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**WHISPERING WINDS ESTATES
RESTRICTIVE COVENANTS**

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Mary A. Brickle

REGISTER OF DEEDS
FOND DU LAC COUNTY, WI

RF

Parcel I.D. Number:

Recording Area

These Restrictive Covenants shall apply to the following parcel of Real Estate, located in Section Two (2), Township Fourteen (14) North, Range Seventeen (17) East, Town of Byron, Fond du Lac County, Wisconsin:

Those Lots are legally described as set forth in "Exhibit A", which is attached to and made a part hereof. ("Real Estate")

- a. Brian G. Abel "Developer" is the owner of the above described Real Estate.
- b. The Developer has subdivided, by Plat, the thirteen (13) lots and four (4) outlots, all as described in "Exhibit A".
- c. The Developer, as well as future purchasers or other interested parties, desire to have a procedure or mechanism for reviewing plans and specifications and a means for governing future use of the Real Estate.
- d. The Developer and subsequent purchasers ("Owners"), by taking title to the described Real Estate, thereby acknowledge the importance of these Restrictive Covenants and the architectural control set forth herein to the quality of life of the residents and the property values of the improvements which will be made to the described Real Estate.

e. The Developer desires and hereby agrees that these Restrictive Covenants shall apply to all lots and outlots described as the Real Estate.

THEREFORE, IT IS AGREED, that development and use of all of the Real Estate shall be subject to the following covenants and restrictions which shall be in perpetuity and be covenants which run with the land:

1. **SUBDIVISION**. No lot or outlot shall be subdivided in a manner which would create an additional building site. Subdivision of any lots or outlots shall only be permitted at the discretion of the Control Committee, in writing, when the subdivision is for the purpose of adding land to an adjoining parcel and not creating another building site.

2. **ARCHITECTURAL CONTROL**. No building shall be erected, place, or altered on any lot which is part of the Real Estate until the construction plans and specifications and a plot plan of the lot showing the location of all such structures or improvements and a landscape plan shall have been approved in writing by the Control Committee as being satisfactory to it.

In making its determination, the Control Committee shall take into account such things as the quality of workmanship, the materials to be used, the harmony of external design and color with existing structures, the topography of the land, the intended landscaping and any other reasonable considerations which the Control committee shall deem relevant.

The Control Committee will have authority to review such plans and specifications, and this authority is in excess and in addition to applicable building codes and/or ordinances.

After submission of the proposed plans and specifications, the Control Committee shall have fifteen (15) days within which to notify the Owner of acceptance, rejection, or conditional acceptance of the proposed improvements to the subject premises. Acceptance by the Control Committee must be in writing to be effective. Any such acceptance shall be limited

to the review and approval of the plans and specifications and site information as actually submitted. There shall be no substantial variation by the Owner unless written approvals for such variation are obtained from the Control Committee.

If requested to do so, the Control Committee will review plans of a prospective purchaser of a lot and render a decision prior to closing in accord with these provisions. In the event such plans and specifications are approved or conditionally approved, the prospective purchaser shall be entitled to thereafter rely on such approval.

3. **COMPLETION OF CONSTRUCTION AND LANDSCAPING.** There shall be no time limit for commencement of construction of a residential dwelling.

Each Owner will maintain lots and outlots prior to occupancy in a manner which will prevent the growth of noxious weeds.

However, once there has been visible commencement of construction on the site, then the following time limits will apply:

a. Construction of the residence shall be completed within twelve (12) months unless excused by the Control Committee in writing.

b. Once the residence is occupied, then within six (6) months each lot or outlot shall be totally landscaped, except for driveways, walkways, and the residence. This landscaping, in addition to shrubbery or mulch, shall be lawn or prairie grass. This requirement will include areas between wooded portions of lots and the roadway. The Control Committee may, in its discretion, extend this requirement due to seasonal or other extraordinary occurrences.

c. All driveways and walkways shall be completed within twelve (12) months of occupancy. When completed, driveways and walkways shall have a paved surface.

