

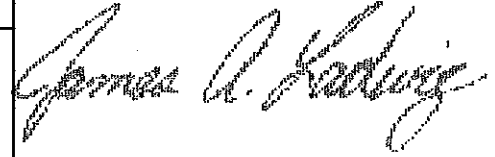
**DECLARATION OF  
RESTRICTIONS**

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Name and Return Address:  
Charles W. Cousland  
Godfrey & Kahn, S.C.  
N21 W23350 Ridgeview Parkway  
Waukesha, Wisconsin 53188

93

(Parcel Identification Number)

THIS INSTRUMENT WAS DRAFTED BY:

Charles W. Cousland  
Godfrey & Kahn, S.C.  
Wis. State Bar No. 1021259

**DECLARATION OF RESTRICTIONS  
FOR  
BLUE RIVER PRESERVE SUBDIVISION**

This Declaration of Restrictions (the "Declaration") is made this 15<sup>th</sup> day of March, 2006 by Blue River Preserve, LLC, hereinafter the "Developer."

**WHEREAS**, Developer is the developer of the Blue River Preserve Development, in the Village of Caledonia, Racine County, Wisconsin; and

**WHEREAS**, Developer is the Owner of the real property comprised of all residential Lots and Outlots in Blue River Preserve Development;

**WHEREAS**, Developer desires to subject the residential Lots and Outlots (the "Property") as identified in the plat for said Blue River Preserve Development to the conditions, restrictions, covenants, reservations and easements contained herein for the benefit of the Property and for the benefit of each owner of any part thereof and for the purpose of creating a desirable utilization of land in an aesthetically pleasing residential environment;

**WHEREAS**, due to the nature of the development there is a Conservation Easement that has been placed on the Property governing the use and management of Outlots 1, 2, 3 and 5 and the Drainage Easements and Walking Path Easement located on Outlot 4;

**WHEREAS**, Outlot 4 has been dedicated to Racine County for use by the public.

**THEREFORE**, the Developer hereby declares that the Property described on the attached Exhibit A, shall be held, sold, conveyed, transferred, used and improved only subject to the conditions, restrictions, covenants, reservations and easements hereinafter set forth which shall inure to the benefit of the Village of Caledonia (the "Village") and the Developer, and their respective successors and assigns, and to all parties hereafter having any interest in the Property.

**1. BINDING EFFECT AND DEFINITIONS**

This Declaration shall become effective immediately upon the recording hereof with respect to the Property as described on the attached Exhibit A.

The terms "Blue River Preserve," "Blue River Preserve Development" and "Subdivision," as used in this Declaration, are defined as the property described on the attached Exhibit A.

The term "Common Areas" as used in this Declaration is hereby defined to include those areas managed and maintained by the Owner's Association that benefit the Lot Owners including the Common Lots, common improvements and common easements.

The term "Common Expense" as used in this Declaration is hereby defined as those expenses for managing, controlling and maintaining the Common Areas and administrative expenses of the Owner's Association.

The term "Common Lots" as used in this Declaration is hereby defined as the real property comprised of Outlots 1, 2, 3, and 5 and the Drainage Easements and Walking Path Easement located on Outlot 4 as described on the Subdivision plat.

The term "Development Agreement" as used in this Declaration is hereby defined as the Development Agreement by and among the Village of Caledonia, the Developer and ISB Community Bank for the development of the Subdivision.

The term "Lot" as used in this Declaration is hereby defined as each separate buildable parcel of real estate existing now or in the future which is created by any land division done in accordance with all applicable laws and regulations, and in compliance with all restrictions set forth in this Declaration, of the lands subject to this Declaration.

The term "Lot Owner" as used in this Declaration is hereby defined as the owner of title of each Lot.

The term "Land Trust" as used in this Declaration is hereby defined as the Kenosha/Racine Land Trust, Inc., a non-profit charitable corporation, and its successors and assigns.

The term "Owner's Association" as used in this Declaration is hereby defined as the homeowners association for all of the Lot Owners.

The term "Stewardship Plan" as used in this Declaration is hereby defined as the management plan for those areas of the Property subject to the Conservation Easement.

## **2. GENERAL PURPOSE**

The general purpose of these restrictions is to assure that Blue River Preserve Development will become and remain an attractive, high quality residential community and to that end to preserve and maintain the natural beauty, to insure the best use and the most appropriate development and improvement of building sites within the Property; to protect owners of building sites against such use of surrounding sites as may detract from the residential value of their property; to guard against and prevent the erection of poorly designed or proportioned structures on any part of the Property; to obtain harmonious use of materials and color schemes in improvements; to insure the highest and best residential quality of the Property; to encourage and secure the improvements of the Property with attractive homes with appropriate locations thereof on the building sites; to secure and maintain proper spatial relationships of structures to other structures and lot lines; and generally to insure the highest and best residential development of the Property.

