

**VILLAGE OF WINDSOR
BOARD RESOLUTION 2016-96**

**APPROVAL OF DOCUMENTS TO MEET CONDITIONS OF PLAT APPROVAL FOR
HAPPY VALLEY ADDITION TO WINDSOR GARDENS,
INCLUDING DEVELOPMENT AGREEMENT, COVENANTS, STORMWATER
MAINTENANCE AGREEMENT AND DEED NOTICE**

WHEREAS, Donald C. Tierney, LLC (“Developer”) obtained approval of the Final Plat of the Happy Valley Addition to Windsor Gardens (“Final Plat”) located in the Village of Windsor, Dane County, Wisconsin, all as set forth in Village Board Resolution 2016-68, which is incorporated herein by reference; and

WHEREAS, to satisfy certain conditions in Village Board Resolution 2016-68, the Developer agreed to provide certain executed documents to the Village and pay certain required fees; and

WHEREAS, Developer is ready to proceed with development of the Final Plat and in order to do so must enter into the documents attached as exhibits hereto, and incorporated by reference, which documents satisfy Condition 5 of Village Board Resolution 2016-68 {collectively herein, the “Required Documents”}; and

WHEREAS, Village staff and consultants have prepared and reviewed the Required Documents, and recommend that the Village Board approve same, all as set forth herein.

NOW, THEREFORE, BE IT RESOLVED by the Village Board of the Village of Windsor as follows:

1. The Village Board hereby approves the Required Documents as presented.
2. The Village Board directs the Parks Commission to work with the Developer in good faith to reach a mutual agreement as to park improvements, all in the manner set forth with particularity on Exhibit 2 of the Development Agreement.
3. The Village Clerk and Village Treasurer are authorized to execute the Final Plat at such time as:
 - a. The Happy Valley Addition, LLC is organized (as confirmed by the Village Attorney);
 - b. Approval from the DeForest Area Fire & EMS Inspector is obtained (as confirmed by the Director of Planning & Development);
 - c. The Required Documents are fully executed (as confirmed by the Director of Planning & Development); and,
 - d. The required Fee in Lieu of Parkland Dedication (\$14,419.34) and the Initial Facility Improvements Fee (\$11,321.30) are deposited with the Village.

4. Following recording of the Final Plat, the Required Documents shall be recorded in the Dane County Register of Deeds office by the Director of Planning & Development, at the Developer's expense.
5. The Developer shall promptly reimburse the Village of Windsor for all costs and expenses incurred by Windsor in connection with the review and approval of the Final Plat, including, but not limited to, the cost of professional services incurred by the Village of Windsor for the review and preparation of required documents, attendance at meetings or other related professional services.

The above and foregoing Resolution was duly adopted at a meeting of the Village Board of the Village of Windsor on July 7, 2016, by a vote of 4 in favor and 0 opposed.

VILLAGE OF WINDSOR

Robert E. Wipperfurth
Robert E. Wipperfurth, President

Donald G. Madelung
Donald G. Madelung, Trustee

Bruce Stravinski
Bruce Stravinski, Trustee

Excused Absence
Alan Buchner, Trustee

Monica M. Smith
Monica M. Smith, Trustee

Attested by:
Tina Butteris
Tina Butteris, Deputy Village Clerk

Incorporated by Reference:

- Exhibit A Covenants and Restrictions
- Exhibit B Development Agreement
- Exhibit C Stormwater Management Agreement
- Exhibit D Deed Notice

**DECLARATION OF COVENANTS AND
RESTRICTIONS FOR MAINTENANCE OF
STORMWATER MANAGEMENT
MEASURES**

RECITALS:

A. Happy Valley Addition, LLC, a Wisconsin limited liability company (“HVA”), is the current owner of property in the Village of Windsor, County of Dane, State of Wisconsin, more particularly described as Lots 1-10, Happy Valley Addition to Windsor Gardens, Village of Windsor, Dane County, Wisconsin (“Property”).

Return to:
Village Clerk, Village of Windsor
4084 Mueller Road
DeForest, WI 53532
ParcelNos.: See attached parcel list

B. Happy Valley Addition Homeowners Association, Inc. (“Association”) shall be responsible for those portions of Outlot 1 within such plat used for stormwater management purposes, as shown on the approved stormwater management plan for the Property, as approved by the Dane County Land Conservation Division and the Village Engineer, which approved plans are on file in the offices of such agencies, and which Outlot 1 will contain stormwater management measures serving the Property. HVA will be responsible for the initial construction of such stormwater management measures in the plat, including within said Outlot 1, and for maintenance thereof until such time as more than five (5) lots within the Property have been sold to bona fide third parties, and thereafter Association shall be responsible for the maintenance thereof.

C. Dane County (“County”) and the Village of Windsor (“Windsor”) require HVA and Association to record this Declaration regarding maintenance of stormwater management measures to be located within the plat of Happy Valley Addition to Windsor Gardens (“the plat”). HVA agrees to construct such stormwater management measures and to maintain them until completion of construction and until more than five (5) lots within the Property have been sold to bona fide third parties, and Association agrees to maintain such stormwater management measures thereafter, and HVA and Association grant to the County and Windsor the rights set forth below.

NOW, THEREFORE, in consideration of the declarations (“Declarations”) herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, HVA and Association agree with Windsor, as follows:

1. Construction and Maintenance. Prior to (a) completion of construction of the plat and (b) the bona fide sale to third parties of more than five (5) lots within the Property, HVA and its successors and assigns shall be responsible for the construction of required stormwater management measures located within the plat and for their maintenance until completion of the plat and the sale of more than five (5) lots within the Property to third parties, in good condition and in working order, such that the measures comply with approved plans on file with Dane County and the Village of Windsor, including stormwater management facilities located in Outlot 1 within the plat. Said construction work and maintenance until completion of construction and sale of more than five (5) lots within the Property to bona fide third parties shall comply with approved plans on file with Dane County and the Village of Windsor. Said construction and maintenance until completion of the plat and sale of more than five (5) lots within the Property to bona fide third parties shall be at the sole cost and expense of HVA.

For purposes of this Agreement, the term “stormwater management measures” include, but are not limited to, detention ponds, treatment ponds, infiltration structures, conveyance swales and ditches.

Upon completion of construction of the plat and the sale of more than five (5) lots within the Property to bona fide third parties, the responsibility of HVA shall end and Association and its successors and assigns shall be responsible to repair and maintain the stormwater management measures located in the plat for which construction has been completed, in good condition and in working order, including those measures located on Outlot 1, such that the measures comply with approved plans on file with Dane County and the Village of Windsor. Said maintenance shall be at the Association’s sole cost and expense. Association will conduct such maintenance or repair work in accordance with all applicable laws, codes, regulations, and similar requirements.

2. Easement to County and Windsor. If either HVA or Association fail to construct or maintain the stormwater management measures as required in Section 1, then County or Windsor shall have the right, but not the obligation, after providing HVA or Association, as applicable, with written notice of the maintenance issue (“Maintenance Notice”) and thirty (30) days to comply with the County’s or Windsor’s maintenance request, to enter the Property in order to conduct the maintenance specified in the Maintenance Notice. County or Windsor will conduct such maintenance work in accordance with all applicable laws, codes, regulations, and similar requirements and will not unreasonably interfere with HVA’s or

Association's use of the Property. All costs and expenses incurred by the County or Windsor in enforcing the Declarations and in conducting such maintenance may be charged to the owners of the benefitted portions of the Property, including the lands of HVA, Association and benefitted lot owners within the Property, by placing the amount on the tax roll for the Property as a special charge in accordance with Section 66.0627, Wis. Stats., and applicable portions of the Dane County or Village of Windsor Ordinances. Said costs and expenses shall include third party consultant fees (legal, engineering, planning etc.) and costs associated with Windsor staff time, all as determined by Windsor.

3. Term/Termination. The term of this Agreement shall commence on the date that this Agreement is recorded with the Register of Deeds for Dane County, Wisconsin, and except as otherwise herein specifically provided, shall continue in perpetuity. Notwithstanding the foregoing, this Agreement may be terminated by recording with the Register of Deeds for Dane County, Wisconsin, a written instrument of termination signed by the County and Windsor and all of the then-owners of the Property.

4. Miscellaneous.

(a) Notices. Any notice, request or demand required or permitted under this Agreement shall be in writing and shall be deemed given when personally served or three (3) days after the same has been deposited with the United States Post Office, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

If to HVA: Happy Valley Addition, LLC
 3564 Egge Road
 DeForest, WI 53532
 Attention: Donald C. Tierney

If to Association: Happy Valley Addition Homeowners Association, Inc.
 c/o Happy Valley Addition, LLC
 3564 Egge Road
 DeForest, WI 53532
 Attention: Donald C. Tierney

If to County: Dane County SM/ES/RD/SS Permitting
 1 Fen Oak Court, Room 208
 Madison, WI 53718

If to Windsor: Village Clerk
Village of Windsor
4084 Mueller Road
DeForest, Wisconsin 53532

Any party may change its address for the receipt of notice by written notice to the other parties.

- (b) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin.
- (c) Amendments to be in Writing. This Agreement may not be modified in whole or in part unless such agreement is in writing and signed by all parties bound hereby.
- (d) Covenants Running with the Land. All of the easements, restrictions, covenants and agreements set forth in this Agreement are intended to be and shall be construed as covenants running with the land, binding upon, inuring to the benefit of, and enforceable by the parties hereto and their respective successors and assigns.
- (e) Partial Invalidity. If any provisions, or portions thereof, of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision, or portion thereof, to any other persons or circumstances shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Dated this 15 day of ^{July,}~~June,~~ 2016.

