

rec 12/14/90
DOC. 1696148

DECLARATION OF RESTRICTIONS
FOR
HAWKSNEST SUBDIVISION

KNOW ALL PERSONS BY THESE PRESENTS; that PEBBLE VALLEY ASSOCIATES is a partnership duly organized and existing under and by virtue of the laws of the State of Wisconsin, located at Brookfield, Wisconsin (herein referred to as "Developer," which term shall also include the duly authorized agent of Developer). Developer is the owner of Hawksnest, being a Subdivision of part of the Southeast Quarter (SE 1/4) and Southwest Quarter (SW 1/4) of the Southeast Quarter (SE 1/4) of Section 10, and part of the Northwest Quarter (NW 1/4), Northeast Quarter (NE 1/4), Southwest Quarter (SW 1/4) and Southeast Quarter (SE 1/4) of the Northeast Quarter (NE 1/4) of Section 15, Township 7 North, Range 18 East, Town of Delafield, Waukesha County, Wisconsin, (herein referred to as "Hawksnest") and intending to establish a general plan for the use, occupancy and enjoyment of Hawksnest, does hereby declare for the mutual benefit of present and future owners of lands in Hawksnest and any future stages of development added as provided in Section C, below (herein referred to individually as "Owner" and collectively as "Owners"), that Hawksnest shall be subject to the following restrictions:

A. BUILDING AND USE RESTRICTIONS

1. All lots are restricted to the erection of a one story, story and one-half, two story or split level single family residence building with a minimum square footage of living space (without regard for basement level areas) of three thousand (3000) square feet, and with an attached garage which will accommodate at least two cars.

2. Only one residence building may be erected on a lot.

3. The garage must be attached to the residence, directly or by breezeway, or built into the basement of the residence and must be constructed with the residence. Garage entrances must be on the side of the building unless Developer grants an exception. All driveways must be paved.

4. All homes and appurtenant structures in Hawksnest shall be of a traditional design such as those commonly referred to as Early American, Cape Cod, English Tudor, French Manor, Georgian, and the like. The design of each home shall be subject to Developer's approval in accordance with Paragraph A.9, below. In granting such approval, Developer may, in its sole discretion, permit portions of the structure (such as sun rooms, green houses and window areas) which are not historically based, if their appearance is reasonably compatible with the traditional styles of architecture permitted in Hawksnest. Any subsequent

remodeling or renovation shall comply with the design standards set forth herein.

5. Owner and all contractors and subcontractors shall comply with the erosion control plan requirements set forth in the attached Exhibit A.

6. The exterior walls of the home and attached garage must be constructed of structural face brick, stucco or stone, wood or other natural materials. Manufactured siding materials such as pressed board, masonite, plywood, vinyl, aluminum or steel are not permitted. Stucatto board is acceptable if no seams are exposed. Any exposed basement or foundation wall must be covered with face brick, stone or stucco. Chimneys shall be constructed of structural masonry materials. All roof areas having an appropriate pitch shall be covered with wood shakes; provided, however, Developer shall have the right to approve other roofing materials if they are of comparable quality or better suited to the approved building design.

7. The residence, attached garage, landscaping and paved driveway must be completed within one (1) year from the start of construction.

8. All structures shall be constructed within the building envelopes and conform to the setback restrictions set forth in the Plat of Hawksnest.

9. All building plans, the exterior design and color of each building to be constructed, and all yard grades and stake

out surveys must be approved by Developer in writing prior to application for a building permit. In addition, basic site features such as fences, decks, inground swimming pools, additions and other temporary or permanent structures or elements contributing significantly to the total environmental effect of Hawksnest are subject to the prior written approval of Developer. Developer's approval shall be based upon the building and use restrictions contained in this Section A and such guidelines as may be adopted from time-to-time by Developer. Developer may withhold exterior design approval if the design is too similar in appearance to others in close proximity.

10. In lieu of public street lights, there shall be installed in a location designated by the Developer at the time of construction of a residence building on a lot, one outdoor electric lamppost with photoelectric controls with no override switch. The design of the lamppost shall be subject to the approval of the Developer. The lamppost shall be maintained by the lot Owner in proper operating manner. If the lamppost is not so maintained, maintenance shall be performed by the Hawksnest Home Owner's Association, created pursuant to Section B, below, and the cost of such maintenance shall be an assessment against the lot Owner, payable within ten (10) days after the date of the assessment.