### **3. INTERPRETATION**

It is inherent to protective covenants and restrictions that from time to time those covenants and restrictions are subject to interpretation. In those instances wherein an interpretation is required because there is no definitive rule to be followed, or because there is a question regarding an intangible concept such as, but not limited to, what constitutes harmonious architectural design, what is poor design or proportion and what is aesthetically pleasing, the matter shall be subject to the opinion of the Architectural Control Committee for the granting of a final approval.

### **4. ARCHITECTURAL CONTROL COMMITTEE**

An Architectural Control Committee (hereinafter the "Committee") for the Subdivision is hereby established. The Committee shall consist of not less than three members, designated as hereinafter set forth. The decision of the majority of the members of the Committee shall be final and binding upon all parties. The Committee members shall not be entitled to compensation for services performed pursuant to this paragraph. The initial members of the Committee shall be appointed by the Developer, and the Developer shall be entitled to remove and replace members of the Committee, at its sole discretion, as long as there remains any vacant Lot in the Subdivision; thereafter, the Committee shall consist of the Board of Directors of the Owner's Association, established as hereinafter set forth, provided said Owner's Association is in existence. If the Owner's Association is not legally in existence at any time after which there is no longer any vacant Lot in the Subdivision, the Committee shall continue in existence with its then existing members, and Committee members shall be subject to removal, replacement and/or appointment as follows: by majority vote of the Committee members in attendance at a Committee meeting called by any one or more Committee members for that purpose; and/or by majority vote of Lot Owners in attendance at a meeting of Lot Owners called by any one or more Lot Owners for that purpose. Lot Owner meetings called to remove, replace and/or appoint Committee members shall require not less than 10 days written notice to at least one owner of each Lot, by personal delivery or by First Class U. S. Mail addressed to the last known owner and address as shown on the Tax Roll.

### **5. ARCHITECTURAL CONTROL**

No building, swimming pool, gazebo, fence, wall, driveway, tennis court, light post, landscaping or other structure or improvement shall be constructed, erected, placed or altered on any Lot in Blue River Preserve Development without the approval of the Architectural Control Committee. For any undertaking requiring approval of the Architectural Control Committee, three sets of plans [including building construction plans (with square footage called out, and with roof, siding and trim colors), site plans, grading plans (where necessary) and landscaping plans] shall be submitted to the Architectural Control Committee, with a postage paid return envelope. If and when plans are approved, two sets of the approved plans shall be signed, dated, and returned by the Architectural Control Committee to the Lot Owner as evidence of such approval. Any changes or revisions required by the Architectural Control Committee shall first be made to the plans by the owner's agent before approval is given. Once the Architectural Control Committee's approval has

been given the plans shall be strictly adhered to by the Lot Owner, unless subsequent changes are approved by the Architectural Control Committee.

In passing upon the plans and specifications, the Committee may take into consideration the suitability of the proposed building or other structure or improvement, its design, elevation, color, construction materials, the harmony thereof with surrounding buildings, its proposed location, the view from other properties in the Subdivision, and such other matters of terrain, environmental impact, aesthetics, and impact upon other Lots in the Subdivision as the Committee may deem appropriate. The Committee shall have the right to waive minor infractions or deviations from these restrictions in the case of hardship and/or common sense. Any action by the Committee shall be final and conclusive as to all persons then or thereafter owning Lots covered by these restrictions. The Committee shall not be liable for actions taken or decisions made in good faith.

In addition to the requirements of these restrictions, all construction shall comply with applicable zoning and building code requirements. It is not intended that the Committee have full knowledge of, or expertise in, matters of zoning, building codes or proper drainage. The Committee shall have no liability or responsibility in the event it approves plans which fail to comply with applicable zoning or building codes, and/or which fail to properly handle drainage. In the event that approved plans violate applicable zoning or building codes, or fail to properly handle drainage, it shall be the sole responsibility of the Lot Owner to discover and determine the error, to have the appropriate corrections made to the plans, and to resubmit the corrected plans to the Committee for its approval.

## **6. DWELLINGS AND OTHER STRUCTURES**

All Lots shall be used only for single family residential purposes, and such recreational purposes permitted by this Declaration and applicable zoning. All dwellings shall be designed by a home designer, registered architect or equally qualified individual or firm.

It is specifically intended, by the architectural control provisions set forth herein, that there be a compatibility of architectural styles amongst the various homes that are in close visual proximity to one another, while at the same time retaining diversity so as to avoid the monotony of duplication. Toward this end, the Architectural Control Committee may evaluate and approve the use of a particular architectural style of home on any given Lot in the Subdivision. In making that evaluation, the Architectural Control Committee may consider the proposed residence in relation to existing homes or previously approved homes that will be in close visual proximity to the proposed residence. The Architectural Control Committee, in its sole discretion, may grant conceptual approval for the use of a certain exterior design on any Lot in the Subdivision, and reserve the use of said design for said Lot, prior to receiving the actual plans as required pursuant to Paragraph 5 above. Any such conceptual approval and/or reservation may be rescinded by the Architectural Control Committee at any time, at its sole option, upon not less than sixty (60) days written notice to the Lot Owner, if the Lot Owner fails to submit the full set of plans as required pursuant to Paragraph 5 above prior to the expiration of said notice period, and/or if the Committee rejects the plans so submitted.

