

601267

VOL 1195 PAGE 612

55

RECORDED

MAY 5 2 53 PM '92

Realty & Financing
REGISTER OF DEEDS
OF WASHINGTON COUNTY WI

DECLARATION OF RESTRICTIONS
FOR
WINDSONG AT GERMANTOWN

KNOW ALL PERSONS BY THESE PRESENTS; that DELAFIELD VENTURE 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 Windsong at Germantown, being a subdivision of part of NW. 1/4, Sec. 35, Town 9 North, Range 20 East, Village of Germantown, Washington County, Wisconsin, (herein referred to as "Windsong") and intending to establish a general plan for the use, occupancy and enjoyment of Windsong, does hereby declare for the mutual benefit of present and future owners of lands in Windsong and any future stages of development added as provided in Section C, below (herein referred to individually as "Owner" and collectively as "Owners"), that Windsong shall be subject to the following restrictions:

A. BUILDING RESTRICTIONS

1. All lots in Windsong are restricted to the erection of a one story, story and one-half, two story or split

10/19/92

level single family residence building and attached garage which will accommodate at least two cars.

2. The minimum size of a one story residence shall be 1800 square feet on the first floor.

3. A story and one-half residence shall have a minimum of 2000 square feet on the upper two floors.

4. A two story residence shall have a minimum of 2000 square feet on the upper two floors.

5. A tri-level residence shall have a minimum of 2000 square feet on the upper two floors.

6. 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 a garage shall be 900 square feet. All driveways must be paved within one year of occupancy.

7. The exterior walls of the residence and attached garage must be constructed of brick, stone, wood siding (which includes only solid wood or wood wafer board products of the type and quality of the Interseal lap siding product manufactured by Louisiana-Pacific Corporation on the date hereof) or other natural materials. No aluminum, vinyl or steel siding will be permitted.

8. All 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 residences and other special circumstances if approved in writing by Developer.

9. The residence and attached garage and a sod or seeded lawn in place must be completed within one year from the start of construction.

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

11. The minimum setback from any abutting street right-of-way is 40 feet. Side yard and rear yard setbacks shall conform to the Village of Germantown (hereinafter referred to as the "Village") ordinances.

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. All building plans and the exterior design of each residence to be constructed in Windsong must be approved by Developer in writing prior to application for a building permit. In addition, basic site features such as fences, decks, garden structures, satellite dishes, additions and other temporary or permanent structures or elements contributing significantly to the total environmental effect within Windsong are subject to the prior written approval of Developer.

14. At the time of construction of a residence the Owner shall install at a location designated by the Village building inspector, one outdoor electric lamppost with an

unswitched photo-electric control. The design of the lamppost shall be subject to the approval of the Developer. The lamppost shall be maintained by the Owner in a proper operating manner. If the lamppost is not so maintained, maintenance shall be performed by the Windsong Homeowner's Association, created pursuant to Section B, below, and the cost of such maintenance shall be an assessment against the Owner, payable within 10 days after the date of the assessment.

15. There shall be no outbuildings, above ground swimming pools, or satellite dish antennas having a diameter in excess of 24 inches. No antenna or satellite dish shall be visible from any roadway or neighboring lot.

16. Proper landscaping, including landscaping of all boulevards, traffic islands, and Outlots 1, 3 and 4, is a mutual benefit of present and future Owners. Landscaping of these areas shall be properly maintained at all times by the Owners or by the Association. Should the Owners or Association fail to maintain the landscaping as required herein, the Village may take remedial steps and assess a special charge as described in Paragraph A 19, below.

17. The Plat establishes drainage easements throughout Windsong. These drainage easement areas shall be maintained clean, clear and free of any obstructions or barriers of any kind. Landscaping within these areas shall consist of ground

cover to inhibit erosion. Any obstructions may be removed by any public utility or by the Village. Should it become necessary for the Village to maintain those easements, the Village may assess a special charge as described in Paragraph A 19, below.

18. 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 attorney's fees, incurred by Developer or the Association in enforcing the restrictions contained in this Declaration. The foregoing shall be in addition to any other rights or remedies which may be available to Developer.

19. In the event the Village determines that Common Area landscaping is not being maintained in accordance with this Declaration and that the public interest requires compliance, the Village may ensure compliance in the manner described below by taking action and levying charges against the Association (with respect to compliance with Paragraphs A 16 and A 17, where applicable) or the Owner (with respect to compliance with Paragraphs A 14, A 16 and A 17, where applicable).