HAPPY VALLEY ADDITION, LLC

By: Donald C. Tierney
Donald C. Tierney, Manager

By: Joanne K. Tierney
Joanne K. Tierney, Manager

This Instrument Drafted By:

Michael J. Lawton

Boardman & Clark LLP

P.O. Box 927

Madison, WI 53701-0927

**AGREEMENT FOR PUBLIC IMPROVEMENTS AND OTHER MATTERS RELATING
TO PLAT OF HAPPY VALLEY ADDITION TO WINDSOR GARDENS,
VILLAGE OF WINDSOR, DANE COUNTY, WISCONSIN**

Executive Summary

1. **Real Estate Subject To Agreement:**
 - 1.1. **Recording Data for Plat:** _____
 - 1.2. **Total Number of Lots:** 10 buildable lots; 1 outlot
 - 1.3. **Phasing Plan:** All lots in one Phase
2. **Contact Information for Owner/Developer (name/phone/email):**
 - 2.1. **Owner:** Happy Valley Addition, LLC
 - 2.2. **Developer:** Donald C. Tierney
 - 2.3. **Authorized Representative(s):** Donald C. Tierney
 - 2.4. **Developer Engineer:** Chuck Bongard & Krista Sommerfeldt, MSA Professional Services
 - 2.5. **Developer Project Manager:** Donald C. Tierney
3. **Contact Information for Village (name/phone/email):**
 - 3.1. **Village Director of Planning & Development:** Amy Anderson Schweppe, Village of Windsor, 608-846-3854; amy@windsorwi.gov
 - 3.2. **Village Engineer:** Kevin Richardson, P.E., Village of Windsor, 608-846-3854; kevin@windsorwi.gov
 - 3.3. **Village Attorney:** Connie Anderson, Anderson Consults, LLC, 608-249-1865; connie@andersonconsultswi.com
 - 3.4. **Only the Village Board can bind the Village of Windsor.**
4. **Contact Information for Windsor Water Utility & Windsor Sewer Utility:**
 - 4.1. **Windsor Utilities Contact:** Tina Butteris, Finance Director, 608-846-3854; tina@windsorwi.gov
 - 4.2. **Utility Engineer:** Gerry Groth, P.E., ggroth@baxterwoodman.com
 - 4.3. **Utility Attorney:** Tim Fenner, Axley Brynelson, LLP, 608-283-6733, tfenner@axley.com
 - 4.4. **Utility Approval Required:** Utility Agreement executed by Developer to be provided to Village prior to execution of Development Agreement.
5. **Public Improvements Required:** See Village Ordinances, Village Engineer, Agreement.
6. **Construction:**
 - 6.1. **Standards:** See Village Ordinances, Village Engineer, Agreement.
 - 6.2. **Commencement Date:** Village Engineer approval required. No early start approved.
 - 6.3. **Contractor List:** Required.
 - 6.4. **Proof of Insurance:** Required; Village as Additional Insured.
7. **Acceptance of Work:** Developer Engineer provides certification of completion of public improvements in accordance with approved plans; Developer provides complete lien

waivers to Village Engineer; Village Engineer observes public improvement installation periodically and provides written comments to Village Board; Developer provides full lien waivers; Dedication process requires approval of resolution by Village Board; Developer shall provide maintenance and repair until dedication.

8. **Guarantee of Work:** Required for 14 months after substantial completion, unless extended due to defective work.
9. **Surety:** Unless otherwise requested by Developer and incorporated in Agreement, Developer agrees to provide letter of credit at 110% of cost; reductions possible during term of Development Agreement following substantial completion; Village Engineer recommendation and Village Board approval required for reductions.
10. **Developer Reimbursement of Village Costs:** Reimbursement required per Development Agreement and Escrow Agreement.
11. **Development Documents:** All are subject to Village Attorney and Village Board approval; includes Development Agreement, Declaration of Covenants and Restrictions, Stormwater Management and Maintenance Agreement, Transfer Restrictions if Phased Development, other documents as specified; documents executed and submitted to Village for recording; all documents run with the land.
12. **Phasing:** Permitted with plan and Village Board approval; recording of Declaration Restricting Transfer required.
13. **Parkland Dedication or Fee in Lieu:** whether to accept land vs. fee is determined by Village Board; rate for fee in lieu calculated based on number of lots and applicable rate for year in which paid.
14. **Fee for Initial Improvements:** established per Wis. Stat. § 236.45(6); not an impact fee; paid before execution of Plat.
15. **Impact Fee: Traffic and/or Other Fees:** Traffic Impact Fee – East and Public Safety Impact Fee (paid at building permit issuance)
16. **Subdivision Signage:** Village Board design approval required; "A Windsor Neighborhood" required on sign.
- 17.

The Executive Summary above is provided as a convenience to the parties. The requirements shall be as set forth in full in the Development Agreement itself.

DEVELOPMENT AGREEMENT

1 **THIS DEVELOPMENT AGREEMENT** (the “**Agreement**”) is made and entered into
2 by and between Happy Valley Addition, LLC, a Wisconsin limited liability company, with its
3 principal business office located at 3564 Egge Road, DeForest, WI 53532, Donald C. Tierney
4 and Joanne K. Tierney (collectively, “**Developer**” or “**Owner**”), and the Village of Windsor
5 (“**Village**”), a Wisconsin municipal corporation, with its principal business office located at 4084
6 Mueller Road, Windsor, Wisconsin.

RECITALS

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9
10 **WHEREAS**, the Developer has received approval from the Village as set forth in Village
11 Board Resolution No. 2016-68, of a residential development to be known as Happy Valley
12 Addition to Windsor Gardens (the “**Development**”) and located on the Plat of Happy Valley
13 Addition to Windsor Gardens, in the Village of Windsor, Dane County, Wisconsin (“**Plat**”), and
14 Developer wishes to enter this Agreement to satisfy one of the conditions of the Village Board’s
15 approval and shall thereafter promptly proceed with recording of the Plat;

16
17 **WHEREAS**, the Village seeks to protect the health, safety and general welfare of the
18 community by requiring the completion of various improvements in the Development and
19 thereby to limit the harmful effects of substandard developments, including premature
20 development which leaves property undeveloped and unproductive;

21
22 **WHEREAS**, the Village Subdivision Ordinance requires, among other things, that
23 provisions be made for the grading of public lands, erosion and stormwater runoff control and
24 street and trail improvements required to serve the Developer’s Development;

25
26 ~~**WHEREAS**, the Developer now wishes to proceed with the installation of public~~
27 ~~improvements to serve Lots 1 - 10, and Outlot 1 of the Development;~~

28
29 **WHEREAS**, the purpose of this Agreement includes, but is not limited to, the avoidance
30 of harmful consequences of land development prior to satisfactory completion of improvements,
31 or prior to the payment of improvement costs and related fees;

32
33 **WHEREAS**, this Agreement is made for the mutual benefit of the Developer and the
34 Village in order to assure compliance with Village Ordinances and standards for public
35 improvements;

36
37 **WHEREAS**, the Developer acknowledges that the Village will be injured in the event of
38 the Developer’s failure to fully and completely perform the requirements of this Agreement; and

39
40 **WHEREAS**, the parties acknowledge and agree that the mutual promises, covenants, and
41 obligations contained in this Agreement are authorized by state law and the Village Ordinances,
42 waive the right to contest the terms of the Agreement and agree to be bound hereto, all as set
43 forth in the Agreement.

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AGREEMENT

47 **NOW, THEREFORE**, in consideration of the above recitals, which are incorporated
48 herein by reference, and other good and valuable consideration, the sufficiency of which is
49 hereby acknowledged, the Village and Developer agree as follows:

51 1. **REQUIRED PUBLIC IMPROVEMENTS.**

52
53 1.1. **Agreements.** The Lots and Outlot are located in the Village of Windsor;
54 however, the adjacent public right-of-way that provides access to the Lots (named
55 Angelica Trail) is located in the Town of Bristol. There will be no connection to
56 public water and sewer, and such public infrastructure will not be located under
57 Angelica Trail. The Lots will be served by well and septic.

58 1.2. **Phasing.** Construction shall be completed in a single phase.

59
60 1.3. **Plans.** Following consultation with Village staff, the Developer shall provide
61 plans for the required Improvements (the “Improvements”), which plans shall be
62 prepared under the seal of Developer’s Engineer (the “**Plans**”). There will be two
63 components to the Plans. The first component shall set forth the public
64 improvements to be constructed on the adjacent Angelica Drive, and shall include
65 public facilities that are part thereof including public streets; gas, electric, and
66 telephone/internet (if located in the right-of-way); lighting; and so forth
67 (“Angelica Drive Improvements”). The Plans for the Angelica Drive
68 Improvements shall be retained for informational purposes, but shall not be
69 subject to Village Engineer review or approval. The Angelica Drive
70 Improvements are located in the Town of Bristol. The second component of the
71 public improvements shall set forth the Improvements required by this Agreement
72 with particularity and shall include, at a minimum, the public stormwater
73 management facilities and the public trails (the “Improvements”). The
74 Improvements shall meet Village construction standards, as established by the
75 **Village Ordinances**¹ and in accordance with generally acceptable industry
76 standards. The Village Engineer shall have the authority to interpret and apply
77 the ordinances and generally accepted industry standards as to the Improvements.

78
79 1.4. **Village Engineer Review.** The Village Engineer shall be given an adequate
80 opportunity to review the Plans and may request such additional information from
81 the Developer as desired. Following the Village Engineer’s written statement of
82 “no objection” to the Plans, and subject to the other requirements and conditions
83 set forth herein, the Developer shall proceed with construction in accordance with
84 the Plans and on the timetable represented to the Village by the Developer, which

¹ There is a QuickLink to the Village Ordinances at www.windsorwi.gov or through the library at the Municode web site (www.municode.com). See in particular, Village Ord. Chapter 38, Article IV, Division 7: *Engineering Plans* and Article V. *Standards and Specifications*.

² See in particular, Village Ord. Chapter 38, Article IV, Division 7: *Engineering Plans* and Article V.

