

**DECLARATION OF RESTRICTIONS  
FOR  
MARY HILL**

This Declaration is made this 29<sup>th</sup> day of September, 2003 by Mary Hill, LLC, hereinafter the "Developer".

WHEREAS, Developer is the owner of the property commonly known as the Mary Hill Subdivision, in the Village of Hartland, Waukesha County, Wisconsin, more particularly described on the attached Exhibit A; and

WHEREAS, Developer desires to subject the property and improvements in said Mary Hill Subdivision to the conditions, restrictions, covenants, reservations and easements contained herein for the benefit of the said property and for the benefit of each owner of any part thereof and for the purpose of creating a desirable utilization of land in an aesthetically pleasing residential environment.

THEREFORE, Developer, as fee owner of the property, hereby declares that the real property described on the attached Exhibit A, shall be held, sold, conveyed, transferred, used and improved only subject to the conditions, restrictions, covenants, reservations and easements hereinafter set forth which shall constitute covenants running with the land and which shall be binding upon Declarant, its successors and assigns, and all subsequent owners and occupants of all or any part of such real property and inure to the benefit of the Developer, its successors and assigns, and to all parties hereafter having any interest in the property.

**1. BINDING EFFECT AND DEFINITIONS**

This Declaration of Restrictions shall become effective immediately upon the recording hereof with respect to the property described on the attached Exhibit A.

The terms "Mary Hill", "Mary Hill development" and "subdivision", as used in this Declaration of Restrictions, are defined as the property described on the attached Exhibit A.

The term "Lot" as used in this Declaration is hereby defined as each separate buildable parcel of real estate existing now or in the future which is created by any land division done in accordance with all applicable laws and regulations, and in compliance with all restrictions set forth in this Declaration, of the lands subject to this Declaration.

The term "common area" is defined as Outlots 1-7, Mary Hill.

Initials

Date

**2. GENERAL PURPOSE**

The general purpose of these restrictions is to assure that Mary Hill will become and remain an attractive, high quality residential community and to that end to preserve and maintain the natural beauty, to insure the best use and the most appropriate development and improvement of Lots within the property; to protect owners of Lots against such use of surrounding Lots as may detract from the residential value of their property; to guard against and prevent the erection of poorly designed or proportioned structures on any part of the property; to obtain harmonious use of materials and color schemes in improvements; to insure the highest and best residential quality of the property; to encourage and secure the improvements of the property with attractive homes with appropriate locations thereof on the Lots; to secure and maintain proper spatial relationships of structures to other structures and lot lines; and generally to insure the highest and best residential development of the property.

**3. INTERPRETATION**

It is inherent to protective covenants and restrictions that from time to time those covenants and restrictions are subject to interpretation. In those instances wherein an interpretation is required because a provision of this Declaration is reasonably subject to more than one interpretation and there is no definitive rule to be followed, or because there is a question regarding an intangible concept such as, but not limited to, what constitutes harmonious architectural design, what is poor design or proportion and what is aesthetically pleasing, the matter shall be subject to the opinion of the Architectural Control Committee for the granting of a final approval under this Declaration.

**4. ARCHITECTURAL CONTROL COMMITTEE**

An Architectural Control Committee (hereinafter the "Committee") for Mary Hill Subdivision is hereby established. The Committee shall consist of not less than three members, designated as hereinafter set forth. The decision of the majority of the members of the Committee shall be final and binding upon all parties. The Committee members shall not be entitled to compensation for services performed pursuant to this paragraph. The initial members of the Committee shall be appointed by the Developer, and the Developer shall be entitled to remove and replace members of the Committee, at its sole discretion, as long as there remains any vacant Lot in the subdivision; thereafter, the Committee shall consist of the Board of Directors of the Owner's Association, established as hereinafter set forth, provided said Owner's Association is in existence. If the Owner's Association is not legally in existence at any time after which there is no longer any vacant Lot in the subdivision, the Committee shall continue in existence with its then existing members, and Committee members shall be subject to removal, replacement and/or appointment as follows: by majority vote of the Committee members in attendance at a Committee meeting called by any one or more Committee members for that purpose; and/or by majority vote of Lot Owners in attendance at a meeting of Lot Owners called by any one or more Lot Owners for that purpose. Lot Owner meetings called to remove, replace and/or appoint Committee members shall require not less than 10 days written notice to at least one owner of each Lot, by personal delivery or by First Class U. S. Mail addressed to the last known owner and address as shown on the Tax Roll.

**5. ARCHITECTURAL CONTROL**

No building, swimming pool, gazebo, fence, wall, driveway, tennis court, children's play set, playground equipment, light post, landscaping, or other structure or improvement shall be constructed, erected, placed, or altered on any Lot in Mary Hill Subdivision or the exterior painted of any building or improvement painted, decorated, or altered without the prior approval of the Architectural Control Committee. Prior to any undertaking requiring approval of the Architectural Control Committee, three sets of plans [including building construction plans (with roof, siding and trim colors), site plans, grading plans (where necessary) and landscaping plans] shall be submitted to the Architectural Control Committee. If and when plans are approved, two sets of the approved plans shall be signed, dated, and returned by the Architectural Control Committee to the Lot Owner as evidence of such approval. Any minor changes or revisions required by the Architectural Control Committee may be noted as exceptions to approval on the plans and detailed in a letter to the Lot owner. The Architectural Control Committee may also require that the owner's agent make changes to the plans before approval is given. Once the Architectural Control Committee's approval has been given the plans shall be strictly adhered to by the Lot Owner, unless subsequent changes are approved by the Architectural Control Committee.

