

rec. 1/26/96 Doc. 2096405

DECLARATION OF RESTRICTIONS

FOR

TALLGRASS SUBDIVISION

KNOW ALL PERSONS BY THESE PRESENTS; that SIEPMANN DEVELOPMENT COMPANY 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 Tallgrass Subdivision, being a subdivision of part of the NW. 1/4 and SW. 1/4 of the NE. 1/4, Section 32, Town 7 North, Range 19 East, City of Waukesha, Waukesha County, Wisconsin, (hereinafter referred to as "Tallgrass") and intending to establish a general plan for the use, occupancy and enjoyment of Tallgrass, does hereby declare for the mutual benefit of present and future owners of lands in Tallgrass and any future stages of development added as provided in Section C, below (herein referred to individually as "Owner" and collectively as "Owners"), that Tallgrass shall be subject to the following restrictions:

A. BUILDING RESTRICTIONS

1. All lots in Tallgrass are restricted to the erection of a one story, story and one-half, or two story single family residence building with a minimum square footage of living space (without regard for basement level areas) of two thousand three hundred (2300) square feet, and with an attached garage which will accommodate at least two cars.

2. 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. The maximum size of the garage shall conform to City of Waukesha (hereinafter referred to as the "City") ordinances. Wherever possible, garage entrances must be on the side of the building.

3. The exterior walls of the residence and attached garage must be constructed of brick, stone, stucco, wood siding, (which includes only solid wood or wood waferboard products of the type and quality of the innerseal lap siding product manufactured by Louisiana Pacific Corporation on the date hereof) or other natural materials. Siding materials such as aluminum, vinyl, steel, pressed board, masonite or plywood will not be permitted.

4. All two story and story and one-half residence roofs shall have a minimum pitch of eight feet in height for each twelve feet in length (8/12), except for rear dormers on a story and one-half residence. All one story residence roofs shall have a minimum pitch of ten feet in height for each twelve feet in length (10/12). A lower minimum roof pitch may be allowed in special circumstances if approved in writing by Developer.

5. The residence and attached garage and a sodded or seeded lawn and a paved driveway must be completed within one year of the start of construction.

6. Only one residence may be erected on a lot.

7. The minimum setback from any abutting street right-of-way is 50 feet. Side yard offsets shall be at least 20 feet. Rear yard offsets shall conform to City ordinances for R-2 zoning districts. In certain instances, in order to facilitate the use of side entry garages, the developer, pursuant to paragraph A. 13 hereof, may allow a variance from the setback and/or sideyard offset requirements; provided that in no event will either the side yard or setback be reduced to less than those required by City ordinances for R-2 zoning districts.

8. There shall be no outside storage of boats, trailers, buses, commercial trucks, recreational vehicles or other vehicles or items deemed to be unsightly by the Developer or the Tallgrass Homeowners Association, created pursuant to Section B.

9. All building plans and the exterior design of each building to be constructed, and all yard grades and stakeout 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 Tallgrass 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 the Guidelines for Plan Approval for Tallgrass subdivision which Owner shall obtain from Developer prior to submitting plans to Developer for approval. Developer may withhold exterior design approval if the design is too similar in appearance to others in close proximity. Following such time that a principal residence has been constructed upon each lot in Tallgrass, Developer may, but shall not be obligated to, delegate to the Tallgrass Homeowners Association Committee the approval authority contained in this Paragraph 9. To be effective, notice of such delegation shall be recorded in the office of the Register of Deeds for Waukesha County, Wisconsin.

10. At the time of construction of a residence the Owner shall install at a location designated by Developer, one outdoor electric postlamp with an unswitched photo-electric control. The design of the postlamp shall be subject to the approval of the Developer. The postlamp shall be maintained by the Owner in a proper operating manner. If the postlamp is not so maintained, maintenance shall be performed by the Tallgrass Homeowner's Association, and the cost of such maintenance shall be an assessment against the Owner, payable within 10 days after the date of the assessment.

11. There shall be no satellite dish antennas having a diameter in excess of 24 inches, no outbuildings and no above ground swimming pools. No antenna or satellite dish shall be visible from any roadway or neighboring lot. All swimming pool related pump, heater and filter equipment must be concealed in an enclosure to minimize noise and visibility.

12. Each Owner, at the time of home construction, shall be responsible for grading their lot so as to direct drainage toward the street or other established drainageway and to prevent an increase in drainage on to neighboring property. In addition, at the time of construction, erosion control measures shall be installed and maintained according to the standards and specifications set forth in the Wisconsin Construction Site Best Management Practices Handbook and/or local ordinances.