85 timeline has been reasonably relied upon by the Village.
86

87 2. **STANDARDS AND SPECIFICATIONS FOR IMPROVEMENTS.**²
88

89 Developer's construction of the Improvements and performance of this Agreement shall
90 be in accordance with the Village Ordinances, whether or not specifically referenced in
91 this Agreement, and the Plans.
92

93 **The standards and specifications for Improvements expressly include, but are not**
94 **limited to, the following:**
95

96 2.1. During Construction: Grading, Erosion Control and Barricading:
97

98 The Developer shall furnish, install and maintain during construction and until the
99 Improvements are accepted by the Village, all barricades and signs as are prudent
100 and necessary for public safety, particularly where new rights-of-way extend or
101 intersect existing streets and all street ends. The Village Engineer may also
102 require Developer to furnish, install and maintain additional barricades and signs.
103 Developer shall maintain "road closed" barrier(s) in place to prevent non-
104 emergency access until such time as the binder layer of asphalt is installed on all
105 of the streets in the Phase under construction.
106

107 The Developer shall furnish, install prior to grading, utility installation or any
108 other land disturbance activity, and maintain during construction and until the
109 Improvements are accepted by the Village such stormwater runoff and erosion
110 control measures as are required by and included in the County-approved plans
111 for erosion control and stormwater runoff. The Developer shall obtain separate
112 approvals for each construction phase, as required. The Village Engineer may
113 also require Developer to furnish, install and maintain additional erosion control
114 and stormwater runoff measures, as the Village Engineer deems appropriate. The
115 Developer shall adhere to the requirements for erosion control and stormwater
116 runoff, and expressly grant the right-of-entry on the Development to the Village
117 Engineer, or designee, to observe the erosion control and stormwater runoff.
118

119 2.2. Stormwater Management Facilities: The Developer shall install adequate ditches,
120 drainageways and stormwater management facilities (collectively, **Stormwater**
121 **Management Facilities**) based on generally accepted industry standards and as
122 required by law. The Developer's Engineer shall provide necessary background
123 data, including stormwater calculations, to the Village Engineer along with a
124 proposed plan for Stormwater Management Facilities certified by the Developer's
125 Engineer. The Village Engineer may rely on the background data and stormwater
126 calculations provided when reviewing the proposed plans. The Developer shall
127 proceed with installation and construction of the Stormwater Management

² See in particular, Village Ord. Chapter 38, Article IV, Division 7: *Engineering Plans* and Article V. *Standards and Specifications*.

128 Facilities in accordance with the plans for all such matters for which a written
129 statement of “no objection” has been issued by the Village Engineer.

130
131 2.3. Streets and Street Lighting: Streets, curb and gutter, and street lighting shall be
132 installed and constructed in accordance with requirements established by the
133 Town of Bristol.

134
135 2.4. Sidewalk and Trails: All sidewalk and trails required to be constructed by
136 Developer shall be constructed in accordance with plans to be prepared by
137 Developer and for which a written statement of “no objection” has been issued by
138 the Village Engineer.³

139
140 2.5. Signage: The entry sign for the Development shall be as required to meet Dane
141 County signage requirements and shall be subject to prior approval by the Village
142 Board, or designee. The signage shall include “A Windsor Neighborhood.”

143
144 2.6. Special Provisions: Special provisions regarding Improvements, if any, are set
145 forth in **Exhibit 2**, which is attached and incorporated by reference. As with other
146 work specified in this Agreement, all special provisions set forth on **Exhibit 2**
147 shall be constructed and installed in accordance with plans prepared under the seal
148 of the Developer’s Engineer and for which the Village Engineer has issued a
149 written statement of “no objection.”

150
151 3. **CONTRACTORS ENGAGED BY DEVELOPER FOR PROJECT;**
152 **INDEMNIFICATION AND INSURANCE.**

153
154 3.1. Approval of Contractor(s). The Developer agrees to engage contractors for all
155 construction, who shall first be approved for such work by the Village Engineer
156 and who shall qualify with every applicable requirement of the Village and any
157 Ordinance, rule or regulation thereof. Prior to the commencement of construction
158 of the Improvements, the Developer shall furnish to the Village Engineer the
159 names of all contractors and subcontractors, together with a classification of the
160 work performed by each and copies of all construction documents relating to the
161 construction of the Improvements. Such submittal shall be prior to the
162 commencement of construction of any of the Improvements. All construction
163 documents for the Improvements are subject to the prior review of the Village.
164

165 3.2. Indemnification by Contractor(s). The Developer shall require all contractors
166 engaged in the construction of the Improvements to indemnify and hold the
167 Village and its engineers and consultants harmless from and against any and all
168 claims, losses, damages, costs and expenses which such contractors may or might
169 incur in connection with the construction of the Improvements. Such

³ See in particular, Village Ord. Chapter 38, Article V, Division 3: *Block Design*. Multi-use paths are required for certain blocks.

170 indemnification and hold harmless clause shall be in form and content acceptable
171 to the Village Attorney and shall be included in each contract which the
172 Developer has with a contractor.
173

174 3.3. Indemnification by Developer. For a period of time commencing with the
175 execution of this Agreement and expiring fourteen (14) months from the date of
176 substantial completion⁴, the Developer hereby expressly agrees to indemnify, save
177 and hold harmless the Village, its engineers, consultants, employees, officers and
178 agents from and against all claims, costs, suits, causes of actions, demands and
179 liability of every kind and nature, for injury or damage received or sustained by
180 any person or persons or property, whomsoever and whatsoever, in connection
181 with, or on account of the performance of the work contemplated hereby and the
182 construction of the Improvements, except where such claim is the exclusive result
183 of the willful or negligent acts of the Village.⁵ As requested by the Village, the
184 Developer further agrees to aid and defend the Village with legal counsel
185 acceptable to the Village in the event the Village is named as a defendant in any
186 action concerning the performance of the work pursuant to this Agreement, except
187 where such suit is brought by the Developer. The provision is not intended to and
188 shall not be interpreted to limit insurance coverage that may be available to the
189 Village or governmental immunity or other defenses that may be available to the
190 Village, each and all of which are expressly reserved by the Village. It is hereby
191 agreed that the Developer is not an agent or employee of the Village, and neither
192 Developer nor its contractors shall represent itself as an agent or employee of the
193 Village.
194

195 3.4. Insurance by Contractor(s). The Developer shall also require all contractors
196 engaged in the construction of the Improvements to maintain such reasonable
197 insurance as shall be required by the Village Attorney and Engineer; and upon
198 demand, furnish to the Village Attorney and Engineer, a current certificate of
199 insurance to evidence such insurance. All such insurance shall comply with the
200 Village's contract requirements pertaining to damage claims, indemnification of
201 the Village and insurance. The Contractor(s) so engaged are required to furnish
202 comprehensive general liability insurance of not less than \$1,000,000.00
203 aggregate for any such damage sustained by two or more persons in any one
204 accident. The Developer is responsible for confirming that such insurance is in
205 place and that the Village is named as an additional insured on such insurance.
206

⁴ See Wis. Stat. §236.13, as amended, which applies to all preliminary and final plats as of August 1, 2014. Pursuant thereto, "substantial completion" is defined as follows: "(P)ublic improvements reasonably necessary for a project or a phase of a project are considered to be substantially completed at the time the binder course is installed on roads to be dedicated or, if the required public improvements do not include a road to be dedicated, at the time that 90% of the public improvements by costs are completed."

⁵ The Village does not by this provision, or by any other provision in this Agreement, waive, reduce or in any way limit any governmental immunity (whether absolute, qualified, as to intentional torts or discretionary acts or other immunity) to which it may be entitled, and hereby expressly reaffirms its right to any and all such immunity, notice of injury, notice of claim and limitation as to damages to the full extent provided by law.

207 4. CONSTRUCTION RELATED ACTIVITIES FOR IMPROVEMENTS.
208

209 In connection with the construction of the Improvements, it is hereby agreed as follows:
210

211 4.1. Scheduling. The Developer agrees that no work shall be scheduled for
212 construction of the Improvements without the Village Engineer's approval of the
213 starting date(s) and construction schedule. The construction of the Improvements
214 shall be completed on or before the completion date(s) set forth in the schedule,
215 unless otherwise extended in writing by the Village.
216

217 4.2. Commencement. The final plans and specifications, signed by the Developer's
218 Engineer, shall be submitted to the Village Engineer prior to any land disturbance
219 or commencement of work. A starting date will not be approved until (1) a
220 written statement of "no objection" with respect to the final plans and
221 specifications for the Improvements has been issued by the Village Engineer, and
222 (2) the Letter of Credit or other security required by this Agreement has been
223 furnished to the Village.
224

225 4.3. Completion. All work specified herein shall be completed within twelve (12)
226 months after the date of commencement, and time is of the essence as to
227 completion. The deadline for completion may be extended as to the laying of the
228 final layer of asphalt paving on streets in accordance with Village policy, as
229 recommended by the Village Engineer. Village policy also requires that
230 Developer furnish appropriate surety for the completion of such work as
231 recommended by the Village Engineer, and approved by resolution of the Village
232 Board.
233

234 4.4. Costs. The Developer agrees that the Village shall not be responsible for any
235 costs or charges related to the construction of the Improvements, and that the
236 Developer is responsible for all such costs, except as otherwise expressly
237 provided for in the Agreement.
238

239 4.5. Construction Related Activities; Inspection and Certification; Lien Waivers. The
240 Village may periodically review construction progress, conduct inspections and/or
241 complete material testing of the Improvements, and is granted access to the site
242 for such purposes. The Developer shall have the obligation to provide such on-
243 site inspection as is necessary to obtain written certification from Developer's
244 Engineer that the Improvements as and when they are completed are in
245 compliance with the standards and specifications of the Village and this
246 Agreement. The Developer's Engineer's written certification shall be provided to
247 the Village Engineer before the Village Engineer recommends acceptance of the
248 Improvements to the Village Board. In addition, and also prior to
249 recommendation of acceptance of the Improvements, the Developer shall present
250 to the Village valid lien waivers from all persons providing materials and/or
251 performing work on the Improvements for which certification is sought. The

252 Developer agrees that no occupancy permits will be issued by the Village until the
253 Improvements have been recommended for acceptance by the Village Engineer;
254 and until all outstanding engineering and inspection fees (including engineering
255 and inspection charges of the Village) have been paid in full, and affidavits and
256 lien waivers are received by the Village indicating that the contractors, suppliers
257 and subcontractors have been paid in full for all work and materials furnished in
258 order to construct the Improvements.
259

260 4.6. Maintenance and Repair. The Developer agrees to provide for maintenance and
261 repair of all Improvements and acknowledges that this obligation runs with the
262 land. The Village will endeavor to provide timely notice to the Developer
263 whenever the Village Engineer is not able to recommend acceptance of an
264 Improvement, or otherwise determines that an Improvement does not conform to
265 the Village’s adopted standards and specifications or is otherwise defective. The
266 Developer shall have thirty (30) days from the issuance of such notice to correct
267 or substantially correct the defect. It is agreed that the Village shall not declare a
268 default under the Agreement during the aforesaid thirty (30)-day correction period
269 on account of any such defect unless it is clear that the Developer does not intend
270 to correct the defect or unless the Village determines that immediate action is
271 required in order to remedy a situation which poses an imminent health or safety
272 threat.
273

274 4.7. Cost Breakdown. The Developer shall, upon substantial completion of the
275 Improvements, provide to the Village a final cost for all of the costs associated
276 with the construction thereof. Such final cost breakdown shall be in such form
277 and content as the Village may reasonably require.
278

279 **5. DEDICATION OF IMPROVEMENTS.**

280
281 5.1. After substantial completion⁶ of the construction in accordance with the Village’s
282 standards and specifications, as certified by the Developer’s Engineer, and
283 provided there is a written statement of “no objection” from the Village Engineer,
284 the Developer shall dedicate the Improvements to the Village.
285

286 5.2. Acceptance of the dedication requires the approval of a resolution by the Village
287 Board.
288

289 **6. GUARANTEE OF THE WORK.** The Developer agrees to guarantee and warrant all
290 work performed under this Agreement against defects in workmanship or materials for a

⁶ See Wis. Stat. §236.13, as amended, which applies to all preliminary and final plats as of August 1, 2014. Pursuant thereto, “substantial completion” is defined as follows: “(P)ublic improvements reasonably necessary for a project or a phase of a project are considered to be substantially completed at the time the binder course is installed on roads to be dedicated or, if the required public improvements do not include a road to be dedicated, at the time that 90% of the public improvements by costs are completed.”