If any Owner is prevented from completing construction by natural disaster or other circumstances not reasonably within his or her control, then the time within which construction or landscaping may be completed may be extended by the Control Committee for a reasonable period of time to allow the Owner to comply with this provision.

4. **CONTROL COMMITTEE.** The Control Committee shall be composed as follows:

a. Until the closing of the first lot, the Control Committee shall consist solely of the Developer.

b. At the time of ultimate closing of subsequent parcels, each purchaser will thereafter be entitled to, at his option, be a member of the Control Committee, until such time as three (3) purchasers of lots have agreed to serve on said Control Committee. Each shall have one vote.

c. Prior to the first closing, the Developer will have all three (3) votes, which will be diminished by one (1) vote each time a purchaser agrees to serve on the Control Committee, until such time as three (3) purchasers have so agreed to serve. Thereafter these three (3) purchasers will constitute the Control Committee, to act in accord with the terms of this Agreement until their successors qualify.

d. The three (3) members of the Control Committee may designate one or more members of the Control Committee, or such other person or persons as they may direct to review the plans and specifications on behalf of the Control Committee or to assist the Control Committee in such review.

At any time after more than three (3) lots have been sold, the Owners of three (3) or more of the described lots may call a meeting for the purpose of electing members of the Control Committee. Written notice of such meeting specifying the purpose shall be mailed to all

Owners not less than five (5) days prior to the meeting. At such meeting any Owner, including the Developer, may be proposed for membership on the Control Committee and upon majority vote of the other Owners shall be elected to the Control Committee until three (3) have been elected. At such meeting one or all of the Control Committee may be replaced.

Any vacancy prior to meeting of the Owners shall be filled by appointment of a successor by the remaining two (2) members. Such successor shall serve until replaced by election as provided above.

Decisions by the Control Committee shall be on a majority vote of its then members.

5. **SPECIAL RESTRICTIONS.** The following are additional Covenants and restrictions shall apply to the construction of any residential dwelling on the described lots and shall not be waived by the Control Committee and shall not be amended, except as provided in Paragraph 14 below:

a. Multi-story dwellings shall have no less than two thousand six hundred (2,600) square feet of living space, and ranch style homes shall have no less than two thousand two hundred (2,200) square feet of living space.

b. The basement and garage shall not be included in determining the amount of square footage. The Control Committee, at its option, may or may not include lower levels of multi-level homes. Normal closets and hallways shall be included in computing square footage.

6. **GARAGES/OUTBUILDINGS/FENCES, ETC.** The plans for any dwelling shall include the immediate construction of a garage. All garages shall be attached to the residence unless permission to the contrary is given in writing by the Control Committee. Construction of

any additional garages, outbuildings, dog cages, fences or other similar or dissimilar improvements to the Real Estate may be allowed but shall first be approved in writing by the Control Committee. However, the Control Committee shall not permit buildings which are in the nature of a pole building, such as a farm building or commercial building. A single satellite receiving dish shall be allowed on each of the described lots, but the placement of such satellite receiving dish shall be subject to the written approval of the Control Committee, which approval shall not be unreasonably withheld.

7. **UTILITIES.** All utilities within each lot shall be underground and easements necessary for installation and maintenance along lot lines shall be given by Owners, provided such easement shall not interfere with the normal use of the property.

8. **USE OF PREMISES/LIGHTS.** The Real Estate shall be used exclusively for single-family residential purposes. No nuisance or offensive activity shall be carried on the Real Estate. The Real Estate shall be kept in a clean and orderly condition and free from any accumulations of brush, trash, or other materials. Lawns and landscaping shall be maintained in a manner consistent with other subdivided lots within the Real Estate.

There shall be no dusk-to-dawn or mercury vapor type lights unless approved in writing by the Control Committee.

9. **ANIMALS.** No farm animals, poultry, pigeons or livestock shall be raised, bred or kept on said premises, except that any Owner may maintain a maximum of two (2) dogs or two (2) cats, as household pets and provided the same are not bred or maintained for any commercial purpose. Dogs shall not be allowed to run loose.

