

**MINUTES OF THE
BROWN DEER BUILDING BOARD
HELD AT THE VILLAGE HALL
4800 WEST GREEN BROOK DRIVE
ON DECEMBER 7, 2015**



The meeting was called to order at 4:03 p.m.

I ROLL CALL

Present: Chris Eger, Mary Buckley, Oscar Avila

Not Present: Chairman Lavern Nall, Betty Bennett, Nate Piotrowski - Community Development Director

Also Present: Shelley Gorman - Admin. Assistant Building Department, Kirk Radtke – Building Inspector, Michael Hall – Village Manager, Erin Hirn – Asst. Village Manager, Mr. Andrew Iarussi – DDR Corp., Mr. Morgan McDonald, Mr. Edward T. Beadle, and Mr. Antwon Watts.

II PERSONS DESIRING TO BE HEARD

None

III CONSIDERATION OF MINUTES

It was moved by Oscar Avila and seconded by Mary Buckley to approve the November 2, 2015 minutes. The motion carried unanimously.

IV OLD BUSINESS

None

V PLANS SUBMITTED FOR CONSIDERATION

The following item was on the Agenda for review:

1. Poblocki Sign Co. – Wall Sign Package - Zi’s Sports Pub – 8777 N. Deerwood Dr.

Mr. Nate Piotrowski – Community Development Director was not present, but did submit to the Board a written memo stating that *“The proposal for Zi’s signs conforms to Village Code in all respects including number of signs and size of signs which allows for up to 3 wall signs at individual maximums of 63 square feet. The awning sign also meets all of the Village code standards; however it has already been installed as it covered up old “Prime Time” signage.”*

The Board reviewed the sign drawings and had no comments. *The motion carried unanimously.*

**2. Developers Diversified Realty – Building Facade – Ross Dress for Less
9088 W. Green Bay Rd.**

Mr. Nate Piotrowski – Community Development Director was not present, but did submit to the Board a written memo stating that *“The Village Inspection Department previously reviewed the design of the building and determined that it was within the Building Inspector’s purview to issue a Building Permit based on Village Code Section 2-506 that allow minor building changes to proceed without Board review. Staff felt that the design kept the general shopping center aesthetic, geometry and height while adding nice minor upgrades. The Building Board, at its last meeting, felt that the changes were more significant as they reviewed the proposed wall signs and made approval of the wall sign conditioned upon approval of the facade changes.”*

Mr. Andrew Iarussi from the DDR, Corp. (Owners of the commercial property shopping center in question) was present for any questions from the Board.

The Board reviewed the drawings submitted and liked the new façade with the condition that the bollards must match the other ones currently used in the shopping center. *The motion carried unanimously.*

3. Morgan McDonald – New Construction Residence for Marlon & Mary Jones 9067 N. Brandy Brook Trail (Lot 30)

Mr. Nate Piotrowski – Community Development Director was not present, but did submit to the Board a written memo stating that *“This is the final lot owned by Aero Homes and one of the last building sites in Deerbrook Estates. The home meets all covenant standards and was approved by the Homeowners Association. There has been concern about the size of the dwelling from neighboring owners. While size, geometry and dimensions are related to the Board’s review of aesthetics; it is only a portion of what the Board should be reviewing. Dwelling size alone should not be the only basis for a decision.”*

Mr. McDonald presented plans, materials and a site map for a new single-family residential construction home that he is seeking to build a home for Marlon & Mary Jones located at 9067 West Brandy Brook Trail (Lot 30). The proposed property is ranch-style, consisting of approximately 1,630 sq. ft. home, that includes three bedrooms and a 581 sq. ft. attached two-car garage.

Mr. Edward T. Beadle and Mr. Anton Watts were also present to voice their objections to the size of the home being built. It is located in between their respective homes which are 2-story and about 3,000 sq. ft. or more in size. They feel that having a single story home that is approx. 2000 sq. ft. in size will hurt their resale value.

It was also noted that these plans have been approved by the Brandy Brook Homeowners’ Association, and it was shown that on Brandy Brook Trail there are approx. five other single story homes.