The exterior siding of all dwellings shall consist of brick, stone, cedar, or other natural material approved by the committee. The Architectural Control Committee, in its sole discretion, shall have the right to permit the use of artificial stone, artificial brick, composite wood, cement board type siding, Dryvit type siding and/or other types of siding as it may deem appropriate to preserve the architectural integrity and quality appearance of dwellings in the Subdivision. In addition to the foregoing, exterior siding may consist of and providing that the architectural integrity of the home is not adversely affected by the use of such material. No exterior walls shall have twenty (20) feet or more of continuous wall without a door or window. No exposed poured concrete or concrete block over eight (8) inches above grade shall be permitted on any house. Where block or concrete would otherwise be exposed, it must be covered by the house siding, or by brick or stone. The roofing of all dwellings shall consist of fully dimensional asphalt shingles, with a minimum thirty (30) year rating, or wood or tile. Conventional asphalt shingles shall not be permitted. The Architectural Control Committee, in its sole discretion, may permit or prohibit the use of other types of roofing materials (such as fiberglass shingles) having substantially the same appearance as the permitted materials, as it may deem appropriate, to preserve the architectural integrity and quality of appearance of dwellings in the Subdivision. Further, the Architectural Control Committee may, in their sole discretion, permit the use of such other forms of high quality and aesthetically pleasing roof materials as may be available now or in the future, including but not limited to masonry and/or copper. The main portion of the roof shall have a minimum pitch of 7/12 unless the Architectural design of the home is affected by a minimum pitch of 7/12, a lesser pitch may be permitted or denied at the sole discretion of the Architectural Control Committee. A lesser pitch over other areas, such as porches, breezeways and bays, may be permitted or denied at the sole discretion of the Architectural Control Committee.

All homes shall include an attached garage with a minimum of 528 square feet. The Architectural Control Committee, at its sole discretion, may prohibit any attached garage which has an exterior appearance of having a capacity of more than 3 cars. All garages shall be equipped with automatic garage door openers for all overhead doors. All garages shall be side entry garages where ever possible, and shall not face a public street (unless on a corner lot), unless such side entry is determined by the Architectural Control Committee, in its sole discretion, to be unfeasible or impractical, based upon the lot dimensions and/or the house design. No detached garages shall be permitted. No storage shed shall be allowed on any Lot. Other types of outbuildings, such as gazebos, pool equipment and/or changing room facilities, etc. may be allowed, providing they are approved, as to design, location and landscaping, by the Architectural Control Committee. No outbuilding shall be constructed on any Lot prior to the commencement of construction of the single family residence on such Lot.

All Lot Owners are further advised that outbuilding construction is also subject to applicable zoning ordinances, and may be prohibited or restricted by the Village of Caledonia unless a variance or conditional use permit is obtained.

## **7. MINIMUM SQUARE FOOTAGE REQUIREMENTS**

Houses constructed in Blue River Preserve Development shall have a minimum square footage of living space as follows:

- i. One story houses shall have a minimum square footage of living

space of not less than 2,100 square feet.

ii. One and one-half story and two story houses shall either have a minimum square footage of living space of not less than 2,550 square feet total with not less than 1,350 square feet on the first floor.

iii. Split level houses (three or more levels) shall have a minimum square footage of living space of not less than 2,550 square feet total on the upper two levels.

v. Bi-level houses shall not be permitted.

Living space is determined by the outside dimensions (exclusive of garages, porches, patios, breezeways, sunrooms and similar additions) of the exterior walls of above grade finished living space. In no event shall floor space which is partially or completely below finished yard grade (such as basement space, whether or not exposed, and/or the lower level of a split-level) be counted for purposes of determining minimum square footage of living space. The minimum square footage shall be determined as of the time of initial construction, and shall not consider or include unfinished areas or future additions.

Notwithstanding the above minimum square footage requirements, the Architectural Control Committee shall have the right, in its sole discretion, to reduce the square footage requirement for any house by up to 10 % (but not below the minimum required by applicable zoning), providing the house contains outstanding architectural features and/or materials.

## **8. COMMENCEMENT OF AND COMPLETION OF CONSTRUCTION**

Any exterior construction commenced shall be completed within a one-year period and shall be ready for occupancy within that period. Also, within one year of occupancy or within two years of the commencement of construction, whichever date shall be shorter, the owner of such Lot shall landscape any area disturbed by construction, and shall complete all landscaping in accordance with the plans and specifications approved by the Architectural Control Committee.

