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#### PROTECTIVE COVENANTS

**FOR** 

THE CONSERVANCY OF NEW BERLIN

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Binding Effect Applicable Laws		
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#### PROTECTIVE COVENANTS FOR THE CONSERVANCY OF NEW BERLIN

THESE PROTECTIVE COVENANTS made this Line day of January, 2006, by MLG Real Estate 2002 LLC (hereinafter the "Developer");

#### WITNESSETH:

WHEREAS, Developer is the owner of the real property described herein, which property is located in the City of New Berlin, Waukesha County, Wisconsin; and WHEREAS, Developer desires to subject the property to the conditions, restrictions, covenants, and reservations contained herein for the benefit of the property and the benefit of each owner of any part of the property, and for the purpose of creating a desirable utilization of the land in an aesthetically pleasing residential environment;

NOW, THEREFORE, the Developer hereby declares that the real property herein described shall be held, sold, conveyed, transferred, used and improved only subject to the conditions, restrictions, covenants and reservations hereinafter set forth:

#### ARTICLE 1. PROPERTY SUBJECT TO PROTECTIVE COVENANTS.

- 1.1 <u>Existing Property</u>. The real property subject to the provisions of these Protective Covenants is described on <u>Exhibit A</u>, attached hereto and incorporated herein (hereinafter the "Subdivision" or "The Conservancy"). The Subdivision is comprised of sixty-seven (67) individual residential lots (hereinafter "Lots") for the entire subdivision.
- 1.2 Additional Property. Developer reserves the right, at any time during the term of these Protective Covenants, to subject other real property (the "Additional Property") to the provisions of these Protective Covenants and to add the Additional Properties to the Subdivision. The Additional Properties shall be located in Waukesha County, Wisconsin and, when added to the Subdivision, shall be adjacent to the Subdivision. Developer shall add Additional Properties to the Subdivision by recording with the Register of Deeds for Waukesha County one or more amendments to these Protective Covenants, with each amendment setting forth the legal description of the Additional Properties thereby added to the Subdivision.

ARTICLE 2. GENERAL. The intention of these Protective Covenants is to achieve the best use and most appropriate development and improvement of each Lot within the Subdivision; to preserve, as far as is practicable, the natural beauty of the Subdivision; to guard against haphazard and inharmonious improvement of the Lots and the erection thereon of unattractive or poorly designed or poorly proportioned structures; to obtain harmonious and attractive use of material and color schemes; to encourage and secure the construction within the Subdivision of attractive homes with appropriate locations thereof on the Lots; to secure and maintain proper setbacks from streets and adequate open spaces between structures; and in general to endeavor to provide for a quality development of the Subdivision.

2.1 <u>Disclaimer</u>. Although the Developer is implementing these Protective Covenants with the intentions set forth above, the Developer makes no assurances, representations or guaranty that the stated intentions of these Protective Covenants shall be achieved, or as to the ultimate value of Lots in The Conservancy, or as to any stability or increase in value as a result of the imposition of these Protective Covenants, or as to the engineering or structural accuracy of construction plans and specifications the Developer approves.

<u>ARTICLE 3.</u> <u>DEFINITIONS.</u> The following terms as used in this document shall have the definitions set forth below:

- 3.1 <u>Association.</u> The term "Association" shall mean the non-profit corporation to be known as The Conservancy of New Berlin Home Owners Association, Inc., which shall serve as an organization of all owners of Lots in the Subdivision, and collect assessments from Lot Owners for payment of Association obligations and maintenance of Association properties, as set forth herein and in the By-laws of the Association.
- 3.2 <u>Common Area.</u> The term "Common Area" shall mean all areas of the real property as described on <u>Exhibit A</u> other than the public streets and the Subdivision, which shall be deemed to be owned by the Association or by Lot Owners in common

with one another. "Common Area" shall also specifically include those areas throughout the Subdivision the Association is required to maintain as set forth in these Covenants.

- 3.3 <u>Developer.</u> The term "Developer" shall mean MLG Real Estate 2002 LLC.
- 3.4 <u>Dwelling Unit.</u> The term "Dwelling Unit" or "Dwelling" shall mean a living unit within the Subdivision, which is intended to be occupied by one family.
- 3.5 <u>Lot.</u> The term "Lot" shall mean an individual residential lot numbered from 1 to 67 inclusive in the Subdivision as shown in <u>Exhibit B</u> attached hereto. No Lot may be further divided without the prior approval of the Plan Commission of the City of New Berlin.
- 3.6 <u>Lot Owner</u>. The term "Lot Owner" shall mean the current owner(s) of any Subdivision, whose name(s) appear in the recorded deed of conveyance.
- 3.7 <u>Outlot.</u> The term "Outlot" shall mean an outlot as shown on the Plat. The reference to an Outlot by a number shall mean that particular Outlot as shown such Plat.
- 3.8 <u>Plans and Specifications.</u> The term "Plans and Specifications" shall mean complete written construction plans and detailed specifications as to materials and colors for construction of any building, wall, fence, sign, pool, deck, patio, or other improvement in The Conservancy, including a site plan showing location of driveways, walkways, elevation, grade of the Lot, location and diameter of live trees on the Lot and any improvements as set forth in Section 4.1.
- 3.9 Review Board. The term "Review Board" shall mean that board composed of three members initially appointed by the Developer to review and approve or disapprove of Plans and Specifications for construction of dwelling units and any structures or improvements in the Subdivision.
- 3.10 <u>Subdivision</u>. The term "Subdivision" shall mean The Conservancy of New Berlin, which means the residential lots numbered 1-67 inclusive as described in <u>Exhibit A</u> and as shown in <u>Exhibit B</u> attached hereto. The Subdivision Plat for The Conservancy of New Berlin is recorded with the Register of deeds for Waukesha County, Wisconsin. The terms "Subdivision and "The Conservancy" includes Outlots 2, 3, 4, 5, 6 and 7 as shown on <u>Exhibit B</u> attached hereto and also shown on the Subdivision Plat for The Conservancy of New Berlin.

3.11 <u>Subdivision Tree Preservation Plan.</u> The term "Subdivision Tree Preservation Plan" means the Tree Preservation Plan for The Conservancy described in Section 4.13.

#### ARTICLE 4. DESIGN CONTROL.

- 4.1 Plans and Specifications. No building, wall, fence, sign, driveway, walkway, swimming pool, deck, patio, gazebo, play equipment, storage building or other structure or improvement of any sort shall be erected, constructed or maintained upon any Lot, nor shall any change or alteration be made thereto, unless complete plans and specifications have been submitted in duplicate to, and approved in writing by, the Review Board. The plans and specifications submitted shall include, in addition to detailed construction plans, a site plan showing the exact size and location of each building, fence, wall, or other structure, the elevation thereof, the grade of the Lot, grades adjacent to the Lot, the proposed finished grade and garage floor grade for the building, sump pump discharge locations, existing mature trees on the Lot, a building elevation or rendering of the building or structure to be constructed, a detailed landscaping plan, and detailed specifications as to materials, colors (including samples) and equipment to be installed in the structure (collectively the "Plans and Specifications"). The address and telephone number of the Lot Owner and other person designated to receive the response of the Review Board shall be included with any submission of Plans and Specifications. Each Lot Owner must strictly adhere to and finish grade his or her Lot in accordance with the Master Site Grading Plan or any amendment thereto approved by the City Engineer on file at the office of the City Clerk. The Developer and/or the City and/or their agents, employees or independent contractors, upon written notice to the owner of a vacant lot, shall have the right to enter upon any Lot, at any time, for the purpose of inspection, maintenance, correction of any drainage condition, and the Lot owner is responsible for the cost of the same.
- 4.2 Review Board. The decision of a majority of the members of the Review Board shall be the decision of the Review Board and shall be final and binding upon all interested parties. The Review Board shall meet in closed sessions. Members of the Review Board shall not be entitled to any compensation from Lot Owners for services

performed pursuant to these Protective Covenants. In the event of death, resignation, or refusal to act by any member of the Review Board, or vacancy on the Review Board for any reason, while any Lot remains vacant without a dwelling unit in the Subdivision, the successor to such member shall be appointed to the Review Board by the Developer or by its successors or assigns. When all the Lots in the Subdivision have been sold by the Developer, or its successors or assigns, and dwelling units have been built on all the Lots in the Subdivision (or at such earlier time determined by the Developer) the Review Board shall thereafter consist of five (5) persons, who shall be the persons appointed or elected as directors of the Association as described in Section 8.3.