291 period of *fourteen (14) months from the date of substantial completion*⁷ of the
292 Improvements. If any defect should appear during the guarantee period, as determined in
293 the reasonable discretion of the Village Engineer, the Developer agrees to make required
294 replacement or acceptable repairs of the defective work at the Developer's own expense.
295 Furthermore, following such notice to and repair by the Developer, the guarantee period
296 shall be extended for an additional fourteen (14) month period from the date of
297 Developer's completion of the repair. All guaranties or warranties for materials or
298 workmanship which extend beyond the guarantee period are hereby assigned by the
299 Developer to the Village, and confirmation of same shall be provided to the Village
300 Engineer.
301

302 7. **COMPLIANCE WITH LAW.** When performing its obligations under this Agreement,
303 the Developer shall comply with all terms of this Agreement, relevant laws, ordinances
304 and regulations in effect, as promulgated by all governmental bodies having jurisdiction
305 thereover. In the event of a conflict among the requirements, the stricter provisions shall
306 control.
307

308 8. **FEES PAYABLE PRIOR TO CONSTRUCTION.** The Developer agrees to pay the
309 Village for all outstanding fees and assessments levied against the Property prior to the
310 start of construction of the Improvements.
311

312 9. **DEVELOPER TO REIMBURSE THE VILLAGE FOR COSTS SUSTAINED.** In
313 addition to any escrow arrangement required by the Village pursuant to its customary
314 practice for administering development projects, the Developer shall reimburse the
315 Village for its actual cost of design, inspection, testing, construction, and associated legal
316 and other fees associated with the Development. The Village's costs shall be determined
317 as follows:
318

319 9.1. The cost of Village employees' time engaged in any way with the required
320 Improvements based on the hourly rate paid to the employee multiplied by a
321 factor determined by the Village representing the Village's cost for expenses,
322 benefits, insurance, sick leave, holidays, overtime, vacation and similar benefits.

323 9.2. The cost of Village equipment employed.

324 9.3. The cost of mileage reimbursed to Village employees and consultants that is
325 attributable to the Development.

326 9.4. The actual costs of Village materials incorporated into the work, including
327 transportation costs, plus a restocking and/or handling fee not to exceed 10% of
328 the cost of the materials.

329 9.5. All costs and expenses incurred by Village in connection with the Development,
330 including, but not limited to, the cost of professional services incurred by the
331 Village for the review and preparation of required documents, attendance at
332 meetings or other related professional services.

333 9.6. Unless the amount totals less than \$50.00, the Village shall bill the Developer

⁷ See *Id.*

334 monthly for expenses incurred by the Village. Bills outstanding for more than
335 thirty (30) days shall accrue interest at the rate of 1% per month.
336

337 **10. SURETY.**
338

339 10.1. The Developer agrees to furnish Dane County, with a copy to the Village, prior to
340 the commencement of any work under this Agreement, with surety in the form of
341 an irrevocable Letter of Credit⁸, in a form deemed acceptable to Dane County for
342 the required stormwater management facilities, and in the amount to be approved
343 by the Village Engineer, all to secure performance of the installation of the
344 required stormwater management facilities required by this contract
345

346 10.2. As work progresses on installation of Improvements constructed as part of this
347 contract, the Village Engineer, upon written request from the Developer from
348 time to time, is authorized to recommend a reduction in the amount of surety as
349 hereinafter provided. When portions of construction (street, stormwater or other
350 improvements) are completed by the Developer, the Village Engineer is
351 authorized, upon submission of lien waivers by the Developer's contractors, to
352 recommend reduction in the amount of surety. Any reduction shall require
353 approval by resolution of the Village Board and Dane County.
354

355 10.3. Upon acceptance by the Village of the Improvements, as approved by resolution
356 of the Village Board, the Village agrees to reduce the surety to an amount which
357 does not exceed ten percent (10%) of the cost of the Improvements, as estimated
358 by the Village Engineer, to secure performance of the guarantee described in this
359 Agreement.
360

361 10.4. Developer agrees to provide written notice of the expiration of any Letter of
362 Credit (or replacement Letter of Credit) provided for herein not less than forty-
363 five (45) days nor more than sixty (60) days prior to its expiration, by sending
364 notice to the following address:
365

366 Village Clerk
367 Village of Windsor
368 4084 Mueller Road
369 DeForest, WI 53532
370

371 **11. COVENANTS AND RESTRICTIONS; STORMWATER MANAGEMENT**
372 **AGREEMENT; TRANSFER RESTRICTIONS ON SALES; OTHER LEGAL**
373 **DOCUMENTS.**
374

⁸ If the Developer prefers to provide a form of security other than a letter of credit, the Developer must contact the Village Attorney prior to executing this Development Agreement so that appropriate language can be incorporated in the Development Agreement. Please see Wis. Stat. § 236.13 for additional details. The language for letters of credit is in the template because it is the most common form of security provided by Developers in the Village.

- 375 11.1. Declaration of Covenants, Conditions and Restrictions. Prior to commencement
376 of construction of Improvements under this Agreement, Developer shall submit
377 the Declaration of Covenants, Conditions and Restrictions to the Village Attorney
378 and Village Board for review and approval as to conformity with the Village
379 Subdivision Ordinance and any conditions of approval. The Covenants,
380 Conditions and Restrictions shall contain provisions that provide for site plan and
381 architectural review procedures for all Lots to insure that the represented quality
382 of the Improvements is maintained.
383
- 384 11.2. Stormwater Management and Maintenance Agreement. Developer shall also
385 enter into the Village's Stormwater Management and Maintenance Agreement, in
386 recordable form satisfactory to the Village Engineer and Village Attorney, prior to
387 the commencement of construction, which agreement shall provide that the
388 Developer shall maintain the Stormwater Management Facilities, at the expense
389 of Developer, until the Village accepts the Improvements, and that after
390 acceptance of the Improvements by the Village, the homeowner association
391 formed by Developer shall maintain the Stormwater Management Facilities at the
392 expense of the association. In the event the association fails to properly maintain
393 the Stormwater Management Facilities, then the Village's Stormwater
394 Management and Maintenance Agreement shall provide that the Village may
395 enter the property and maintain the Stormwater Management Facilities, with the
396 cost thereof to be charged back as a special charge to the owners of Lots within
397 the Development. The foregoing instruments shall be recorded prior to the
398 commencement of any work under this Agreement.
399
- 400 11.3. Restrictions on Transfer Of Lots Outside Current Phase. [Not applicable to single
401 phase Development.]
402
- 403 11.4. Other legal documents required for this Development shall be as specified on
404 Exhibit 2.
405
- 406 12. **SURVEY MONUMENTS.** Developer agrees to install all survey monuments for the
407 final Plat in the manner required by law and Village Ordinance, except that pursuant to
408 the provisions of Wis. Stat. § 236.15(1)(h), Developer shall have a period of up to five (5)
409 years after the date of execution of this Agreement by all parties, or the start of
410 construction of the final Phase of the Development, whichever comes first, within which
411 to complete installation of all required monuments in the entire Development as required
412 by law and Village Ordinance. Notwithstanding the foregoing, Developer agrees to
413 complete all such survey work for each phase of the Plat by the time of completion of
414 Improvements for such phase of the Plat. Developer will provide security in the amount
415 and manner reasonably required by the Village Engineer at the time of commencement of
416 construction of the first Phase of the Plat based on estimates from responsible surveying
417 firms, to secure the full costs of such survey monumentation work within such time
418 period. No construction shall be commenced until the Village Engineer has approved the
419 adequacy of the security for the surveying costs.

- 420
421 13. **PARKLAND DEDICATION OR FEE IN LIEU OF DEDICATION.** The Village
422 acknowledges that Developer has satisfied all requirements of the Village Subdivision
423 Ordinance with regard to the dedication of park lands or the payment of fees in lieu of
424 dedication of park lands for the Development in a sum of \$14,419.34 prior to recording
425 the Plat or **as described on Exhibit 2.**
426
- 427 14. **FEE FOR INITIAL IMPROVEMENTS TO PARKLAND PER WIS. STAT.**
428 **§ 236.45(6).** The Village acknowledges that Developer has satisfied all requirements of
429 the Village Subdivision Ordinance with regard to the fee for initial Improvements to
430 parkland paying the sum of \$1,132.13 per Lot (total due for 10 lots is \$11,321.30), which
431 payment shall be made prior to the Village's execution of the Plat or **as described on**
432 **Exhibit 2.**
433
- 434 15. *[Reserved for Future Use.]*
435
- 436 16. **GENERAL CONDITIONS.**
437
- 438 16.1. No Vested Rights Granted. Except as provided by law, or as expressly provided
439 in this Agreement, no vested right in connection with this project shall inure to the
440 Developer. Nor does the Village warrant by this Agreement that the Developer is
441 entitled to any other required approvals.
442
- 443 16.2. No Waiver. No waiver of any provision of this Agreement shall be deemed or
444 constitute a waiver of any other provision, nor shall it be deemed or constitute a
445 continuing waiver unless expressly provided for by a written amendment to this
446 Agreement signed by both Village and Developer; nor shall the waiver of any
447 default under this Agreement be deemed a waiver of any subsequent default or
448 defaults of the same type. The Village's failure to exercise any right under this
449 Agreement shall not constitute the approval of any wrongful act by the Developer
450 or the acceptance of any Improvement.
451
- 452 16.3. Village Rights Retained. The Village does not hereby waive, and expressly
453 retains, its right to governmental immunity and other defenses that may be
454 available to the Village. The obligations set forth herein are not intended to, and
455 shall not be interpreted to, limit the Village's insurance coverage or other similar
456 protections. To the extent not expressly contracted in this Agreement, the Village
457 retains and expressly reserves its legislative discretion.
458
- 459 16.4. Amendment/Modification. This Agreement may be amended or modified only by
460 a written amendment approved and executed by the Village and the Developer.
461
- 462 16.5. Default. A default is defined herein as the Developer's breach of, or failure to
463 comply with, the terms of this Agreement. The Village reserves to itself all
464 remedies available at law or equity as necessary to cure any default. The Village