During the time of construction, the Lot Owner shall be responsible to see that his or her contractor maintains a constant cleanup of all scraps, paper or other waste materials, and all dirt and mud tracked onto public streets. Lot Owner shall maintain an onsite dumpster during the construction to assure site maintenance upon commencement of construction. The Lot Owner shall further be responsible for the repair of any and all damage to the public right-of-way adjacent to the Lot, including but not limited to any pavement, sidewalk, curb, gutter, ditch, swale and/or culvert, and to any drainage ditches, swales and/or other drainage facilities on the Lot, occurring prior to completion of construction. In the event that the owner or his contractor shall fail in this responsibility, the Developer shall have the right to perform the necessary cleanup and/or make the necessary repairs and to obtain reimbursement for the expense incurred by the Developer, as set forth in Paragraph 9 below.

During any earth moving activities, proper erosion control practices shall be installed to prevent sediment entering storm water drainage ways or leaving the immediate construction site.

Construction activities related to improvements upon any Lot shall not spill over or occur on any outlot within the Subdivision, except for those construction activities contemplated or provided for in the Stewardship Plan. All construction activities shall comply with applicable Village of Caledonia and Racine County ordinances.

## **9. FAILURE TO COMPLY**

In the event the Lot Owner and/or his or her contractors fail to comply with the cleanup requirements and/or repair of any damaged sidewalks, curbs and/or gutters, drainage facilities, public right-of-way and/or other improvements required by the Village of Caledonia, and in the event the Developer, as a result of such noncompliance, undertakes any cleanup or repair, and/or is charged or assessed by the Village of Caledonia for same, the Developer shall be entitled to recover, upon demand, from the Owners of the applicable Lot, jointly and severally, all costs and expenses incurred by Developer for such cleanup and/or repair, together with all costs and expenses of collection, including but not limited to reasonable actual attorney's fees. In the event the Lot Owner and/or the Lot Owner's contractors fail to comply with the architectural or other requirements or provisions of this Declaration, and in the event Developer retains an attorney to pursue enforcement of said requirements and/or provisions, the Developer shall be entitled to recover, upon demand, from the Owners of the applicable Lot, jointly and severally, all costs and expenses, including but not limited to reasonable actual attorney's fees, incurred by Developer with respect to such enforcement.

## **10. TREES**

No existing live tree with a diameter of four inches or more at a height six inches above ground shall, without approval of the Architectural Control Committee be cut down, destroyed, mutilated, moved or disfigured. All existing trees shall be protected during construction and preserved by wells or islands and proper grading in such a manner as may be required by the Architectural Control Committee. Existing live trees with a diameter of four inches or more at a height six inches above the ground shall be considered by the Architectural Control Committee in granting approval for the location of the house, driveway and any and all other structures on any Lot. No trees shall be cut down, destroyed, mutilated, moved or disfigured on any Common Lot without the prior approval of the Owner's Association and the Land Trust. Any action taken on any Common Lot shall be in accordance with the Stewardship Plan and the Conservation Easement.

## **11. BUILDING SETBACKS**

It is one of the intentions of this Declaration to create a completed community whose site plan is varied and well integrated to the overall site surroundings as well as the specific Lot.

The minimum building setbacks and offsets are:

- 35 feet from all street right-of-way lines;
- 10 feet minimum from side property lines; and
- 50 feet minimum from rear property lines;



The site plan for each Lot shall be reviewed with respect to achieving the above goals and avoiding monotony or noticeable similar placement of homes to those existing or previously approved. In achieving these goals, offsets greater than those specified above may be required by the Architectural Control Committee. Further, the Architectural Control Committee, in its sole discretion, may alter the offsets to the minimum allowed by the Village of Caledonia if it determines, in its sole discretion, that terrain conditions and/or preservation of existing trees so require.

## **12. DRIVEWAYS**

The owner of each Lot shall, within one year of the date of issuance of an occupancy permit for the construction of a residence on a Lot, install a hard surfaced concrete or asphalt driveway. Said driveway shall extend from the vehicle entry to the garage to an intersection with the public street. All driveways shall be located at least 5 feet from the property line. All driveways must comply with applicable zoning and building code requirements of the Village of Caledonia.

## **13. HEIGHT OF GRADE, AND BUILDING PADS**

No owner of any Lot, nor any person or persons claiming under him, shall or will at any time alter the grade of any Lot or outlot from that which is naturally occurring on that Lot or outlot at the time the site development improvements have been completed by the Developer, except to the extent required to comply with the Master Grading Plan or any amendment thereto as approved by the Village Engineer on file in the office of the Village Clerk, unless and until the property owner shall first obtain the written approval of the Architectural Control Committee and the Village of Caledonia for such grade alterations.

In order to obtain this approval, it shall first be necessary for the Lot Owner, at his or her expense, to have prepared a grading plan that shows in detail the area to be re-graded, the existing and proposed topography, analyzes the effects on site drainage, and is a plan that does not unreasonably affect the drainage on an adjacent Lot or on the Common Lots or the Lot Owner's viewing of unreasonable slope treatment.

Each Lot Owner must strictly adhere to and finish grading its Lot in accordance with the Master Lot Grading Plan or any amendment thereto as approved by the Village Engineer on file in the office of the Village Clerk. The Developer and/or the Village and/or its agents, employees or independent contractors shall have the right to enter upon any Lot or Common Lot, at any time, for the purpose of inspection, maintenance, and correction of any drainage condition. Except as specified in the Development Agreement between the Village of Caledonia and the Developer, the Lot Owner is responsible for cost of the same.