Submission of Plans. The Lot Owners shall submit Plans and Specifications to the Review Board at the earlier of (i) at least fifteen (15) days prior to the time that such Plans and Specifications are submitted to the Building Inspector of the City of New Berlin for approval, or (ii) thirty (30) days prior to commencement of construction of the dwelling unit or any other improvement. Plans and Specifications must comply with the intentions set forth in Section 2, the standards set forth in Section 5 herein, and must be approved by the Review Board in writing. The approved Plans and Specifications shall be submitted to the City of New Berlin Building Inspector along with the building permit application, before any construction or alteration of any improvement may by commenced on any Lot. Plans and Specifications shall be submitted in duplicate to the Review Board at the following address, which address may by changed by notice in writing to the purchaser of a Lot at the time of purchase or at such other time as the Review Board provides written notice to the Lot Owner:

MLG Real Estate 2002 LLC 13400 Bishops Lane, Suite 100 Brookfield, WI 53005 Attention: The Conservancy Project Coordinator (262) 797-9400

Upon request by a Lot Owner, the Review Board shall issue a written receipt for the Plans and Specifications submitted by or on behalf of the Lot Owner, showing the date of the submission.

4.4 <u>Review</u>. The Review Board shall review and approve such Plans or Specifications, or disapprove those, which in its judgment, are not in conformity with

these Protective Covenants or are inconsistent with the purposes set forth in Article 2. In reviewing the Plans and Specifications, the Review Board may take into consideration, among other things, the following:

The suitability of the proposed dwelling unit or other structure in the Subdivision;

The design, layout, elevation and the materials of which the dwelling unit or improvement is to be constructed;

The location of the improvements upon the Lot and within the Subdivision;

The exterior appearance of the dwelling unit including roofing materials and the color scheme; and

The compliance of the dwelling unit or other structure with the standards set forth in these Protective Covenants.

- 4.5 <u>Approval</u>. The Review Board shall approve Plans and Specifications by letter sent to the Lot Owner at the address included in the Plans and Specifications.
- 4.6 <u>Disapproval.</u> If the Review Board disapproves of Plans and Specifications, the Review Board shall specify the reasons for such disapproval to the Lot Owner in writing. The Lot Owner shall then be entitled to submit revised Plans and Specifications for review by the Review Board, in which event another receipt shall be issued by the Review Board.
- 4.7 <u>Waiver.</u> The Review Board shall be entitled to waive or grant a variance from the requirements of these Protective Covenants and the standards set forth herein upon written application therefore to the Review Board as a part of a submission of Plans and Specifications to the Review Board, or otherwise, for reasons deemed adequate and reasonable to the Review Board, and in consideration of the purposes of these Protective Covenants as set forth in Article 2. The decision of the Review Board shall be final and binding with regard to any waiver or variance, whether or not such waiver of variance is specifically granted by the Review Board in writing, or is a part of or necessitated by Plans and Specifications approved by the Review Board; provided, however, that the waiver shall not be effective until written approval for the specific variance request is granted by the City of New Berlin, if such approval is required by the City.

- 4.8 <u>Erosion Control.</u> During construction of a dwelling unit on a Lot, the Lot Owner shall take all adequate measures to comply with applicable City erosion control ordinances.
- 4.9 Lot Grading. The Lot Owner shall finish the topography and ground elevation of each Lot as required by the Plans and Specifications approved by the Review Board for the efficient discharge and drainage of surface groundwater and sump pump discharge throughout the Subdivision. Final grading shall be completed by the Lot owner in accordance with the approved Subdivision master grading plan within two (2) months following the date of occupancy of a dwelling unit thereon, weather and seasonal considerations permitting. An as-built grading survey shall be submitted to and approved by the Review Board prior to seeding and landscape installation. The maximum slope of the ground abutting a house shall be 3' horizontal to 1' vertical. Also, "no touch zones" exist on each Lot as further described in Section 7.10 of these Protective Covenants, and Lot Owners must adhere to the rules for such zones.
- 4.10 Ground Fill on Building Site. Where ground fill is necessary on any Lot to obtain the proper topography and finished ground elevations, the Lot Owner shall be responsible for the same and the ground fill shall be free of waste material, and shall not contain noxious materials of any kind. The Lot Owner shall be responsible for ensuring that all fill materials are leveled immediately upon completion of the dwelling unit and graded and contoured in accordance with the Plans and Specifications and any applicable municipal erosion control ordinance.
- 4.11 <u>Building Materials.</u> All exterior walls, including soffit and fascia, shall be constructed with natural materials such as brick, stone, and wood or with Hardi-Plank type cement board the Review Board approves. Wood corner boards and trim of at least 4-6" width must be used around all windows, doors, and vents. Windows may be aluminum or vinyl clad. All exposed chimneys shall be masonry clad. All direct vent fireplaces must be constructed to be flush with the exterior wall. The Plans and Specifications for all dwelling units proposed to be erected, altered or modified shall specify construction materials that shall be approved by the Review Board in the Board's sole discretion.

- 4.12 <u>Masonry</u>. If masonry material is used on the exterior walls, the masonry shall terminate at an inside corner. If it is not possible to terminate the masonry at an inside corner, the material must then terminate at a corner board that is at least 4-6" in width or terminate with a brick return or other method as approved by the Review Board.
- 4.13 <u>Preservation of Trees</u>. Existing trees and wooded areas are to be maintained in their original condition wherever possible. No live deciduous trees greater than 5 inches in diameter, nor any conifer trees greater than 10 feet in height, shall be moved, removed or destroyed in any way unless the tree is specifically designated as within the building envelope or within a grading or filling area as designated on the recorded Plat or Master Grading Plan. The normal pruning, thinning, and removal of dead or diseased or insect infested vegetation shall only be conducted under written recommendation of a forester or the Director of Community Development, and with the prior written approval of the Review Board. Tree Preservation Easements exist within the development as further described in Section 7.4 of these Protective Covenants.
- 4.14 <u>Construction</u>. During construction of a dwelling unit or any other improvement on a Lot, the construction site shall be kept free of refuse and litter, and rubbish and construction materials shall be stored on the site only as long as necessary under the circumstances. Any natural vegetation and tree debris removed during the stripping of the building pad shall be removed from the construction site immediately. Construction sites shall remain as organized, neat and quiet in appearance as reasonably possible throughout the construction period.
- 4.15 <u>Completion; Occupancy</u>. Any dwelling unit construction on any Lot in the Subdivision shall be enclosed and under roof with the finished exterior material in place within twelve (12) months after the commencement of construction. No dwelling unit shall be occupied until the exterior surfacing of the dwelling unit is completed and the Lot is finished to rough grade
- 4.16 <u>Curb and Gutter Deposit</u>. At the time of closing, the Lot buyer shall deposit \$500 with the Review Board as a curb and gutter deposit. At the time the plat of survey for a Lot is approved, the Review Board will inspect and document the condition of the curb and gutter in front of the subject Lot for any concrete damage. When the Lot Owner obtains an occupancy permit, the Review Board shall re-inspect the curb and

gutter. If there is no damage to the curb and gutter in front of the subject Lot, the curb and gutter deposit will be returned. If there is damage to the curb and gutter, then the curb and gutter deposit will be drawn upon to repair the damaged curb and/or gutter in front of the subject Lot. Any remaining money unused for repairs will be returned to the Lot Owner. If damage to the curb and/or gutter exceeds the amount of the deposit, then the Lot Owner shall be personally liable for the difference. If the Lot Owner fails to pay the difference, a lien for the amount due may be placed against the Lot and collected in accordance with these Covenants and the By-Laws.

4.17 Roof Pitch, Roof Materials and Roof Overhangs. The roofs of all multistory dwelling units shall have a minimum pitch of eight (8) feet in height for each twelve (12) feet in length (8/12). The roofs of all single-story dwelling units shall have a minimum pitch of ten (10) feet in height for each twelve (12) feet in length (10/12). The roof of a dwelling unit shall be covered with at least twenty-five (25) year dimensional shingles. Roof overhangs of the dwelling unit shall be a minimum of twelve (12) inches at the eaves and three (3) inches at gable ends.