Should the Village determine that deficiencies under these exist and that public interest requires compliance, the Village shall give written notice of the deficiencies to the Association (as to A 16 and A 17, where applicable) or the Owner (as to A 14, A 16 and A 17, where applicable). The Association

or the Owner shall have the time specified in the notice to rectify deficiencies and if the deficiencies are not rectified within the time period, the Village shall have the right to enter upon such property using its own employees and equipment or contracting with others for such work to rectify the conditions. The cost of such work or services shall be billed to the Association (as to A 16 and A 17, where applicable) or to the Owner (as to A 14, A 16 and A 17, where applicable). The Village shall have the right to enforce collection of such amounts by extending the same on the current or next succeeding tax roll as an unpaid special charge in accordance with §66.60(16) of the Wisconsin Statutes against all Owners (as to A 16 and A 17, where applicable) or against the responsible Owner (as to A 14, A 16 and A 17, where applicable). The Owners do hereby consent to the levying of such special charges and hereby waive any and all notices and hearings which might otherwise be required by state statutes for the levying of special charges.

B. OWNERS ASSOCIATION

1. An unincorporated association (herein referred to as the "Association") of the owners of land in Windsong 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 "Windsong at Germantown Homeowners Association."

2. The term "Common Area" shall include the following areas (which are generally identified on the attached Exhibit A), plus any additional areas which may be added in accordance with Section C.

(a) Outlots 1, 3 and 4 of Windsong.

(b) The area of easements granted to the Association by Developer over portions of Lots 1-7 for purposes of installing entryway monuments, fencing, and landscaping.

(c) The grass area and any fencing and landscaping contained within the public right-of-way of Donges Bay Road.

(d) All landscaped courts and boulevards contained within the dedicated streets in Windsong. Any portion of the Common Area within a public street right-of-way may only be improved with the consent of the Village 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. 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. Siepmann, James P. Siepmann 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. So long as fifty percent (50%) or more of the lots in Windsong 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 Windsong 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 Windsong 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 Windsong 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.

6. 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.

7. The term of office of the initial members of the Committee shall commence upon the execution hereof and shall continue until December 31, 1993. 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 5, above).

8. All meetings of the Committee shall be open to Owners and held upon not less than three days prior written notice to all of the Owners. Two 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 maintenance of improvements in the Common Area;
- (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 action as may be necessary to cause the Common Area to be 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 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 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 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 Washington 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.

12. 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.

13. 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.

14. If the Committee shall fail to discharge its duties under this Section B within 60 days of written demand by the Village, the Village may discharge the duties of the Committee. The costs of the Village incurred in connection therewith shall be charged to the Owners of the Village 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 11 (a), above) of such costs.

C. FUTURE STAGES OF DEVELOPMENT OF WINDSONG

The Developer, its successors and assigns shall have the right to bring within this Declaration future stages of the development of Windsong, 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 (i) the Village, and (ii) 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 Washington County, Wisconsin.

E. TERM AND BINDING EFFECT

This Declaration and any amendments shall be in force for a term of 30 years from the date the Declaration is recorded. Upon the expiration date of such initial 30 year term or any extended term as provided herein, this Declaration shall be automatically extended for a successive term of 10 years, 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 and their mortgagees and is recorded in the Office of the Register of Deeds of Washington County. This Declaration shall be binding upon all Owners and any other person claiming under or through Developer.

IN WITNESS WHEREOF, the undersigned, being all of the Partners of DELAFIELD VENTURE, has executed this Declaration of Restrictions this 2 day of MARCH, 1992.

DELAFIELD VENTURE, a Partnership

By: SIEPMANN INVESTMENT CORP.,
partner

By: 

Ronald P. Sieppmann,
President

Attest: 

James P. Sieppmann,
Secretary

[Signatures continued on next page]

By: [Signature]
Harry Bielinski, partner

By: [Signature]
Frank Bielinski, partner

VILLAGE OF GERMANTOWN

By: [Signature]
NOTHUR H. HERRL, its PRESIDENT

Attest: [Signature]
JANE A. WILKINSON, its CLERK

~~The foregoing Declaration is hereby approved this~~
~~day of _____, 1992.~~

~~WASHINGTON COUNTY~~

By: _____

STATE OF WISCONSIN)
) ss.
COUNTY OF WAUKESHA)

Personally came before me this 2nd day of March,
1992, the above-named Harry Bielinski and Frank Bielinski, to me
known to be the person(s) who executed the foregoing instrument
and acknowledged the same.

[Signature]
Notary Public, County of Waukesha
State of Wisconsin
My Commission: October 9, 1994