Subdivision grading has been performed with the intention that home construction on each Lot take place within a building pad area consisting of a strip of land extending from the minimum front yard set-back line to a line parallel to and 50' back from said front yard set-back line, and extending across the Lot to the minimum side yard set-back lines. Construction of the home and/or

other improvements beyond the limits of such building pad area may result in an increased risk of encountering adverse subsoil conditions.

### **Missing Paragraph on Discharge**

#### **14. NUISANCES**

No noxious or offensive activities shall be carried on upon any Lot or Common Lots, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

#### **15. OUTDOOR STORAGE**

No boat, unlicensed vehicle, inoperable vehicle, recreational vehicle, vehicle licensed as a truck, or trailer of any kind may be parked or stored on any Lot outside of a building for any time period in excess of 24 hours in any calendar week, except for trucks and/or trailers used during construction or trucks and/or trailers used during remodeling periods with a time period as approved by the Committee. The term "recreational vehicle" shall mean any vehicle used primarily for pleasure or recreation, and shall include, but not be limited to: snowmobiles; trail bikes; travel trailers and campers; motor homes; and off road vehicles of any kind.

#### **16. UTILITY RESTRICTIONS**

All Lots shall be provided with electric, natural gas, cable, sewer, water, and telephone service by means of underground installation only. No residence or other building or structure on any Lot shall be serviced by the use of any secondary overhead service wires. All costs and expenses involved in installing underground utility service connections on any Lot between the utility companies' secondary pedestals and the buildings on any Lots shall be paid by the owner of said Lot.

#### **17. ANIMALS AND LIVESTOCK AND POULTRY**

No animals, livestock or poultry shall be raised, bred or kept on any Lot, except that dogs, cats and/or other customary household pets shall be permitted providing they are not raised, bred and/or kept for commercial purposes.

#### **18. SIGNS**

No sign of any kind shall be displayed to the public view on any Lot except one sign not more than two square feet in size identifying the property of the owner, one sign not more than five square feet in size advertising the property for sale or rent, a sign used by a builder to advertise a residence for sale, or as a model home, but only during the construction and sales period, and such signs as may be used by the Developer in conjunction with initial Lot sales in the Subdivision, or one or more Subdivision entrance signs erected by the Developer and/or by the Owner's Association.

## **19. LAWN AND YARD**

In addition to the normal maintenance and mowing of lawn areas on a Lot, the owner of each Lot shall also maintain the lawn and yard area in front of the Lot from the property line (front lot line) to the back of the curb and gutter section or shoulder of the public roadway. In addition to mowing the area between the Lot line and the road, the Lot Owner shall keep this area free of debris and in all other ways properly maintained. Notwithstanding the foregoing, the Owner's Association, in its sole discretion, shall have the right, but not the responsibility, to undertake mowing and/or other lawn maintenance within the area between the front Lot line and the road, throughout the Subdivision, and to charge the cost thereof as a Common Expense.

## **20. ANTENNAE**

No exterior antennae, other than one dish type antenna not exceeding thirty (30) inches in diameter, shall be allowed on any Lot.

With respect to dish antennas not exceeding thirty (30) inches in diameter, the same shall not be attached to the front of any house, nor shall same be located in the front yard of the residence.

## **21. FENCES**

It is the intention to preserve the open natural feeling of Blue River Preserve Development's environment. Therefore, no barrier fences or containment fences may be erected on or adjacent to any lot line. Fencing to meet governmental regulations with regard to swimming pools will be permitted. All proposed fencing must adhere to the Village of Caledonia Fence Ordinance. Properly designed and located kennels not exceeding 100 square feet in size for household pets will be approved providing they are properly screened from public view by landscaping.

## **22. MAILBOX & POST**

Each Lot shall have a uniform mail box and newspaper box on a uniform post, which shall be installed by the Lot Owner at the Lot Owner's expense no later than the date of issuance of the occupancy permit. Mailbox, newspaper box and post location shall be determined by the Village of Caledonia and/or Caledonia Post Office. The design and specifications of the mail box, newspaper box and post, including size, style, color, paint or stain, and materials, shall be such as is determined by the Architectural Control Committee, so that all mail boxes, newspaper boxes and mail box posts have a uniform appearance throughout the Subdivision. If the Post Office requires the use of grouped mail boxes, Developer shall have the right to elect, as to some or all Lots, to provide and install the mail boxes, newspaper boxes and/or posts, and to collect from Lot Owners, at closing on the lot sale, a reasonable charge for providing and installing same. The Owner's Association shall have the right to assume all or part of the responsibility for maintaining, repairing

and/or replacing mailboxes, newspaper boxes and/or posts, and to charge the cost thereof as a Common Expense. To the extent not assumed by the Owner's Association, the Lot Owner shall be responsible for maintaining the mailbox, newspaper box and post in a first class condition at all times, and in compliance with the specifications.