#### ARTICLE 5. SUBDIVISION STANDARDS.

- 5.1 <u>General</u>. All Lots in the Subdivision shall be subject to the standards set forth herein. Only one dwelling unit may be constructed upon a Lot in the Subdivision, as described in Section 5.2 below.
- 5.2 <u>Unit Size</u>. The total minimum finished living area of a one-story dwelling shall be 2,400 square feet. For a two-story dwelling, and one and one-half story dwelling, the total minimum finished living area shall be 2,600 square feet. No building or part of any building shall exceed 35 feet in height, or 2 ½ stories, whichever is lower. The dwelling unit shall be constructed within the approved building area shown on the master grading plan unless specifically waived by the Review Board under Section 4.7.
- 5.3 <u>Unit Measurement.</u> The square footage of a dwelling unit shall be measured along the perimeter of the dwelling unit at and above the grade (measured along the exterior walls exclusive of garages, porches, patios, breezeways and similar additions). For purposes of calculating total area, the Review Board, in its sole discretion, shall determine what constitutes a one-story or multi-level dwelling unit. The

total height of a dwelling shall be measured vertically from the finished first floor elevation to the highest point on the dwelling.

- 5.4 <u>Windows.</u> False closed-shuttered windows and windows that are visible from the exterior only shall not be permitted. When shutters are used on the front of the dwelling unit, shutters must also be used on the windows on the sides and rear of the dwelling unit where shutters would be appropriate. This rule shall also apply to window grids and other trim features. Trim of at least four (4) inches in width must be used on all windows without shutters and on all vents, doors, and louvers. The Review Board may require placement of windows in walls that would otherwise be featureless and shall place more importance on an attractive, balanced exterior design than over concerns about design or placement of interior features.
- 5.5 <u>Setbacks.</u> The building setback shall be measured from the property line to the edge of the roof overhang. The Review Board and City may grant a waiver to allow the setback to be measured from the foundation instead of the overhang in the event the dwelling unit foundation meets the setback line on both sides of the Lot. This waiver may apply to both the width and depth of the dwelling unit. The Review Board will not allow any deviations from the setbacks as set forth below.

The required minimum building setbacks for Lots 12-30 zoned R-3 PUD are as follows:

Setbacks:	R3 PUD	
	Lots 12-30	
Front:	30 feet	
Rear:	50 feet, with the exception of Lots 16-19 which shall have a rear setback line located 90' from the front lot line and Lots 20-22 and 24-30 which shall have a rear setback line located 100' from the front lot line	
Side:	15 feet, with the exception of lots 13 and 14, which shall have a more restrictive side setback. (See Subdivision Plat)	
Corner Side:	30 feet	

The required minimum building setbacks for Lots 1-11 and 31-67 zoned R-3 are as follows:

Setbacks:	R3	
	Lots 1-11 and 31-67	
Front:	50 feet	
Rear:	50 feet	
Side:	15 feet	
Corner Side:	50 feet	

Additionally, a protective wetland setback exists upon, over, through and across certain Lots in the Subdivision identified on the Plat as Lots 25-29 and Outlot 3. On Lots with a protective setback, no structures of any sort shall be permitted to be placed or constructed within 30 feet of any area designated as a wetland.

- Driveways. Each dwelling unit shall have a separate driveway. Driveways shall be located at least five (5) feet from all side and rear Lot lines. Driveways shall be constructed so that the first 15' off the back of curb has a slope of no more than 4%. The remainder of the driveway from the right-of-way line to a point 20 feet from the house can be constructed at a maximum slope of 10%. The driveway slope from that point to the dwelling shall not exceed 4%. No point on any driveway may extend more than five (5) feet beyond the rear most point, or the front most point of a garage door. Side entry driveways may not extend more than 35 feet from the garage door toward the side lot line to allow for a turnabout. The intent of this restriction is to prohibit parking slabs or driveway flares or creating any other part of a driveway that may allow or encourage the storage or parking of vehicles or other items. Within twelve (12) months from the issuance of an occupancy permit by the City of New Berlin for any dwelling unit, all driveways on the Lot must be paved with concrete, asphalt, or other hard and impervious paving substance (gravel and crushed stone are not acceptable paving substances). All driveway designs must receive prior written approval by the Review Board as outlined in Plans and Specifications.
- 5.7 <u>Walkways.</u> Within twelve (12) months of the issuance of an occupancy permit by the City of New Berlin for any dwelling unit, all walkways on the Lot shall be

paved with concrete, brick or other hard and impervious paving substance approved in advance by the Review Board. Gravel, crushed stone and asphalt are not acceptable paving substances.

5.8 Attached Garage. Each dwelling unit is required to be constructed with an attached side-entry garage where feasible as described in this Section 5.8. The Review Board will not base a waiver of the side entry requirement on economic hardship or Lot owner preference of constructing a one-story dwelling unit with a front entry garage rather than a two-story dwelling unit with a side entry garage. On all dwelling units where a front entry garage is permitted, the front elevation and garage door shall be subject to additional required architectural enhancements as determined by the Review Board. In any case, no garage will be built for fewer than two and one-half  $(2\frac{1}{2})$  cars. The maximum garage size must conform to the City of New Berlin ordinances. Garage entrances shall be located on the side of the dwelling unit as shown on the master-grading plan unless otherwise approved in writing by the Review Board. The garage must be constructed at the same time as the dwelling unit and shall harmonize with the dwelling unit as to design, materials, and finished floor elevation. Where driveways on adjacent lots are side by side on a common Lot line, the Review Board or the City may limit the width of the driveway flares at the road so that the adjacent flares do not overlap or conflict with one another.

Plans and specifications that detail a front entry garage design for Lots 3, 4, 13, 14, 17, 18, 19, 30, 36, 40, 41, 51, 52, 53, 54, 55, 56, 57, 58 and 61 will be reviewed on a case by case basis by the Review Board consistent with the procedures described in Section 4.7 and recognizing that placement of a side entry garage on these Lots may be difficult because of the features of the Lot, such as grading requirements and location of trees. Accordingly, the Review Board will base a waiver of the side entry garage requirement on all factors it deems relevant, which may include but not be limited to the size and depth of the proposed dwelling unit, the configuration of the Lot, potential grading and drainage problems, the creation of steep slopes, the impact of the dwelling unit on existing trees and limiting the use of the rear yard.

Any remaining Lot not specified in the previous paragraph that submits Plans and Specifications detailing a front entry garage design will also be reviewed on a case by case basis by the Review Board following the procedures described in Section 4.7. The Review Board will undertake such review with the realization that the configuration and size of the remaining Lots are more conducive to side entry garages and therefore more compelling factors must be present in order for the Review Board to grant a waiver. The Review Board will base a waiver of the side entry requirement on all factors the Review Board deems relevant, which may include but not be limited to the increase in the overall size of the structure above the minimum square footage requirements, enhanced architectural elements of the elevations, the size and depth of the proposed structure, the configuration of the Lot, potential grading and drainage problems, the creation of steep slopes, the impact of the dwelling unit on existing trees and limiting the use of the rear yard.

5.9 Landscaping. Unless a written variance is granted by the Review Board, landscaping must also include planting beds (to include at least a total of twelve (12) shrubs, trees or bushes), seeding or sodding of the front, sides and rear lawn and at least two (2) additional landscape trees (with at least one in the front yard) having a minimum diameter of 2-1/2 inches at time of planting. Additional plantings on the Lot are encouraged so that a pleasing park-like appearance shall ultimately be accomplished in The Conservancy. All landscaping as shown in approved Plans and Specifications, including street trees, must be completed by the Lot Owner by the first spring or fall season following the substantial completion of construction of the dwelling unit, whichever season comes first. Substantial completion shall mean issuance by the City of New Berlin of an occupancy permit, except in the case of model homes where substantial completion shall mean the date such home is first open for inspection to prospective buyers or is listed with a real estate broker or advertised in a newspaper of general or local circulation. As required in Section 4.9, Lot Owners shall not seed or sod the Lot until and unless the Review Board has approved an as-built grading survey. Before a Lot Owner builds a house and/or completes landscaping, the Lot Owner shall be responsible for maintaining the Lot by trimming weeds and grass to a height not exceeding twelve (12) inches. If a Lot Owner fails to maintain the Lot, Developer may at its option

maintain the Lot and charge the Lot Owner a reasonable fee for doing so. If the Lot Owner fails to pay for the lot maintenance within thirty (30) days of being billed by Developer, then the Developer reserves the right to file a lien against the Lot and/or to refuse to review Plans and Specifications or Plats of Survey.