13. The Developer, and no other, shall have the right and authority to modify the Building Restrictions or to permit variances from application thereof, if in its opinion, the modification or variance is consistent and compatible with the overall scheme of development of Tallgrass, provided that no such modification shall be in violation of local ordinances, or have the effect of revoking an approval previously granted in writing hereunder. Notwithstanding the foregoing, any such modifications or variances shall be at the sole and absolute discretion, aesthetic interpretation and business judgment of the Developer, and this paragraph and any modifications or variances granted hereunder shall not in any way be interpreted (i) as preventing the Developer from requiring at any time, and from time to time, strict compliance with the Building and Use Restrictions, or (ii) as entitling any person to a modification or variance not approved and granted in writing by the developer.

14. Any Owner violating the restrictions contained herein shall be personally liable for and shall reimburse Developer and the Association for all costs and

expenses, including attorneys' fees, incurred by Developer or the Association 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 and the Association.

B. OWNERS ASSOCIATION

1. An unincorporated association (herein referred to as the "Association") of the Owners of land in Tallgrass and all future stages of development as provided in Section C, below (herein referred to individually as "Owner" and collectively as "Owners"), is hereby created for purposes of managing and controlling subdivision Common Areas (as defined below) and performing other duties as set forth herein for the common benefit of the Owners. The Association shall be known as "Tallgrass Homeowners Association".

2. The term "Common Area" shall include the following areas, plus any additional areas which may be added in accordance with Section C.

(a) Outlots 1, 2, 3, 4, and 5 of Tallgrass.

(b) The grass area and any fencing and landscaping contained within the public right-of-way of Northview Road.

(c) All landscaped courts and boulevards contained within the dedicated streets in Tallgrass. Any portion of the Common Area within a public street right-of-way may only be improved with the consent of the City and other appropriate public authorities. Consent to any such improvement shall not be considered or construed as an assumption of liability or responsibility for maintenance, nor shall such consent relieve the Association and/or the Owners of duties to maintain such improvements.

3. Each lot shall have an appurtenant undivided fractional interest in the common area outlots (including added future stages), the numerator of which shall be one and the denominator of which shall be the total number of lots subject to this Declaration (including added future stages). All deeds and any other conveyances of any lot in Tallgrass shall be deemed to include such appurtenant undivided interest in the common area outlots, whether or not so specifically stated in any such deed or other conveyance.

4. 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 James P. Siepman, Charles B. Schiereck and Karen S. Reed.

5. 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.

6. So long as fifty percent (50%) or more of the lots in Tallgrass are owned by Developer, all three members of the Committee shall be appointed by Developer. So long as twenty percent (20%) or more but less than fifty percent (50%) of the lots in Tallgrass are owned by Developer, two members of the Committee shall be appointed by Developer and one member shall be elected as provided herein. So long as five percent (5%) or more but less than twenty percent (20%) of the lots in Tallgrass are owned by Developer, one member of the Committee shall be appointed by Developer and two members shall be elected as provided herein. If less than five percent (5%) of the lots in Tallgrass are owned by Developer, all of the members of the Committee shall be elected as provided herein. The provisions of this paragraph shall also apply in the event of any future stages of development in accordance with Section C., below, but the lots contained therein shall not be considered in determining the above percentages.

7. Each Owner shall be entitled to vote in person or by proxy in elections for selecting members of the Committee. Owners shall have one vote for each lot owned.

8. The term of office of the initial members of the Committee shall commence upon the execution hereof and shall continue until December 31, 1997. Thereafter, the term of office of members of the Committee shall be for two 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, (or appointment by Developer, if applicable, pursuant to the terms of Paragraph B. 6, above).

9. All meetings of the Committee shall be open to Owners. The annual meeting shall be held upon not less than three days prior written notice to all of the Owners. Meetings of the Committee for the purpose of carrying out its duties and powers as set forth herein may be held from time to time without notice. Two members of the Committee shall constitute a quorum. Actions of the Committee shall be taken by majority vote.

10. The Committee shall have the following duties:

- (a) To provide for the maintenance of improvements in the Common Areas;
- (b) To establish dates and procedures for the election of members of the Committee; and
- (c) To maintain in force at all times commercial general liability insurance in an amount not less than one million dollars (\$1,000,000.00);
- (d) To provide for the maintenance and repair of the sidewalks located on the Common Area and the sidewalk located between the east line of Tallgrass

Subdivision and University Drive, pursuant to an easement granted by Waukesha County to the City of Waukesha;

(c) To provide for payment of the cost of installing a future sidewalk on the east side of University Drive, pursuant to an agreement by and among the Developer, the Association and Waukesha County.