In passing upon the plans and specifications, the Committee may take into consideration the suitability of the proposed building or other structure or improvement, its design, elevation, color, construction materials, the harmony thereof with surrounding buildings, its proposed location, the view from other properties in the subdivision, and such other matters of terrain, environmental impact, aesthetics, and impact upon other Lots in the subdivision as the Committee may deem appropriate. The Committee shall have the right to waive minor infractions or deviations from these restrictions in the case of hardship and/or common sense. Any action by the Committee shall be final and conclusive as to all persons then or thereafter owning Lots covered by these restrictions. The Committee shall not be liable for actions taken or decisions made in good faith.

**NOTE: ANY LOT OWNER WHO CAUSES OR ALLOWS ANY IMPROVEMENTS TO BE CONSTRUCTED, INSTALLED, PLACED OR ALTERED ON THE LOT WITHOUT PRIOR WRITTEN APPROVAL OF THE ARCHITECTURAL CONTROL COMMITTEE MAY BE REQUIRED TO REMOVE SUCH IMPROVEMENT IN ITS ENTIRETY AT THE LOT OWNER'S EXPENSE.**

In addition to the requirements of these restrictions, all construction shall comply with applicable zoning and building code requirements. Neither the Committee nor the Developer is expected to have full knowledge of, or expertise in, matters of zoning, building codes or proper drainage. Neither the Committee nor the Developer shall have liability or responsibility in the event it approves plans which fail to comply with applicable zoning or building codes, and/or which fail to properly handle drainage. If approved plans violate applicable zoning or building codes, or fail to properly handle drainage, the Lot Owner is solely responsible for recognizing the error, and making appropriate corrections to the plans. The corrected plans must be resubmitted to the Architectural Control Committee for its approval.

**6. DWELLINGS AND OTHER STRUCTURES**

All Lots shall be used for single-family residential purposes, and such recreational purposes permitted by this Declaration and applicable zoning. No trade or business shall be

carried on anywhere in the Subdivision except for: (1) the incidental use of a Lot for personal business conducted by mail and/or telecommunications that does not burden the use of the Lot or Subdivision by frequent visits by business service providers or customers; and (2) the sale of Lots, subject to the other provisions hereof. The term "residential purposes" includes only those activities necessary for, or normally associated with, the use and enjoyment of a home site as a place of residence and limited recreation. Nor garage or other mobile or accessory structure shall be used for temporary or permanent living or sleeping for family or guests without prior approval of the Committee. All dwellings shall be designed by a home designer, registered architect or equally qualified individual or firm.

The architectural control provisions set forth herein, are specifically intended to create and preserve a compatibility of architectural styles amongst the various homes that are in close visual proximity to one another, while at the same time retaining diversity so as to avoid the monotony of duplication. Toward this end, the Architectural Control Committee may evaluate and approve the use of a particular architectural style of home on any given Lot in the subdivision. In making that evaluation the Architectural Control Committee may consider the proposed residence in relation to existing homes or previously approved homes that will be in close visual proximity to the proposed residence. The Architectural Control Committee, in its sole discretion, may grant conceptual approval for the use of a certain exterior design on any Lot in the subdivision, and reserve the use of said design for said Lot, prior to receiving the actual plans as required pursuant to Paragraph 5 above. Any such conceptual approval and/or reservation may be rescinded by the Architectural Control Committee at any time, at its sole option, upon not less than sixty (60) days written notice to the Lot Owner, if the Lot Owner fails to submit the full set of plans as required pursuant to Paragraph 5 above prior to the expiration of said notice period, and/or if the Committee rejects the plans so submitted.

The exterior siding of all dwellings shall consist of natural wood siding, natural stone, brick and/or stucco. The use of cement board, plank or fish-scale siding and an efis system (Dryvit) will be permitted providing those material are used with wood or efis system corner boards. Further, the Architectural Control Committee, in its sole discretion, shall have the right to permit or prohibit the use of artificial stone, artificial brick, composite wood, and/or other types or styles of siding as it may deem appropriate to preserve the architectural integrity and quality appearance of dwellings in the subdivision. In no event shall any dwelling be sided with metal or vinyl siding, except for use on facia and soffits. No exposed poured concrete or concrete block or any other type of structural material over eight (8) inches above grade shall be permitted on any house. Where block or concrete or any other type of structural material would otherwise be exposed, it must be covered by brick or stone or efis system. The roofing of all dwellings shall consist of fully dimensional asphalt shingles; with a minimum thirty (30) year rating, or wood or tile. Conventional asphalt shingles shall not be permitted. The Architectural Control Committee, in its sole discretion, may permit or prohibit the use of other types roofing materials (such as fiberglass shingles) having substantially the same appearance as the permitted materials, as it may deem appropriate, to preserve the architectural integrity and quality of appearance of dwellings in the subdivision. Further, the Architectural Control Committee may, in their sole discretion, permit the use of such other forms of high quality and aesthetically pleasing roof materials as may be available now or in the future, including but not limited to masonry and/or copper. The main portion of the roof shall have a minimum pitch of 6/12. A lesser pitch over other areas, such as porches, breezeways and bays, may be permitted or denied at the sole discretion of the Architectural Control Committee.

All homes shall have at least one fireplace. The exterior of all chimneys shall be brick, stone or masonry faced with stucco, regardless of whether the fireplace is located on an interior or exterior wall. All homes shall include an attached garage with a minimum of 576 square feet. The Architectural Control Committee, at its sole discretion, may prohibit any attached garage, that has an exterior appearance of having a capacity of more than 3 cars. All garages shall be equipped with automatic garage door openers for all overhead doors. All garages shall be side entry garages, and shall not face a public street (unless on a corner lot), unless such side entry is determined by the Architectural Control Committee, in its sole discretion, to be unfeasible or impractical. No detached garages shall be permitted.

No free-standing exterior storage shed shall be allowed on any Lot. Other types of outbuildings, such as gazebos, pool equipment and/or changing room facilities, etc. may be allowed, providing they are approved, as to design, location and landscaping, by the Architectural Control Committee. No outbuilding shall be constructed on any Lot prior to the commencement of construction of the residence on such Lot. All Lot Owners are further advised that outbuilding construction is also subject to applicable zoning ordinances, and may be prohibited or restricted unless a variance or conditional use permit is obtained.