- 5.10 Outbuildings and Temporary Structures. Other than dwelling units and other structures and improvements approved in advance by the Review Board pursuant to Section 4.1, no structure of any kind, including, but not limited to, any tent, shed, storage bin, skateboard ramp, detached garage, garage apartment, stable, barn, kennel or doghouse shall be moved onto or constructed upon any Lot within the Subdivision.
- 5.11 <u>Swimming Pools/Spas.</u> Swimming pools, hot tubs or spas may be erected, altered or modified in The Conservancy only with the prior written approval of the Review Board. No pools whatsoever shall be constructed within the limits of a tree preservation easement (See section 7.4). No above ground swimming pools shall be permitted except in the case of inflatable or hard-sided children's pools having a wall height no greater than 24 inches in height.
- 5.12 Fences and Walls. No fences or fence walls of any height or length for any purpose shall be permitted on any Lot except in the case of in ground swimming pools. Pool fencing shall be created of a wrought iron or similar material and encompass the pool and pool patio areas only. The placement and design of the pool fence must be approved in advance by the Review Board. Retaining walls shall be permitted only with prior approval of the placement, design and materials used by the Review Board.
- 5.13 Motorized Vehicles. Only automobiles and other four-wheel passenger vehicles may be parked on a Lot outside of a garage in the Subdivision, and they may be parked only on driveways that have been approved in advance by the Review Board pursuant to Article 4. Inoperable vehicles may not be parked or stored outside of the garage. No lawn or farm vehicle or equipment, recreational vehicle, motorcycle, trailer, boat, boat trailer or similar vehicle or equipment shall be parked or stored on any Lot other than in a garage. No commercial vehicles, including semi-trailer tractors, dump trucks, delivery trucks, and similar vehicles, irrespective of ownership, may be parked or stored on a Lot other than temporarily for the delivery of materials or merchandise, and other than during temporary periods of construction or remodeling upon the Lot. No

Motorcycles, snowmobiles, trail bikes, dune buggys, off-street motorized vehicles and recreation vehicles of any kind shall be operated on any Lot, driveway or parking area within the Subdivision.

- 5.14 <u>Antennas/Microwave Dishes.</u> External antennas, satellite or microwave dishes and solar panels of any type or for any purpose may be installed and maintained on a Lot in the Subdivision only with the prior written approval of the Review Board. In no event may any satellite, antenna or microwave dish be larger than two (2) feet in diameter or visible from the street in front of the dwelling unit. Any proposal for any such installation shall be submitted to the Review Board for approval, and shall show the size, location and appearance of such installation, prior to any such installation in the Subdivision.
- 5.15 Post Lights. Each Lot Owner shall purchase uniform post lights as specified by the Developer from the Developer at the time of closing. Each post light shall be installed on the Lot at the time of finished grading of the yard at a location specified by the Developer. Information regarding the proper installation location and how to obtain the post light is included in the Buyer Information Pack separate from this document. In any event, each post light shall be installed within nine months from the date the dwelling unit is occupied. Each post light shall be connected to an electrical power source at the time of installation and shall be maintained in a clean and operating condition at all times thereafter. Any replacement of such post lights shall be accomplished by the Lot Owner, and only with a post light of the same specifications, height, and appearance and in the same location as the original post light. The post light specified by the Developer is equipped with a photoelectric sensor; therefore, no Lot Owner may install a turn-off switch for the post light.
- 5.16 <u>Mailboxes</u>. Each Lot Owner shall purchase uniform mail/paper boxes from the Developer at the time of closing. Information regarding how to obtain the mailbox is included in the Buyer Information Pack separate from this document. All mail/paper boxes shall be installed by the Lot Owner in accordance with the requirements of the U.S. Post Office. Any replacement of such mail/paper box shall be accomplished by the Lot Owner, and only with a mail/paper box of the same specifications, height and appearance as the original mail/paper box at Lot Owner's expense. No other mailbox,

paperbox or other receptacle of any kind for use in the delivery of mail, newspapers or magazines or similar materials shall be erected or installed by a Lot Owner.

- 5.17 <u>Signs</u>. No sign of any kind shall be displayed to the public view on any Lot except as follows:
  - (a) A sign placed on the Lot by a Lot Owner or the real estate agent of the Lot Owner advertising the property for sale. No such sign shall exceed 6 square feet in size.
  - (b) A sign erected by a building/contractor of a dwelling unit in the Subdivision during the time the dwelling unit is under construction. No such sign shall exceed 6 square feet in size.
  - (c) Signs by an owner/contractor advertising a dwelling unit as a "model home". No such sign shall exceed 24 square feet in size.

All of the foregoing signs shall be professional, unlit signs installed so that the bottom of the sign shall be no more than three (3) feet above the ground. All signs shall be removed promptly upon sale or occupancy of the dwelling unit on the Lot. Any signs other than those listed above must receive prior written approval of the Review Board before installation. Nothing contained in this Section 5.16 shall be deemed to prohibit the Developer from placing such signs as it may deem necessary or desirable within the Subdivision until all Lots within the Subdivision are sold.

- 5.18 Animals. No animals, livestock, poultry or pigs of any kind shall be raised, bred or kept on any Lot for any purpose, including commercial purposes, except that dogs, cats or other small household pets may be kept in a manner that will not disturb the quality of life and the environment of the Subdivision. No more than two dogs and two cats shall be maintained in any household. Lot Owners shall be responsible for promptly cleaning up all pet refuse.
- 5.19 Garbage and Refuse Storage and Disposal. No Lot shall be used in whole or in part for the storage of rubbish in any form whatsoever, nor shall any portion of a Lot or dwelling unit thereon be used for the storage of any property or thing that will cause such Lot and dwelling unit to appear in an unclean or untidy condition or that will be offensive to community standards. All trash, garbage or waste materials shall be kept in sanitary containers either inside a garage or, when outside, in sanitary containers adjacent

to the dwelling unit, suitably screened from view from streets and adjoining Lots. Outside incinerators are not permitted. No building or construction material shall be stored on any Lot outside of a dwelling unit or garage, other than during periods of actual construction or remodeling, and then only for as long as may be reasonably necessary. Each Lot Owner may store up to a maximum of one cord of wood behind and adjacent to the dwelling unit in a manner consistent with the other provisions of this Section 5.19.

- 5.20 <u>Nuisances</u>. No noxious or offensive odor, activities or conditions shall be created, conducted or permitted to exist in, on or about any dwelling or Lot, which may be, or may become, an annoyance or nuisance to the neighborhood or which may cause any noise which disturbs or might disturb the peace, quiet, comfort or serenity of the occupants of surrounding property.
  - 5.21 Parking. Parking shall be prohibited on all public roadways at all times.
- 5.22 <u>Snow Removal</u>. Snow and ice removal from private driveways shall not be placed in public roadways or right-of ways.
- 5.23 <u>Clotheslines</u>. Clotheslines may be permitted with prior written approval of the Review Board, and provided that when the clotheslines are in use, they are not visible from the street and when they are not in use, are retractable.

#### ARTICLE 6. TERM AND AMENDMENT.

- 6.1 Term. These Protective Covenants shall be in full force and effect for a period of thirty (30) years from the date these Protective Covenants are recorded, after which time these Protective Covenants shall automatically be extended for successive periods of ten (10) years each; provided, however, that an instrument terminating these Protective Covenants, if signed by Lot Owners possessing a majority of the votes available in the Association, shall be effective as of the end of the original term or ten year extension within which it is recorded.
- 6.2 <u>Amendment</u>. These Protective Covenants may be amended at any time by the signature and recording of an amendment to these Protective Covenants by owners possessing 75% of the votes available in the Subdivision; provided, however, as long as the Developer owns a Lot, no amendment shall be effective unless such amendment is approved in writing by the Developer, and no amendment annulling, waiving, changing,

modifying or amending the provisions of these Protective Covenants shall be effective unless such amendment is approved in writing by the Plan Commission of the City of New Berlin if so required. Such amendment shall take effect upon the date of the recording thereof. Notwithstanding anything in Section 6.2 to the contrary, these Protective Covenants may be amended by the Developer alone in accordance with Section 1.2, subject only to the written approval thereof by the Plan Commission of the City of New Berlin.