11. The Committee shall have the following powers:

(a) To take such action as may be necessary to cause the Common Area and the sidewalk described above to be maintained, repaired, landscaped (where appropriate) and kept in good, clean and attractive condition.

(b) To take such action as may be necessary to enforce the provisions of Paragraphs A.8 , A.9 and A.10, above;

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

(d) To levy and collect assessments in accordance with the provisions of Paragraph B. 12, below.

12. 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 equal to his pro rata share of the costs incurred or anticipated to be incurred by the Association in performing its duties and discharging its obligations. The pro rata share of an Owner of a lot shall be a fraction, the numerator of which shall be one 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, management and supervision

thereof; and all costs for the Association reasonably incurred in conducting its affairs and enforcing the provisions of this Section B.

(b) Assessments shall be approved at the duly convened annual meeting of the Committee.

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

(d) Assessments shall become due and payable 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 from the date due until paid, and such unpaid assessments and the interest thereon shall constitute a continuing lien on the real estate against which it was assessed until they have been paid in full. The assessments and interest thereon shall also be the personal obligation of any current or subsequent Owner of the lot against which the assessment was made.

(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 canceling or releasing any such lien. The failure to file any such notice shall not impair the validity of the lien. All recording and attorney fees relating to any such document 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 or appointed 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.

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 members 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 60 days of written demand by the City, the City may discharge the duties of the Committee. The costs of the City incurred in connection therewith shall be charged to the Owners of the properties affected by such actions of the City by adding to each Owner's real estate tax statement a charge equal to such Owner's pro rata share (the same as such

Owner's share of annual assessments as provided in subparagraph B. 12 (a), above) of such costs.

C. FUTURE STAGES OF DEVELOPMENT OF TALLGRASS

The Developer, its successors and assigns shall have the right to bring within this Declaration future stages of the development of Tallgrass, provided such future stages are or become adjacent to the real estate which is or becomes subject to this Declaration or any supplemental declaration. The future stages authorized under this Section shall be added by recording a Supplemental Declaration of Restrictions with respect to the future stages which shall extend the provisions of this Declaration to such future stages and indicate any provisions which differ from the provisions of this Declaration or any prior Supplemental Declaration. Except with respect to increasing the number of Owners and adding to the Common Area, such Supplemental Declarations shall not revoke, modify or add to the Covenants established by 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 having at least sixty percent (60%) of the votes in the Association; provided, however, that any such action must also be approved in writing by the City and 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. RESERVATION BY DEVELOPER OF RIGHT TO GRANT EASEMENTS.

Developer hereby reserves the right to grant and convey easements to the City and/or to any public or private utility company, upon, over, through or across those portions of any Lot in Tallgrass within 10 feet of any lot line for purposes of allowing the City or utility company to furnish gas, electric, water, sewer, cable television or other utility service to any Lot(s) or through any portions of Tallgrass or for purposes of facilitating drainage of storm or surface water within or through Tallgrass. Such easements may be granted by 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 Tallgrass to persons other than a Successor-Developer.

F. DURATION OF RESTRICTIONS

These restrictions and any amendments thereto shall be in force for a term of thirty (30) years from the date this Declaration is recorded, and upon the expiration of such initial 30 year term or any extended term as provided herein, this Declaration shall be automatically extended for successive terms of 10 years each, unless prior to the end of the then-current term a notice of termination is executed by the owners of at least ninety percent (90%) of all lots subject to this Declaration (and their mortgagees) and is recorded in the office of the Register of Deeds of Waukesha County. These Restrictions 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 B.15, above, the City of Waukesha, Waukesha County, Wisconsin.

IN WITNESS WHEREOF, the undersigned, being the authorized signatory of SIEPMANN DEVELOPMENT COMPANY, has executed this Declaration of Restrictions this 24 day of JANUARY, 1996.

SIEPMANN DEVELOPMENT COMPANY

BY: James P. Siepmann
James P. Siepmann,
Authorized Signatory

STATE OF WISCONSIN)
) SS
WAUKESHA COUNTY)

Personally came before me this 24th day of January,
1996, the above-named James P. Siepmann, to me known to be the person who executed
the foregoing instrument and acknowledged the same.



Joan T. Dunn
Notary Public, Waukesha County,
State of Wisconsin
My Commission: 10/4/98

This Instrument Was Drafted By:
Siepmann Development Company
17800 W. Capitol Drive
Brookfield, WI 53045