### **23. EASEMENTS**

Easements for installation and maintenance of utilities, drainage facilities, and storm water retention or detention areas are dedicated to the Village of Caledonia, as shown on the recorded plat. Within these easements, no structure, planting or other materials shall be placed or be permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement areas of each lot and all improvements in it shall be maintained on a day-to-day basis by the owner of the lot. More extensive maintenance such as re-grading shall be the responsibility of the Owner's Association. Any storm water retention basins shall be maintained by the Owner's Association. However, all public storm sewers shall be owned and maintained by the Village of Caledonia.

The Developer, its successors and assigns, herewith grant to the Village of Caledonia, its agents and employees, a perpetual easement to enter upon all lots in the Subdivision for the purposes of maintaining storm water drainage facilities and any other utility located thereon pursuant to the terms herein stated. The dimensions of the various easements are set forth on the recorded plat for the Subdivision. The Developer, will grant any other easements to the public utilities necessary to service the Lots at Blue River Preserve Development and will grant all easements as required by the Village of Caledonia, including the Conservation Easement and any additional easements delineated on the plat of the Subdivision.

The Village, and as provided for in the Conservation Easement, the Land Trust, shall have the right to enter onto the Outlots to ensure compliance with this Declaration and as provided for in the Conservation Easement.

All rights and easements described herein are perpetual rights and are easements pertinent to and running with the land and shall be binding upon and inure to the benefit of the Lot Owners, the Developer, the Owners Association and the Village of Caledonia.

### **24. SWIMMING POOLS AND HOT TUBS**

In-ground swimming pools shall be permitted, subject to the approval of the Architectural Control Committee, if they meet Village and county ordinances and specifications. Above ground swimming pools are prohibited, including but not limited to temporary or portable above ground pools with filtration systems. Above ground wading pools in excess of 30 square feet of water surface area are prohibited. Hot tubs and spas are permitted. Architectural Control Committee approval is not required for temporary portable units, but is required for permanently installed units. If placed on a concrete slab, the slab requires approval. If covered with a gazebo type structure, the gazebo requires approval, whether or not the gazebo is permanently affixed to the ground.

## **25. GOVERNMENT RESTRICTIONS**

The Developer, its successors and assigns which includes Lot Owners, and all parties hereafter having an interest in the Property, are subject to all rules, codes, regulations and ordinances of the Village of Caledonia, Racine County, the State of Wisconsin and the Federal Government, and the same may be more restrictive than this Declaration. In the event there is a conflict between the requirements of this Declaration and any provision of any Village, County, State or Federal law, ordinance or regulation, the more restrictive provisions shall apply. Nothing herein authorizes any modification of, nor does it authorize the Architectural Control Committee to modify in any way, the rules, codes, regulations and ordinances of the Village of Caledonia, Racine County, the State of Wisconsin and the Federal Government. No release or waiver by the public body and/or public utility requiring same shall be effective unless it is in writing and approved by the governing body.

To the extent that any specific restriction contained herein is the same as, or is substantially similar to, any specific restriction set forth in or on the Subdivision plat, the Development Agreement, and/or any approval obtained in conjunction with the development of this Subdivision, the inclusion of such restriction herein shall be deemed to constitute a recitation of the restriction required by the public body and/or public utility requiring same, but not a modification of any such restriction, such that same may be enforced, released or waived by the public body and/or public utility having the right of enforcement, in accordance with Sec. 236.293, Wis. Stats., whether or not enforcement rights with respect to such specific restriction are also granted herein to the Owner's Association and/or any other Lot Owner. The foregoing shall apply only with respect to specific provisions hereof which were specifically required by a public body, and shall not apply to any general requirement that the Developer establish Subdivision restrictions, any general approval of these restrictions by any public body, and/or the mere fact that a public body and/or public utility is granted any enforcement rights herein.

## **26. DEVELOPEMENT AGREEMENT**

A Development Agreement has been entered into by and between the Developer and the Village of Caledonia, a copy of which is on file in the office of the Village Clerk of the Village of Caledonia.

## **27. AMENDMENTS TO DECLARATION**

This Declaration may be annulled, waived, changed, modified or amended at any time by written declaration setting forth said change, executed by the owners of at least sixty percent (60%) of the Lots in the Subdivision, provided, however, so long as the Developer owns any Lot in the Subdivision, no amendment to this Declaration of Restrictions shall become effective unless the amendment is approved by and executed by the Developer. Notwithstanding the foregoing, the provisions of Sections 8, 9, 10, 12, 13, 15, 21, 23, 24, 25, 27, 28, 29, 30, 32, 33, 34, and 35 shall not be amended or modified without the written approval of the Village Board of the Village of Caledonia. Further, no amendment shall become effective unless and until same is duly recorded in the office of the Register of Deeds for Racine County, Wisconsin. In the event there is more than one (1) owner of any Lot in the Subdivision, the execution of any amendment by any one (1) or