#### ARTICLE 7. EASEMENT

- 7.1 Landscape Easements. The Declarant hereby declares, creates and reserves exclusive easements over certain areas shown on the subdivision plat for the Subdivision recorded in the Register of Deeds for Waukesha County, Wisconsin ("Plat"). The landscape easements are identified on the Plat as "30' Wide Landscape Easement" ("Landscape Easement") over Lots identified in the Plat, including Lots 2, 3 and 4, and also Oulots 5 and 6. The Landscape Easement is for the benefit of the Association, its members and the City of New Berlin and is for the multiple purposes of installing, constructing and maintaining an entrance monument(s), signs, fences and planting trees, shrubs and other landscaping. No owner shall alter or remove any landscaping structure, planting or soil or other item from the Landscape Easement, nor in any way add to, disturb, alter, or cause any improvement to be made to the Landscape Easement. The Association shall be responsible for the maintenance of the Landscape Easement, including but not limited to repairing, restoring or replacing any entrance monument, sign or fence, cutting the grass and controlling weeds as necessary and in accordance with the requirements of the City of New Berlin.
- 7.2 <u>Vision Corner Easements.</u> Developer hereby declares, creates and reserves a vision corner over Lots 11, 12, 23, 32, 35, 50, 51, 59, 61 and 67 and Outlots 5 and 6. The vision corner easements are identified on the Plat as "30 X 30' Vision Corner Easement," "60' x 60' Vision Corner Easement" and "100' x 150' Vision Corner Easement" (hereinafter collectively referred to as the "Vision Corner Easements"). In the Vision Corner Easements, planting of berms, fences, signs and other structures shall be permitted provided that the height does not conflict with the vision corner restrictions as

stated in the general notes on Exhibit B. In addition, no driveways shall be permitted within the Vision Corner Easements. The Association shall be responsible for maintaining the Vision Corner Easements on Outlots 5 and 6, including but not limited to controlling noxious weeds and removing debris, in accordance with the requirements of the City of New Berlin.

- 7.3. <u>Preservation Area Easement</u>. The Declarant hereby declares, creates and reserves an easement over Outlot 5 identified on the Plat as "Preservation Area Easement". In order to preserve, enhance and promote the indigenous environment, certain activities shall be prohibited within the Preservation Area Easement, including but not limited to:
  - (a) Filling, grading or changing of grades in any way, except for the maintenance of storm drainage easements and stormwater facilities as required by the approved stormwater maintenance plan.
  - (b) Removal of topsoil or other earthen materials.
  - (c) The removal or destruction of any vegetative cover, including trees, shrubs, grasses or the like, shall be prohibited with the exception of the removal of dead, diseased or dying vegetation at the discretion of the Lot owner, or silvicultural thinning upon recommendation of a forester or naturalist and the approval of the Wisconsin Department of Natural Resources.
  - (d) Planting of vegetation not native or indigenous to the site or not typical wetland vegetation.
  - (e) Construction of any permanent or temporary structure, fences, pools, decks, play equipment or the like.
  - (f) Filling with yard waste or other landscape materials.

The "Preservation Area Easement" shall also be maintained as outlined in the separate document entitled "Butler's Gartnersnake Habitat Restoration Plan" dated May 9, 2005 and prepared by Cedarburg Science. A copy of the Plan is on file with the City of New Berlin.

7.4 <u>Tree Preservation Easements</u>. Developer hereby declares, creates and reserves easements over Lots identified on the Plat, including Lots 4-11 where a 20 foot

easement exists along the rear property lines, and Lots 12-30 where an irregular easement area exists on the Lots (hereby collectively referred to as "Tree Preservation Easements"). The purpose of the easements is to preserve, enhance and promote the indigenous environment. The plat of survey for each Lot identified above and on the Plat shall show all trees 4" or greater in diameter that lie within 25 feet of the proposed dwelling unit. Certain activities are prohibited within the Tree Preservation Easement as noted on the Plat. Lot Owners of the foregoing Lots should note the following restrictions:

- (a) Filling and grading activity may be allowed with prior written approval from both the Review Board and the City Director of Community Development ("City Director").
- (b) Construction of any permanent or temporary structures such as decks, play equipment and related items may be allowed with prior written approval from both the Review Board and the City Director. No pools shall be constructed within the limits of the Tree Preservation Easement.
- (c) The removal or destruction of any live deciduous tree with a diameter of 5 inches and greater nor any conifer tree greater than 10 feet in height shall be strictly prohibited without the prior written approval of the Review Board and the City Director. The proposed dwelling unit shall be located a minimum of 5' from the trunk of any tree with a diameter of 5" or larger that is located within the Tree Preservation Easement. Silvicultural pruning of any tree limits overhanging into the building envelope will be allowed only with the prior written approval of the City Director and the Review Board.
- (d) The removal of dead, diseased or dying vegetation may be performed at the discretion of the Lot Owner with the guidance of a forester or naturalist and the City Director, and with the prior written approval of the Review Board.

(e) Decks no more than 4' in height may be constructed within the Tree Preservation Easement so long as they have no detrimental effect on any tree with a diameter of 5" or larger.

#### 7.5 Wetland and Isolated Natural Resource Area Restrictions.

Outlot 2 is an isolated natural resource area and Outlots 2, 3, and 5 and lots 25, 26, 28 and 29 include wetlands. The isolated natural resource area and wetlands shall be subject to the following restrictions.

- Grading and filling are prohibited, unless specifically authorized by the municipality in which this land is located and, if applicable, the Wisconsin Department of Natural Resources and the Army Corps of Engineers.
- 2. The removal of topsoil or other earthen materials is prohibited.
- 3. The removal or destruction of any vegetative cover, i.e., trees, shrubs, grasses, etc., is prohibited, with the exception that dead, diseased, or dying vegetation may be removed, at the discretion of the landowner. Silvicultural thinning, upon the recommendation of a forester or naturalist and with approval from the Waukesha County Department of Parks and Land Use -Planning and Zoning Division, shall also be permitted. The removal of any vegetative cover that is necessitated to provide access or service to an approved residence or accessory building shall be permitted only when the access or service cannot be located outside of the Conservancy/ Wetland/ Isolated Natural Resource Preservation Area and with approval from the City of New Berlin and the Waukesha County Department of Parks and Land Use – Planning and Zoning Division. The removal or destruction of any vegetative cover is permitted by right within the pedestrian easement over Outlot 2.
- 4. Grazing by domesticated animals, i.e., horses, cows, etc., is prohibited.

- The introduction of plant material not indigenous to the existing environment of the Conservancy/Isolated Natural Resource Area/Wetland Preservation Area is prohibited.
- 6. Ponds may be permitted subject to the approval of the municipality in which they are located and, if applicable, the Wisconsin Department of Natural Resources and the Army Corps of Engineers.
- 7. The construction of buildings is prohibited.
- 7.6 <u>Utility Easements</u>. Developer hereby declares, creates and reserves easements over each Lot in the Subdivision for purposes of underground installation and maintenance of electric, gas, water, telephone, cable television lines, and such other utilities or lines and equipment as may be necessary or desirable to service Lots within the Subdivision ("Utility Easements"). The Utility Easements are shown on the Plat or on separate easement instruments recorded in the Waukesha County Register of Deeds. Developer further reserves the right to sign and record specific grants of easements to utilities or similar entities on standard terms and conditions, which easements shall in all cases be located as described in the instruments or reserved on the recorded plat for the Subdivision or on a separate easement.
- 7.7 <u>Storm Drainage and Storm Water Easements.</u> Developer hereby declares, creates and reserves easements shown on the Plat as "20' Wide Storm Drainage Easement", "Storm Water Easement", "40' Wide Storm Drainage Easement", and "30' Wide Storm Drainage Easement" (hereinafter collectively referred to as "Easements") over certain Lots in the Subdivision, including but not necessarily limited to Lots 2, 3, 4, 13-18, 36, 37, 41-43, 45-49, 62, 63, 65 and 66 and Outlots 4, 5, and 6 for the purpose of operating, repairing, maintaining and replacing from time to time, facilities used in connection with storm water drainage, storm sewer facilities and water facilities, including, but not limited to, storm water drainage pipes and surface swales. No buildings or other improvements, pavement or landscaping may be placed in, upon or over the Easements. The Association shall be responsible for maintaining all drainage pipes, surface swales and other storm sewer and storm water facilities, including those

located on Lots. Notwithstanding the foregoing, the City has the right to inspect the storm sewer and storm water facilities. In the event ponds in the Subdivision become polluted or non-functional with regard to water quality or storage and in the event Association fails to correct the problem once notified by the City, the City might hire a contractor to correct the problem and fractionally assess each Lot Owner in the Subdivision. Each Lot Owner over whose Lot an Easement runs shall be responsible for cutting the grass and weed control in the Easement.