465 also reserves to itself the right to draw on a Letter of Credit or other surety
466 provided hereunder in addition to pursuing any other available remedies.
467 Remedies shall include, but not be limited to, stopping all construction in the
468 approved final Plat and prohibiting the transfer or sale of Lots. Remedies shall be
469 cumulative, and the exercise of one shall not preclude the exercise of others.
470

471 16.6. Entire Agreement. This written Agreement, and written amendments, and any
472 referenced attachments thereto, shall constitute the entire Agreement between the
473 Developer and the Village.
474

475 16.7. Attorney Fees. If the Village is required to resort to litigation or arbitration to
476 enforce the terms of this Agreement, and if the Village prevails in the litigation or
477 arbitration, the Developer shall pay all Village costs, including reasonable
478 attorney fees and expert witness fees. If the court or arbitrator awards relief to
479 both parties, each will bear its own costs in their entirety.
480

481 16.8. Time. For the purpose of computing the commencement, abandonment and
482 completion periods, and time periods for Village or Developer action, such times
483 in which war, civil disasters, acts of God, or extreme weather conditions occur or
484 exist shall not be included if such times prevent the Developer or Village from
485 performing their/its obligations under the Agreement.
486

487 16.9. Severability. If any part, term or provision of this Agreement is held by the courts
488 to be illegal or otherwise unenforceable, such illegality or unenforceability shall
489 not affect the validity of any other part, term or provision, and the rights of the
490 parties will be construed as if the part, term or provision was never part of the
491 Agreement.
492

493 16.10. Benefits. The benefits of this Agreement to the Developer are personal and shall
494 not be assigned without the express written approval of the Village. Such
495 approval may not be unreasonably withheld, but any unapproved assignment is
496 void. Notwithstanding the foregoing, the burdens of this Agreement are personal
497 obligations of the Developer and also shall be binding on the heirs, successors and
498 assigns of the Developer.
499

500 16.11. Notice. Any notice required or permitted by this Agreement shall be deemed
501 effective when personally delivered in writing or three (3) days after notice is
502 deposited with the U.S. Postal Service, postage prepaid, certified mail and return
503 receipt requested, and addressed as follows:
504

505 If to Developer:

Happy Valley Addition, LLC
Attn: Donald C. Tierney, Manager
3564 Egge Road
DeForest, WI 53532

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If to Village:

Village of Windsor
Attn: Village Clerk
4084 Mueller Road
DeForest, WI 53532

16.12. Recordation. The Village may record this Agreement or a memorandum of this Agreement in the Register of Deeds Office. All costs of recording shall be paid by the Developer.

16.13. Effective Date. This Agreement shall be effective as of the date and year executed by both parties.

*[SIGNATURES ON FOLLOWING TWO PAGES]
[EXHIBITS INCORPORATED BY REFERENCE]*

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601

EXHIBIT 1
PHASING PLAN

PHASE	LOTS	COMMENCE	COMPLETE
1	1 - 10	August 1, 2016	August 1, 2017

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603
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608

Changes to the Phasing Plan by the Developer require approval of the Village Board. Changes without Village approval shall be deemed a breach of the Agreement by the Developer. Village approval changes to the Phasing Plan shall not be unreasonably withheld or delayed.

EXHIBIT 2
SPECIAL PROVISIONS

Overall:

PLANS: The Village Engineer has no objection to the final OVERALL plans presented by the Developer's Engineer, which plans are dated and marked as follows:

Checklist For Possible Special Provisions:

1. Water & Sewer Improvements: Development is on Private Well and Septic, no public improvements.
2. Public roads: Public Road Improvements are in the Jurisdiction of the Town of Brisol
3. Stormwater Management: as required by approved plan, Dane County and Village Engineer
4. Sidewalk: not required by Village of Windsor; public right-of-way is in Town of Bristol
5. Trees: A minimum of 29 trees shall be required and shall be placed at the discretion of the Developer.
6. Trails: See notes for item 8, Parks below.
7. Landscaping and restoration: _____
8. Parks: Prior to the Village's execution of the Plat, all required documents shall be fully executed (Development Agreement, Covenants, Stormwater Management Agreement, Deed Notice) and provided to the Director of Planning & Development, proof of the organization of Happy Valley Addition, LLC shall be provided by the Developer to the Village Attorney, and the required Fee in Lieu of Parkland Dedication (\$14,419.34) and the Initial Facility Improvements Fee (\$11,321.30) shall be provided to the Finance Director for deposit with the Village of Windsor. The total deposit of \$25,740.64 shall be in a fund designated for exclusive use in those parks located in the Windsor Gardens development that is in the Village of Windsor. The fund designation shall expire 24 months from the deposit, and thereafter the deposit will be available for Park's purposes as set forth in the CORP Plan. During the 24 month period, it is the parties' agreement to work together to identify parks improvements that are beneficial to the Windsor Gardens development and acceptable to the Developer, the Parks Commission and the Village Board. If Developer elects to complete agreed upon parks improvements, Developer shall be reimbursed for associated costs from the designated fund. The amount of reimbursement shall be agreed upon prior to commencement of the improvements and paid upon substantial completion.
9. Signage:
 - a. Fire numbers/addresses: To provide continuity in the assignment of addresses on Angelica Trail, the Town of Bristol shall provide the Village of Windsor the address assignment for house numbers along Angelica Trail. It shall be the responsibility of the Village of Windsor to provide the fire numbers.
 - b. Street signs: To be provided by the Town of Bristol

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c. Development signs: Must be approved by the Village of Windsor and must contain "A Windsor Neighborhood" note.

- 10. Maintenance Agreement: Yes, Stormwater.
- 11. Transfer Restriction: No
- 12. Covenants: Yes
- 13. Easements: No
- 14. Other: Recording of a Deed Notice in a form satisfactory to the Village Board, Village Attorney and Director of Planning & Development for all public services provided to the lots, and notice of such arrangements to be recorded and run with the land. (Police, Garbage, Stormwater Management, Taxes = Windsor, Road Maintenance and Services = Bristol)

For a Particular Phase:

PLANS: The Village Engineer has no objection to the final plans FOR PHASE 1 presented by the Developer's Engineer, which plans are dated and marked as follows: NOT APPLICABLE

Windsor Park Land Dedication Calculation - Happy Valley Addn to Windsor Gardens

Step #1 Determine the required Parkland Dedication based on the number of dwelling units shown on the Plat for Windsor.

	Number of Units	Multiply by 1/10 acre	=	Dedication Requirement	
	10	0.1	=	1	
Unit Total	10			1 Acres	Required Park Dedication

Step #2 Determine the acreage of dedicated Parkland shown on the Plat for Windsor.

Dedicated Park Space		Sq Ft / Acre		
Total Sq Feet	0	43560	=	0 Total Acres Dedicated on Plat

Step #3 Determine deficiency of dedicated parkland for the Plat for Windsor.

	1	-	0	=	1	Deficiency in Parkland Dedication
--	---	---	---	---	---	-----------------------------------

Step #4 Determine the fee in lieu of parkland dedication

		2016 Values		
	1 X \$	14,419.34	= \$	14,419.34 Fee in Lieu of Parkland Dedication

Initial Facility Improvement Fee

Determine the Initial Facility Improvement Fee

	Number of Units		Cost Per Unit 2016		2016 Values	
Single Family / Duplex	10	x	\$ 1,132.13	=	\$ 11,321.30	
					\$ 11,321.30	Required Fee for Park Improvements

0

Fee in Lieu of	Initial Improvement	Total
\$ 14,419.34	+ \$ 11,321.30	= \$ 25,740.64

**DECLARATION OF COVENANTS,
RESTRICTIONS, CONDITIONS AND
EASEMENTS FOR THE PLATS OF HAPPY
VALLEY ADDITION TO BRISTOL GARDENS,
TOWN OF BRISTOL, AND HAPPY VALLEY
ADDITION TO WINDSOR GARDENS, VILLAGE
OF WINDSOR, ALL IN DANE COUNTY,
WISCONSIN**

Happy Valley Addition, LLC, a Wisconsin limited liability company ("Developer"), owner of the real estate in the Village of Windsor and the Town of Bristol, Dane County, Wisconsin, which has been platted as the Plats of Happy Valley Addition to Bristol Gardens, Town of Bristol, and Happy Valley Addition to Windsor Gardens, Village of Windsor, all in Dane County, Wisconsin (collectively "the Property"), hereby declare that all of the lots in the Property are subject to the following restrictions, covenants, conditions and easements, and that all of such lots are and shall be held, sold, occupied, conveyed and transferred subject to the covenants, restrictions, conditions and easements set forth herein:

Return to:
Michael J. Lawton
P.O. Box 927
Madison, WI 53701-0927

See attached list
Parcel Identification Number

ARTICLE 1

Definitions

For purposes of these Covenants, Restrictions, Conditions and Easements, the following terms shall be defined in the following manner:

1.1. "Developer" shall refer to Happy Valley Addition, LLC, and their representatives, successors and assigns.

1.2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to a platted lot (exclusive of outlots) within the Property, except that as to any such lot which is the subject of a land contract wherein the purchaser is in possession, the term "Owner" shall refer to such person instead of the vendor.

1.3. "Property" shall mean and refer to the real estate described as the Plats of Happy Valley Addition to Bristol Gardens, Town of Bristol, and

Happy Valley Addition to Windsor Gardens, Village of Windsor, all in Dane County, Wisconsin.

ARTICLE 2
Property Subject to This Declaration

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the Town of Bristol and the Village of Windsor, Dane County, Wisconsin, and shall be known as the Plats of Happy Valley Addition to Bristol Gardens, Town of Bristol, and the Happy Valley Addition to Windsor Gardens, Village of Windsor, all in Dane County, Wisconsin.