Siding: Vinyl CertainTeed Main Street: Color Natural Clay

Trim: Vinyl CertainTeed: Color Light Maple

Windows: Alliance Single Hung – White Vinyl

Roofing: CertainTeed Asphalt Dimensional 30-year Shingles Color: Weatherwood

Stone Veneer: Eldorado Stone Color: Mountain Ledge - Sierra

It was moved by Chris Eger and seconded by Oscar Avila to approve the plans for a new single-family residential home to be located at 9067 West Brandy Brook Trail (Lot 30), with the condition that the stone must return 1’ (foot)-4” (inches) to either side from the west elevation onto the north and south elevations as noted on the plans.

The motion carried unanimously.

VII ADJOURNMENT

The meeting adjourned at 4:44 p.m.

The next regularly scheduled meeting is January 4, 2016.

Shelley Gorman

Shelley Gorman, Admin. Assistant Building Department
Village of Brown Deer



**COMMUNITY
SERVICES
DEPARTMENT**

MEMO

To: Building Board
From: Nate Piotrowski, Community Development Director
Subject: Building Board Agenda 12-7-15
Date: December 3rd, 2015

1. Zi's Signs

The proposal for Zi's signs conforms to Village Code in all respects including number of signs and size of signs which allows for up to 3 wall signs at individual maximums of 63 square feet. The awning sign also meets all of the Village code standards, however it has already been installed as it covered up old "prime Time" signage

2. DDR Corp. – Ross Dress for Less

The Village Inspection Department previously reviewed the design of the building and determined that it was within the Building Inspector's purview to issue a Building Permit based on Village Code Section 2-506 that allow minor building changes to proceed without Board review. Staff felt that the design kept the general shopping center aesthetic, geometry and height while adding nice minor upgrades. The Building Board, at its last meeting, felt that the changes were more significant as they reviewed the proposed wall signs and made approval of the wall sign conditioned upon approval of the façade changes.

New Home – 9067 N. Brandy Brook Trail

This is the final lot owned by Aero Homes and one of the last building sites in Deerbrook Estates. The home meets all covenant standards and was approved by the Homeowners Association. There has been concern about the size of the dwelling from neighboring owners. While size, geometry and dimensions are related to the Board's review of aesthetics, it is only a portion of what the Board should be reviewing. Dwelling size alone should not be the only basis for a decision.

**Declaration Of Protective Covenants, Restrictions, Easements
And Establishment Of Homeowners Association For
Deer Brook Estates Subdivision**

This Declaration is made this ___ day of _____, 2005, by **Pebblebrook LLC**, a limited liability company under the laws of the State of Wisconsin (hereinafter referred to as "Developer").

WITNESSETH:

Whereas, Developer is the owner of the real property more particularly described in Exhibit A attached hereto and made a part hereof and intending to establish a general plan for the use, occupancy and enjoyment of the property has caused the subdivision of the property by the Plat for Deer Brook Estates Subdivision (hereinafter the "Subdivision") as more particularly set forth on the copy of a portion of the plat of Deer Brook Estates Subdivision showing the location of the lots, Outlots 1 and 2, easements and the median in the entrance to the Subdivision (at times herein collectively referred to as the "Common Area or Areas") in Exhibit B attached hereto and made a part hereof.

Now Therefore, the Developer does hereby declare that all of the land in Deer Brook Estates Subdivision, except for dedicated streets and utilities, shall be subject to all of the protections, restrictions, covenants and easements hereinafter set forth, which shall inure to the benefit of the Developer and the Lot Owners (the owners of all of the lots including the outlots and the median entrance in the subdivision are hereinafter collectively referred to as "the Owners" or the "Lot Owners") and the Deer Brook Estates Homeowners Association (created by this Declaration and hereinafter the "Association") and shall be binding upon the Lot Owners, the Association, and their respective heirs, personal representatives, successors, assigns, transferees, mortgagees, licensees, lessees, employees, agents and invitees and any other user of the Subdivision, and shall be conditions, restrictions, covenants, reservations and easements running with the Land, including without limitation each Lot, Outlot and all other Common Areas.

ARTICLE I.

Section 1.01. Use of Land and Building Restrictions: No lot shall be used for other than a single family residential purpose provided, however, that Outlot 1 shall be reserved for improvements relating to drainage and storm-water detention and retention and Outlot 2 for access to Milwaukee County (A.C. Hanson) Park. The owners of all lots in the subdivision shall comply with all applicable codes and ordinances of the Village of Brown Deer, hereafter "the Village". All dwellings and garages shall be completed within the time allotted by the ordinances or codes of the Village or within a period of one year from the start of construction, which shall mean excavation, whichever is shorter. There shall be no further division or subdivision of lots.