- 7.8 <u>Watermain and Sanitary Easements</u>. Developer hereby declares, creates and reserves easements shown on the Plat as "30' Wide Watermain Easement", over certain Lots in the Subdivision, including but not necessarily limited to Lots 40 and 41 and Outlot 4, and a "40' Wide Sanitary Sewer Easement" over certain Lots in the Subdivision, including, but not limited to Lots 42 and 43 for the purpose of operating, repairing, maintaining and replacing from time to time, facilities used in connection with watermain and sanitary purposes. No buildings or other improvements, pavement or landscaping may be placed in, upon or over the Easements.
- Recreational or Other Easements. Declarant, or its successors and assigns, including the Board of Directors of the Association, shall have the right to (i) grant easements upon, over, through and across an Outlot (except for any part of an Outlot owned by the City) or Common Areas as may be required for or by any type of utility services, including but not limited to, cable television or master antenna service, which easements may be granted to the Association or its nominee and as may be necessary for excavation and construction of any of the services to be provided by the easements; and (ii) grant easements, upon, over, through or across the Common Areas for ingress and egress to or from the Common Areas or for recreational purposes across the Common areas provided such proposed use would not have a material adverse impact on the Common Areas.
- 7.10 No Touch Zones. The Developer hereby declares and creates No Touch Zones on every Lot within the Subdivision as described on the Subdivision Plat as "Private Drainage Easement Detail (Typ.)" on sheet 5, measuring 5 feet along every side and rear lot line within the Subdivision. The Developer shall grade swales and drainage ways along side lot lines per the Master Grading Plan. No Lot Owner shall alter or

remove any soil, nor in any way disturb the finished grade in the No Touch Zones, nor shall any Lot Owner add to or remove plantings in the No Touch Zones other than to maintain and trim the turf grass.

- 7.11 Vacant Lot Maintenance Easement. Declarant hereby declares, creates and reserves a vacant lot maintenance easement to the City of New Berlin and Developer granting the City and Developer the right (but not the obligation) to enter upon any vacant Lot in the Subdivision in order to inspect, repair or restore any part of the Lot the City or Developer deems necessary so that the Lot is in compliance with all applicable provisions of the City of New Berlin Municipal Code and these Protective Covenants. A vacant Lot shall include any Lot that does not have an occupied principal dwelling unit that is used for single-family purposes at the time of inspection, repair or restoration. All actual costs, including professional fees and all other fees as may be reimbursed pursuant to the City of New Berlin Municipal Code, incurred by the City or Developer in exercising their right to inspect, repair or restore the Lot, shall be borne by the owner of the Lot necessitating such inspection, repair or restoration and if not paid for by such Lot owner within forty-five (45) days of receipt of any invoice therefore, may be placed against the tax roll for the Lot and collected as a special assessment or a special charge by the City or assessed by the Developer in accordance with the By-laws of the Association.
- Outlots 2 and 4 the Pedestrian Path Easements for the benefit of the City of New Berlin. The purpose of the Pedestrian Path Easements is to allow the City to operate, use, maintain, improve and repair walking trails over and upon Outlot 2 and 4 in a location the City determines. The City shall be responsible for all costs associated with the trails after the Developer has constructed the improvements in accordance with the Subdivision Developer's Agreement and a separate easement document for Outlot 2. The path has already been constructed on Outlot 4. An existing 25' Pedestrian and Walkway Easement is adjacent to Lots 16, 17, and 18.

#### ARTICLE 8. ASSOCIATION OF LOT OWNERS.

8.1 <u>Home Owner's Association</u>. The Developer shall create a non-profit Wisconsin corporation to be known as The Conservancy of New Berlin Home Owners

Association, Inc., referred to herein as the "Association", which corporation is to be formed for the purpose of maintaining and operating any Subdivision entrance monument, landscaping, lighting, and any real estate for which the Association is responsible together with any other amenity that may be provided by the Developer or the Association from time to time. The Association shall assess the pro rata share of the costs of such maintenance and other expenses of operation of the Association against the individual Lot Owners, in accordance with terms set forth in the Articles of Incorporation and Bylaws of the Association.

- 8.2 <u>Membership and Voting</u>. Each Lot Owner, whether one or more, shall be a member of the Association, but each Lot shall represent one (1) vote only in the affairs of the Association, regardless of the number of owners of the Lot (if more than one (1), the vote of a majority of the owners shall represent the vote of such Lot). Person(s) owning more than one (1) Lot shall have one (1) vote for each such Lot owned. Membership in the Association by a Lot Owner shall terminate at such time as such Owner sells or otherwise conveys or transfers such Lot.
- 8.3 <u>Directors and Officers of the Association</u>. The Developer shall have the right to appoint an initial board of up to three (3) directors of the Association, which directors shall serve as provided in the By-Laws. After the Developer has sold the final Lot in the Subdivision, subsequent directors will be elected as provided in the By-Laws of the Association. The Board of Directors will elect the officers of the Association annually.
- 8.4 Operating Budget. Commencing with the calendar year 2006 and for each year thereafter, the Association shall prepare and adopt an operating budget covering the period January 1st through December 31st of such year. The budget shall be prepared and adopted by the Board of Directors before the beginning of the subsequent year, and shall be mailed to each Lot Owner at least fourteen calendar days prior to the annual meeting of the Association. In accordance with the financial needs of the Association, all of the Lots shall be subject to a general annual assessment, as contained in the annual budget, for the purposes of payment of costs and expenses of the Association and carrying out its stated purposes and functions. Such costs shall include, but not be limited to, payment for taxes on any Association property such as outlots, maintenance,

repair, replacement and additions to subdivisions entrance monuments, landscaping, and storm water management areas and the cost of materials, management and supervision.

- 8.5 <u>Tax Foreclosure</u>. In the event Waukesha County or the City of New Berlin acquires title to any Lot in the Subdivision through the foreclosure of a lien for delinquent taxes, the Association assessments pertaining to such Lot shall not be charged to Waukesha County or the City of New Berlin, but shall be paid by all remaining Lot Owners through increased assessments by the Association.
- 8.6 <u>Maintenance of Common Areas</u>. The Association shall at its cost maintain in good condition and repair, replace and operate all of the Common Areas.
- 8.7 Ownership of Outlots. Each Lot shall have an appurtenant undivided interest in the Outlots, the numerator of which shall be one and the denominator of which shall be the total number of Lots subject to these Protective Covenants; provided, however, that no Lot shall have an ownership interest in any portion of an Outlot that is owned by the City. All deeds and other conveyances of any Lot in the Subdivision shall be deemed to include such undivided interest in the Outlots.

#### ARTICLE 9. MISCELLANEOUS

- 9.1 <u>No Reversion of Title</u>. No violation or breach of any covenant, condition, restriction or other term of these Protective Covenants shall cause a Lot Owner to lose title to a Lot.
- 9.2 <u>Enforcement</u>. Enforcement of these Protective Covenants shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any provisions of these Protective Covenants, either to restrain violation or to recover damages, or both. Any such action may be brought by the Association, any Lot Owner possessing a vote in the Association, the Developer or the City. Enforcement of rules and regulations of the Association may also be accomplished pursuant to terms of the Association By-Laws. The City shall have no obligation to enforce all or any portion of these Protective Covenants.
- 9.3 <u>Severability</u>. Invalidation of any of the provisions of these Protective Covenants by judgment or court order shall in no way affect any other provisions herein, which other provisions shall remain in full force and effect.