#### **7. MINIMUM SQUARE FOOTAGE REQUIREMENTS**

Only one single-family house may be constructed on each Lot. Houses constructed in Mary Hill Subdivision shall have a minimum square footage of living space as follows:

- i. One-story houses shall have a minimum square footage of living space of not less than 2,400 square feet.
- ii. One and one-half story and two story houses shall have a minimum square footage of living space of not less than 3,000 square feet total, or not less than 2,400 square feet of living space on the first floor.
- iii. Two-story houses shall have a minimum square footage of living space of not less than 3,000 square feet total, with not less than 1500 square feet on the first floor.
- iv. Split level houses (three or more levels) shall have a minimum square footage of living space of not less than 3,000 square feet total on the upper two levels.
- v. Bi-level houses shall not be permitted.

Living space is determined by the outside dimensions (exclusive of garages, porches, patios, breezeways, sunrooms and similar additions) of the exterior walls of above grade finished living space. In no event shall floor space which is partially or completely below finished yard grade (such as basement space, whether or not exposed, and/or the lower level of a split-level) be counted for purposes of determining minimum square footage of living space. The minimum square footage shall be determined as of the time of initial construction, and shall not consider or include unfinished areas or future additions.

Notwithstanding the above minimum square footage requirements, the Architectural Control Committee shall have the right, in its sole discretion, to reduce the square footage requirement for any house by up to 10 % (but not below the minimum required by applicable zoning), providing the house contains outstanding architectural features and/or materials.

**8. COMMENCEMENT OF AND COMPLETION OF CONSTRUCTION**

Before any construction shall be commenced on any Lot the driveway shall be rough graded and graveled in a horizontal location and with a vertical alignment as approved by the Architectural Control Committee. All access to and from the home site construction area by material suppliers, contractors and other individuals shall be by this driveway location and no other means or way. This covenant is primarily for the protection of natural amenities of the site.

Any exterior construction commenced shall be completed within a one-year period and shall be ready for occupancy within that period. Also, within one year of occupancy or within two years of the commencement of construction, whichever date shall be shorter, the owner of such Lot shall landscape any area disturbed by construction, and shall complete all landscaping in accordance with the plans and specifications approved by the Architectural Control Committee.

During the time of construction the Lot Owner shall be responsible for maintaining the integrity of the site and surrounding areas. Lot Owners shall make certain that their contractors maintain a daily cleanup of all scraps, paper or other waste materials, as well as all dirt and mud tracked onto public streets, and that all access to the site is through the approved driveway, and by no other means or way. The Lot Owner shall further be responsible for the repair of any and all damage to the public right-of-way adjacent to the Lot, including but not limited to any pavement, sidewalk, curb, gutter, ditch, swale and/or culvert, and to any drainage ditches, swales and/or other drainage facilities on the Lot, occurring prior to completion of construction. If the owner or his contractor fail to maintain the site and surrounding areas in this manner, the Developer or the Homeowners' Association shall have the right, but not the obligation, to perform the necessary cleanup and/or make the necessary repairs and to charge the Construction Deposit and/or obtain reimbursement for the expense incurred by the Developer or Homeowners' Association, as set forth in Paragraph 9 below.

During any earth moving activities, proper erosion control practices shall be installed to prevent sediment entering storm water drainage ways or leaving the immediate construction site.

**9. CONSTRUCTION DEPOSIT** At the time of closing on a lot a Construction Deposit in the amount of One Thousand Dollars (\$1,000.00) shall be collected from the buyer of a Lot and held in an escrow account by the Developer or the Homeowner's Association. These funds are transferable to subsequent owners after the initial sale by the Developer. These funds are to assure the compliance with Section 8 of these covenants and restrictions pertaining to contractor cleanup, use of the approved driveway and repair of damage to pavement, sidewalks, curbs and gutters, to assure compliance with the landscaping and tree planting requirements set forth in this Declaration, and to assure compliance with the architectural covenants, restrictions and requirements contained herein and as approved by the Architectural Control Committee. If a lot owner and/or his or her contractors fail to comply with the cleanup requirements and/or the use of the approved driveway, and/or repair of any damaged sidewalks, curbs and/or gutters, and in the event the Developer or Homeowner's Association, as a result of such noncompliance, undertakes any cleanup or repair, and/or is charged or assessed by the Village of Hartland for same, the Developer or Homeowner's Association shall be entitled to deduct and retain from the Construction Deposit a sum sufficient to reimburse Developer or Homeowners' Association for all costs and expenses incurred for such cleanup and/or repair. If a lot owner and/or the lot owner's contractors fail to comply with the architectural or other requirements or provisions of the Declaration, and if the Developer or Homeowners' Association retains an attorney to pursue enforcement of said requirements and/or

provisions, the Developer or Homeowners' Association shall be entitled to deduct and retain from the escrow a sum sufficient to reimburse the Developer or Homeowners' Association for all costs and expenses, including but not limited to reasonable actual attorney's fees, incurred by the Developer or Homeowners' Association with respect to such enforcement. If the escrowed amount is not sufficient to fully reimburse the Developer or Homeowners' Association for cleanup and/or repair expenses, charges and/or assessments, and/or for costs, expenses and reasonable attorney's fees relating to enforcement of architectural requirements, the owners of the lot shall be jointly and severally liable to the Developer or Homeowners' Association for any excess. If no deductions are made, or if there is a balance remaining after all deductions, the balance in the escrow account shall be returned to the current owner when the home is completed, the lawn established, and trees are planted as required in Section 10 of these Restrictions.