ARTICLE 3
Architectural Control and Protective Covenants and Restrictions

3.1. For all buildings and structures to be erected or placed on any lot subject to this Declaration, the plans, specifications, site, grading and landscaping plans for all such buildings or structures must be submitted to the Developer or the Architectural Control Committee, whichever is then applicable, for written approval as to appearance, the quality of workmanship and materials, harmony of exterior design, including exterior colors, size, location with respect to topography and finish grade elevation, site layout, roof pitch, location of improvements and amount, quality and nature of landscaping, prior to commencement of any construction on any lot. All buildings erected on the Property shall have a minimum roof pitch of not less than 6/12 pitch, but a variance from this minimum may be granted by the Developer or the Architectural Control Committee, whichever is then applicable, in their discretion. For purposes of this Declaration, the term "structure" shall include play structures, fences, patios, decks and swimming pools. All plans shall conform to and comply with the terms of Exhibit A hereto.

3.2. After the Developer and their representatives, successors and assigns, cease to have any title to any lot subject to this Declaration, the plans, specifications, site, grading and landscaping plans, and all other matters to be submitted to the Developer under these Covenants, Conditions, Restrictions and Easements, must be submitted to the Architectural Control Committee ("Committee") for approval in writing by a majority of the members of said Committee. The Committee shall consist of the members of the Board of Directors of the Happy Valley Addition Homeowners

Association, Inc., or in the alternative, if the Directors of the Association so elect, three persons elected by a majority of the members of the Board of Directors of the Association.

3.3. For each building erected or placed on any lot subject to this Declaration, the prime contractor or builder to be hired for construction of such building shall be approved in writing by the Developer or the Committee, whichever is then applicable, prior to commencement of construction. The approval of the Developer or the Committee shall not be unreasonably withheld. Such approval may be withheld for reasons such as the proposed contractor's or builder's financial status, business history and prospects, building reputation or any other reason which would be similarly relied upon by a reasonably prudent businessman then developing a neighborhood of quality single family residences.

3.4. No alteration in the exterior appearance of existing buildings or structures, including but not limited to, exterior remodeling and the construction of play structures, fences, patios, decks, and swimming pools, shall be made without the prior written approval of the Developer or the Committee, whichever is then applicable.

3.5. The existing vegetation of each lot subject to this Declaration, including trees of a diameter of three (3) inches or greater, shall not be destroyed or removed except as approved in writing by the Developer or the Committee, whichever is then applicable. In the event such vegetation is removed or destroyed without approval, the Developer or Committee may require the replanting or replacement of same, the cost thereof to be borne by the Owner.

3.6. The elevation of a lot shall not be changed so as to materially affect the surface elevation or grade of the surrounding lots. Violations of the approved site, grading or landscaping plans shall give either the Developer or Committee, whichever is then applicable, or any adjacent lot owner within the Property, a cause of action against the person violating such site, grading or landscaping plan for injunctive relief or damages as appropriate. No earth, rock, gravel, or clay shall be excavated or removed from any Lot within the Property without the approval of the Developer or the Committee, whichever is then applicable.

3.7. All lots within the Property (other than outlots) shall be used only for single family residential purposes, and except that Developer may continue to use lands owned by Developer for present agricultural purposes and uses.

The following minimum floor area requirements shall apply to all single family residential buildings erected on any lots subject to this Declaration:

- (a) No single story building shall have less than 1600 square feet.**
- (b) No two-story building shall have less than 2000 square feet.**
- (c) No raised ranch, bi-level, or tri-level building shall have less than 2000 square feet on the main two floors.**

For the purposes of determining floor area, stair openings shall be included, but open porches, screened porches, attached garages, and basements, even if the basements are finished, shall be excluded.

The above minimum requirements may be waived by the Developer or the Committee, whichever is then applicable, in the event the proposed architecture and quality of the house is such as to present an appearance compatible with other houses within the Property.

3.8. All single family residential buildings must have an attached garage and such garage must contain not less than two (2) nor more than four (4) automobile garage stalls, but the maximum limitation may be waived by the Developer or the Committee, whichever is then applicable.

3.9. No building previously erected elsewhere may be moved onto any lot subject to this Declaration, unless approved by the Developer or the Committee, whichever is then applicable, in their discretion.

3.10. All driveways must be either concrete or paved. No more than three (3) domestic animals may be kept on any lot subject to this Declaration. Commercial animal boarding, kenneling or treatment is expressly prohibited, whether for free or not, within the Property. No dog which is a pit bull, or Doberman, in whole or in part, shall be maintained or reside on any lot or outlot within the Property, without the written consent of the Developer or the Committee, whichever is then applicable, in its sole discretion.

3.11. Accessory buildings or structures, including, but not limited to, storage sheds, detached garages and above ground swimming pools, are expressly prohibited within the Property except where approved in writing in advance by the Developer or Committee, whichever is then applicable, in their sole discretion.

3.12. Where public sidewalks exist, it is the responsibility of the abutting lot owner to maintain same in a safe and passable condition, reasonably free from snow, ice or obstruction, but this shall not apply to trails.

3.13. No trailer, basement, tent, shack, garage, barn, or any part thereof, shall ever be used as a residence, temporary or permanent, nor shall any residence be of a temporary character.

3.14. Parking of commercial or service vehicles owned or operated by residents within the Property is prohibited unless such vehicles are kept in garages. Parking or storage of boats, travel trailers, mobile homes, campers, and other recreational vehicles within the Property is prohibited unless kept inside garages. Parking of more than three (3) vehicles in the driveway or on the street within the Property, by the residents or owners of any one lot in the Property, shall be prohibited, except for vehicles of guests, invitees or contractors of the residents or owners of such lot. This section shall not prohibit the temporary parking of any vehicles otherwise prohibited, if such parking is for the sole purpose of loading or unloading such vehicles at the lot at which parked, for a period not to exceed forty-eight (48) hours. No cars or other vehicles shall be parked on lawns, yards or ditch areas at any time.

3.15.

A. All areas of lots (excluding outlots) not used as a building site or lawn or under cultivation as a garden shall have a cover crop and be kept free from noxious weeds. The Owner shall keep each lot (excluding outlots), and all improvements, in good order and repair and free of debris, including, but not limited to, the mowing of all lawns, the pruning of all trees and shrubbery and the painting (or other external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management. This paragraph shall not be construed to prevent a family garden or orchard, provided that all family gardens and orchards shall be located in the back yards, and shall be located no closer than ten (10') feet from the lot line, and the garden area on any lot may not exceed twenty-five (25%) percent of the lot area not covered by residence, garage and driveway.

B. All lot owners whose lots abut or adjoin a public trail owned by the Town of Bristol or Village of Windsor, or a trail owned or maintained by the Association, within the Subdivision, shall maintain the lawn or grass area next to the trail up to and abutting the paved surface of the trail, including,

but not limited to, the mowing of the grass, the control of weeds and the trimming and pruning of shrubs, bushes, trees and other vegetation, all in a workmanlike manner and with reasonable frequency, but maintenance of the trail surface itself by the lot owner is not required. In the event that any lot owner does not maintain such area adjoining or abutting a trail in the manner required herein, the Town of Bristol or the Village of Windsor (being the governmental unit in which the area requiring maintenance is located), may give written notice and opportunity to cure of not less than thirty (30) days duration to the owner of the adjoining or abutting lot in question, and in the event that such default is not cured within such time period by the owner, the Town or Village, as applicable, may enter the applicable lot or land and mow or otherwise maintain such area abutting or adjoining the trail at the expense of the owner of the abutting or adjoining lot. Any costs incurred by the Town of Bristol or Village of Windsor under this paragraph shall be a special charge on the tax bill for such abutting or adjoining lot and constitute a lien upon such lot, as provided in Chapter 66, Wisconsin Statutes, and the owner hereby consents thereto and waives any notice or hearing in connection therewith. Interest on the delinquent amount shall accrue at the rate of 12% per annum.

C. The Happy Valley Addition Homeowners Association, Inc. shall keep all outlots within either plat which are designated on the plats for stormwater management purposes, whether or not dedicated to the Town of Bristol or the Village of Windsor, free of debris and noxious weeds, and shall maintain all such outlots in a workmanlike condition in accordance with the approved stormwater plans for such outlots. Owners of lots within the Property understand that they may not place, erect or maintain any structure or any other encroachment on any outlot within the Property.

3.16. On any lot conveyed by land contract or deed from the Developer, construction shall be commenced within one (1) year from the date of such land contract or deed. Upon violation of this restriction, the Developer shall have the option, exercisable by written notice to the lot owner within ninety (90) days after the expiration of such one (1) year period, to have said lot conveyed to the Developer at the original sales price, free and clear of any liens and encumbrances created by act or default of the Owner of such lot, with taxes and installments on assessments for the year in which conveyance occurs being prorated as of the date of such conveyance. Developer may waive its rights under this section in writing, in its discretion.

3.17. Construction of all buildings shall be completed within six (6) months after issuance of a building permit for the respective building.

Landscaping (including grading, sodding, and seeding) and paving of driveway shall be completed within one hundred eighty (180) days of completion of construction, provided weather conditions so allow. If such construction or landscaping is delayed due to matters beyond the control of the lot owner, the time for completion shall be extended by the period of such delay.

3.18. A. All mailboxes within the Property shall be located on one side of the public streets within the Property, which side shall be designated by the Developer or the Committee, whichever is applicable.

B. Except to the extent preempted by federal law, no exterior antennas, satellite dishes, solar panels, wind mills, walls or fences of any kind shall be permitted within the Property unless approved in writing in advance by the Developer or the Committee, whichever is then applicable, including approval of the location, material, height and color thereof.

C. No chain link fence shall be installed or built at anytime within the Property. Unless otherwise approved by the Developer or the Committee, whichever is applicable, in their sole discretion, all fences within the Property shall be ornamental iron or wrought iron and be black in color. No fences within the Property shall exceed 4 feet in height. No fences within the Property shall be located closer than one (1) foot from any property line.

3.19. No noxious or offensive trade or activity shall be carried on, nor shall anything be done which may be or will become a nuisance to the neighborhood. This shall not be construed to prevent a family garden or orchard, provided that all family gardens and orchards shall be located in back yards, and shall be located no closer than ten (10') feet from the lot line, and the garden area on any lot may not exceed twenty-five (25%) percent of the lot area not covered by the residence, garage and driveway. No burning barrels shall be allowed on any lot.