11. The design and location of each mail box/newspaper box shall be subject to the approval of Developer.

12. There shall be no outside storage of boats, trailers, buses, commercial trucks, campers or other vehicles or items deemed to be unsightly by the Developer.

13. There shall be no garden or other out buildings, above ground swimming pools or satellite dish antennas having a diameter in excess of twenty-four (24) inches. No antenna or satellite dish shall be visible from any roadway or neighboring lot.

14. Developer shall have the right to modify the building and use restrictions contained in this Section A with respect to Lot 11 because of its location within Hawksnest.

15. Any Owner violating the restrictions contained herein shall be personally liable for and shall reimburse Developer for all costs and expenses, including attorney's fees, incurred by Developer in enforcing the restrictions contained in this Section A. The foregoing shall be in addition to any other rights or remedies which may be available to Developer.

B. OWNERS ASSOCIATION

1. An unincorporated association (herein referred to as the "Association") of the Owners of lands in Hawksnest and all future stages of development added as provided in Section C, below, is hereby created for purposes of owning, managing and controlling the Common Areas (as defined below) and performing its other duties as set forth herein for the common benefit of

the Owners. The Association shall be known as "Hawksnest Homeowners Association."

2. The term "Common Areas" shall include the following areas of Hawksnest and any future stages of development added in accordance with Section C, below.

(a) All outlots, conservancy areas, recreational areas and common areas owned by the Association or Developer and shown on the Plats or Certified Survey Maps of the lands subject to this Declaration.

(b) The area of easements granted to the Association by Developer over portions of the lands subject to this Declaration.

(c) The grass area and any fencing and landscaping contained within the public rights-of-way of any public roadway adjacent to the lands subject to this Declaration.

(d) All landscaped courts and boulevards contained within the dedicated streets in the lands subject to this Declaration.

Any portion of the Common Area within the public street right-of-way may only be improved with the consent of the appropriate public authorities.

3. The Association shall be governed by a three-member Committee, hereinafter referred to as the "Committee," which shall be solely responsible for the activities of the

Association. The initial members of the Committee shall be Ronald P. Siepman, James P. Siepman and Charles B. Schiereck.

4. To qualify as a member of the Committee, a person must be either an Owner or a duly designated officer or representative of an Owner.

5. The initial term of the Committee shall commence on the date of recording of this Declaration and shall continue until two (2) calendar years after the year in which Declarant first no longer owns seventy-five percent (75%) of the lots then subject to this Declaration. During such initial term Declarant shall have the right to appoint, remove or replace all three members of the Committee. Declarant may relinquish or reassert all or any part of such right at any time or times during such initial term.

6. Subject to the rights of Declarant as provided in Paragraph B.5, above, each Owner shall be entitled to vote in person or by proxy in elections for selecting members of the Committee. Owners of lots shall have one (1) vote for each lot owned.

7. After the initial term as provided in Paragraph B.5, above, the term of office of members of the Committee shall be for two (2) calendar years. If any member of the Committee shall die, resign, be unable to act or cease to be qualified to be a member, the unexpired term of such member shall be filled by a special election.

8. All meetings of the Committee shall be open to Owners and held upon no less than three (3) days prior written notice to all of the Owners. Two (2) members of the Committee shall constitute a quorum. Actions of the Committee shall be taken by majority vote.

9. The Committee shall have the following duties:

(a) To provide for the control and maintenance of the lands and improvements in the Common Areas;

(b) To establish dates and procedures for the election of members of the Committee;

(c) To promulgate operating procedures for the conduct of the Association and Committee's affairs; and

(d) To enforce the provisions of this Section B.

10. The Committee shall have the following powers:

(a) To take such actions as may be necessary to cause the Common Area to be used, improved, maintained, repaired, landscaped (where appropriate) and kept in good, clean and attractive condition;

(b) To enter into contracts and to employ agents, attorneys or others for purposes of discharging its duties and responsibilities hereunder; and

(c) To levy and collect assessments in accordance with the provisions of Paragraph B.11, below.