**10. TREES**

No existing live tree with a diameter of eight inches or more at a height four feet above ground shall be cut down, destroyed, moved or disfigured, without approval of the Architectural Control Committee. All existing trees shall be protected during construction and preserved by wells or islands and proper grading in such a manner as may be required by the Architectural Control Committee. Existing live trees with a diameter of eight inches or more at a height four feet above the ground shall be considered by the Architectural Control Committee in granting approval for the location of the house, driveway and any and all other structures on any Lot. The provisions of this paragraph do not apply to any tree located more than 250 feet from the nearest common Lot line with any other Lot in the subdivision.

As part of the landscaping plan, the Owner of each Lot shall plant a minimum of two (2) trees on the lot, in addition to those planted in the front yard of the residence by the Developer. Each tree planted by the Lot Owner shall have a minimum trunk diameter of not less than 2 1/2 inches, measured 4 feet above the ground surface. The type and location of said trees shall be subject to approval of the Architectural Control Committee as part of the approval of the landscaping plan.

The Village of Hartland has required the Developer to plant certain street trees as indicated in the Street Tree Plan approved with the final plat of the subdivision. Each Lot owner shall be responsible for protecting and maintaining, including watering and fertilizing as necessary, any street trees located on their Lot. The Lot owner shall replace any street trees that die for any reason at Lot owner's expense and shall continue to maintain and protect said trees.

**11. BUILDING SETBACKS**

One of the intentions of these covenants and restrictions is to create a community whose site plan is varied and well integrated to the overall site surroundings as well as to each Lot.

The minimum building setbacks and offsets are:

- 40 feet from all street property lines
- 20 feet from all side property lines, and
- 35 feet from all rear property lines.

The site plan for each Lot will be reviewed to achieve the above goals and to avoid monotony or noticeably similar placement of homes to existing or previously approved homes. The

Architectural Control Committee may require offsets greater than those specified above to achieve these goals. Further, the Architectural Control Committee may, in its sole discretion, alter the offsets to the minimum allowed by the Village of Hartland if it determines that terrain conditions and/or preservation of existing trees so require.

**12. DRIVEWAYS**

Each Lot Owner shall install a hard surfaced concrete or asphalt driveway, within one year of the date of issuance of an occupancy permit for the residence on the Lot. Said driveway shall extend from the vehicle entry to the garage to an intersection with the public street.

Each Lot Owner is responsible for determining the size and location of the drive cut in the curb, in accordance with the requirements and application process of the Village of Hartland. The cost of the curb cut shall be paid by the Lot Owner.

**13. HOME CONSTRUCTION ON LOT**

Architectural Control Committee approval for each proposed home shall constitute approval of the home in regard to style, size, and other requirements of these Deed Restrictions, including placement of the home and setbacks. Architectural Control Committee approval does not guarantee any grading elevation, floor elevation, or placement of a future home on said lot. Lot Owners are solely responsible for determining that Owner's Lot is suitable for the home, placement of the home, and requisite grading for the home of Owner's choice.

**14. HEIGHT OF GRADE AND BUILDING PADS**

No Lot Owner, or any person or persons claiming under the Lot Owner, shall alter the grade of any Lot or outlot from that which is naturally occurring on that Lot at the time the site development improvements have been completed by the Developer, except to the extent required to comply with the Master Grading Plan or any amendment thereto approved by the Village Engineer on file in the office of the Village Clerk, unless and until the Lot Owner first obtains written approval of the Architectural Control Committee and the Village of Hartland for such grade alterations.

To obtain this approval, each Lot Owner shall have a grading plan prepared, at his or her expense, which details the area to be re-graded, the existing and proposed topography, analyzes the effects on site drainage, and does not unreasonably affect an adjacent Lot Owner in regard to drainage or view.

Each Lot Owner shall strictly adhere to the Master Lot Grading Plan or any amendment thereto approved by the Village Engineer on file in the office of the Village Clerk, and shall finish grade its Lot in accordance with said Plan and amendments. The Developer and/or the Village and/or their agents, employees or independent contractors shall have the right to enter upon any Lot, at any time, to inspect, maintain, or correct any drainage condition which does not conform to these requirements, and the property owner shall be responsible for cost of the same.

Subdivision grading has been performed to create a building pad on each Lot, as shown on the As Built Grading Plan.

**15. NUISANCES**

No noxious or offensive activities shall be carried on upon any Lot or outlot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

**16. OUTDOOR STORAGE**

No boat, unlicensed vehicle, inoperable vehicle, recreational vehicle, vehicle licensed as a truck, or trailer of any kind may be parked or stored on any Lot outside of a building for any time period in excess of 24 hours in any calendar week, except for trucks and/or trailers used during active construction or remodeling periods. The term "recreational vehicle" shall mean any vehicle used primarily for pleasure or recreation, and shall include, but not be limited to, snowmobiles, trail bikes, travel trailers and campers, motor homes, and off road vehicles of any kind.

**17. UTILITY RESTRICTIONS**

All Lots shall be provided with electric, natural gas, and telephone service by means of underground installation only. No residence or other building or structure on any Lot shall be serviced by the use of any secondary overhead service wires. All costs and expenses involved in installing underground utility service connections on any Lot between the utility companies' secondary pedestals and the buildings on any Lots shall be paid by the owner of said Lot.

**18. ANIMALS AND LIVESTOCK AND POULTRY**

No animals, livestock or poultry shall be raised, bred or kept on any Lot, except that dogs, cats and/or other customary household pets permitted by Village ordinances shall be permitted providing they are not raised, bred and/or kept for commercial purposes.

**19. SIGNS**

No more than three signs are allowed on any one Lot during the construction period. The combined square footage of all signs on a Lot shall not exceed twenty-five square feet, and no one sign shall exceed sixteen square feet. If any one business places signs on more than five (5) Lots, the aforementioned size restrictions apply only to the first five (5) Lots. Said business may not place more than one sign on each additional Lot, with a maximum size footage of eight (8) square feet.