- 9.4 <u>Binding Effect</u>. These Protective Covenants shall run with the land and shall be binding upon and inure to the benefit of the Developer, all Lot Owners and their heirs, successors, and assigns, and any party hereafter having any interest in any of the Lots in the Subdivision, for the full term of these Protective Covenants.
- 9.5 Applicable Laws. The Lot Owners are advised that they are subject to all rules, codes, regulations and ordinances of the City, the County of Waukesha, the State of Wisconsin and the federal government and the same may be more restrictive than these Protective Covenants. In the event there is a conflict between the requirements of these restrictions and any provision of any City, County, State or federal law or regulation, the more restrictive shall apply.

(Signatures follow on the next page)

IN WITNESS WHEREOF, Developer has signed and sealed this instrument by its duly authorized representatives.

MLG Real Estate 2002-LLC

By: MLG Residential Fund LLC, sole member By: MLGRE Principals LLC, managing member

By:

Timothy J. Wallen, President

STATE OF WISCONSIN COUNTY OF WAUKESHA

Personally came before be this 6th day of January, 2006, the above-named Timothy J. Wallen, the President of MLGRE Principals LLC., managing member of MLG Residential Fund LLC, who executed the foregoing instrument and acknowledged the same as the state of said entity.

....

Notary Public, Waukesha County, State of

My Commission: expires 6-14-09

This was document drafted by and after recording should be returned to:

Paul J. Hinkfuss MLG Commercial, LLC 13400 Bishop's Lane, Suite 100 Brookfield, WI 53005

Wisconsin

k:\projects\newberlin (marcus & vogel)\covenants\conservancy covenants final copy.doc

## EXHIBIT A

Legal Description

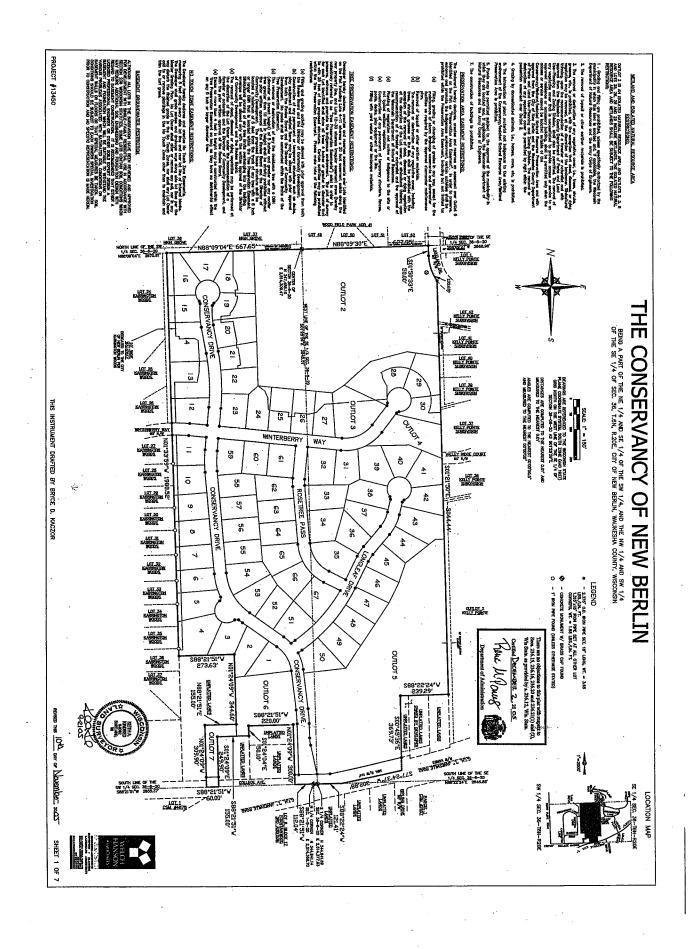
The Conservancy of New Berlin Subdivision

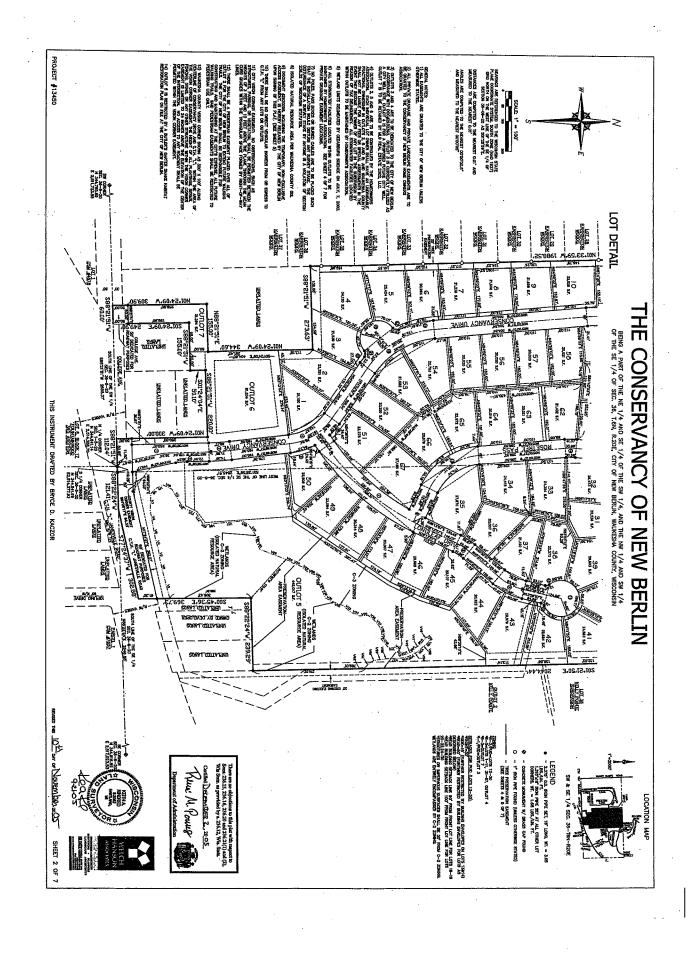
Beginning at the S 1/4 corner of said Section 36; thence S.88°21'51"W., along the south line of the SW 1/4 of said Section 36, 112.04 feet; thence N.01°24'09"W., 300.00 feet; thence S.88°21'51"W., 220.00 feet; thence S.01°24'04"E., 50.10 feet; thence S.88°21'51"W., 155.00 feet; thence S.01°24'09"E., 249.90 feet; thence S.88°21'51"W., 60.00 feet; thence N.01°24'09"W., 309.90 feet; thence N.88°21'51"E., 155.00 feet; thence N.01°24'09"W., 344.60 feet; thence S.88°21'51"W., 273.63 feet; thence N.01°33'59"W., 1,988.52 feet to the north line of said SW 1/4; thence N.88°09'04"E., along the north line of said SW 1/4, 667.65 feet to the center of said Section 36; thence N.88°09'30"E., along the north line of the SE 1/4 of said Section 36, 627.95 feet; thence S.01°50'33"E., 50.00 feet; thence 133.69 feet along the arc of a curve to the left with a radius of 230.00 feet whose chord bears S.18'29'44"E., 131.82 feet: thence S.01°21'50"E., 2,044.44 feet; thence S.88°22'24"W., 239.29 feet; thence S.00'45'36"E., 369.73 feet to the centerline of County Trunk Highway "L"; thence S.77'24'37"W., along the centerline of said County Trunk Highway "L", 302.88 feet to the south line of the SE 1/4 of said Section 36; thence S.88°22'24"W., along the south line of said SE 1/4, 121.41 feet to the point of beginning. Said lands contain 3,166,736 square feet (72.70 acres.)

