have the right to provide exterior maintenance upon, or repair or replacement of, any Lot and improvements or landscaping thereon in the event of default by any Lot Owner in that Lot Owner's duties hereby imposed; subject, however, to the following provisions. Prior to performing any maintenance, repair or replacement on a Lot Owner's property, the Board of Directors of the Association, or a committee appointed by the Board of Directors, shall determine that same is in need of maintenance, repair or replacement, and is detracting from the overall appearance of the Property. Except in the event of an emergency, prior to commencement of any work, the Board of Directors must furnish at least fifteen (15) days' prior written notice to the Lot Owner at the last address listed in the Association's records for said Lot Owner notifying the Lot Owner that unless certain specified replacements, repairs or maintenance are commenced within said fifteen (15) day period and

thereafter diligently pursued to completion, the Association may procure said replacements, repairs or maintenance, and charge same to the Lot Owner. Upon the failure of the Lot Owner to act within said period of time and to thereafter diligently pursue such replacements, repairs or maintenance, the Association shall have the right to enter in or upon any Lot and the exterior of any improvements located thereon, or to hire personnel to do so, to make such necessary replacements, repairs, or maintenance as is specified in the written notice. In this connection, the Association shall have the right to do such things as, but limited to, paint, repair, replace and care for roofs, gutters, downspouts and exterior building surfaces, clean or resurface paved access ways and parking areas, trim and care for trees, shrubs, grass, walks, swales, berms and other landscaping and drainage improvements, as well as to provide general cleanup, and removal of debris which in the opinion of the Association detracts from the overall beauty and setting of the Property. None of the Declarant, the Developer or the Association, or their agents or employees, shall be liable to the Lot Owner for any trespass or damages or injury to the property or person of the Lot Owner or the occupants or invitees of the affected Lot or improvements thereon unless caused by gross negligence or intentional wrongdoing.

b. The cost of the replacement, repair or maintenance referred to above shall be assessed as an individual assessment against the Lot Owner of the Lot or improvements upon which such maintenance is done. Said individual assessment shall be secured by a lien upon the affected Lot and improvements and shall also constitute a personal obligation of the Lot Owner. The individual assessment shall be collectible along with interest at the highest rate allowed by law from date of expenditure to date of payment by the Lot Owner, and costs of collection and attorneys' fees, in the same manner as delinquent annual assessments.

c. For the purpose of performing the replacements, repairs or maintenance authorized above, the Association, through its duly authorized agents, contractors or employees, shall have the right to enter upon any Lot and the exterior of any improvements thereon during reasonable hours on any day except Sundays and holidays, except that in an emergency situation, as determined by the Board of Directors, entry may be made on any day and at any hour.

d. The Association shall maintain and keep in good repair the Common Property and all improvements thereon. Said maintenance obligation shall be deemed to include but not be limited to maintenance, repair and replacement, subject to the insurance and casualty loss provisions contained herein, of all utility lines, pipes, wires, glass, conduits, structures, systems, trees, fences, shrubs, grass, streets, parking spaces, walks, and other improvements situated upon the said Common Property. All maintenance of each Lot and all parts of any structure thereon, unless specifically identified as being the responsibility of the Association, shall be the responsibility of the Lot Owner of such Lot.

15. Party Walls (where applicable).

a. Each wall built as a part of the original construction of the residential improvements to the Lots and placed on the dividing line between two (2) adjacent separately-owned Lots shall constitute a party wall. The general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

b. The Lot Owners of the two (2) adjacent Lots that share a party wall shall both have the equal right to use such party wall in a reasonable manner, provided that such use by one Lot Owner does not interfere with the use and enjoyment of the other Lot Owner.

c. In the event a party wall is damaged or destroyed (including deterioration from

ordinary wear and tear and lapse of time) it shall be the obligation of the Lot Owners that share the party wall to rebuild and repair the party wall.