ARTICLE II.

Section 2.01. Type of building: All homes in the subdivision shall be single family dwellings and shall be erected or placed on said lots with attached or built-in private garages.

Section 2.02. Building Size: The minimum living area exclusive of basement area for each dwelling in the Subdivision shall be the following:

1 story home: One Thousand Six Hundred (1,600) square feet.

1 ½ story home: Two Thousand (2,000) square feet total with a minimum of One Thousand (1,000) square feet for the first floor.

Split-level home: Two Thousand (2,000) square feet total with a minimum of One Thousand (1,000) square feet for the first floor.

2 story home: Two Thousand (2,000) square feet total with a minimum of One Thousand (1,000) square feet for the first floor.

For purposes of calculating total area, the Developer, in its sole discretion, shall determine what constitutes a 2 story, 1 ½ story and split-level home and if the Developer shall have terminated, the Association shall make this determination.

Section 2.03. Construction: Each dwelling to be located in the Subdivision shall be constructed or erected on the site and no previously used building shall be moved to or reassembled upon a Subdivision lot.

Section 2.04. Approval of Plans and Specifications: No dwelling or structure shall be erected, placed, or altered on any lot until the construction plans and specifications, building grades, elevations, and a plan showing the location of the structure has been submitted in duplicate to, and approved by the Developer (until such time as provided in section 5.03 D when the Association as successor to the Developer will assume the responsibility to approve the plans). The approval or disapproval shall be given within fifteen (15) calendar days of submission and shall be based on quality of design, workmanship, and materials; harmony of exterior design with existing or proposed structures; locations, with respect to topography, finish grade elevations, and drainage. The Developer (or Association) shall have the absolute right to refuse to approve any plan or specification which, in its judgment, is not in conformity with these restrictions, or not desirable aesthetically. In passing on plans and specifications, the suitability of the proposed building, its design, elevation, square footage, materials of which it is to be constructed, the harmony thereof with surrounding building and the view from other properties may be taken into consideration. The lot owner or its designated representative shall submit two sets of complete plans for approval prior to the start of construction. One set shall be returned approved to the owner or its representative and the other approved set shall remain in the Developer's (or Association's) file for further reference. Once plans are approved the "footprint" of the home, the exterior dimensions (height, length, width), and the appearance thereof, shall not thereafter be changed without further approval in the same

manner as the initial approval. Any action by the Developer (or Association) shall be final and conclusive as to the persons then or thereafter owning lots covered by these restrictions. In addition to the requirements of this paragraph, no building permit will be issued by the Village of Brown Deer unless the applicant obtains approval from the Village Building Board.

Section 2.05. Grading of Lots: Master subdivision grading, erosion control, and house grade plans have been prepared by the Developer, and accepted by the Village, copies of which are on file in the office of the Developer, and in the offices of the Village and its Building Inspector or Engineering Manager. The plans designate the manner in which each lot shall be finally graded and drained by the Developer or its successor, in relation to other lots in the subdivision and designates grade elevations for all dwellings. Maintenance of drainage during the time of development of the subdivision and prior to sale of an individual lot shall be the responsibility of the Developer; however, once a lot is sold, establishing proper lot grades shall be the responsibility of the lot owner. The Developer purposely has not pre-graded each lot so as to preserve as many of the existing trees as possible. It is recommended that existing trees located on any lot, exceeding two (2) inches in caliper, measured six (6) inches above ground level and beyond fifteen (15) feet of a dwelling be saved to maintain the aesthetics of the subdivision. At the time a building permit is requested, the recommended yard grade elevation at said dwelling shall be obtained from the Village, and the dwelling shall be constructed accordingly. The survey submitted for architectural approval and building permit shall specify and locate existing trees on the site (exceeding two (2) inches in caliper) and note on such site plan which trees are to be removed to accommodate construction. No deviation therefrom shall be permitted without approval of the Village and the developer. The owner of each lot shall be responsible for all costs of grading, additional soil, if needed, or for the removal of soil. From that time forward nothing shall be done which will impede or obstruct the flow of surface drainage water in accordance with said plan. Silt fences (or other erosion control devices) have been placed at various locations in the subdivision by the Developer in connection with approved plans on file, as above, or as ordered by the Village in the course of development of the subdivision. Owners are required to maintain said fences until such time as vegetative cover is restored to all disturbed areas, and to comply with any orders of the Village requiring additional erosion control, fencing and/or hay bales. If an owner fails to comply with such order within forty-eight (48) hours, the Village shall have the right to cause such work to be done, and to charge the cost thereof to the owner, which, if not paid, shall be added to the tax bill as a special assessment.