No more than one sign, with a maximum size of eight (8) square feet will be allowed on any one lot following construction of the home for the purpose of selling the property except for additional occasional signs for a specific event such as, but not limited to, an Open House. The occasional signs may not be on the lot for more than three (3) consecutive days with a minimum of four (4) days before placing the same or similar signs on the lots again.

The above does not apply to the Developer who may use signs in conjunction with initial Lot sales in the subdivision or one or more subdivision entrance signs erected by the Developer an/or by the Association. No signs may be placed on the Outlots of the subdivision provided, however, that this Declaration shall not be construed to prohibit the Village of Hartland from maintaining, reconstructing, and periodically replacing a Village entrance sign.

**20. LAWN, YARD AND LANDSCAPING MAINTENANCE**

In addition to the normal maintenance and mowing of lawn areas on a Lot, the owner of each Lot shall also maintain the lawn and yard area in front of the Lot from the property line (front lot line) to the back of the curb and gutter section or shoulder of the public roadway. In addition to mowing the area between the Lot line and the road. Lot Owner shall keep this area free of debris and in all other ways properly maintained. Notwithstanding the foregoing, the Association, in its sole discretion, shall have the right, but not the responsibility, to undertake mowing and/or other lawn maintenance within the area between the front Lot line and the road, throughout the subdivision, and to charge the cost thereof as a common expense.

Developer may landscape the common areas of the subdivision, lot areas and areas between the front Lot line and the right-of-way with trees, plantings, grass areas, ponds, signs and brick/stone/wood piers or other ornamentation, at Developer's expense to enhance the beauty of the subdivision. Lot Owners and/or the Homeowner's Association shall become responsible for the maintenance of such landscaping after closing, and the Developer shall have no further responsibility as to the growth, survival or maintenance of such landscaping. Until such time as the Homeowner's Association is turned over to the Lot Owners, Developer shall maintain the common areas.

**21. ANTENNAE**

No exterior antennae, other than one dish type antenna not exceeding thirty (30) inches in diameter, shall be allowed on any Lot.

With respect to dish antennas not exceeding thirty (30) inches in diameter, same shall not be attached to the front of any house, nor shall same be located in the front yard of the residence.

**22. FENCES**

To preserve the open natural feeling of Mary Hill Subdivision's environment, no barrier fences or containment fences may be erected on or adjacent to any lot line. Only fencing which is purely of a decorative or landscaping nature may be installed. Fencing to meet governmental regulations with regard to swimming pools will be permitted. Properly designed and located kennels not exceeding 100 square feet in size for household pets will be approved providing they are properly screened from public view by landscaping.

**23. MAILBOX**

Each Lot shall have a grouped uniform mailbox and newspaper box on a uniform post, which shall be installed by the Developer at the Lot Owner's expense. The design and specifications of the mailbox, newspaper box and post, including size, style, color and materials, shall be such as is set forth in the Mary Hill Subdivision Development Agreement by and between the Village of Hartland and Mary Hill, LLC. Purchasers of Lots from the Developer shall purchase the mailbox and group mailbox post from the Developer at time of closing. Developer shall have the right to elect to install the mailboxes, newspaper boxes and posts, and to collect from Lot Owners, at closing on the lot sale, a reasonable charge for installing same. The Owner's Association shall have the right, but not the responsibility, to assume all or part of the responsibility for maintaining,

repairing and/or replacing mailboxes, newspaper boxes and/or posts, and to charge the cost thereof as a common expense. To the extent not assumed by the Association, the Lot Owner shall be responsible for maintaining the mailbox, newspaper box and post in a first class condition at all times.

**24. EASEMENTS**

In addition to those easements set forth on the subdivision plat and/or granted by Developer in accordance with the subdivision development agreement with the Village of Hartland, the Developer, in its sole discretion may grant easements to the Village of Hartland and/or to any public or private utilities, upon, over, through or across those portions of any Lot or any other portions of the subdivision for purposes of allowing the Village of Hartland or utility companies to furnish gas, electric, water, sewer, cable television or other utility service, or to facilitate drainage of storm or surface water within or through to any Lot(s) or through any other portions of the subdivision. Such easements may be granted by the Developer in its own name, and without the consent or approval of any Lot Owner, until such time as Developer has conveyed legal title to all Lots platted or to be platted in the subdivision to persons other than a successor developer.

**25. SWIMMING POOLS AND HOT TUBS**

In-ground swimming pools shall be permitted, subject to the approval of the Architectural Control Committee, if they meet Village and county ordinances and specifications. Above ground swimming pools are prohibited. Hot tubs and spas are permitted. Architectural Control Committee approval is required for permanently installed units. If a unit is placed on a concrete slab, the slab requires approval. If a unit is to be covered with a gazebo type structure, the gazebo type structure requires approval, regardless of whether or not that structure is permanently affixed to the ground.

**26. GOVERNMENT RESTRICTIONS**

The Developer, its successors and assigns, and all parties hereafter having an interest in the property, are subject to all rules, codes, regulations and ordinances of the Village of Hartland, Waukesha County, the State of Wisconsin and the Federal Government, and the same may be more restrictive than these restrictions. In the event there is a conflict between the requirements of these restrictions and any provision of any Village, County, State or Federal law or regulation, the more restrictive provisions shall control. Nothing herein authorizes any modification of, nor does it authorize the Architectural Control Committee to modify in any way, the rules, codes, regulations and ordinances of the Village of Hartland, Waukesha County, the State of Wisconsin or the Federal Government. No release or waiver by the public body and/or public utility requiring same shall be effective unless it is in writing and approved by the governing body.