more of said owners of such Lot shall be deemed sufficient for the purpose of approving and executing any amendment, without the requirement that the other owner(s) of such Lot join in the execution of such amendment, unless such other owner or owners of said Lot have recorded in the Office of the Register of Deeds for Racine County, Wisconsin, prior to the date of execution of such amendment by any other owner of such Lot, a notice setting forth the fact that approval of any amendment on behalf of such Lot shall not be effective without the approval of the owner filing such notice. In no event shall this section be construed so as to require the Developer to obtain the approval of any Lot Owner to make any amendment to this Declaration which is expressly permitted by any provision of this Declaration to be made by Developer alone. No amendment shall be inconsistent with the terms of the Conservation Easement unless the Conservation Easement is also amended upon agreement by all of the parties thereto. If any amendment is inconsistent with the Conservation Easement, it shall be void.

## **28. ASSIGNMENT**

All Developer's rights and obligations pursuant to this Declaration may be assigned by Developer to one or more successor developers, with the approval of the Village . The Village may assign its interest in this Declaration to any successor entity or entities, including any municipality or municipalities established under Wisconsin law with jurisdiction over part or all of the area now occupied by the Village .

## **29. ENFORCEMENT**

The restrictions and covenants herein contained may be enforced by the Developer, by the Owner's Association created pursuant to the provisions of this Declaration, by any Lot Owner in the Subdivision, and/or by the Village of Caledonia, at its option, in the event Sections 8, 9, 10, 12, 13, 15, 21, 23, 24, 25, 27, 28, 29, 30, 32, 33, 34, and 35 are violated, by proceedings at law or in equity against any person or persons violating or attempting to violate same. The proceedings may seek to recover damages and/or demand compliance. No enforcement action by the Developer, by the Owner's Association created pursuant to the provisions of this Declaration, and/or by any Lot Owner in the Subdivision with respect to the construction, placement or alteration of any structure or improvement on any Lot shall be commenced more than one (1) year after the completion of the construction, placement or alteration of such structure or improvement. Nothing herein contained shall be construed so as to require that the Developer, the Owner's Association, or the Village of Caledonia undertake any enforcement action.

## **30. TERM**

These restrictions shall run with the land and shall be binding upon all parties and persons having any interest in the land affected hereby for an initial period of forty (40) years from the date this Declaration is recorded, and thereafter shall continue for the full duration of the statutory limitation period for actions to enforce easements or covenants restricting the use of real estate (currently codified at Section 893.33 (6), Stats., but including any future amendments, modifications or re-numbering of that section). Notwithstanding the forgoing, any provision requiring Village Approval prior to amendment shall be perpetual and shall be binding upon and

inure to the benefit of the Developer, the Owner's Association, and the Village of Caledonia. Any amendment to this Section shall require the approval of the Village.

### **31. SEVERABILITY**

Invalidity of any provision of this Declaration, regardless of how determined, shall in no way affect any of the other provisions, which shall remain in full force and effect.

### **32. OWNER'S ASSOCIATION**

A homeowners association shall be created by the Developer for the purpose of managing the affairs of the Subdivision, and for the purpose of managing, controlling and maintaining the Common Areas ("Owner's Association"). Said Owner's Association shall be established as follows:

A. The Owner's Association shall be established as either a non-profit corporation or a non-profit association. Each Lot Owner shall be a member of the Owner's Association, and each Lot shall be entitled to one (1) vote at meetings of the Owner's Association. Membership shall pass with title to each Lot.

B. The Owner's Association shall be governed by a Board of Directors consisting of not less than three (3) directors, who shall act by majority vote. So long as any vacant Lot in the Subdivision is owned by Developer, Developer shall be entitled to appoint a sufficient number of the directors such that the directors appointed by Developer constitute a majority.

C. Each Lot in the Subdivision shall be subject to assessment by the Owner's Association for an equal share of the Owner's Association's existing or anticipated Common Expenses, which assessments shall constitute a lien on the Lot, and, except as set forth below with respect to Racine County and/or the Village of Caledonia, the personal obligation of the Lot Owners, until paid. In the event Racine County and/or the Village of Caledonia become the owners of any Lot through the tax delinquency process, the foregoing provision shall not be deemed to supersede any law limiting or eliminating the liability of the County or the Village with respect to fees or assessments imposed by this Declaration. Further, in the event Racine County and/or the Village of Caledonia become the owners of any Lot through the tax delinquency process, neither the County or the Village shall have any personal obligation for the payment of Owner's Association assessments.

D. The Articles and By-Laws of the Owner's Association shall contain such additional provisions as Developer may deem appropriate at the time of establishment of the Owner's Association.

E. In the event any further division of any Lot (whether by Subdivision Plat, Certified Survey Map, and/or other legal land division) creates additional residential Lots within the Subdivision, each Lot so created shall have equal membership and voting rights in the Owner's Association, and be subject to assessment for an equal share of the Owner's Association's existing and anticipated expenses, with all other Lots in the Subdivision.