10. **SIGNS.** No signs shall be placed upon the subject premises, other than street number designations. However, in the event the Owner desires to sell the Real Estate, a sign

indicating the sale of the Real Estate may be placed upon the subject premises for a reasonable period of time. Such sign shall be in accord with the type normally associated with sales of residential real estate.

11. **TRUCKS**. No trucks with a load capacity over one (1) ton in weight are to be garaged or parked anywhere on said premises, except for parking in the ordinary course of making trade deliveries. In addition, vehicles of any size may be barred by the Control Committee in the event they deem the keeping of a particular vehicle is unsightly and/or not in accord with the best interest of the neighborhood. Non-operating or junked vehicles shall not be kept on any premises and shall be immediately removed.

12. **RECREATIONAL EQUIPMENT**. No boats, snowmobiles, campers, travel trailers, motorcycles, lawn mowers, tractors, or any other such equipment shall be stored within outside view on the subject property.

13. **ENFORCEABILITY**. The Control Committee, and any successor thereto, as well as the Owners of any lot located within the described Real Estate shall have the right to commence legal action to prevent or stop any violation of the foregoing restriction by any legal remedy available against the parties responsible for such violations. These remedies to include, but not be limited to, an action for injunction for specific performance, or any action for damages resulting from such violations.

It is agreed by all Owners that these Covenants are of critical importance to Owners of unique parcels of Real Estate and that an action for damages may not be an adequate remedy. It is specifically agreed that the Control Committee or Owners, who may be aggrieved by a party violating the terms of this Agreement, shall, at such party or parties' option, be awarded the remedy of damages, injunction, specific performance or any other remedy at law

or equity to enforce the terms of this Agreement. Because of the importance of these Restrictive Covenants to all Owners within the described Real Estate, it is agreed and acknowledged that an order of enforcement may include an order for removal of improvements which have been made to the Real Estate in violation of this Agreement.

In the event it is necessary for the Control Committee acting on behalf of the Owners or an individual Owner to enforce the terms of this Agreement and in the even a court of competent jurisdiction grants a Judgment against an Owner for violation of these Covenants, then in such even it is specifically agreed that such Judgment also include reasonably necessary attorneys fees, costs, and disbursements associated with bring this action hereunder.

14. **DURATION OF RESTRICTIONS.** The restrictions and covenants contained in this Agreement shall extend in perpetuity and be covenants which run with the land.

15. **SEVERABILITY.** In the event that any provision herein contained shall at any time be deemed invalid, such provision shall be considered to be severed from this Agreement, with all of the remaining restrictions and Covenants to be in full force and effect, and enforceable as outline in Paragraph 11 above.

16. **AMENDMENT.** The restrictions herein contained, except as otherwise specifically provided, may be amended, subject to the following:

- a. Such amendment shall be in writing.
- b. It shall be signed by the Owners of not less than two-thirds (2/3) of the Real Estate.
- c. The amendment or memorandum thereof shall be recorded.

17. **LIABILITY OF CONTROL COMMITTEE.** Members of the Control Committee, or any party acting on its behalf, shall not be liable to any Owner for malfeasance or misfeasance

in such capacity unless such actions cause damage and are found to be have been willful and/or malicious and in bad faith.

18. **OUTLOTS.** Under current laws, rules, and regulations, certain of the subdivided areas of the Real Estate have been identified as outlots. However, in the event a building permit can be obtained for an Outlot Two (2) and Outlot Three (3), then such outlot may be used for residential purposes but all of the terms, conditions, and restrictions herein shall apply to said outlots in the same manner as the other lots which have been created. Outlot One (1) and Outlot Four (4) shall not be developed.

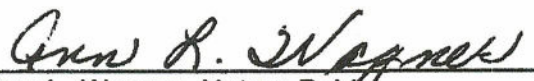
Dated this 9th day of August, 2000.



Brian G. Abel, Developer

STATE OF WISCONSIN)
) ss
FOND DU LAC COUNTY)

Personally came before me this 9th day of August, 2000, known to me to be Brian G. Abel, Developer, and the person who executed the foregoing instrument.