16. **Roofs.** To ensure and enhance the value of the Lots and the improvements constructed on the Lots, to preserve the distinctive style and decor of the Property, and to protect the health, safety and welfare of the Lot Owners and occupants of the Properties, roofs are hereby made subject to the following special conditions, declarations, covenants and restrictions in addition to those heretofore and hereinafter set forth.

a. In the event that any roof is damaged or destroyed due to deterioration from ordinary wear and tear and lapse of time the Lot Owners whose residential improvements share a common roof may, in their collective discretion, replace the roof or any part thereof, provided that the appearance of the roof remains uniform. Neither Lot Owner, acting alone, may replace the roof or any part thereof, without the consent of the other Lot Owner that shares the roof.

b. The Association may, in accordance with Section 15, above, require that the Lot Owners with a shared roof replace the roof or any part thereof.

c. The cost to repair or replace all or any part of a shared roof, whether due to normal wear and tear and the lapse of time, or otherwise, shall be the obligation of the Lot Owners who share such roof. Notwithstanding the foregoing, if such damage or destruction is caused by the intentional or negligent act or omission of a Lot Owner (or such Lot Owner's agents, guests, or members of their family), such Lot Owner shall be responsible for all costs to repair or replace such damage or destruction.

17. **Driveways.** All driveways areas that are outside of the first twenty (20) feet (measured perpendicular to the garage door) from any units/ garage door(s) is considered shared driveway and any units using that driveway section for access to their garage shall be jointly responsible for any maintenance or replacement of the concrete jointly. Parking on driveways that are shared with another unit is limited to the first 20ft measured perpendicular to garage doors. The Association may, in accordance with Section 15, above, require that the Lot Owners with a shared driveway repair or replace any part thereof.

18. **Covenants.** The Covenants set forth in this Declaration shall run with the land, and shall be binding on all successors in interest to the Property and any Lot. All future conveyances of any Lot or Lots, shall be subject to the Covenants set forth herein. Acceptance of a deed by any purchaser is considered an agreement to observe and abide by such Covenants for the protection of all owners within the Subdivision.

Invalidation of any one of these Covenants by judgment or court order, shall in no way affect the remaining provisions, which shall remain in full force and effect.

These Covenants may be removed, modified, annulled, waived, changed, and/or amended at any time and in any manner by a written document setting forth such amendments, (a) by the Declarant as long as the Declarant owns any real estate for resale within the Subdivision, or (b) after the Declarant has conveyed all real estate within the Subdivision, then by the Association with the written consent of at least seventy-five percent (75%) of the outstanding votes of the Members. The written document setting forth such amendments shall be recorded in the office of the Brown County Recorder in Green Bay, Wisconsin.

The Declarant, the Developer and/or individual Lot Owners benefited by this Declaration may enforce the Covenants herein contained using any available legal or equitable remedies, including, by way of example only, affirmative or restrictive injunction. In the event of litigation to enforce these Covenants, the non-performing party or the party violating any of the Covenants shall reimburse the Declarant, Developer and/or individual Lot Owners for all out-of-pocket expenses (including reasonable attorney's fees and court costs) incurred in successfully enforcing these Covenants.

For so long as the Declarant owns any real estate in the Subdivision, variations in any of the Covenants may be permitted by the Declarant where the Declarant is reasonably satisfied that such variations will be pleasing and generally in keeping with the character of surrounding properties and will not be a detriment to the Subdivision as a whole. All such variations must be in writing and signed by, or on behalf of, the Declarant to be enforceable.

All decisions of the Declarant on any matter shall be enforceable against any Lot Owner if made in good faith exercise of judgment so long as such decision is not clearly in conflict with the express provisions of these Covenants. Any Lot Owner or other person seeking to avoid, set aside, or challenge any such decision of the Declarant, shall have the burden of proof to establish that such standards were not met at the time the decision was made.

The Declarant may assign its rights as the Declarant under this Declaration by recording written documentation of such assignment with the office of the Brown County Recorder in Green Bay, Wisconsin. Upon recording of such an assignment, the assignee shall become, and shall be deemed to be, the Declarant for all purposes hereunder.

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the date set forth below.

**DECLARANT:
DAYBREAK DEVELOPMENT, LLP**


Dated: February 15th, 2020

By: 
Ryan R. Radue President

STATE OF WISCONSIN :
: SS.
COUNTY OF BROWN :

Personally came before me this 15th day of February 2020, the above-named Ryan P. Radue, to me known to be the person who executed the foregoing instrument and acknowledged the same.

KIM MARIE STENCIL
NOTARY PUBLIC
STATE OF WISCONSIN


KIM MARIE STENCIL
Notary Public, State of Wisconsin
My Commission: 06-18-2022