To the extent that any specific restriction contained herein is the same as, or is substantially similar to, any specific restriction set forth in or on the subdivision plat, the Developer's Agreement, and/or any approval obtained in conjunction with the development of this subdivision, the inclusion of such restriction herein shall be deemed to constitute the recitation of the restriction required by the public body and/or public utility requiring same, such that same may be enforced, released or waived by the public body and/or public utility having the right of enforcement, in accordance with Sec. 236.293, Wis. Stats., whether or not enforcement rights with respect to such specific restriction are also granted herein to the Owner's Association and/or any

other Lot Owner. The foregoing shall apply only with respect to specific provisions hereof which were specifically required by a public body, and shall not apply to any general requirement that the Developer establish subdivision restrictions, any general approval of these restrictions by any public body, and/or the mere fact that a public body and/or public utility is granted any enforcement rights herein.

**27. SUBDIVIDER'S AGREEMENT**

A Subdivider's Agreement has been entered into by and between the Developer and the Village of Hartland, a copy of which is on file in the office of the Clerk of the Village of Hartland.

**28. AMENDMENTS TO DECLARATION**

This Declaration may be annulled, waived, changed, modified or amended at any time by written declaration setting forth said change, executed by the owners of at least sixty percent (60%) of the Lots in the subdivision, provided, however, so long as the Developer owns any Lot in the subdivision, or any portion of the land described on the attached Exhibit A, no amendment to this Declaration of Restrictions shall become effective unless the amendment is approved by and executed by the Developer. Notwithstanding the foregoing, the provisions of this Declaration shall not be annulled, waived, changed, amended, rescinded, or modified without the prior written approval of the Village Board of the Village of Hartland. The Village shall be deemed to have consented if it fails to act on a written request within 60 days of filing it with the Village Clerk. Further, no amendment shall become effective unless and until same is duly recorded in the office of the Register of Deeds for Waukesha County, Wisconsin. In the event there is more than one (1) owner of any Lot in the subdivision, the execution of any amendment by any one (1) or more of said owners of such Lot shall be deemed sufficient for the purpose of approving and executing any amendment, without the requirement that the other owner(s) of such Lot join in the execution of such amendment, unless such other owner or owners of said Lot have recorded in the Office of the Register of Deeds for Waukesha County, Wisconsin, prior to the date of execution of such amendment by any other owner of such Lot, a notice setting forth the fact that approval of any amendment on behalf of such Lot shall not be effective without the approval of the owner filing such notice. In no event shall this section be construed so as to require the Developer to obtain the approval of any Lot Owner to make any amendment to this Declaration which is expressly permitted by any provision of this Declaration to be made by Developer alone.

**29. ASSIGNMENT**

All of Developer's rights pursuant to this Declaration may be assigned by Developer to one or more successor developers with the prior written consent of the Village of Hartland.

**30. ENFORCEMENT**

The restrictions and covenants herein contained may be enforced by the Developer, by the Owner's Association created pursuant to the provisions of this Declaration of Restrictions, and/or by any Lot Owner in the subdivision, by proceedings at law or in equity against any person or persons violating or attempting to violate same. The proceedings may seek to recover damages and/or demand compliance. No enforcement action by the Developer, by the Owner's Association created pursuant to the provisions of this Declaration of Restrictions, and/or by any Lot Owner in the subdivision with respect to the construction, placement or alteration of any structure or

improvement on any Lot shall be commenced more than one (1) year after the completion of the construction, placement or alteration of such structure or improvement. Nothing herein contained shall be construed so as to require that the Developer or the Owner's Association undertake any enforcement action.

**31. TERM**

These restrictions shall run with the land and shall be binding upon all parties and persons having any interest in the land affected hereby for an initial period of forty (40) years from the date this Declaration of Restrictions is recorded, and thereafter shall continue for the full duration of the statutory limitation period for actions to enforce easements or covenants restricting the use of real estate (currently codified at Section 893.33 (6), Stats, but including any future amendments, modifications or re-numbering of that section).

**32. SEVERABILITY**

Invalidity of any provision of this Declaration, regardless of how determined, shall in no way affect any of the other provisions, which shall remain in full force and effect.

**33. OWNER'S ASSOCIATION**

An Owner's Association shall be created by the Developer for the purpose of managing the affairs of the subdivision, and for the purpose of managing, controlling and maintaining common areas, common improvements and common easements. Said Association shall be established as follows:

A. The Association shall be established as a non-profit corporation. Each Lot Owner shall be a member of the Association, and each Lot shall be entitled to one (1) vote at meetings of the Association. Membership shall pass with title to each Lot.

B. The Association shall be governed by a Board of Directors consisting of not less than three (3) directors, who shall act by majority vote. So long as any vacant Lot in the subdivision is owned by Developer, Developer shall be entitled to appoint a sufficient number of the directors such that the directors appointed by Developer constitute a majority.

C. Each Lot in the subdivision shall be subject to assessment by the Association for an equal share of the Association's existing or anticipated expenses, which assessments shall constitute a lien on the Lot, and, except as set forth below with respect to Waukesha County and/or the Village of Hartland, the personal obligation of the Lot Owners, until paid. In the event Waukesha County and/or the Village of Hartland become the owners of any Lot through the tax delinquency process or otherwise, the foregoing provision shall not be deemed to supersede any law limiting or eliminating the liability of the County or the Village with respect to fees or assessments imposed by this Declaration. Further, in the event Waukesha County and/or the Village of Hartland become the owners of any Lot through the tax delinquency process, neither the County nor the Village shall have any personal obligation for the payment of Association assessments.

D. "Special Assessments" may be made and levied by the Association against a particular Lot owner and his, her or their Lot (without levying against other Lots) for:

costs and expenses (anticipated or incurred) for repair of damage to common areas caused by or at the direction of the Lot owner or the family or guests of the Lot owner;

costs, expenses and actual attorneys fees incurred in, or in anticipation of, any suit, action or proceeding to enforce this Declaration against the Lot owner;

interest due on general or special assessments;

all other costs and expenses anticipated or incurred by the Association which are subject to special assessments as provided under this Declaration; and

costs, expenses and actual attorney's fees incurred in or in anticipation of, any suit, action or proceeding brought against the Owner's Association.