11. The Committee shall levy and collect assessments in accordance with the following:

(a) The Owner of each lot shall be subject to a general annual charge or assessment of its pro rata share of the costs incurred or anticipated to be incurred by the Association in performing its duties. The pro rata share appurtenant to a lot shall be a fraction, the numerator of which shall be one (1) and the denominator of which shall be the total number of lots subject to this Declaration (including added future stages) at the time of the assessment. Said costs shall include, but not be limited to: taxes; insurance; repair, replacement and additions to the improvements made to the Common Area; equipment; materials; labor and the management and supervision thereof; and all costs of the Association reasonably incurred in conducting its affairs and enforcing the provisions of this Section B.

(b) Assessments must be approved at a duly convened meeting of the Committee.

(c) Written notice of an assessment shall be personally delivered to each Owner subject to the assessment or delivered by certified mail addressed to the last known address of such Owner.

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

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

(f) The Committee may record a document with the Register of Deeds in Waukesha County, Wisconsin, giving notice of a lien for any such unpaid assessment and upon payment or satisfaction of the amount due record a document cancelling or releasing any such lien. The failure to file any such notice shall not impair the validity of the lien. All recording and attorney fees relating to any such document shall be borne by the affected Owner.

(g) Upon application by any Owner, any member of the Committee may, without calling a meeting of the Committee, provide to such Owner a statement in recordable form certifying (1) that the signer is a duly elected member of the Committee and (2) as to the existence of any unpaid assessments or other amounts due to the Association. Such statement shall be binding upon the Committee and shall be conclusive evidence to any party relying thereon of the

payment of any and all outstanding assessments or other amounts due to the Association.

(h) Any lien for assessment may be foreclosed by a suit brought by the Committee, acting on behalf of the Association, in a like manner as the foreclosure of a mortgage on real property.

12. During the initial term of the Committee, the Committee shall not have the power to make improvements to the Common Area in addition to those then in existence (herein referred to as "Additional Improvements") without the written approval of Developer. After the initial term, the Committee shall not have the power to make Additional Improvements having a cost in excess of One Thousand Dollars (\$1,000.00) without the consent of ninety percent (90%) of the then current Owners.

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

14. Failure of the Association or the Committee to enforce any provisions contained in this Section B, upon the

violation thereof, shall not be deemed to be a waiver of the rights to do so, or an acquiescence in any subsequent violation.

15. If the Committee shall fail to discharge its duties under this Section B within sixty (60) days of written demand by the Town, the Town may discharge the duties of the Committee. The costs of the Town incurred in connection therewith shall be charged to the Owners of the properties affected by such actions of the Town by adding to each Owner's real estate tax statement incurred a charge equal to such Owner's pro rata share (the same as such Owner's share of annual assessments as provided in Paragraph B.11(a), above) of such costs.

C. FUTURE STAGES OF HAWKSNEST

The Developer, its successors and assigns shall have the right to bring within this Declaration lands in future stages of Hawksnest, provided such lands are or become adjacent to (or separated by a road, highway or utility right-of-way from) the real estate which is or becomes subject to this Declaration or any Supplemental Declaration. The future stages added to this Declaration authorized under this subsection shall be added by recording Supplemental Declarations of Covenants and Restrictions with respect to the future stages which shall include such future stages in this Declaration, extend the provisions of this Declaration to such future stages and indicate any provisions that differ from the provisions contained in this Declaration or

any prior Supplemental Declaration. Except with respect to increasing the number of Owners and adding to the Common Area, such Supplementary Declarations shall not revoke, modify or add to the covenants established for lands theretofore subject to this Declaration or any prior Supplemental Declaration.

D. AMENDMENT PROVISIONS

Any of the provisions of this Declaration may be annulled, waived, changed, modified or amended at any time by written document setting forth such annulment, waiver, change, modification or amendment, executed by the Owners of lands then having at least sixty percent (60%) of the votes in the Association (notwithstanding the foregoing, provisions hereof requiring a vote in excess of sixty percent (60%) shall not be amended without the affirmative vote of such higher percentage); provided, however, that any such action must also be approved in writing by (i) the Town, (ii) Waukesha County, and (iii) the Developer so long as it shall be an Owner. This Declaration and all amendments shall be executed as required by law so as to entitle it to be recorded, and shall be effective upon recording in the office of the Register of Deeds for Waukesha County, Wisconsin.