No structures and/or obstructions shall be placed within ten (10) feet of the drainage swale (easement), located along the rear lot lines of lots 27 through 43 inclusive, as established in the Master Grading Plan.

No structures and/or obstructions shall be placed within ten (10) feet of the drainage swale (easement), located along the rear lot lines of lots 21 through 26 inclusive, as established in the Master Grading Plan.

An abandoned sanitary sewer was located and removed from the buildable area of lots 27 and 28 and the potential buyers of said lots shall be informed of that fact prior to sale.

Section 2.06. Surface Draining: The owner of each lot in the Subdivision shall grade his lot so that there will be a natural waterway along the side and rear lot lines to provide for the flowage of surface water in the direction of the natural flow of such water. Such waterways shall be sodded unless such drainage is provided by underground drain tile and no obstruction of any kind shall be erected or placed in such waterways. All of such work shall be done as directed or approved by the Association.

ARTICLE III.

Section 3.01. Offensive Activities: No commercial, industrial or commercial agriculture, activities shall be conducted on any lot in the said subdivision, nor shall anything be done which may be or may become a public nuisance. Trash, garbage and other waste shall be kept in sanitary containers and be screened from public view. No animals, livestock or poultry shall be raised, bred, or kept on any lot, except that no more than two dogs, two cats, or other customary household pets may be kept or harbored, but not for any commercial purpose.

Section 3.02. Fences: No fences or other similar structures shall be erected or constructed in the Subdivision without prior written consent of the Association.

Section 3.03. Commercial Signs: No commercial signs or billboards of any type or structure whatsoever shall be erected on any part of the Subdivision, except for a "Lot for Sale" or "House for Sale" sign.

Section 3.04. Fill and Trees: All excess fill of any kind shall remain in the Subdivision or may be removed with prior permission from the Association. The removal of any living, healthy trees on any lot shall be subject to the approval of the Association.

Section 3.05. Temporary Use: No temporary structure, trailer, basement, tent, garage, barn or outbuilding on any lot in the Subdivision shall, at any time, be used as a residence.

Section 3.06. Suspended Construction: The exterior of every structure proposed to be located in the Subdivision shall be substantially complete within twelve (12) months after the building has been started. No building may be occupied before construction is complete and the Village issues an occupancy permit.

Section 3.07. Utility Service: All electric, telephone, TV and internet cable lines, and other service lines to the structures shall be placed underground.

Section 3.08. Outside Storage: No outside storage of boats, trailers, snowmobiles, recreational vehicles or vehicles of any type shall be permitted, not,

however, prohibiting the temporary (no more than two (2) days) presence or parking of such items incidental to their use by owners, their invitees or guests.

Section 3.09. Use of the Outlots and Common Areas: No personal property or debris of any kind shall be placed or stored on the Outlots or common areas. No buildings or other improvements shall be erected on the Outlots or common areas, nor shall the Outlots be divided. The Outlots shall be solely for the benefit of the owners of all lots in the subdivision, and all uses thereof shall, at all times, be subject to the provisions of ordinances of the Village.

Section 3.10. The Lot 1 Driveway: Shall be oriented to the Northeast so as to access onto Brandybrook Trail along the Northeast side of the lot. Private driveway access onto the boulevard entrance to the Subdivision is prohibited.

Section 3.11. Setbacks: Pursuant to the Deer Brook Estates Subdivision Plat Agreement entered into by Developer and the Village of Brown Deer the following setbacks apply for construction of all homes:

Front Yard: Thirty-five (35) feet from property line

Side Yard: Eight (8) feet from the property line

Rear Yard: Twenty-five (25) feet from the property line

ARTICLE IV.