E. "General Assessments" may be made and levied by the Association equally against each Lot owner and his, her or their Lot for the following "common expenses" which may be anticipated, incurred or paid by the Association for:

maintenance, repairs, upkeep or operation of common areas and any additional common areas that may be acquired by the Association;

any insurance maintained by the Association;

taxes, assessments and charges of any kind made or levied by any governmental authority against the Association or upon any property of the Association;

all costs and expenses for the operation and administration of the Association, including legal, accounting, management fees, bonding, insurance and other costs incident to the exercise of any of its powers or obligations;

costs and expenses for additional improvements to common areas beyond those installed by Developer and approved by the Association;

all items subject to special assessment which have not been collected from a Lot owner at the time such payments are due; provided that upon collection of the special assessment from that Lot owner, all other Lot owners shall receive an appropriate adjustment, reimbursement or credit on future general assessments, as the Committee may determine, for payments made under this paragraph;

all damages, costs, expenses and attorneys fees incurred in, or in anticipation of, any suit or proceedings (whether administrative, legislative, judicial) which are not otherwise collected by special assessment;

costs and expenses of service, if any, made available to all Lots and/or for any common area; and

all other costs and expenses declared to be common expenses under this Declaration.

The general assessments for all common expenses shall be levied equally against each Lot.

Each Lot owner shall promptly pay, when due, all general and special assessments levied by the Association against such owner and his, her or their Lot, together with all costs, expenses and reasonable attorney fees incurred by the Association in collection of any delinquent assessment(s). All assessments shall become due as the Association may determine appropriate (in a lump sum or in installments with or without interest.) Time is of the essence with respect to all payments.

All co-owners of a Lot shall be jointly and severally liable for all general and special assessments levied against the Lot, regardless of the type of tenancy, estate or interest in the Lot (whether as joint tenants, tenants-in-common, land contract purchaser(s) or seller(s), or otherwise.)

All general and special assessments which are not paid when due: shall bear interest at eighteen percent (18%) per annum until the assessment is paid in full; shall constitute a lien on the Lot; and shall be collectible and enforceable by the Association by suit against the Lot owner, by foreclosure or the lien, and/or in any other manner or method provided under this Declaration or laws of the State of Wisconsin.

The lien granted hereunder shall also cover and include all interest accruing on the delinquent assessments, plus costs, expenses and attorney's fees for collection.

The Association shall have the exclusive right and power to collect or enforce collection of all general and special assessments levied by the Association. They shall further have the exclusive right to bring any and all actions and proceedings for the collection thereof and/or the enforcement of liens arising therefrom. The Association may bring an action at law against any Lot owner personally to collect such assessments and/or to foreclosure the lien for such assessments against the Lot (in the same manner and method as an action to foreclose a real estate mortgage.) The Association shall have the right at any time to notify all Lot owners within the subdivision of the delinquency of any Lot owners.

F. The Articles and By-Laws of the Association shall contain such additional provisions as Developer may deem appropriate at the time of establishment of the Association.

G. In the event any further division of any Lot (whether by Subdivision Plat, Certified Survey Map, and/or other legal land division) creates additional residential Lots within the subdivision, each Lot so created shall have equal membership and voting rights in the Association, and be subject to assessment for an equal share of the Association's existing and anticipated expenses, with all other Lots in the Subdivision.

**34. OUTLOTS 1-7.**

The Mary Hill Subdivision Plat contains areas designated as Outlots 1-7. Said Outlots are common areas for the Lots in Mary Hill. Each Lot in Mary Hill shall be deemed to include an equal undivided ownership interest in Outlots 1-7, and each conveyance of a Lot in Mary Hill shall be deemed to include the conveyance of such undivided interest, whether or not specifically set forth in the instrument of conveyance. The Developer has granted easements to the public for the use of the paths within the Outlots for pedestrian and bicycling purposes as set forth in Exhibit \_\_\_ and a continuation of such public pathways in Outlots 2 and 5 is anticipated as of the date of this Declaration. Developer further expressly retains the right to grant additional easements for the use of said Outlots in accordance with the provisions of Section 39 below.

**35. MAINTENANCE OF DRAINAGE EASEMENTS, POND, COMMON AREAS, ENTRANCE SIGNAGE, ISLANDS AND PUBLIC WALKING PATHS**

The Owner's Association has the responsibility of properly landscaping and maintaining all common areas, street islands and subdivision entrance signage, pond wells, and maintaining the street name and traffic control signs and street lights within the subdivision. The Association has the responsibility of properly maintaining (including snow removal) all public walking paths within the subdivision. The street lights shall be the property of Wisconsin Energy Corporation. Repairs, maintenance, and replacement of the street lights shall be performed by Wisconsin Energy Corporation and shall be paid for by the Owner's Association. Subject to the provisions of Paragraph 36 below, the Owner's Association further has the responsibility of properly maintaining all drainage easement areas located within the individual Lots which are subject to this Declaration of Restrictions and the pond, pond wells, and all drainage easement areas within common areas. Maintenance of the pond shall include, but not necessarily be limited to: maintenance of the pond wells, preservation of the embankments; prevention of erosion above the pond, around the pond and downstream therefrom; and dredging if and when necessary to ensure that they function in accordance with their original purpose and design. In the event the Owner's Association does not properly landscape and/or maintain said items, the Village of Hartland may send written notice to the Association setting forth which of said items the Village has determined are not properly landscaped and/or maintained, and stating that the Village of Hartland may perform such landscaping and/or maintenance if not properly done by the Association. The above-referenced notice shall give the Association a minimum of fifteen (15) days to correct the problem, unless the Village determines, in its discretion, that a shorter notice period is appropriate due to a hazardous condition requiring more immediate action. If such landscaping and/or maintenance is not performed within the time granted by the above-referenced notice, and/or if the Village determines, in its discretion, that immediate action, without notice, is required due to an imminent threat of damage to persons or property, the Village of Hartland shall then have the authority, but not the obligation, to undertake such landscaping and/or maintenance, and shall have the right to charge the Lot Owners on a pro rata basis for any costs incurred by the Village as a result of said

landscaping and/or maintenance. Said costs shall be assessed in the same manner as special charges pursuant to Section 66.0627 Wis. Stats. If such charges are not paid by any Lot Owner within the period fixed by the Village of Hartland, such charges shall become a lien upon the Lot Owner's Lot as provided in Section 66.0627(4), Wis. Stats., and shall be extended upon the tax rolls as a delinquent tax against the Lot Owner's Lot as provided in Section 66.0627, Wis. Stats.