E. ROADS

1. Certain roads in Hawksnest and future stages terminate or may terminate at the then current boundaries of the subdivision. The Owners are hereby put on notice that said roads

(or any other roads which may be located over outlots owned by Developer) may be connected with or extended to other roads in future stages of the development of Hawksnest or in lands owned by others if such extension or connection is approved by the Town, Waukesha County or other public entities having jurisdiction. No Owner shall have the right to object to any such extension or connection or to claim that he has incurred a loss or damage as a result thereof.

2. The Plat of Hawksnest as of the date of recording hereof anticipates a road connecting Hawksnest to lands to the south at a point immediately south of Hawksnest Court. Developer shall have the right to relocate said road at any location or locations within said road or Outlot 5 by recording a duly approved Plat or Certified Survey Map. As a part of any such relocation, Outlot 5 shall be adjusted to exclude any new road or roads and to include any of the existing road that is abandoned. Upon any such relocation, the Developer shall quit claim Outlot 5 to the Association. Outlot 5 as so modified shall continue to be a Common Area.

F. DURATION OF RESTRICTIONS

These restrictions shall be in force in perpetuity and shall be deemed to run with the land and shall bind the Owners and their heirs, successors and assigns and be enforceable by any Owner and, to the extent permitted by Paragraph C.15, above, the Town.

IN WITNESS WHEREOF, the undersigned, being the authorized partner of PEBBLE VALLEY ASSOCIATES, has executed this Declaration of Restrictions this 28th day of November, 1990.

PEBBLE VALLEY ASSOCIATES

By: *Ronald P. Siepmann*
 Ronald P. Siepmann, Partner

STATE OF WISCONSIN)
) SS
 WAUKESHA COUNTY)

Personally came before me this 28th day of November, 1990, the above-named Ronald P. Siepmann, to me known to be the person who executed the foregoing instrument and acknowledged the same.

James T. Deen
 Notary Public, Waukesha County,
 State of Wisconsin
 My Commission: October 9, 1994

This Instrument Was Drafted By:

George F. Roth
 GODFREY & KAHN, S.C.
 780 North Water Street
 Milwaukee, WI 53202

CONSENT OF MORTGAGEE

M&I Northern Bank as mortgagee of any present or future mortgage on the lands subject to the foregoing Declaration of Restrictions, hereby consents to and agrees that its mortgages shall be subject to the foregoing Declaration of Restrictions.

M&I NORTHERN BANK

BY: [Signature]

JAMES H. SAXTON V.P.

Attest: [Signature]

Mary S. Suttle

STATE OF WISCONSIN)
) ss.
COUNTY OF)

Personally came before me this 28 day of November, 1990, the above-named James Saxton and Mary Suttle, to me known to be the V.P. and asst. V.P., respectively of M&I Northern Bank and to me known to be the persons who executed the foregoing instrument and acknowledged the same.

[Signature]

Sandra H. Magnus
Notary Public [Signature]
County, WI
My Commission: 4-27-94

EXHIBIT "A"

INDIVIDUAL LOT EROSION CONTROL PLAN
FOR HAWKSNEST SUBDIVISION

To protect Pewaukee Lake, neighboring property and rights-of-way, the purchaser shall prevent soil erosion and sedimentation by:

1. Installing and maintaining a silt fence or straw bale barrier on all downslope sides of the lot;
2. Installing and maintaining a gravel entrance (6 inches of 2 to 3 inch aggregate, 7 feet wide and 50 feet long or the distance from the road to the construction area, whichever is less); requiring all vehicles to use that entrance;
3. At the end of each work day, cleaning up any soil tracked onto the road;
4. Locating all soil piles at least 25 feet from any downslope road, ditch or drainageway; immediately placing silt fence on the downslope side of all soil piles;
5. As soon as gutters are installed, placing extenders on all downspouts to route roof water to a stabilized area; continuing use of the extenders until vegetation is established; and
6. Sodding, or seeding and mulching, the lot within 60 days after the occupancy permit is issued; maintaining the sod or seed by watering and any necessary replanting. (for homes with occupancy permits issued between September 1 and April 30, the lot shall be covered with mulch within 30 days after the occupancy permit is issued and the mulch shall be maintained until the lot is sodded or seeded. For these lots, sodding or seeding shall be completed by June 1.)

All erosion control measures shall be installed and maintained according to the best standards and specifications set forth in the Wisconsin Construction Site Best Management Practice Handbook, the Wisconsin Soil Conservation Service Field Technical Guide, or adopted by the Waukesha County Land Conservation Department.