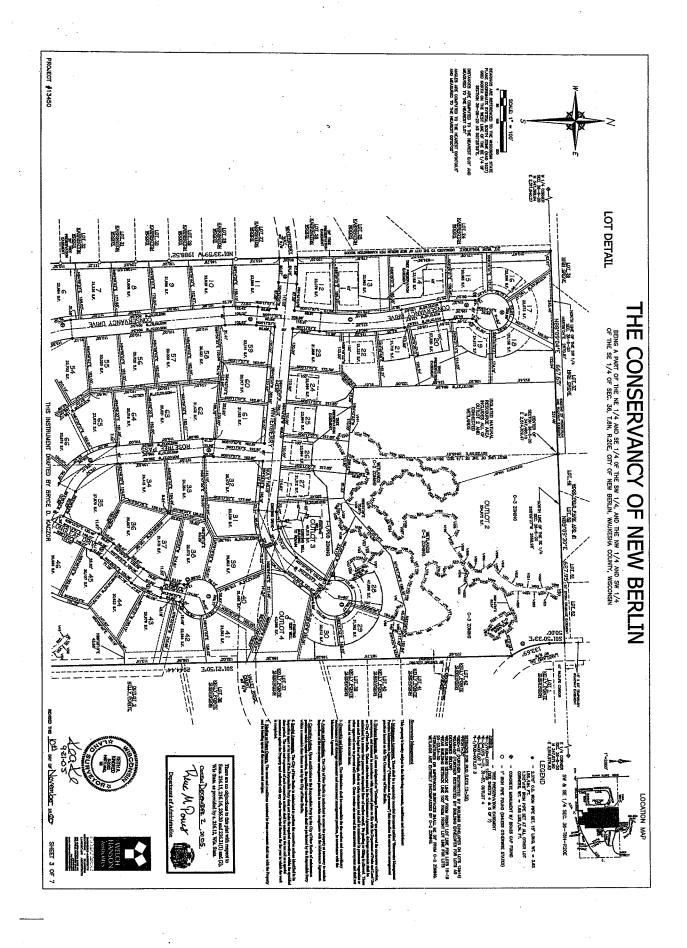
### **EXHIBIT B**

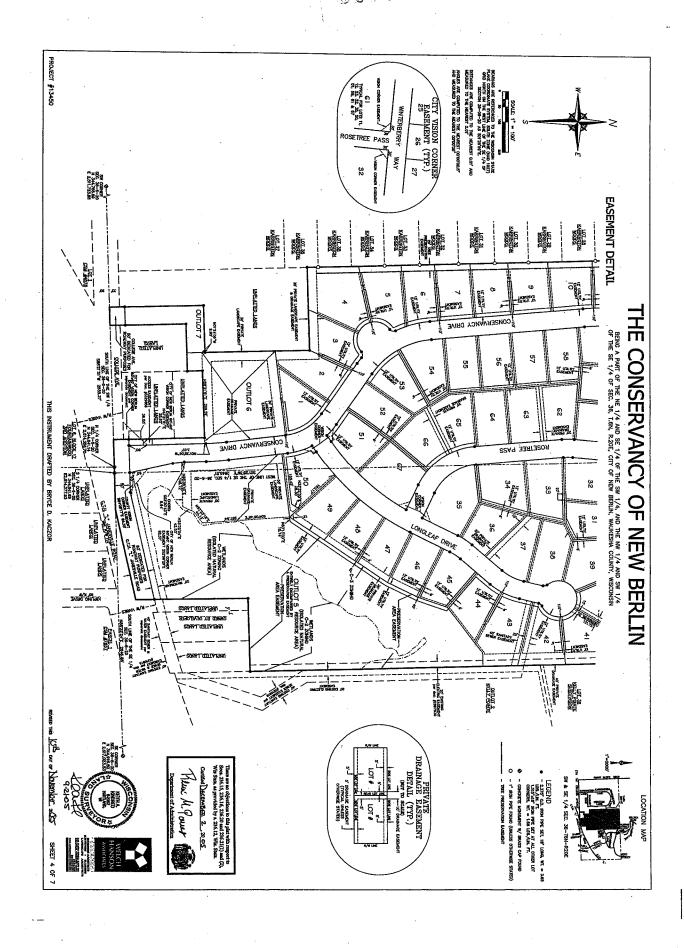
## Subdivision Plat

The Conservancy of New Berlin Subdivision









PROJECT #13450 THIS INSTRUMENT DRAFTED BY BRYCE D. MACZOR  THIS INSTRUMENT DRAFTED BY BRYCE D. MACZOR	<del>┋┋┸┸┸┇┇┇┇┇┇┇┇┇┇┇┇┇</del> ┇┇┇┇┇┇┇┇┇┇┇┇┇┇┇┇┇┇┇┇	THE CONSERVANCY OF NEW BERLIN  BENG A PART OF THE NE 1/4 AND SEE 1/4 OF THE SW 1/4, AND THE NW 1/4 AND SW 1/4  OF THE SEE 1/4 OF SEE, 38, T.GN, R.20E, CIT' OF NEW BERLIN, WALKESHA COUNTY, WISCONSIN
12 ( MARIE ) R. A. P.	<u>┊╶┇┇┦┦┇┇</u> ╏┇┇╏╿╿╿╿┩┆╿╿┦╿┤╿┇┼╿╿┦╎┋╬┼╟┨╏┆╏┦╬┼┟┼┦╎╡┆┼╎╠╏╬┟┇┦╏┇┦╏┆ <u>┞╟╬</u> ┇╏┇ <u>┍┡╌┩┋┸┦┦┸</u> ╒╒╣┇╩╏╸╿╏┰┦	NEW BERLIN  Then my no objection to this pin with respect to the r

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SHEET 7 OF 7

# mat I have made such survey, load division and plot by the direction of NLG REAL ESTATE 2002, LLC, owner of sold lands. CORPORATE OWNER'S CERTIFICATE OF DEDICATION it i how fully compiled with the provisions of Chopter 238 of the Weconsto State tutes and the subdivision regulations of the City of New Berlin in surveying, dividing imporing the same. t such survey is a correct representation of oil the exterior boundaries of the lands weyed and the division thereof made. REAL ESTATE 2002, LLC does further certify that this plot is required by \$238.10 or \$238.12 to be that to the following for approval or objection: REVL ESTATE 2002, LIC, a limited biddly company daly organized and adelthy under aid by witue leas of the State of Weccoath, as amore, does havely anothy that each limited bability company of the lead described on this plat to be surveyed, divided, mapped and dedicated as represented on this Some med little aw or Newsember and 21st day of September The day of January 20.06 to the tredest, of the shown named limited liability company, to me known to be stry company, and extensional limited liability company, and extensional limited liability company, and extensional limited liability company. Commission Expires G-14-09 David or F Wankesha county Waccords LLC, how upused these presents to be signed by Chick Wecomen, and its corporate and to Community, 2006. 20 05 THE CONSERVANCY OF NEW BERLIN BEING A PART OF THE NE 1/4 AND SE 1/4 OF THE SW 1/4, AND THE NW 1/4 AND SW 1/4 OF THE SE 1/4 OF SEC. 36, T.6N, R.20E, CITY OF NEW BERLIN, WALKESHA COUNTY, WISCONSIN Amounty come before one the 28 th Common of the document of the common o St Faggi = Baska divising of Aidhmeston a conscribed by white of the lower of the Tryund Baria ... C Bulling ) equament for electric and communications service is hereby granted by MLG REAL ESTATE 2002, LLC, antor, to WISCONSIN ELECTRIC POWER COMPANY, a Mecanish corporation, doing business as We Energise, Frank Bank 1 (capone see) ommission expires 6-14-09 Huber he circ freshing. I deep of Meconain, and its corporate seed to be inercente officed this good of Mercaph the r 20 4 5 C. Omer. Bok. 6,50 CITY OF HEW BESILSH PLANSING COMMISSION APPROVAL: Spell 7.000 ) handly dustly that the fereping is true and correct capy of a resolution delepted by the Common Coancil of the City of him Sefen. AL Parmielo F. Rennes, being day elected, qualified and acting Texaminer of Wadestha County, do hereby certify that the macroin in my office about no monotement to select and no unpoid towes or special community as of 100001666. 28, 2005 officially the levels baseded in the past of THE CERTIFICATE OF COUNTY TREASURES: STATE OF WISCONSM) WANKESHA COUNTY) 55 COMMON COUNCIL APPROVAL CERTIFICATE: Useumber 28, 2005 Kews M. Power Certified DECEMBER 2 20 05 1-4-06