**36. DAY TO DAY MAINTENANCE OF DRAINAGE EASEMENT AREAS**

The day to day maintenance of any drainage easement area located on an individual Lot shall be the responsibility of the owners of such Lot. Day to day maintenance includes such items as cutting grass, raking leaves, removing fallen trees and branches, and removing other minor obstructions. This paragraph shall not limit the Village's authority of enforcement against the Association, as described in Section 35, above.

**37. POND LIABILITY**

Storm water retention ponds have been created and are required by the Village to assist in the removal of sediment and detention of storm water in the subdivision. The storm water retention ponds are not intended to be used for swimming or recreational facilities, and any use of the storm water retention ponds for such use is strictly prohibited. Any person 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 subdivision, each Owner and its respective successors, assigns, heirs and personal representatives thereby waives, to the fullest extent permitted by law, any and all claims for liability against the Village of Hartland, the Developer, the Association, and their respective agents, contractors, employees, 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 storm water retention ponds. In addition, each Owner (and its successors, assigns, heirs and personal representatives) agrees to indemnify, defend and hold harmless the Village of Hartland, the Developer, the Association, and their respective agents, contractors, employees, officers, directors and shareholders, from and against any and all liabilities, claims, demands, costs and expenses of every kind and nature (including attorney's fees), including those arising from any injury or damage to any person (including death) or property sustained in or about or resulting from the use or existence of the storm water retention ponds.

**38. PATHWAYS**

The Developer shall establish public asphalt pathways over portions of the Common Areas and Outlots as set forth in Exhibit C, and the Association shall be responsible for all maintenance, repair, and replacement of such pathways. The pathways shall be used for public pedestrian and bicycle purposes only. The Developer and Association can give no assurance that the pathways will not be used by unauthorized persons or for unauthorized purposes. The Lot owner's affected by the pathways, by acceptance of a deed thereto, waive and release Developer and the Association from any and all liability or responsibility for personal injury or property damage which may occur as a result of the establishment, maintenance or use of the pathways.

**39. DEVELOPER'S RIGHTS**

Developer has acquired or may acquire in the future other lands in the vicinity of this Subdivision, including but not necessarily limited to the lands described on the attached Exhibit B,

Developer shall have the express right, but not the obligation, to develop all or part of the lands described on the attached Exhibit B, and/or other lands in the area, in such a manner as to create an integrated development with this Subdivision. To accomplish that purpose, Developer shall have the express right, without the necessity of obtaining the approval of the Owner's Association or any Lot Owner, to do any or all of the following:

- a. Grant easements for the use, and establish requirements for the maintenance of, common Outlots and/or other common areas such that the Owners of Lots in all of the developments have the full right of access to and use of common Outlots and/or other common areas, and the Owners of all Lots share equally in the maintenance expenses.
- b. Amend this Declaration of Restrictions with the prior consent of the Village of Hartland so as to subject any or all of said additional lands to this Declaration of Restrictions. In doing so, Developer shall have the right, when required or requested by any governmental body, to establish certain provisions which may be applicable to one or more, but less than all, of the developments.
- c. Amend the Articles of Incorporation and/or By-laws of the Owner's Association so that the Owner's Association functions as the association for all of the developments.
- d. Amend the provisions hereof with respect to the Architectural Control Committee (ACC) so that there are separate ACCs for each development, or so that there is a combined ACC for some or all developments.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 29th day of September, 2003.

Mary Hill, LLC Developer

By: [Signature]  
RICHARD A. HANZEL Manager

ACKNOWLEDGMENT

STATE OF WISCONSIN)  
)SS.  
WAUKESHA COUNTY )

Personally came before me this 29th day of September, 2003, the above-named Richard Hanzel, to me known to be the person who executed the foregoing instrument and acknowledged the same.

[Signature]  
Notary Public, Waukesha County, WI  
My commission expires 7-16-06

Approved:

[Signature]  
Village of Hartland, Board of Trustees, August 25, 2003

**Recorded**  
**#3076396**

Document drafted by and Return to:  
Michael D. Orgeman  
Lichtsinn & Haensel, s.c.  
111 E. Wisconsin Avenue, Suite 1800  
Milwaukee, WI 53202

EXHIBIT A

# MARY HILL

BEING A PART OF THE SW 1/4 OF THE NW 1/4, AND PART OF THE NW 1/4  
AND SW 1/4 OF THE SW 1/4, ALL IN SECTION 25, T.8N., R.18E.,  
VILLAGE OF HARTLAND, WAUKESHA COUNTY, WISCONSIN

Initials \_\_\_\_\_

Date \_\_\_\_\_

**Recorded**  
**#3076396**

EXHIBIT B

# MARY HILL PARK

BEING A PART OF THE NW 1/4, NE 1/4, SE 1/4 AND SW 1/4 OF THE NW 1/4 OF SECTION 25, AND A PART  
OF THE NE 1/4, SE 1/4, SW 1/4 AND NW 1/4 OF THE NE 1/4 OF SECTION 26, ALL IN T.8N., R.18E.,  
TOWN OF MERTON, WAUKESHA COUNTY, WISCONSIN

initials \_\_\_\_\_

ate \_\_\_\_\_