Ann L. Wagner, Notary Public
State of Wisconsin
My Commission expires: September 29, 2002

THIS INSTRUMENT WAS DRAFTED BY:

ROBERT V. EDGARTON (#1011146)
ATTORNEY AT LAW

EXHIBIT "A"

WHISPERING WINDS ESTATES

Lots Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), Seventeen (17), Eighteen (18), Nineteen (19), Twenty (20) and Twenty-One (21) and Outlots One (1), Two (2), Three (3) and Four (4) of the Plat of Whispering Winds Estates located in a part of Lot Four (4) of Certified Survey Map No. 4363 and being a part of the Southwest Quarter (SW 1/4) of the Southeast Quarter (SE 1/4) and the Southeast Quarter (SE 1/4) of the Southeast Quarter (SE 1/4) of Section Two (2), Township Fourteen (14) North, Range Seventeen (17) East, Town of Byron, Fond du Lac County, Wisconsin.

Document Number	AMENDMENT NO. 1 TO WHISPERING WINDS ESTATES RESTRICTIVE COVENANTS	0724698 RECORDING FEE <u>13.</u> NO. OF PAGES <u>2</u> RECORDED ON:
Return Address:	Attorney Robert V. Edgarton Edgarton, St. Peter, Petak, Massey & Bullon P. O. Box 1276 Fond du Lac, WI 54936-1276	2001 SEP 21 PM 1 48 SALLY BARBEAU REGISTER OF DEEDS FOND DU LAC COUNTY, WI
Parcel I.D. Number:		Recording Area

This Amendment No. 1 to Whispering Winds Estates Restrictive Covenants affects lands described in Exhibit "A" which is attached to and made a part hereof and amends certain Restrictive Covenants previously recorded August 9, 2000, at 8:19 a.m. as Document No. 697638.

The following additional provisions shall be deemed added to the Restrictive Covenants:

19. **DISCLOSURE AND WAIVER.** The Owner has advised all Purchasers of Lots of the proximity of quarries. Additionally, there is a possibility of expansion of these quarries or creation of additional quarries. Associated with quarry operations may be such things as equipment noise, dust, and blasting. Neither the Owner, nor the Town of Byron, are able to guarantee with any degree of certainty as to what the future of these operations may entail.

Purchase has been given an opportunity to make such investigation of this as Purchaser may wish.

By virtue of taking title to a Lot, the Purchaser does thereby release the Owner and the Town of Byron from any claims or damages of any nature related to any of such quarry operations or permits which may be granted by any approving authority, including the Town of Byron, for continuance of existing or future quarries in the area.

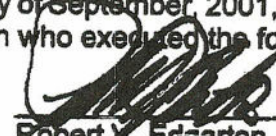
Dated this 17th day of September, 2001.



Brian G. Abel, Developer

STATE OF WISCONSIN)
)SS
FOND DU LAC COUNTY)

Personally came before me this 17th day of September, 2001, the above named Brian G. Abel, Developer, to me known to be the person who executed the foregoing instrument and acknowledged the same.



Robert V. Edgarton
Notary Public, State of Wisconsin
My Commission is Permanent.

This instrument drafted by:
Atty. Robert V. Edgarton (#1011146)

EXHIBIT "A"

WHISPERING WINDS ESTATES

Lots Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), Seventeen (17), Eighteen (18), Nineteen (19), Twenty (20) and Twenty-One (21) and Outlots One (2), Two (2), Three (3) and Four (4) of the Plat of Whispering Winds Estates located in a part of Lot Four (4) of Certified Survey Map No. 4363 and being a part of the Southwest Quarter (SW 1/4) of the Southeast Quarter (SE 1/4) and the Southeast Quarter (SE 1/4) of the Southeast Quarter (SE 1/4) of Section Two (2), Township Fourteen (14) North, Range Seventeen (17) East, Town of Byron, Fond du Lac County, Wisconsin.