3.20. The Owner of any lot subject to this Declaration shall not change the elevation of any utility easement in excess of six (6) inches without the permission of all of the applicable utilities and shall be responsible for any damages caused to underground utilities based on any changes in grade of more than six (6) inches.

3.21. No lot or outlot as platted shall be resubdivided, without the consent of the Developer and the Town or Village in which such lot or outlot is located. No boundary line within the Property shall be changed, except with the approval of the Developer or the Committee, whichever is then

applicable. This section shall not be construed to prevent the use of one lot and part or all of another lot or lots as one building site.

3.22. No signs of any type shall be displayed to public view on any lot without the prior written consent of the Developer or the Committee, whichever is then applicable, except for (a) lawn signs of not more than six (6) square feet in size advertising the property where located for sale, and (b) signs erected by Developer advertising lots within the Property for sale.

3.23. All buildings constructed on any lots subject to this Declaration shall conform to all governmental zoning requirements and all set-back requirements imposed by local ordinance.

3.24. No Owner of any lot shall re-grade or obstruct any swale, drainage way, drainage ditches or stormwater detention area, whether established by easement or not, which is in existence at the time of development on such lot, so as to impede the flow of surface water across such swale, ditches or drainage way, or interfere with the proper functioning of any such swale, ditches, drainage way or stormwater detention area, and no structure, planting or other materials shall be placed or permitted to remain within any such swale, ditches, drainage way or stormwater detention area.

3.25. The following landscaping requirements apply to all lots (other than outlots) within the Property:

- (a) All yards must be either (i) sodded or (ii) or seeded, fertilized and crimp mulched or covered with an erosion mat, including street terraces. The lot owner shall comply with all Village and Town ordinances in which the lot is located, as well as Dane County erosion control requirements.**
- (b) Landscape plantings and maintenance of the premises and adjoining street terrace shall be the responsibility of the lot owner. Complete visual screening of the front, rear and side boundaries of any lot is prohibited without approval of the Developer or the Committee, whichever is then applicable.**

3.26. The Developer, after a period of ten (10) years from the date of recording the either final Plat or after seventy-five percent (75%) of the lots within the Property (other than outlots) have been sold, whichever occurs first, may elect to assign all of the Developer's rights to approve all of the items set forth in Article 3 hereof to the Committee.

3.27. Article 3 hereof shall run with the land and shall be binding upon and inure to the benefit of all persons having an interest in the Property for a period of thirty (30) years after the applicable is recorded, after which time Article 3 of this Declaration as to the applicable plat shall automatically stand renewed for successive five (5) year periods unless the same is cancelled as provided in Section 3.28 below. If any person, or its successors or assigns, shall violate or attempt to violate any of the covenants and restrictions contained in Article 3 hereof while Article 3 hereof is effective, the Developer, the Committee or any person or persons owning any lot or lots within the Property, shall have standing to bring proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants or restrictions, and the prevailing party shall be awarded reasonable attorneys fees and costs, and any person violating any of these covenants or restrictions shall be liable for all costs of removing any such violation.

3.28. Article 3 hereof, or any part thereof, may be cancelled, released, amended, or waived in writing as to some or all of the lots subject to this Declaration by an instrument signed by the Developer, or if the Developer has released or assigned the Developer's rights under Article 3 of this Declaration as provided, then by an instrument in writing signed by the Owners of a majority of the lots (other than outlots) subject to this Declaration, except that this Declaration may not be amended without the consent of the Town of Bristol if the amendment affects said Town or lots within the Town, and the Village of Windsor if the amendment affects said Village or lots within the Village.

3.29. Invalidation of any one of these covenants or any severable part of any covenant, by judgment or court order, shall not affect any of the other provisions, which shall remain in full force and effect.

3.30. In the event the Developer or the Committee, whichever is then applicable, does not affirmatively approve or reject the plans, specifications and site, grading and landscaping plans, the prime contractor or builder, alterations, or any other matters which must be submitted to the Developer or Committee, within thirty (30) days after the same have been submitted to the approving authority in writing with a complete application, then such approval shall not be required in that instance.

3.31. In exercising any authority under Article 3 of this Declaration, the Developer or Committee, as appropriate, shall act in accordance with the following standards:

- (a) to assure the most appropriate development and improvement of the Property;**
- (b) to protect each Owner of a lot against improper uses by other lot owners;**
- (c) to preserve the beauty of the Property;**
- (d) to guard against the erection of poorly designed or poorly proportioned structures, or structures built of improper or unsuitable material;**
- (e) to encourage and secure the erection of attractive, adequate sized homes, which conform and harmonize in external design with other structures within the Property and which are properly located upon the lot in accordance with its topography and finished grade elevation; and**
- (f) to provide for high quality improvements which will protect the investments of purchasers of lots.**

3.32. The Developer and the Committee shall not be liable for any loss suffered by any person on the basis of the approval or disapproval of any proposed use, plans, specifications, site, grading or landscaping plan or other matter, including any loss arising out of the negligence of the Developer or Committee.

3.33. If any Owner shall violate or attempt to violate any covenant or restriction with regard to drainage swales, ditches, drainage ways, stormwater detention areas, or maintenance or landscaping, or if any lot owner responsible for specific duties with regard thereto shall fail to perform such duties, the Developer, the Committee, or applicable Town or Village, shall have standing to bring proceedings at law or in equity against the person or persons violating or attempting to violate such covenant or restriction or failing to perform such duties, and shall be awarded appropriate relief, including reasonable attorney fees and costs, to remedy said violation.

3.34. The Happy Valley Addition Homeowners Association, Inc. shall maintain all stormwater management facilities (including the drainage and stormwater easements and outlots designated for stormwater purposes on the Property as shown on the Plats), including mowing, cleaning and maintenance generally, all in a workmanlike manner, all in accordance with

the terms of the Dane County stormwater management permit and ordinance and the plans approved by the Town of Bristol and the Village of Windsor, as applicable, at the sole expense of such Association. In the event of a failure on the part of the Association to maintain any such stormwater management facilities as provided herein, after 30 days written notice of default and opportunity to cure from either the Town of Bristol or the Village of Windsor, as applicable, either the Town of Bristol or the Village of Windsor, as applicable, may enter such stormwater management area and perform such maintenance as is required hereunder at the expense of the Association and the owners of the lots in the portion of the Property located within such Town or Village, and the cost to the Town of Bristol or the Village of Windsor, if not paid in full by the Association, or the Owners of the affected lots, within 30 days after written demand by the Town or Village, as applicable, shall be a special charge against the Lots (other than outlots) within the portion of the Property located within the applicable Town or Village, on a pro rata basis, and may be recovered in the manner provided by law for special charges, be included in the real estate tax bill for the Lots (other than outlots) within the portion of the Property located within the applicable Town or Village on a pro rata basis, and become a lien on each such Lot on such pro rata basis. The rights of the Town of Bristol or Village of Windsor to enter such lands as provided herein and to enforce the obligations specified herein shall constitute a perpetual easement for the benefit of the public in favor of the Town of Bristol or the Village of Windsor. Interest shall accrue on any obligation if past due at the rate of 12% per annum and be included in the special charge and lien. The Town of Bristol or the Village of Windsor may seek injunctive relief against the Association requiring the Association to perform the maintenance with respect to such stormwater management areas as required above, and the Association shall be liable for the actual attorney fees and costs of the Town or Village in connection with any such action or any action to recover the special charge provided above. The provisions in this section may not be amended nor the covenants or easements provided herein waived or terminated without the consent of the Town of Bristol and the Village of Windsor, and Dane County, and the written consent of either (a) the Developer or (b) the Owners of a majority of lots (other than outlots) within the Plats.

3.35. NOTICE IS HEREBY GIVEN TO ALL OWNERS OF LOTS WITHIN THE PROPERTY THAT THE PLATS ADJOIN AND ARE IN THE VICINITY OF LANDS WHICH ARE USED FOR AGRICULTURAL PURPOSES, WHICH MAY INVOLVE CROP AND ANIMAL PRODUCTION ACTIVITIES, THE USE OF MACHINERY AND EQUIPMENT, AND THE USE OF AGRICULTURAL FERTILIZERS AND PESTICIDES. AGRICULTURAL ACTIVITIES MAY

INVOLVE THE CREATION OF DUST AND NOISE, AND THE PRESENCE OF STRONG ODORS. THE PROPERTY IS LOCATED IN AN AGRICULTURAL AREA AND RESIDENTS MUST EXPECT THAT CONDITIONS WHICH OCCUR IN AGRICULTURAL AREAS MAY OCCUR IN OR NEAR THE PROPERTY. WISCONSIN HAS ADOPTED A "RIGHT TO FARM" LAW WHICH PROVIDES LEGAL PROTECTION FOR AGRICULTURAL ACTIVITIES AGAINST LEGAL ACTIONS CLAIMING NUISANCE.

3.36. NOTICE IS FURTHER GIVEN TO ALL OWNERS OF LOTS WITHIN THE PROPERTY THAT ANGELICA TRAIL IS A PUBLIC STREET LOCATED IN THE TOWN OF BRISTOL AND THAT MAINTENANCE OF ANGELICA TRAIL IS PROVIDED BY THE TOWN OF BRISTOL. THE TOWN OF BRISTOL AND THE VILLAGE OF WINDSOR WILL EACH DECIDE INDEPENDENTLY WHAT PUBLIC SERVICES SUCH TOWN OR VILLAGE WILL PROVIDE TO THE LOTS LOCATED WITHIN ITS BOUNDARIES.

ARTICLE 4

Happy Valley Addition Homeowners Association, Inc.

Definitions

For purposes of Article 4 of these Covenants, Restrictions, Conditions and Easements, the following terms shall be defined in the following manner:

4.1. "Association" shall mean and refer to Happy Valley Addition Homeowners Association, Inc., its successors and assigns.

4.2. "Board" shall mean and refer to the Board of Directors of the Association.

4.3. "Declaration" shall mean the Declaration of Covenants, Restrictions, Conditions and Easements for the Plats of Happy Valley Addition to Bristol Gardens, Town of Bristol, and Happy Valley Addition to Windsor Gardens, Village of Windsor, all in Dane County, Wisconsin, as it may from time-to-time be amended.

Association Membership and Board of Directors

4.4. Members. The Owner of each platted lot (exclusive of outlots) within the Plats of Happy Valley Addition to Bristol Gardens, Town of Bristol, and Happy Valley Addition to Windsor Gardens, Village of Windsor, all in Dane County, Wisconsin, shall be a member of the Association. Where more than one person holds an ownership interest in any lot, all persons holding

such interest shall be members. The members shall have such rights as are set forth herein, in the Articles and By-Laws of the Association, as amended from time-to-time, and as may be provided by the laws of the State of Wisconsin.