Section 4.01. Term: The covenants, easements, restrictions and provisions herein contained constitute covenants running with the land and shall be binding on all owners, condominium unit owners association, purchasers at Sheriff's sale, receivers, trustees and mortgagees, or successors having an interest in the land affected hereby for a period of twenty-five (25) years from the date this instrument is recorded, after which time this instrument shall automatically be extended for successive periods of ten (10) years unless, by a vote of seventy percent (70%) of the then record owners in fee of lots (each lot having one vote) taken prior to the expiration of said twenty-five (25) year period or an extension and filed of record in Milwaukee County, it is agreed to amend or release the same; provided however, that any such amendment or release must be in conformance with Section 7.01 hereof.

ARTICLE V.

Section 5.01. Enforcement: Enforcement of any of the provisions of this Declaration may be maintained in law or in equity by the Homeowners Association or any record owner against any person or persons violating or attempting to violate any Covenants herein contained either by injunction or to recover damages.

Section 5.02. Severability: Invalidation of any one of the Covenants herein contained shall in no way affect any of the other Covenants which shall remain in full force and effect.

Section 5.03. Homeowners Association:

- A. Developer hereby establishes an unincorporated homeowners association to be known as Deer Brook Estates Homeowners Association, hereafter "Association", which shall be managed by a Committee, as herein provided. That membership in said Association shall be mandatory for every person or entity who is a beneficial owner of a fee or an undivided fee interest in any part of the real estate subject to this Declaration or any Supplemental Declaration, including contract buyers, but excluding those persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall transfer to the new owner(s) upon the conveyance of said fee interest(s).
- B. The Association shall receive an initial payment of two hundred and fifty dollars (\$250.00) per lot to be made by the owners of record in fee of each lot other than Developer at the time of initial purchase, and shall collect further assessments for the necessary work and maintenance for general, common and public areas within the subdivision.
- C. The Association shall hereafter maintain the general, common and public areas hereafter, "Common Area", which are located on Outlot 1, Outlot 2 and the landscaped entrance median as from time to time required. In the event the Association does not properly landscape or maintain any areas or items as provided herein, the Village may send written notice to the Association indicating that the Village has determined that the above-noted landscaping and/or maintenance has not properly been performed and further indicating that the Village will perform such landscaping and/or maintenance if not properly done by the Association. The above-referenced notice shall give the Association a minimum of thirty (30) days to correct the problem. If any such landscaping and/or maintenance is not performed within the time granted by the above-referenced notice, the Village shall then have the authority to landscape and/or maintain the areas referred to in said notice 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 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, such charges shall become a lien upon that owner's lot as provided in Section 66.0627, Wis. Stats., and shall be extended upon the tax rolls as a delinquent tax against that owner's lot as provided in Section 66.0627, Wis. Stats. Notwithstanding any of the provisions of this subparagraph C, the provisions of any Stormwater Maintenance Agreement entered into by and between the Developer and/or the Association and the Village of Brown Deer shall supercede any of the terms of this subparagraph unless the terms herein are more beneficial to the Village of Brown Deer.

- D. The Association shall be governed by an Executive Committee, hereinafter referred to as the "Committee", that shall be solely responsible for the activities of the Association. Until such time as the Developer owns less than 20% of the lots in the Subdivision, the Committee shall be comprised of one (1) member, David M. Stewart, the managing member of Developer. Within 10 days after sale of any lot or lots that results in the Developer owning less than 20% of the lots (not including any outlots) in the Subdivision, the Developer shall send written notice to all the owners of lots announcing that an election will be necessary to elect three members to the Committee. The initial election of members of the Committee shall be held no more than 50 days from the date triggering the requirement that Developer send notice of the need for an election. In the event that Developer fails to send the required notice any owner of record may send out the notice and take steps to conduct the election pursuant to the provisions of this Declaration. The Association will thereafter be governed by a three member Committee elected by the owners of the lots in the subdivision. Each member of the Committee shall be an owner of record in fee or duly designated officer of an owner of record in fee.
- E. The owners of record in fee shall be entitled to vote in person or by written proxy in elections for electing members of the Committee. There shall be one (1) vote for each lot. There shall be no fractional votes and if the owners of record of a given lot who vote shall not agree on the vote counted for such lot, there shall be no vote for such lot. The three persons with the highest vote totals shall be elected to the Committee.
- F. The term of office for members of the Committee shall be for two (2) calendar years. The initial term of office shall be for the remainder of the year in which elected and the succeeding 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.
- G. All meetings of the Committee shall be held in Milwaukee County and shall be open to all Owners and held upon not less than three (3) days prior written notice to all the Owners. Two (2) members of the committee shall constitute a quorum. Actions of the Committee shall be taken by majority vote.
- H. The Committee shall have the following duties:
- a. Provide for, upon execution and recording hereof, the maintenance, repair and replacement of improvements in the Common Area, which include the drainage and access easements, ponds, and landscaped areas as delineated on the plat.
 - b. Approve or deny plans pursuant to the provisions of Article II of these Declarations.
 - c. Establish dates and procedures for the election of members of the Committee.

- d. Promulgate operating procedures for the conduct of the association and Committee's affairs, including selection of a Treasurer who is one of the Committee's members, which Treasurer shall have the responsibility to keep accurate books and make them available at reasonable times upon reasonable notice to the Committee and to the owners of each lot.
- I. The Committee shall have the following powers and duties:
 - a. Cause the Common Area and drainage easement area and storm water retention/detention area on Outlot 1, to be maintained, repaired, replaced, landscaped and kept in good, clean and attractive condition, and in conformance with any local, county or state ordinance, statute, rule or regulation.
 - b. Enter into contracts and to employ agents, attorneys or others for purposes of discharging any of its duties and responsibilities hereunder.
 - c. Levy and collect general and/or special assessments in accordance with provisions of Paragraph J, below.
 - J. The Committee shall levy and collect general and/or special assessments in accordance with the following:
 - a. i) The Owner of each lot shall be subject to a charge of general assessment for the purpose of defraying the costs of maintaining and administering, the landscaped entrance median, Outlot 2 and the access and drainage easement located on Outlot 1: the Common Area including grassy areas, drainage easement area, infiltration trenches, if any, and the storm-water retention/detention area included but not limited to lawn maintenance, removing accumulated sediment, invasive woody vegetation and erosion. Such annual assessment shall be a prorata share (one equal share per lot) of the costs incurred or anticipated to be incurred by the Association in performing its duties. Said costs shall include, but not be limited to, payment of taxes, if any, insurance, repair, replacement and additions to be improvements made to the Common Area, the cost of labor, equipment, materials, management and supervision thereof, and all costs of the Association reasonably incurred in conducting its affair and enforcing the provisions of this Section; ii) In addition, the Association is empowered to levy special assessments against specific owners, and lots for actual expense of work performed by the Association on the specific lots enumerated in Paragraph J (a) (i) above with respect to maintenance of the drainage easement(s) and access easements located thereon if the Owners by their act or omission cause additional costs to the Association in fulfilling their duty of maintenance, including but not limited to obstructing

passage in any easement area. David Stewart shall not be liable for annual general or special assessments.

- b. Assessments, general or special, must be approved at a duly convened meeting of the Committee.
- c. Written notice of a general or special assessment shall be personally delivered to each Owner subject to the assessment or delivered by certified mail addressed to the last known address of Owner. The address on the current real estate tax assessment roll may be used for such notice.
- d. All assessments, general or special, shall become due and payable in form and manner determined by the Committee within thirty (30) days after the mailing or personal delivery of the notice, as the case may be.
- e. All assessments not paid when due shall bear interest at the rate of twelve percent (12%) per annum until paid and such unpaid assessments 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 the Owner of the real estate against which the assessment was made.
- f. The Committee may record a document in the office of the Register of Deeds of Milwaukee County, Wisconsin, giving notice of a lien for any 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 attorneys fees relating to and such document shall be borne by the affected Owner.
- g. Upon application by the Owner, the member of the Committee designated as Treasurer may, without calling a meeting of the Committee, provide to such Owner at statement (1) that the signer is the Committee's duly selected Treasurer and (2) as to the existence of any unpaid assessments or other amounts due to the Association. Such statement shall only be binding upon the Committee if it is approved after a meeting of the Committee and shall thereupon 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 general and special assessment may be foreclosed by a suit brought by the Committee, acting on behalf of the Association, in a like manner for the foreclosure of a mortgage on real property.

K. Members of the Committee and the Developer shall not be liable for any action taken by them in good faith on behalf of their duties hereunder, even if such action involved a mistaken judgement 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 any and against any and all costs or expenses, including reasonable attorneys fees, in connection with any suit or other action relating to the performance of their duties hereunder.

- L. Failure of the Association or the Committee to enforce any provisions contained in this Declaration, 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.
- O. Pursuant to the Deer Brook Estates Subdivision Development Agreement entered into by Developer and the Village of Brown Deer the stormwater detention basin thereon shall be owned, maintained and operated by the Association and it shall enter into a Stormwater Management Agreement with the Village and the lot owners and the Association shall comply with all of the terms of the Development Agreement and the Stormwater Management Agreement.
- P. The initial address for the Association at which all notices to the Association or Developer shall be delivered is: 106 Highway 164, Colgate WI, 53017 and any change in this address shall be provided in writing to all owners and the Village of Brown Deer to the attention of the Village Manager.

Section 5.04. Easements in Favor of Developer and Association: The Developer and/or the Association shall have an irrevocable right and perpetual easement to enter upon all lots to maintain and make repairs and replacements to the stormwater detention basin, common areas and utility installations when necessary to maintain, repair or replace any portion of the stormwater detention basin, common areas or any improvements thereon, or to repair or maintain any sewer, water or utility installation.

Section 5.05. Outlots and Common Areas : Default Maintenance Rights of the Village of Brown Deer: If the storm-water retention/detention areas, drainage easement area(s) and infiltration trenches, if any, from time to time located in Outlot 1 in the subdivision are not maintained in accordance with the Stormwater Management Agreement and applicable municipal, county, and state rules, regulations, ordinances and statutes, the Village of Brown Deer shall give written notice of such failing to the Association. If such maintenance failure is not corrected within thirty (30) days of the mailing of such notice, the Village of Brown Deer (the "Village") shall have an easement to enter upon Outlot 1 and shall have then right to complete such maintenance either by using its own employees or contracting with others. The Village may proceed to recover its costs pursuant to section 5.03 C above and Developer, as owner of all the lots in the Subdivision, and its successors and assigns, hereby consents in advance to the levying of such special charges or assessments and waives any further notice.

Section 5.06. Termination of Developer Interests in Common Areas: Upon the occurrence of the sale or transfer of the last lot owned by Developer all remaining right,

title and interest of Developer to the Outlots and the common areas of the subdivision shall automatically vest in each of the lot owners without need for any further document, instrument or action on the behalf of Developer or the Association. Each lot owner, shall have an equal, undivided interest in the Outlots. There shall be no separate tax statements for the Outlots, or any common areas.

ARTICLE VI.

Section 6.01. Utility and Municipal Easements: Subrogation : The Developer reserves the right to enter into easement agreements providing for access over and across the Common Areas with the Village or any utility at any time prior to sale of all lots in the Subdivision. All conveyances of lots by Developer and any mortgages thereon shall automatically be subordinated to such easement(s), provided the granting of said easement(s) shall in no way interfere with the free and full enjoyment and use of any lot in the Subdivision.

ARTICLE VII.

Section 7.01. Amendment: This declaration may be annulled, waived, changed, modified or amended at any time by written Declaration setting forth the change, executed by the owners of at least sixty-six and two-thirds percent (66 2/3%) of the lots in the subdivision and upon recording thereof in the office of the Register of Deeds for Milwaukee County. As long as Developer owns any lot in the subdivision, Developer's consent to the change is essential for its validity, such consent to be evidenced by execution of the amending Declaration by Developer. Notwithstanding the foregoing, as long as Developer owns any lot in the subdivision, Developer shall have the absolute right, acting alone:

- a) to amend, alter or modify these restrictions, if requested by the Village Board or any other governmental agency, and
- b) to amend, alter or modify these restrictions, if such proposed change is nonmaterial in character and in the best interests of the subdivision;

provided, however, no amendment, annulling, waiving, changing, modifying or amending the provisions of this declaration shall be effective unless and until approval by the Village Board of the Village of Brown Deer.

Section 7.02. Street Lights and Yard Lights: In lieu of public street lighting, at the time of construction of each residential building, the owner of each lot shall install a permanent outdoor electric yard light with photoelectric controls so that the lamppost is lit from dusk to dawn. The lamppost shall be installed in the front yard adjacent to the driveway not within six (6) feet of any lot line on a free standing structure separate from the main building. All electric yard lights shall be of a uniform design, from a Village approved and selected sample and shall be purchased by the buyer of each lot at the time of sale. The lamppost shall be installed and maintained, by the lot owner. If the lamppost is not so maintained, the Association shall perform maintenance and repairs, and the cost

shall be assessed against the lot owner, payable within ten (10) days after the date of assessment.

Section 7.03. Tree Planting: Within one year of the issuance of an occupancy permit for a residence, two trees shall be planted per lot. Trees shall be planted in no closer than ten (10) feet from any driveway and forty (40) feet from the corner of an intersection as measured from the right-of-way lines extended. All trees planted shall be a minimum size of two and one half (2.5) inches in caliper. Said caliper reading shall be taken six (6) inches above ground level. All street trees shall be guaranteed for a period of one (1) year from the date of planting. Replacement of trees under this section shall also be guaranteed for one (1) year.

Section 7.04. Driveways: A hard surface driveway, parking stand, or turnabout constructed of concrete, asphalt, or similar materials shall be installed within one year after issuance of an occupancy permit. Driveways shall not be constructed closer than three (3) feet to the property line. All driveways have to be cut in and stoned before a building permit can be issued. For further information, please see Article 10 of the Brown Deer Village Code, VOL 1 SEC VI.

ARTICLE VIII.

Section 8.01. Conflicts between Zoning and 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, 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, State or Federal law or regulation, the more restrictive provisions shall apply.

ARTICLE VIX.

Section 9.01. Building Restrictions: Roof pitches should be a minimum of 6/12. Roof type should be a minimum of thirty (30) year dimensional. Roof color for all lots shall be "Weatherwood".

Section 9.02. Exterior of Home: The exterior of all homes shall be constructed of vinyl, hardiplank, or composite siding.

Section 9.03. Color Guidelines: All colors of homes in Deer Brook Estates shall be "earthtone" in color.

- A. Earthtone colors for hardiplank include the following: sand, white, cream, tan, pelican, bungalow, sanderling, light grey, seal, clay, sandstone, beige, taupe, cape cod grey, Monterey grey, Navajo white, outside white, oyster shell.
- B. Earthtone colors for vinyl and composite siding include the following: winter white, French cream, Victorian silver, classic almond, coastal dune, april linen, hazel brown, tumbleweed tan, cobblestone clay, saddle brown, granite grey.

- C. Colors for trim include the following: white, almond, American walnut, aspen grey, beachwood maple, bronze, brookstone, cameo, champaign, charcoal grey, classic cream, colonial yellow, desert sand, everest, harbor grey, glacier blue, linen, musket brown, pebblestone clay, royal brown, sage, sandstone, sawmill, silver grey, terra bronze/ sandstone, village green, timberstone brown, wicker, woodland green.

Section 9.04. Exterior Windows: All four (4) sides of the home must balance. No elevations can be without windows, except the garage and the garage door. All windows on the front of the house shall have a four (4) inch wrap around windows, or have shutters installed.

Section 9.05. Home Exterior: A home's front elevation exterior shall be composed of at least twenty-five percent (25%) brick, stone or cultured stone, and the design must be approved by the Association. All brick or stone shall end at a corner board, or should wrap twenty- four (24) inches around the corner. The siding material shall be uniform on all sides of the home, except for the veneer treatment on the front elevation.

Section 9.06. Exterior Corner Boards: All exterior corner boards shall be at least six (6) inches in width. Material shall be cedar, vinyl, or wrapped aluminum.

Section 9.07. Garage: All garages shall have a size of at least two (2) cars, and should be a mix of side entry and front load. Garages must be approved by the Association.

Section 9.08. Mailboxes: All mailboxes shall be selected by the developer. If mailboxes are damaged at any time, they must be replaced with the exact same mailbox, at the owner's expense. (Not the Homeowners Association)

Section 9.09. Landscaping: All disturbed areas of all lots shall be fully landscaped, restored, seeded or sodded within one year after issuance of an occupancy permit.

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