### **33. MAINTENANCE OF COMMON AREAS AND ENTRANCE SIGNAGE**

The Owner's Association has the responsibility of properly landscaping and maintaining all Common Areas including all street islands and the Subdivision entrance signage. To the extent the landscaping is located within the Conservation Easement, all landscaping shall be consistent with the Conservation Easement and shall be accomplished pursuant to the Stewardship Plan. Subject to the provisions of Paragraphs 34 and 35 below, the Owner's Association further has the responsibility of properly maintaining all drainage easement areas located within the individual Lots which are subject to this Declaration. In the event the Owner's Association does not properly landscape and/or maintain said items, the Village of Caledonia may send written notice to the Owner's Association setting forth which of said items the Village has determined are not properly landscaped and/or maintained, and stating that the Village of Caledonia may perform such landscaping and/or maintenance if not properly done by the Owner's Association. The above-referenced notice shall give the Owner's Association a minimum of ten (10) days to correct the problem, unless the Village determines, in its discretion, that a shorter notice period is appropriate due to a hazardous condition requiring more immediate action. If such landscaping and/or maintenance is not performed within the time granted by the above-referenced notice, and/or if the Village determines, in its discretion, that immediate action, without notice, is required due to an imminent threat of damage to persons or property, the Village of Caledonia shall then have the authority, but not the obligation, to undertake such landscaping and/or maintenance, 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 of Caledonia, such charges shall become a lien upon the Lot Owner's Lot as provided in Section 66.0627(4), Wis. Stats., and shall be extended upon the tax rolls as a delinquent tax against the Lot Owner's Lot as provided in Section 66.0627, Wis. Stats.

### **34. DAY-TO-DAY MAINTENANCE OF DRAINAGE EASEMENT AREAS**

Each Lot Owner, at the sole cost and expense of that Lot Owner, shall permanently maintain all drainage easements which include but are not limited to storm water drainage ditches and swales ("Drainage Facilities") located within the boundaries of that owner's Lot. The drainage facilities shall be maintained so as to allow the free flow of surface water into, over, across and through the Lot, all pursuant to the approved storm water drainage plan on file with the Village of Caledonia. All Drainage Facilities shall be maintained to the standards and specifications of the approved drainage plan. The day-to-day maintenance of any drainage easement area located on an individual Lot includes such items as cutting grass, raking leaves, removing fallen trees and branches, and removing obstructions. This paragraph shall not limit the Village's authority of enforcement against the Owner's Association, as described in Section 33, above or pursuant to any applicable Village Ordinance. In no case, shall the day-to-day drainage easement maintenance on the individual Lots negatively affect the Common Lots protected by the Conservation Easement.

### **35. CONSERVATION EASEMENT AND STEWARDSHIP PLAN**

The Commons Lots that consist of the Outlots of the Property are subject to the Conservation Easement attached hereto as Exhibit "B" and incorporated herein by reference that





**EXHIBIT A**  
**LEGAL DESCRIPTION**

LEGAL DESCRIPTION:

Being a part of the Northeast 1/4 and Northwest 1/4 of the Northeast 1/4 of Section 26, Township 4 North, Range 22 East, Village of Caledonia, Racine County, Wisconsin, more particularly described as follows:

Commencing at the Northeast corner of said Section 26; thence S.89°25'45"W., along the north line of the Northeast 1/4 of said Section 26 and the centerline of 4 Mile Road, 332.00 feet to the point of beginning of the hereinafter described lands; thence S.01°00'21"E., 182.00 feet; thence N.89°25'45"E., 332.00 feet to the centerline of Short Road; thence S.01°00'21"E., along the centerline of said Short Road, 710.91 feet; thence S.89°30'44"W., 363.01 feet; thence S.01°00'21"E., 300.01 feet; thence N.89°30'44"E., 363.01 feet to the centerline of said Short Road ; thence S.01°00'21"E., along said centerline, 133.01 feet to the north line of the north 1/2 of the Northeast 1/4 of said Section 26; thence S.89°30'44"W., along said north line, 1,335.49 feet to a meander line of the Root River; thence N.67°47'19"W., along said meander line, 278.80 feet; thence N.84°30'40"W., along said meander line, 585.14 feet; thence N.35°10'34"W., along said meander line, 502.45 feet; thence N.01°50'18"E., along said meander line, 741.32 feet to the north line the Northeast 1/4 of said Section 26; thence N.89°25'45"E., along said north line, 985.54 feet; thence S.00°34'15"E., 235.00 feet; thence N.89°25'45"E., 216.00 feet; thence N.00°34'15"W., 235.00 feet to the north line of the Northeast 1/4 of said Section 26; thence N.89°25'45"E., along said north line, 885.00 feet to the point of beginning. Also including lands lying between said meander line and the centerline of the Root River.

Containing 3,202,891 square feet or 73.53 acres more or less.

The above property is now known as:

Blue River Preserve, being a part of the NE. ¼ and NW. ¼ of the NE. ¼ Section 26, T.4N., R.22E., Town (now Village) of Caledonia, Racine County, Wisconsin.