4.5. Board of Directors. The affairs of the Association shall be managed by the Board. The Board shall be selected in the manner, and shall have such duties, powers and responsibilities as are set forth herein, in the Articles and By-laws of the Association, as amended from time-to-time, and as may be provided by the laws of the State of Wisconsin, subject to the rights of Developer as set forth in such instruments.

Common Areas; Entrance Sign

4.6. Acquisition of Common Areas. The Association may take title from time-to-time to real property within the Plats of Happy Valley Addition to Bristol Gardens, Town of Bristol, Dane County, Wisconsin, and Happy Valley Addition to Windsor Gardens, Village of Windsor, Dane County, Wisconsin, for the purpose of providing common areas for the use and benefit of the members, establishing and maintaining plat entrance signs, and managing stormwater management areas serving the Plats. The Association shall have the right to exclusive management and control of all such common areas and all improvements thereon.

4.7. Obligations of Association. The Association shall have the duty to maintain common areas or real estate in which the Association has an interest, in good, clean, attractive and sanitary condition, order and repair, and to make such improvements and perform such maintenance as shall further the interests of the members. In addition, the Association shall have the duty to maintain the stormwater management areas within the Property at its expense, and to assess the costs thereof to the Lots (other than outlots) within the Property.

4.8. Easement of Enjoyment. Subject to the provisions of this Declaration, all common areas shall be held by the Association for the benefit of the members. Each of said members shall have an equal, undivided right to use and enjoyment of such common areas, subject to the right of the Association to manage such lands for the benefit of the members of the Association and to establish reasonable rules for the use of such common areas.

4.9. Entrance Sign. The Association shall maintain in good order and repair any entrance sign(s) for the Property, at the expense of the Association.

Assessments

4.10. Creation of Lien and Personal Obligation of Assessments. The Developer hereby covenants, and each Owner of any lot within the Property (other than outlots) by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all assessments in the amount and manner hereinafter provided. All such assessments, together with interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and a continuing lien upon the lot (but not any outlot) against which each such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the person who was the Owner of such lot (other than outlots) at the time when the assessment became due and payable.

4.11. Creation of Assessments. Assessments shall be determined, established and collected each year, starting with calendar year 2017, in the following manner:

- (a) Budget.** In December of each year starting in December 2016, the Board shall determine a budget for the ensuing calendar year, which shall include the costs to be incurred by the Association in connection with the maintenance, improvement and operation of common areas, entrance sign(s) and stormwater management areas, payment of taxes and insurance, and other costs connected therewith, including a reasonable reserve for depreciation. Such budget shall be approved by a vote of two-thirds (2/3) of the Board on or before the last day of December each year.
- (b) Limitation on Assessments.** The maximum annual assessment which may be authorized under this Article shall be \$100.00 for each lot to which the Association has the power to make assessments hereunder or under other comparable instruments (excluding outlots), until the actual annual costs of maintenance, improvement and operation of common areas and payment of taxes, insurance and other costs associated therewith, including a reasonable reserve for depreciation, shall exceed the annual revenue generated by an assessment of \$100.00 per lot, in which

event the maximum assessment per lot shall be such actual costs of maintenance, improvement and operation of common areas and payment of taxes, insurance and other costs associated therewith, including a reasonable reserve for depreciation, divided equally among all lots as to which the Association has the power to make assessments hereunder or under other comparable instruments (excluding outlots).

- (c) **Declaration of Assessments.** The Board shall declare assessments so levied due and payable thirty (30) days from the date of such levy. The Board shall notify each Owner of the action taken by the Board, the amount of the assessment against the lot owned by such Owner and the date such assessment becomes due and payable. Such notice shall be mailed to the Owner at the last known post office address by United States mail, with postage prepaid, or be personally delivered to the Owner.
- (d) **Collection of Assessments.** In the event any assessment levied against any lot remains unpaid for a period of sixty (60) days from the date of the levy, the Board may, in its discretion, file a claim for a maintenance lien against the lot for which payment is not made, and upon compliance with the provisions of Section 779.70, Wisconsin Statutes, or other applicable authority, such claim shall be and become a lien against such lot. The claim shall thereafter accrue interest at the rate of interest payable upon legal judgments in the State of Wisconsin, and the Board may exercise such remedies to collect such claim as may be afforded by law. The Owner of the subject lot shall be responsible for all costs of collection incurred by the Association in connection therewith. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of any common areas or abandonment of his lot.
- (e) **Joint and Several Liability of Grantor and Grantee.** Upon a voluntary conveyance, the grantee of a lot shall be jointly and severally liable with the grantor for all unpaid assessments as provided in this Article up to the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amount paid by the grantee therefore. However, any such grantee shall be entitled to a statement from the Association setting forth the amount of such unpaid assessments and any such grantee shall not be liable for, nor shall the lot conveyed be

subject to a lien for, any unpaid assessment against the grantor pursuant to this Article in excess of the amount therein set forth. If the Association does not provide such a statement within ten (10) business days after the grantee's request, it is barred from claiming any lien which is not filed prior to the request for assessments owed by the grantor.

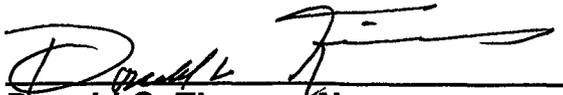
4.12. **Term.** Article 4 hereof shall run with the land and shall be binding upon and inure to the benefit of all persons having an interest in the Property for a period of thirty (30) years after the Plats of Happy Valley Addition to Bristol Gardens, Town of Bristol, and Happy Valley Addition to Windsor Gardens, Village of Windsor, all in Dane County, Wisconsin, are recorded, after which Article 4 of this Declaration shall automatically stand renewed for successive five (5) year periods unless the same is cancelled as provided in Section 4.13 below.

4.13. **Cancellation, Release, Amendment or Waiver.** Article 4 hereof, or any part thereof, may be cancelled, released, amended or waived in writing as to some or all of the lots subject to this Declaration by an instrument signed by the Developer, or if the Developer has released or assigned the Developer's rights under Article 3 of this Declaration as provided herein, then by an instrument in writing signed by both (a) the Owners of a majority of the lots (other than outlots) subject to this Declaration, and (b) a majority of the Board of the Association.

4.14. **Severability.** Invalidation of any one of these covenants or any severable part of any covenant, by judgment or court order, shall not affect any of the other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have executed this instrument on this 15th day of July, 2016.

HAPPY VALLEY ADDITION, LLC

By: 
Donald C. Tierney, Manager

By: 
Joanne K. Tierney, Manager

STATE OF WISCONSIN)

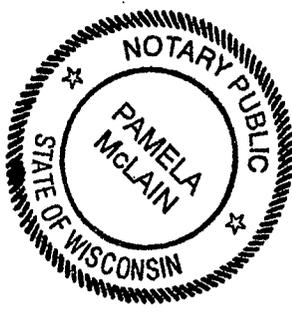
COUNTY OF DANE) ss.
)

On this 15th day of July, 2016, before me, a Notary Public, personally appeared Donald C. Tierney and Joanne K. Tierney, to me known, who being by me duly sworn, did depose and say that they executed said document.

Pamela McLain

Notary Public, State of Wisconsin
My Commission: 8/19/19

*This instrument drafted by
Michael J. Lawton.*



**PLAT OF HAPPY VALLEY ADDITION
TO WINDSOR GARDENS,
VILLAGE OF WINDSOR,
DANE COUNTY, WISCONSIN:**

**DEED NOTICE
RE
LOTS 1-10 AND OUTLOT 1**

As set forth in the Declaration Of Covenants, Restrictions, Conditions And Easements, the owners of property in the PLAT OF HAPPY VALLEY ADDITION TO WINDSOR GARDENS are hereby notified as follows:

**1. LOTS LOCATED IN VILLAGE OF WINDSOR;
PUBLIC RIGHT-OF-WAY AND ACCESS IN TOWN
OF BRISTOL.**

**THE LOTS' FRONTAGE IS ON ANGELICA TRAIL.
ANGELICA TRAIL IS A PUBLIC STREET
LOCATED IN THE TOWN OF BRISTOL.
MAINTENANCE OF ANGELICA TRAIL IS
PROVIDED BY THE TOWN OF BRISTOL.**

**THE LOTS THEMSELVES ARE LOCATED IN THE VILLAGE OF WINDSOR.
THEREFORE, OTHER LOCAL SERVICES ARE GENERALLY PROVIDED BY
THE VILLAGE OF WINDSOR. THE VILLAGE OF WINDSOR'S ORDINANCES
APPY TO THE LOTS. PERMITS ARE OBTAINED FROM THE VILLAGE OF
WINDSOR. LOT OWNERS VOTE IN THE VILLAGE OF WINDSOR AND PAY
REAL ESTATE TAXES TO THE VILLAGE OF WINDSOR, NOT THE TOWN OF
BRISTOL.**

**MAILING ADDRESSES ARE DETERMINED BY THE U.S. POSTAL SERVICE,
NOT THE VILLAGE OF WINDSOR OR THE TOWN OF BRISTOL.**

SEE COVENANTS ARTICLE 3.

**2. RIGHT TO FARM NOTICE. WISCONSIN HAS ADOPTED A "RIGHT TO FARM"
LAW. THE PLAT IS ADJACENT TO AND/OR NEAR AGRICULTURAL PROPERTY.
AGRICULTURAL ACTIVITIES ARE TO BE EXPECTED AND ARE NOT A
NUISANCE.**

SEE COVENANTS ARTICLE 3.

THIS SPACE RESERVED FOR RECORDING DATA

RETURN TO:

Amy Anderson Schweppe
Village of Windsor
4084 Mueller Road
DeForest, WI 53532

DRAFTED BY:

Constance L. Anderson, Village Attorney
Anderson Consults, LLC
Madison, WI 53704
Connie@AndersonConsultsWI.com

PARCEL IDENTIFICATION NUMBERS:

See EXHIBIT A

EXHIBIT A

Lots and Parcel Identification Numbers Affected:

LOTS 1-10 AND OUTLOT 1 OF HAPPY VALLEY ADDITION TO WINDSOR
GARDENS, VILLAGE OF WINDSOR, DANE COUNTY, WI.

PARCEL NUMBERS: