

DECLARATION OF RESTRICTIONS

FOR

CREEKWOOD HIGHLANDS AT MENOMONEE FALLS

KNOW ALL PERSONS BY THESE PRESENTS; that Pilgrim Park Limited Partnership is a limited partnership duly organized and existing under and by virtue of the laws of the State of Wisconsin, located at 225 E. Mason Street, Milwaukee, Wisconsin (herein referred to as the "Declarant," which term shall also include any duly authorized agent of the Declarant, including, but not limited to, the Developer, as defined below). The Declarant is the owner of certain real estate located in the Village of Menomonee Falls, Waukesha County, State of Wisconsin, as more particularly described on Exhibit A attached hereto, and hereafter referred to as "Creekwood Highlands". The Declarant desires to develop Creekwood Highlands as a planned residential development and the Declarant has hired Fiduciary Real Estate Development, Inc. (hereafter the "Developer") as the developer of Creekwood Highlands for the purpose of developing Creekwood Highlands as a planned residential development with the potential for single-family, two-family, and multi-family dwellings. As provided herein, the Declarant and the Developer desire and intend to establish a general plan for the use, occupancy and enjoyment of Creekwood Highlands, and therefore do hereby declare for the mutual benefit of present and future owners of lots or other lands in Creekwood Highlands (the "Owners"), including, but not limited to, any future stages of development added to Creekwood Highlands as provided in Article C herein, that Creekwood Highlands shall be and hereby is subject to the following restrictions, declarations and covenants:

ARTICLE A

BUILDING AND USE RESTRICTIONS.

1. Creekwood Highlands is zoned as Planned Residential District (PRD) by the Village of Menomonee Falls. Single-family dwellings, two-family dwellings or multi-family dwellings are permitted in a PRD; however, two-family or multi-family dwellings are only permitted on lots or areas designated by the Declarant. The Declarant reserves the right to amend or eliminate the lot lines shown on Exhibit C within the boundaries of the multi-family designation with approval of the Village of Menomonee Falls. The Declarant also reserves the right to add additional multi-family areas in accordance with Article C of the Declaration of Restrictions. For the purposes hereof, the term "Lot" shall mean any Single-Family Residence Lot or Multi-Family Lot in Creekwood Highlands. The term "Unit" shall mean any Multi-Family Unit within Creekwood Highlands.

2. All Single-Family Residence Lots in Creekwood Highlands as designated by the Declarant are hereby restricted to allow the erection of only one (1) single family residence (hereafter referred to as a "Single-Family Residence"). Such Single-Family Residences shall be limited to one story Single-Family Residences, one and one-half Single-Family Residences, two story Single-Family Residences, tri-level Single-Family Residences or split level Single-Family Residences. Each Single Family Residence shall have an attached garage which shall be of sufficient size to accommodate a minimum of two cars. Single-Family Residence Lots are identified on Exhibit C attached hereto.

3. All two-family and multi-family residential buildings in Creekwood Highlands are hereby restricted to the areas designated by the Declarant and such areas are identified on Exhibit C attached hereto (hereafter referred to as "Multi-Family Residences"). The Declarant reserves the

right to ammend or eliminate the lot lines shown on Exhibit C within the boundaries of the multi-family designation. The Declarant also reserves the right to designate the Multi-Family Lots as Single-Family Lots at its discretion. The Declarant also reserves the right to add additional multi-family areas in accordance with Article C of the Declaration of Restrictions. All building plans, surveys, and landscaping plans for Multi-Family Residences in Creekwood Highlands must receive the written approval of the Architectural Control Board of Menomonee Falls as well as the written approval of the Declarant.

4. In order to maintain the integrity and aesthetics of Creekwood Highlands, all building plans for any Single-Family Residences or Multi-Family Residences or other permitted improvements, including, but not limited to, the exterior design and color of each building to be constructed, and all yard grades and stake out surveys showing erosion control measures shall be submitted to the Declarant and the Declarant shall have approved the same in writing prior to an Owner (or its agents or contractors) submitting an application for a building permit. In addition, landscape plans and basic site features such as fences, decks, in ground swimming pools, additions and other temporary or permanent structures or elements contributing significantly to the total environmental and aesthetic effect of Creekwood Highlands are subject to the prior written approval of the Declarant. The Declarant's approval of building design, square footage requirements, building location, and any other restriction influencing the integrity and aesthetics of Creekwood Highlands shall be based upon the building and use restrictions contained in this Article A and such guidelines as may be adopted from time-to-time by the Declarant, at Declarant's reasonable discretion. The Declarant shall have the right to withhold exterior design, exterior material, and square footage requirements approval if the design and square footage requirements are too similar in appearance or

does not aesthetically conform with the other buildings in close proximity. It being the intent of the Declarant to maintain diversity in appearance and quality of design in Creekwood Highlands.

5. In order to maintain the integrity and aesthetics of Creekwood Highlands, all building plans for any Multi-Family Residences or other permitted improvements, including, but not limited to, the exterior design and color of each building to be constructed, and all yard grades and stake out surveys showing erosion control measures are subject to the written approval of the Architectural Control Board of Menomonee Falls (or its agents or contractors) in addition to the Declarant before the Owner can submit an application for a building permit. In addition, landscape plans are subject to the prior written approval of the Architectural Control Board of Menomonee Falls and of the Declarant.

6. The following minimum sizes for a Single-Family Residence in Creekwood Highlands shall be based solely on living area within the Single-Family Residence. For the purpose of computing the square footage of living area within a Single-Family Residence, the basement level or garage area of a Single-Family Residence shall not be included in the square footage. The Declarant, in all instances, shall have the final determination in determining the minimum square footage required for a Single-Family Residence to be built upon a Lot provided that these minimums are not less than the R-3 zoning requirements of the Village. The Declarant, in all instances, shall have the final determination as to the classification of the Single-Family Residence for the purpose of determining the minimum square footage (i.e. single story, two story, tri-level or split level). See Article A Item #10 for the restrictions on lots with a frontage less than 110 feet. All Single-Family Residences in Creekwood Highlands shall have the following minimum living areas:

A. A single story Single-Family Residence shall have a minimum of 2,000 square feet of living area on the first floor of the Single-Family Residence. Unless the square footage of a single story Single-Family Residence is a minimum of 2,400 square feet, all attached garages shall be side entry.

B. A story and one-half Single-Family Residence shall have a minimum of 2,400 square feet of living area, with a minimum of 2,000 square feet of living area on the first floor of the Single-Family Residence. Unless the square footage of a story and one-half Single-Family Residence is a minimum of 2,600 square feet, all attached garages shall be side entry.

C. A two story Single-Family Residence shall have a combined minimum of 2,400 square feet of living area on the first and second floors of the Single-Family Residence. Unless the square footage of a two story Single-Family Residence is a minimum of 2,600 square feet, all attached garages shall be side entry.

D. A split level Single-Family Residence shall have a combined minimum of 2,400 square feet of living area on the first and second floors of the Single-Family Residence. Unless the square footage of a split level Single-Family Residence is a minimum of 2,600 square feet, all attached garages shall be side entry.

E. A tri-level Single-Family Residence shall have a combined minimum of 2,400 square feet of living area on the three floors of the Single-Family Residence. Unless the square footage of a tri-level Single-Family Residence is a minimum of 2,600 square feet, all attached garages shall be side entry.

7. The minimum sizes for a Multi-Family Residence in Creekwood Highlands shall not be less than the R-6 zoning requirements of the Village. Each plan will be reviewed separately to determine the required square footage. In order to maintain the integrity and aesthetics of Creekwood Highlands, the Declarant, in all instances, shall have the final determination as to the square footage required in a Multi-Family Residence.

8. The exterior wall of a Single-Family Residence and attached garage or Multi Family Residence must be constructed of structural or thin-cut face brick, stucco, dryvit, stone, wood, Hardiplank® Cedarmill, Hardiplank® Colonial Roughsawn or other natural materials. Any exterior product that is similar to any of the accepted exterior materials in the preceding list will be reviewed separately by the Declarant to be approved at its discretion; however, the Declarant must approve in writing the exterior material in a letter that is separate from the architectural plan approval. The Declarant may, at its discretion, approve in writing the use of manufactured siding materials such as pressed board, masonite, plywood, vinyl, Hardipanel®, aluminum or steel on designated portions of the home where deemed appropriate. Staccato board is acceptable if no seams are exposed on certain areas of the home but the materials must be approved by the Declarant in writing.

9. Declarant may require brick lines or brick accents on the Single-Family Residence or Multi-Family Residences as an exterior material at the sole discretion of the Declarant.

10. Front and side elevation windows on Single-Family Residences and Multi Family Residences must be trimmed out using casing, shutters or any other trim approved in writing by the Declarant.

11. All roof areas shall have an appropriate pitch of six feet in height for each twelve feet in length (6/12), except for rear dormers on story and one-half Single-Family Residences and other special circumstances if the same are approved in writing by the Declarant, and all roof areas shall be covered with wood shakes, fiberglass or asphalt shingles, or other roofing material; provided, however, the Declarant shall have the right to approve other roofing materials if they are of comparable or superior quality and are better suited to the approved building design of the Single-Family Residence or Multi Family Residence. All Multi-Family Residences' exterior building materials and roof pitches must be approved in writing by the Declarant and are subject to the approval of the Architectural Control Board of Menomonee Falls.

12. All garages shall be attached to the Single-Family Residence, directly or by breezeway, or built into the basement of the Single-Family Residence, and all garages shall be constructed at the same time the Single-Family Residence is constructed. Although garage entrances shall be permitted, in accordance with item 6A-E of this Article, toward the front of a residence, side entry garages are strongly recommended, and owners are encouraged to construct garage entrances on the side of the residence. The Declarant shall have the final determination of architectural design, including garage entrances. On Lots that have a frontage less than 110 feet, the Declarant may, at its sole discretion, determine the garage location and entrance to the home. Notwithstanding the foregoing, in all cases the Declarant shall have the right to determine the location of the garage entrance. All driveways shall be paved (either with asphalt, cement or brick). Attached garages on Multi-Family Residences are strongly encouraged and are subject to written approval of the Declarant and the approval of the Architectural Control Board of Menomonee Falls.

The Declarant shall have the final determination of the architectural design including garage entrances.

13. All setbacks shall be approved by the Declarant. The minimum setback for a Single-Family Residence from any abutting street right-of-way on Lots 1 to 48 shall be **30** feet, the minimum side yard setback on Lots 1 to 48 shall be 15 feet, and the minimum rear yard setback on Lots 1 to 48 shall be 30 feet. Driveways shall be permitted within the minimum 15 foot side yard setback in accordance with the requirements of the Village of Menomonee Falls. Multi-Family Residences' building setbacks must be approved by the Architectural Control Board of Menomonee Falls and the Declarant.

14. During construction of a Single-Family Residence or Multi-Family Residence or any other permitted improvements, all Owners, and all contractors and subcontractors, shall comply with the erosion control plan requirements required by the Village. These requirements are set forth in the attached Exhibit B. Note that Exhibit B states that you must sod, seed and/or mulch the Lot within 60 days after the occupancy permit is issued.

15. Any Single-Family Residence or Multi-Family Residence, attached garage, landscaping and/or paved driveway shall be completed within 18 months from the start of construction. Declarant or Homeowner Association can complete the landscaping and driveway after the 18 month time period and charge and/or file a lien against the Lot owner for all costs incurred to complete the work.

16. All Lots shall be graded immediately upon completion of construction of a Single-Family Residence or a Multi-Family Residence, and the grade shall thereafter be maintained to strictly comply with the comprehensive grading plan and erosion control standards for Creekwood Highlands approved by the Village of Menomonee Falls. Strict

compliance with such grading plan shall be enforced so as to prevent the discharge or redirection of storm water onto any adjacent Lots.

17. No soil shall be removed from any lot in the Subdivision without the prior consent of the Declarant or its duly appointed agent. Any excess soil resulting from excavations shall be transported, at the lot buyer's expense, to such other places in the Subdivision or on other property as may be designated by the Declarant. If the Declarant, after notification from the lot owner, fails or neglects within forty-eight (48) hours to notify the Lot Owner of the place to which excess soil is to be delivered, the Owner may dispose of said fill at the Owner's own discretion. Failure to comply with this paragraph shall render the Lot Owners liable for damages equal to the cost of acquiring the same amount and quality of fill improperly disposed of, plus the cost of delivering the same from its source to the parcel designated.

18. At the time of construction of a Single-Family Residence or Multi-Family Residence, the Owner of such Single-Family or Multi-Family Residence shall install, at the Owner's expense, one (1) outdoor electric lamppost (the design and quality of which shall be specified by the Declarant), with an unswitched photo-electric cell, at a location on the Lot deemed appropriate to the subdivision, at the Declarant's discretion. The lamppost shall be maintained by the Owner, at the Owner's expense, in a proper operating manner. If the Owner fails to maintain the lamppost in proper operating order, maintenance of the lamppost may, fifteen (15) days after written notice to the Owner, be performed by the Declarant and the cost of such maintenance shall be a Special Assessment against the Owner, payable according to the terms and conditions contained in Article B hereof.

19. The Owners of the Lots in Creekwood Highlands shall, at the time such Lots are landscaped pursuant to the requirements of the Declaration, plant two (2) trees (with a minimum two inch (2") trunk diameter at grade) along the front lot line of such Lots in such locations as are specified by the Declarant on the stakeout survey that must be approved prior to construction. Each Multi-Family Unit is required to plant two street trees. If not installed within 18 months of the initial building permit, the Declarant or the Homeowner Association can install the street trees and charge and/or file a lien for all costs incurred to purchase and plant the street trees.

20. The design (including materials) and location of each mailbox/newspaper box shall be subject to the approval of the Declarant, in Declarant's discretion.

21. Plans showing exact locations and construction details of fences, walls, hedges or mass screening plantings shall be submitted to the Developer and be approved in writing before they may be constructed or planted. Fence approvals are at the Declarant's discretion and will depend on such items as landscaping screening, functionality, location, and/or materials. No fences erected on any Lot affected by these declarations shall be higher than six (6) feet from the graded surface of the ground on which said fence is erected. No perimeter Lot fencing shall be permitted. In the event the fence restrictions and ordinances of the Village or Menomonee Falls are more restrictive from time to time than the restrictions contained herein, the Village of Menomonee Falls restrictions and ordinances shall control and supersede the terms and conditions contained herein.

22. There shall be no outside storage of cars, motorcycles, snowmobiles, jet skis, boats, trailers, buses, trucks or campers, or any other vehicles or items deemed to be unsightly by the Declarant. The outside storage or parking of commercial vehicles is expressly prohibited, and any commercial vehicle must be housed in a garage.

23. There shall be no out-buildings, above ground swimming pools, tennis courts or satellite dish antennas (having a diameter in excess of twenty-four (24) inches). No antenna or permitted satellite dish shall be visible from any roadway or neighboring Lot.

24. No Lot shall be used in whole or in part for the storage of rubbish or building materials (other than during the construction of a Single-Family Residence, Multi-Family Residence, or any other permitted improvements) of any character whatsoever, nor shall any Lot be used for the storage of any property, item or material that shall cause such Lot to appear in an unclean or untidy condition or that will be obnoxious or offensive to the eye in the opinion of the Declarant. Trash, garbage, refuse, debris or other waste kept on any Lot in preparation for removal from such Lot shall be kept in sanitary covered containers, which are stored out of sight of the street and adjacent property.

25. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be or may become a nuisance to the neighborhood.

26. No exterior detached dog kennel or house detached from the main structure shall be constructed or maintained on any Lot. No Lot Owners shall keep any pet or pets which create a nuisance. The maximum number of household pets shall be in accordance with the Village of Menomonee Falls ordinances covering such pets. All farm animals, poultry, horses, etc., and all animals kept for commercial purposes shall be prohibited under any circumstances.

27. The storm water retention pond located on Outlot 2 (as shown on the Plat of Creekwood Highlands) has been created and was required by the Village of Menomonee Falls to assist in the removal and detention of storm water from Creekwood Highlands. The storm water retention ponds are not intended to be used for swimming or recreational facilities, and any use of

the storm water retention ponds for such use is strictly prohibited. Any persons entering into or using the storm water retention ponds either intentionally or accidentally do so at their own risk. By purchase of a Lot in Creekwood Highlands, each Owner and its respective successors, assigns, heirs and personal representatives thereby waives, to the fullest extent permitted by law, any and all claims for liability against the Declarant, the Developer, the Creekwood Highlands of Menomonee Falls Homeowners Association, and their respective agents, contractors, employees, officers, directors and shareholders, for injury or damage to person or property sustained in or about or resulting from the use or existence of the storm water retention ponds. In addition, each Owner (and its successors, assigns, heirs and personal representatives) agrees to indemnify, defend and hold harmless the Declarant, the Developer, the Creekwood Highlands of Menomonee Falls Homeowners Association, and their respective agents, contractors, employees, officers, directors and shareholders, from and against any and all liabilities, claims, demands, costs and expenses of every kind and nature (including attorneys' fees), including those arising from any injury or damage to any person (including death) or property sustained in or about or resulting from the use or existence of the storm water retention ponds.

28. The Declarant shall have the right to enforce all of the terms, conditions and restrictions contained herein. Any Owner violating the terms, conditions or restrictions contained herein shall be personally liable for and shall reimburse the Declarant for all costs and expenses, including attorneys' fees, incurred by the Declarant in enforcing the terms, conditions and restrictions contained in this Declaration. Any Owner who causes or allows any improvement or improvements to be constructed, installed, placed, or altered on that Owner's Lot without first obtaining the prior written approval of the Declarant shall, at the Declarant's discretion, be required

to remove such improvement or improvements in their entirety at the Lot Owners' expense. The foregoing shall be in addition to any other rights or remedies which may be available to the Declarant.

29. The Owners, by the purchase of their Lots, agree that the Declarant shall not be held liable for any good faith decision or decisions made by the Declarant in enforcing the terms, conditions and restriction contained herein and in preserving the integrity and the natural beauty of the Creekwood Highlands.

30. At such time the Declarant determines, in its discretion, the Declarant shall delegate or assign the authority and responsibilities of the Declarant contained herein to the Creekwood Highlands of Menomonee Falls Homeowners Association established according to Article B herein.

ARTICLE B

CREEKWOOD HIGHLANDS OF MENOMONEE FALLS HOMEOWNERS

ASSOCIATION

1. An unincorporated association (herein referred to as the "Association") of the Owners of land in Creekwood Highlands (and all future stages of development as provided in Article C herein), is hereby created for purposes of: (a) managing and controlling the common affairs of Creekwood Highlands, (b) owning, managing, controlling and maintaining any Common Areas in Creekwood Highlands (as defined below), and, (c) performing other duties as set forth herein for the common benefit of the Owners. The Association shall be known as "Creekwood Highlands of Menomonee Falls Homeowners Association."

2. The term "Common Areas" shall include the following areas of Creekwood Highlands, and any areas designated as Common Areas in any future stages of development of

Creekwood Highlands added to this Declaration in accordance with Article C (hereafter referred to as "Future Stages of Development"):

A. All outlots, conservancy areas and common areas of Creekwood Highlands, as shown on the Plat of Creekwood Highlands, now or hereafter owned by the Declarant and or the Association.

B. Any area of easements granted to the Association by Declarant as indicated on the final Plat of Creekwood Highlands over portions of the lands subject to this Declaration or all future stages of development as provided in Section C herein.

C. The grass area and any fencing and landscaping contained within the public rights-of-way of any public roadway adjacent to or included with the lands subject to this Declaration.

All Common Areas and related facilities shall be used for the common benefit of the Owners of Lots in Creekwood Highlands. Such Common areas shall not be used for recreational or other activities by any Lot Owner unless in accordance with the terms, conditions and restrictions contained herein or as are hereafter adopted or otherwise approved by the Association. The Developer shall have the right to erect signs in the outlots and common areas to promote the sale of lots in the subdivision. Any signs, monuments, structures or other common facilities constructed by the Declarant or the Association on any Common Areas shall be operated and properly maintained and repaired by the Declarant or the Association (as the case may be) so as to be neat and attractive in appearance. The Association shall properly maintain the Common Areas so that they are neat and attractive in appearance (including, without limitation, proper care and cutting of grass and other vegetation). The Association shall maintain all storm water drainage facilities (retention ponds) so

as to ensure that they function properly. The obligation to maintain the storm water retention ponds includes, but is not limited to, the obligation to clean and dredge such facilities as necessary. Any plantings or signs placed in Creekwood Highlands by the Declarant or the Association at any of the entry locations to the subdivision shall also be considered Common Areas, and shall be cared for and maintained in the same manners as described above. Any portion of the Common Area within the public street right-of-way may only be improved or altered with the consent of the appropriate public authorities.

3. The Association shall be governed by a three member Committee, hereinafter referred to as the "Committee," which shall be solely responsible for the activities of the Association. The initial members of the Committee will be appointed by the Declarant.

4. To qualify as a member of the Committee, a person must be either an Owner or a duly designated officer, agent or representative of an Owner.

5. The term of office of the initial members of the Committee (which have been appointed by the Declarant) shall commence upon the date of recording of this Declaration and shall continue until two calendar years after the year in which Declarant no longer owns seventy-five (75%) of the Lots then subject to this Declaration (provided, however, in the event the Declarant, during such two (2) year period, adds Future Stages of Development to this Declaration pursuant to Article C herein which results in Declarant again owning twenty-five percent (25%) or more of the Lots subject to the Declaration, then the initial term of the Committee shall continue in full force and effect until two (2) years after such time as Declarant no longer owns seventy-five percent (75%) of the Lots then subject to this Declaration). During such initial term, Declarant shall have the right to appoint, remove or replace all three members of the Committee. Declarant may relinquish or

reassert all or any part of the rights provided to the Committee or the Association at any time or times during such initial term.

6. Subject to the rights of Declarant as provided in Article B, Section 5 above, each Owner shall be entitled to vote in person or by proxy in elections for selecting members of the Committee. The Owners of a Lot (whether the Lot is owned singularly or collectively) shall have one (1) vote in the affairs of the Association for each Lot owned.

7. After the initial term as provided in Article B, Section 5 above, the term of office of members of the Committee shall be for two (2) calendar years. If any member of the Committee shall die, resign, be unable to act or cease to be qualified to be a member, the unexpired term of such member shall be filled by special election of the Association.

8. All meetings of the Committee shall be open to all Owners, and shall be held upon not less than three (3) days prior written notice to all of the Owners. Two (2) members of the Committee shall constitute a quorum. Actions of the Committee shall be taken by majority vote of the members. The Committee shall call a meeting of all of the Owners of the Association no less than one (1) time per calendar year.

9. The Committee shall have the following duties:

- A. To provide for the maintenance of improvements in the Common Area;
- B. To establish dates and procedures for the election of members to the Committee;
- C. To promulgate operating procedures for the conduct of the Association's and the Committee's affairs;

D. To enforce the terms, conditions and restrictions contained in this Declaration according to the terms thereof; and

E. Establish an Architectural Review Board (as hereinafter defined) if so delegated by the Declarant pursuant to Article A, Section 30 herein. Declarant has the right to retain this power infinitely. Such Architectural Review Board shall consist of three (3) persons appointed by the Committee. No Owner of a vacant Lot (except for the Declarant) shall have the right to serve on the Architectural Review Board. Upon the delegation of the Declarant's authority under this Declaration to the Architectural Review Board, the Architectural Review Board shall have all of the rights and obligations of the Declarant pursuant to Article A herein.

10. The Committee shall have the following powers:

A. To take such action as may be necessary to cause the Common Areas to be maintained, repaired, landscaped (where appropriate) and kept in good, clean and attractive condition;

B. To enter into contracts and to employ agents, attorneys or others for purposes of discharging its duties and responsibilities hereunder;

C. To levy and collect assessments in accordance with the provisions of Section 11, Paragraph B of this Article B; and

D. To do any thing or take any other action which is incidental to or necessary for the Committee to perform its duties and discharge its obligations under this Declaration.

11. The Committee shall levy and collect assessments in accordance with the following:

A. The Owner of each Lot shall be subject to a general annual charge or assessment ("General Assessment") equal to its pro rata share of the costs incurred or anticipated to be incurred by the Association in performing its duties and discharging its obligations hereunder. The pro rata share of an Owner of a Lot shall be a fraction, the numerator of which shall be one and the denominator of which shall be the total number of Lots and Units subject to this Declaration (including Future Stages of Development) at the time of the assessment. The Owner of each Unit (referring to Multi family) shall be subject to a general annual charge or assessment ("General Assessment") equal to its pro rata share of the costs incurred or anticipated to be incurred by the Association in performing its duties and discharging its obligations hereunder. The pro rata share of an Owner of a Unit shall be a fraction, the numerator of which shall be one and the denominator of which shall be the total number of Lots and Units subject to this Declaration (including Future Stages of Development) at the time of the assessment. Said costs shall include, but not be limited to: taxes; insurance; repair, replacement and additions to the improvements made to the Common Areas; equipment; materials; labor, management and supervision thereof; and, all costs for the Association reasonably incurred in conducting its affairs and enforcing the terms, conditions and restrictions contained in this Declaration. The Committee shall also have the power to levy a special assessment ("Special Assessment") against any individual Lot Owner for the failure of such Lot Owner to: maintain said Owner's Lot in accordance with the reasonable standard of the subdivision; install the seeding, sodding, and/or mulching of the Lots; maintain the lamppost required under Article A, Section 14 herein; install street trees and landscaping required under Article A, Section 15 herein; and/or, failure of said

Owner to comply with the terms, conditions and restrictions contained in this Declaration. Herein General Assessments and Special Assessment are sometimes collectively referred to as "Assessments."

B. Declarant shall not be required to pay any assessment on any Lots owned by the Declarant.

C. Assessments shall be approved at a duly convened meeting of the Committee;

D. Written notice of an Assessment shall be personally delivered to each Owner subject to the assessment or delivered by regular mail addressed to the last known address of such Owner;

E. Assessments shall be due and payable on or before thirty (30) days after the mailing or personal delivery of the notice, as the case may be.

F. Assessments not paid when due shall bear interest at the rate of twelve percent (12%) per annum from the date due until paid, and such unpaid Assessments and the interest thereon shall constitute a continuing lien on the real estate against which it was assessed until they have been paid in full. The Assessments and interest thereon shall also be the personal obligation of any current or subsequent Owner of the Lot against which the Assessment was made.

G. The Committee may record a document with the Register of Deeds in Waukesha County, Wisconsin, giving notice of a lien for any such unpaid Assessment and upon payment or satisfaction of the amount due record a document canceling or releasing any such lien. The failure to file any such notice shall not impair the validity of the lien. All

recording and attorney fees relating to any such document or the collection of an Assessment shall be borne by the affected Owner.

H. Upon application by any Owner, any member of the Committee may, without calling a meeting of the Committee, provide to such Owner a statement in recordable form certifying (1) that the signer is a duly elected or appointed member of the Committee, and (2) as to the existence of any unpaid assessments or other amounts due to the Association. Such statement shall be binding upon the Committee and shall be conclusive evidence to any party relying thereon of the payment of any and all outstanding Assessments or other amounts due to the Association.

I. Any lien for Assessments may be foreclosed by a suit brought by the Committee, acting on behalf of the Association, in a like manner as the foreclosure of a mortgage on real property. The affected Owner shall be responsible for all of the Association's costs in collecting the Assessment, including, but not limited to, attorneys' fees.

12. During the initial term of the Committee, the Committee shall not have the power to make improvements to the Common Area in addition to those then in existence (herein referred to as "Additional Improvements") without the written approval of the Developer. After the initial term, the Committee shall not have the power to make Additional Improvements having a cost in excess of One Thousand Dollars (\$1,000.00) without the consent of ninety percent (90%) of the then current Owners.

13. Members of the Committee shall not be liable for any action taken by them in good faith in discharging their duties hereunder, even if such action involved a mistaken judgment or negligence by the member or agents or employees of the Committee. The Association shall

indemnify and hold the members of the Committee harmless from and against any and all costs or expenses, including reasonable attorney's fees, in connection with any suit or other action relating to the performance of their duties hereunder.

14. Failure of the Association or the Committee to enforce any terms, conditions or restrictions contained in this Declaration, upon the violation thereof, shall not be deemed to be a waiver of the rights to do so, or an acquiescence in any subsequent violation.

ARTICLE C

FUTURE STAGES OF DEVELOPMENT OF CREEKWOOD HIGHLANDS

The Developer, its successors and assigns shall have the right, after the effective date hereof, to add Future Stages of the Development to the real estate subject to this Declaration, provided such Future Stages of Development are or become adjacent to the real estate which is or becomes subject to this Declaration or any supplemental declaration. The Future Stages of Development authorized under this Article C shall be added by recording a Supplemental Declaration of Restrictions with respect to such Future Stages of Development which shall extend the provisions of this Declaration to such Future Stages of Development, and shall indicate any provisions which differ from the provisions of this Declaration or any prior Supplemental Declaration. Except with respect to increasing the number of Lots and adding to the Common Areas, and all amendments and modifications incidental thereto, such Supplemental Declarations shall not otherwise revoke, modify, amend or add to the covenants established by this Declaration or any prior Supplemental Declaration.

ARTICLE D

AMENDMENT PROVISIONS

Any of the provisions of this Declaration may be annulled, waived, changed, modified or amended at any time by written document setting forth such annulment, waiver, change, modification or amendment, executed by the Owners of lands having at least seventy five percent (75%) of the votes in the Association; provided, however, that any such action must also be approved in writing by (i) the Village, and (ii) the Developer so long as it shall be a Lot Owner.

This Declaration and all amendments shall be executed as required by law so as to entitle it to be recorded, and shall be effective upon recording in the office of the Register of Deeds for Waukesha County, Wisconsin.

ARTICLE E

ROADS

Certain roads in Creekwood Highlands and Future Stages of Development terminate or may terminate at the then current boundaries of the subdivision. Owners are hereby put on notice that said roads (or any other roads which may be located over outlots owned by the Developer) may be connected with or extended to other roads in Future Stages of Development or in lands owned by others if such extension or connection is approved by the Village, Waukesha County or other public entities having jurisdiction. No Owner shall have the right to object to any such road extension or connection, nor shall any Owner have the right to claim that it has incurred a loss or damage as a result thereof.

ARTICLE F

TERM AND BINDING EFFECT

This Declaration and any amendments shall be in force for a term of 30 years from the date the Declaration is recorded. Upon the expiration date of such initial 30 year term or any extended term as provided herein, this Declaration shall be automatically extended for a successive term of 10 years, unless prior to the end of the then-current term a Notice of Termination is executed by the Owners of at least seventy-five percent (75%) of all Lots and their mortgagees, is consented to by

the Village of Menomonee Falls, and is thereafter recorded in the Office of the Register of Deeds of Waukesha County. This Declaration shall be binding upon all Owners and any other person claiming under or through the Declarant.

IN WITNESS WHEREOF, the undersigned has executed this Declaration of Restrictions this ____ day of _____, 1998.

PILGRIM PARK LIMITED PARTNERSHIP, a Wisconsin limited partnership
By: FIDUCIARY REAL ESTATE DEVELOPMENT, INC.,
General Partner

By: _____
William R. Arpe, President

Attest: _____
Donald S. Wilson, Secretary

STATE OF WISCONSIN)
) ss.
COUNTY OF MILWAUKEE)

Personally came before me this ____ day of _____, 1998, the above-named William R. Arpe, President, and Donald S. Wilson, Secretary, of Fiduciary Real Estate Development, Inc., to me known to be the person(s) who executed the foregoing instrument and acknowledged the same in such capacity.

Notary Public, County of Milwaukee
State of Wisconsin
My Commission expires on:

*This Instrument Drafted by,
and Should be Returned to:*

*Brett K. Miller, Esq.
Davis & Kuelthau, S.C.
111 East Kilbourn Avenue
Suite 1400
Milwaukee, WI 63202-6613*

EXHIBIT A

Legal Description of Creekwood Highlands

Fiduciary Real Estate Development, Inc. is the "Developer" of Creekwood Highlands, being a subdivision of part of the NE 1/4 of Section 34, Township 8 North, Range 20 East, In The Village of Menomonee Falls, Waukesha County, Wisconsin.

EXHIBIT B

Erosion Control Standards

To protect the retention ponds and the storm sewer system in Creekwood Highlands, the purchaser shall prevent soil erosion and sedimentation by:

1. Installing and maintaining a gravel entrance (6 inches of 2 to 3 inch aggregate, 7 feet wide and 50 feet long or the distance from the road to the construction area, whichever is less); requiring all vehicles to use that entrance;
2. At the end of each work day, cleaning up any soil tracked onto the road;
3. Locating all soil piles at least 25 feet from any downslope road, ditch or drainageway; immediately placing silt fence on the downslope side of all soil piles;
4. As soon as gutters are installed, placing extenders on all downspouts to route roof water to a stabilized area; continuing use of the extenders until vegetation is established; and
5. Sodding, seeding and/or mulching of the Lot within 60 days after the occupancy permit is issued; maintaining the sod or seed by watering and any necessary replanting. (For homes with occupancy permits issued between September 1 and April 30, the Lot shall be covered with mulch within 30 days after the occupancy permit is issued and the mulch shall be maintained until the Lot is sodded or seeded. For these Lots, sodding or seeding shall be completed by June 1).

All erosion control measures shall be installed and maintained according to the best standards and specifications set forth in the Wisconsin Construction Site Best Management Practice Handbook, the Wisconsin Soil Conservation Service Field Technical Guide, or adopted by the Waukesha County Land Conservation Department.

**FIRST SUPPLEMENT TO
DECLARATION OF RESTRICTIONS
FOR
CREEKWOOD HIGHLANDS AT MENOMONEE FALLS**

THIS FIRST SUPPLEMENT, made as of the ____ day of _____, 2000, by **PILGRIM PARK LIMITED PARTNERSHIP**, a Wisconsin limited partnership (hereafter “Declarant”).

WITNESSETH:

WHEREAS, on February 16th, 1999, Declarant entered into that certain Declaration of Restrictions for Creekwood Highlands at Menomonee Falls (the “Declaration”) wherein the Declarant subjected that certain real property described on Exhibit A attached hereto and then owned by Declarant (referred to as “Creekwood Highlands” in the Declaration) to the terms and conditions contained in the Declaration; and

WHEREAS, the Declaration was recorded on February 26th, 1999 in the Registrar’s Office of Waukesha County as Document No. 2424559;

WHEREAS, on March 25th, 1999, Declarant entered into that certain First Amendment to Declaration of Restrictions for Creekwood Highlands at Menomonee Falls (the “First Amendment”) wherein 75% of the then owners of lands in Creekwood Highlands amended the Declaration, and

WHEREAS, The First Amendment was recorded on June 29, 2000 in the Register’s Office of Waukesha County as Document No. 2571909;

WHEREAS, on July 12th, 2000, Declarant entered into that certain Second Amendment to the Declaration of Restrictions for Creekwood Highlands at Menomonee Falls (the “Second Amendment”) wherein 75% of the then owners of lands in Creekwood Highlands amended the

Declaration, and

WHEREAS, the Second Amendment has yet to be recorded in the Office of the Register of Deeds of Waukesha County.

WHEREAS, on _____ the Declarant specifically provides that the Declarant may subject additional real estate to the Declaration, provided such real estate is adjacent to Creekwood Highlands;

WHEREAS, the Declarant is the sole owner of certain real estate which is adjacent to Creekwood Highlands and is more particularly described on Exhibit C (hereafter referred to as the “First Addition to Creekwood Highlands”); and

WHEREAS, the Declarant desires, as of the date hereof, to subject the First Addition to Creekwood Highlands to the Declaration.

IN WITNESS WHEREOF, the Declarant hereby supplements the Declaration as follows:

1) All defined terms used herein, but not otherwise defined herein, shall have the same meaning ascribed to them in the Declaration.

2) The Declarant hereby submits the First Addition to Creekwood Highlands to all of the terms, conditions, restrictions, covenants, rights, and obligations of the Declaration, as if the Declaration had been entirely restated herein. From and after the date hereof, the term “Creekwood Highlands” as used in the Declaration shall include all of the real property described in Exhibit A, and Exhibit B attached hereto.

3) Notwithstanding anything contained in the First Amendment, Second Amendment or the Declaration to the contrary, the following shall be special restrictions pertaining to the hereafter identified individual lots in the First Addition to Creekwood Highlands:

4) In addition to the materials approved for construction as listed in the Declaration, the Multi-Family buildings may be constructed with aluminum siding, fascia, or soffits.

5) All setbacks shall be approved by the Declarant. The minimum setback for a Single-Family Residence from any abutting street right-of-way on Lots 49 to 75 shall be **40** feet, the minimum side yard setback on Lots 49 to 75 shall be 15 feet, and the minimum rear yard setback on Lots 49 to 75 shall be 30 feet. Corner lots are required to maintain a 40-foot set back from both streets. Upon written request of the owner, and written approval by the Declarant, owners of corner lots may be allowed to encroach into the side yard set back (side of house toward the street) to no less than 25' from the street facing lot line. If owners wish to rotate the proposed residence to face toward the corner, the declarant reserves the right to determine the street yard setbacks that the declarant believes to be in the most aesthetic, and beneficial to the overall appearance of the Subdivision.

6) Driveways shall have a 3 foot side yard setback. Subject to the Declarants' written approval, the Declarant may allow the turn around portion of the driveway to be located no closer than 2 feet from the lot line upon written request of the Owner.

7) All lots containing wetlands, as shown on the Final Plat of Creekwood Highlands Addition #1 shall be further restricted by the Department of Natural Resources, by preserving a 25 foot natural and unmowed buffer of all lands bordering the delineated wetlands per DNR specification. Any owner failing to comply with this requirement will be subject to penalties determined by DNR regulators.

8) All lots bordering the unnamed tributary to the Fox River must maintain a minimum of

a 50-foot natural and unmowed buffer along both sides of the unnamed tributary. Any owner failing to comply with this requirement will be subject to penalties determined by DNR regulators.

9) Owners of condominium units located on lots 76 and 77 of the final plat are not required to install a lamppost as required under Article A (18) of the Declaration.

10) The Declarant shall, at such time deemed appropriate, pursuant to the requirements of the Declaration, plant shade trees of a type approved by the Village of Menomonee Falls on the private property, between the street right-of-way line and a line parallel approximately five feet in from the street right-of-way line. Shade trees shall be planted at a rate of at least one tree per 40 linear feet of frontage or fraction thereof on both sides of proposed roads and along the effected frontage of existing streets per Village ordinance. The minimum size of trees at planting should be 2.5 to 3 inch calipers or larger.

11) At such time as determined by the Menomonee Falls branch of the United States Post Office, the Declarant shall have uniform mailboxes installed for each Lot.

12) The storm water retention ponds located in Lots 76 and 77 (as shown on the Plat of Creekwood Highlands) have been created and were required by the Village of Menomonee Falls to assist in the removal and detention of storm water from Creekwood Highlands. The storm water retention ponds are not intended to be used for swimming or recreational facilities, and any use of the storm water retention ponds for such use is strictly prohibited. Any persons entering into or using the storm water retention ponds either intentionally or accidentally do so at their own risk. By purchasing a Lot in Creekwood Highlands, or a Condominium Unit, each Owner and its respective successors, assigns, heirs and personal representatives thereby waives, to the

fullest extent permitted by law, any and all claims for liability against the Declarant, the Developer, the Creekwood Highlands of Menomonee Falls Homeowners Association, the Future Condominium Owners Associations at Lots 76 and 77, and their respective agents, contractors, employees, officers, directors and shareholders, for injury or damage to person or property sustained in or about or resulting from the use or existence of the storm water retention ponds. In addition, each Owner (and its successors, assigns, heirs and personal representatives) agrees to indemnify, defend and hold harmless the Declarant, the Developer, the Creekwood Highlands of Menomonee Falls Homeowners Association, the Future Condominium Owners Associations at Lots 76 and 77 and their respective agents, contractors, employees, officers, directors and shareholders, from and against any and all liabilities, claims, demands, costs and expenses of every kind and nature (including attorneys' fees), including those arising from any injury or damage to any person (including death) or property sustained in or about or resulting from the use or existence of the storm water retention ponds.

13) The Declarant, to preserve the aesthetics of Creekwood Highlands and its retention Ponds, has granted an Easement, for control and maintenance of the retention ponds and for any landscaping located along Silver Spring Road and any areas bordering the entrance to the subdivision, to the Creekwood Highlands of Menomonee Falls Homeowners Association.

14) Subject to the rights of Declarant as provided in Article B, Section 5 above, each Lot or Unit (whether the Lot/Unit is owned singularly or collectively) shall have one (1) vote in the affairs of the Association for each Lot/Unit owned. Each Lot or Unit shall be entitled to cast its one vote in person or by proxy in elections for selecting members of the Committee. Each condominium unit shall, being a part of the Creekwood Highlands subdivision, be subject to the \$100.00 annual Homeowners Association fee.

IN WITNESS WHEREOF, the undersigned has executed this Declaration of Restrictions this _____ day of _____, 2000.

PILGRIM PARK LIMITED PARTNERSHIP, a Wisconsin Limited partnership

By: FIDUCIARY REAL ESTATE DEVELOPMENT, INC.,
General Partner

By: _____
William R. Arpe, President

Attest: _____
Donald S. Wilson, Secretary

STATE OF WISCONSIN)
) Ss.
COUNTY OF MILWAUKEE)

Personally came before me this _____ day of _____, 2000, the above-named William R. Arpe, President, and Donald S. Wilson, Secretary, of Fiduciary Real Estate Development, Inc., to me known to be the person(s) who executed the foregoing instrument and acknowledged the same in such capacity.

Notary Public, County of Milwaukee
State of Wisconsin
My Commission expires on:

*This Instrument Drafted by,
And should be returned to:*

*Brett K. Miller, Esq.
Davis & Kuelthau, S.C.
111 East Kilbourn Avenue
Suite 1400
Milwaukee, WI 63202-6613*

EXHIBIT B

Legal Description of Creekwood Highlands Addition No.1

Fiduciary Real Estate Development, Inc. is the "Developer" of Creekwood Highlands Addition No. 1, being a subdivision of part of the NE 1/4 of Section 34, Township 8 North, Range 20 East, In The Village of Menomonee Falls, Waukesha County, Wisconsin.

EXHIBIT A

Legal Description of Creekwood Highlands

Fiduciary Real Estate Development, Inc. is the "Developer" of Creekwood Highlands, being a subdivision of part of the NE $\frac{1}{4}$, SE $\frac{1}{4}$, SW $\frac{1}{4}$, and NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 34, Township 8 North, Range 20 East, In The Village of Menomonee Falls, Waukesha County, Wisconsin.

Document Number

**THIRD AMENDMENT TO
DECLARATION OF
RESTRICTIONS FOR
CREEKWOOD HIGHLANDS AT
MENOMONEE FALLS**

Document Title

Recording Area

Name and Return Address

Brett K. Miller, Esq.
Davis & Kuelthau, s.c.
111 E. Kilbourn Ave., Ste. 1400
Milwaukee, WI 53202

Parcel Identification Number (PIN)

**THIRD AMENDMENT
TO
DECLARATION OF RESTRICTIONS
FOR
CREEKWOOD HIGHLANDS AT MENOMONEE FALLS**

Dated: February __, 2001

**THIRD AMENDMENT TO
DECLARATION OF RESTRICTIONS
FOR
CREEKWOOD HIGHLANDS AT MENOMONEE FALLS**

THIS THIRD AMENDMENT, made as of the _____ day of February, 2001, by **PILGRIM PARK LIMITED PARTNERSHIP**, a Wisconsin limited partnership (the "**Declarant**").

WITNESSETH:

WHEREAS, on February 16, 1999, the Declarant entered into that certain Declaration of Restrictions for Creekwood Highlands at Menomonee Falls (the "**Declaration**") wherein the Declarant subjected that certain real property described on Exhibit A attached hereto and then owned by the Declarant ("**Creekwood Highlands**") to the terms and conditions contained in the Declaration; and

WHEREAS, the Declaration was recorded on February 26, 1999, at the Waukesha County Register of Deeds Office as Document No. 2424559; and

WHEREAS, on March 25, 1999, the Declarant entered into that certain First Amendment to Declaration of Restrictions for Creekwood Highlands at Menomonee Falls (the "**First Amendment**"); and

WHEREAS, the First Amendment was recorded on June 29, 2000, at the Waukesha County Register of Deeds Office as Document No. 2571909; and

WHEREAS, on July 12, 2000, the Declarant entered into that certain Second Amendment to the Declaration of Restrictions for Creekwood Highlands at Menomonee Falls (the "**Second Amendment**"); and

WHEREAS, the Second Amendment was recorded on _____, 2001, in the Waukesha County Register of Deeds Office as Document No. _____; and

WHEREAS, Article C of the Declaration provides that the Declarant may subject additional real estate to the Declaration, provided such real estate is adjacent to Creekwood Highlands; and

WHEREAS, the Declarant is the sole owner of that certain real estate located immediately adjacent to the west and northwest of Creekwood Highlands, as more particularly described on Exhibit B attached hereto (the "**First Addition to Creekwood Highlands**") and shown on the Plat of Creekwood

Highlands Addition No. 1 attached hereto as Exhibit C (the "**First Addition Plat**"); and

WHEREAS, the Declarant now desires to supplement and amend the Declaration to include the First Addition to Creekwood Highlands to the Declaration as hereinafter set forth.

IN WITNESS WHEREOF, the Declarant hereby amends and supplements the Declaration as follows:

1. Defined Terms. All defined terms used herein, but not otherwise defined herein, shall have the same meaning ascribed to them in the Declaration.

2. Expansion. The Declarant hereby submits the First Addition to Creekwood Highlands to all of the terms, conditions, restrictions, covenants, rights, and obligations of the Declaration, as if the Declaration had been entirely restated herein. From and after the date hereof, the term "**Creekwood Highlands**" as used in the Declaration shall include all of the real property described on Exhibit A and Exhibit B attached hereto, and shown on the Final Plat of Creekwood Highlands Addition No. 1 (the "**Final Plat**"), a copy of which is attached hereto as Exhibit C.

3. Condominium Development on Parcels 51 and 77 of First Addition to Creekwood Highlands. The Declaration contemplated single-family, two-family and multi-family residential units in Creekwood Highlands. It is the Declarant's intention to subject Parcel 51 and Parcel 77, as shown on the First Addition Plat, to the declaration of condominium (the "**Condominium Declaration**") pursuant to Chapter 703 of the Wisconsin Statutes (the "**Condominium**"). Each condominium unit contained within the Condominium shall be considered a "Single Family Residence" and an individual "Lot" for purposes of the Declaration and shall sometimes be referred to herein as "Condominium Units". Each Owner of a Condominium Unit shall be considered an "Owner" of a "Lot" for all purposes of the Declaration (with each having all rights, responsibilities, obligations and restrictions commensurate therewith, including, but not limited to, one vote in the Association per Condominium Unit). The Developer currently intends to develop 44 Condominium Units on Parcel 51 and 32 Condominium Units on Parcel 77, provided, however, the Declarant reserves the right to add or subtract from the foregoing total estimated Condominium Units based on the actual approvals the Declarant obtains from the Village of Menomonee Falls to develop the Condominium Units. Nothing contained in the Declaration shall be deemed to grant any Owner of a Lot in Creekwood which is not a Condominium Unit any right or authority to participate in the internal affairs and governance of the Condominium, and, except for and subject

in all events to the express restrictions, obligations and rights granted to the Owners under this Declaration, the internal affairs and governance of the Condominium shall be as provided under Section 703 of the Wisconsin Statutes and the Condominium Declaration. The Declarant further reserves the right to include an expansion of the Condominium into any Future Stages of Development as provided in Article C of the Declaration.

4. Requirements and Restrictions Applicable to First Addition to Creekwood Highlands. Notwithstanding anything contained in the First Amendment, Second Amendment or the Declaration to the contrary, the following shall be special restrictions pertaining only to the Lots in the First Addition to Creekwood:

(a) All Lot setbacks shall be approved in writing by the Declarant. Except for Parcel 51 and Parcel 77 (i.e., the Condominium), the minimum setbacks for a Single-Family Residence shall be: (i) forty (40) feet from any abutting street right-of-way; (ii) fifteen (15) feet from any side yard; and (iii) thirty (30) feet from any rear yard. In addition, any corner Lots (other than Parcel 51 and Parcel 77) are required to maintain a forty (40) foot set back from both street rights-of-way; provided, however, upon written approval of the Declarant (in its sole discretion) the street yard set backs for a corner Lot may be decreased to a minimum set back of twenty-five (25) feet. If any Owner desires to rotate its proposed Single-Family Residence to face toward the corner of a Lot, the Declarant reserves the right to determine the street yard setbacks that the Declarant believes to be the most beneficial to the overall appearance of the Subdivision.

(b) Other than Parcel 51 and Parcel 77, all driveways on any Lot shall have a minimum of a three (3) foot side yard setback, unless otherwise approved in writing by the Declarant (in its sole discretion).

(c) Any Lot that contains wetlands, as delineated on the First Addition Plat, shall be subject to a requirement that the Owner of such Lot maintain a twenty-five (25) foot natural and unmowed buffer on such Owner's Lot along and from the edge of such delineated wetland pursuant to current specifications set by Wisconsin Department of Natural Resources (the "DNR"), as the same may be amended from time to time. Any Lot Owner failing to comply with the foregoing wetland buffer requirement may be subject to penalties and fines as determined by the DNR. In addition, all Owners shall be subject to and shall comply with the wetland restrictions set forth on the First Addition Plat.

(d) Any Lots bordering the unnamed tributary to the Fox River, including, but not limited to, Lots 69 through 77, shall be subject to a requirement that the Owner of

such Lot maintain a minimum of a fifty (50) foot natural and unmowed buffer of such Owner's Lot along and from the edge of such unnamed tributary. Any owner failing to comply with this requirement may be subject to penalties and fines as determined by the DNR.

(e) Parcel 51 and Parcel 77, as shown on the First Amendment Plat, shall not be subject to the requirement that a lamppost be installed as required under Article A, Section 18 of the Declaration.

(f) The Condominium Units may be constructed with aluminum siding, fascia, or soffits deemed acceptable to the Declarant, in its sole discretion.

(g) All Lots in First Addition to Creekwood Highlands shall also be subject to any and all restrictions contained on the First Addition Plat.

5. Tree Plantings. The Village of Menomonee Falls has required all of the Owners of Lots in the First Addition to Creekwood Highlands to plant certain shade trees (of a type approved by the Village of Menomonee Falls) on the Lots parallel to and approximately five (5) feet into the Lots from the street right-of-way line. Pursuant to the current Village of Menomonee Falls ordinances, such shade trees shall be planted at an interval of at least one (1) tree per 40 linear feet of street right-of-way frontage or fraction thereof along both sides of the street right-of-way. The minimum size of such trees at planting shall approximately two and one-half to three inch (2.5-3") calipers or larger. Each Owner shall be responsible to maintain such plantings located on its respective Lot; provided, however, with respect to Lots 51 and 77, the Condominium Association shall be responsible to maintain any such tree plantings (other than as required in Section 7(b) herein).

6. Common Areas.

(a) The storm water detention easement areas located on Parcel 51 and Parcel 77, in the locations more particularly shown on the First Addition Plat, shall be deemed to be "Common Area" as defined in the Declaration and the storm water detention ponds located thereon shall be maintained by the Association as provided in the Declaration. In addition, the Owners acknowledge that the Declarant has granted an easement to the Village of Menomonee Falls to utilize the storm water detention ponds located on Parcel 51 and Parcel 77 as provided on the First Amendment Plat.

(b) The landscaping and other plantings located along or to be planted and installed in the area marked "Landscape, Landscape Planting and Landscape Maintenance Easement" shall be deemed to be "Common Areas" as defined in the Declaration (as contemplated in Article B, Section 2, Subsection C) and shall be maintained by the Association as provided in the Declaration and as may be required by the

EXHIBIT A

Legal Description of Creekwood Highlands

Creekwood Highlands, being a subdivision of part of the NE 1/4, SE 1/4, SW 1/4, and NW 1/4 of the NW 1/4 of Section 34, Township 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin.

EXHIBIT B

Legal Description of Creekwood Highlands Addition No. 1

Creekwood Highlands Addition No. 1, being a subdivision of part of the Northwest 1/4 and Southwest 1/4 of the Northwest 1/4 of Section 34 and part of the Northeast 1/4 and Southeast 1/4 of the Northeast 1/4 of Section 33, all in Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin.

EXHIBIT C

Plat of Creekwood Highlands First Addition No. 1

Document Number

**FOURTH AMENDMENT TO
DECLARATION OF
RESTRICTIONS FOR
CREEKWOOD HIGHLANDS AT
MENOMONEE FALLS**

Document Title

Recording Area

Name and Return Address

Brett K. Miller, Esq.
Davis & Kuelthau, s.c.
111 E. Kilbourn Ave., Ste. 1400
Milwaukee, WI 53202

Parcel Identification Number (PIN)

**FOURTH AMENDMENT
TO
DECLARATION OF RESTRICTIONS
FOR
CREEKWOOD HIGHLANDS AT MENOMONEE FALLS**

Dated: October __, 2001

**FOURTH AMENDMENT TO
DECLARATION OF RESTRICTIONS
FOR
CREEKWOOD HIGHLANDS AT MENOMONEE FALLS**

THIS FOURTH AMENDMENT, made as of the ____ day of October, 2001, by **PILGRIM PARK LIMITED PARTNERSHIP**, a Wisconsin limited partnership (the "**Declarant**").

WITNESSETH:

WHEREAS, on February 16, 1999, the Declarant entered into that certain Declaration of Restrictions for Creekwood Highlands at Menomonee Falls (the "**Declaration**") wherein the Declarant subjected that certain real property described on Exhibit A attached hereto and then owned by the Declarant ("**Creekwood Highlands**") to the terms and conditions contained in the Declaration; and

WHEREAS, the Declaration was recorded on February 26, 1999, at the Waukesha County Register of Deeds Office as Document No. 2424559; and

WHEREAS, on March 25, 1999, the Declarant entered into that certain First Amendment to Declaration of Restrictions for Creekwood Highlands at Menomonee Falls (the "**First Amendment**"); and

WHEREAS, the First Amendment was recorded on June 29, 2000, at the Waukesha County Register of Deeds Office as Document No. 2571909; and

WHEREAS, on July 12, 2000, the Declarant entered into that certain Second Amendment to the Declaration of Restrictions for Creekwood Highlands at Menomonee Falls (the "**Second Amendment**"); and

WHEREAS, the Second Amendment was recorded on February 27, 2001, in the Waukesha County Register of Deeds Office as Document No. 2628282; and

WHEREAS, on February 23, 2001, the Declarant entered into that certain Third Amendment to the Declaration of Restrictions for Creekwood Highlands at Menomonee Falls (the "**Third Amendment**"); and

WHEREAS, the Third Amendment was recorded on February 28, 2001, in the Waukesha County Register of Deeds Office as Document No. 2628668; and

WHEREAS, Article C of the Declaration provides that the Declarant may subject additional real estate to the Declaration, provided such real estate is adjacent to Creekwood Highlands; and

WHEREAS, the Declarant is the sole owner of that certain real estate located immediately adjacent to the west and northwest of Creekwood Highlands, as more particularly described on Exhibit C attached hereto (the "**Second Addition to Creekwood Highlands**") and shown on the Plat of Creekwood Highlands Addition No. 2 attached hereto as Exhibit D (the "**Second Addition Plat**"); and

WHEREAS, the Declarant now desires to supplement and amend the Declaration to include the Second Addition to Creekwood Highlands to the Declaration as hereinafter set forth.

IN WITNESS WHEREOF, the Declarant hereby amends and supplements the Declaration as follows:

1. Defined Terms. All defined terms used herein, but not otherwise defined herein, shall have the same meaning ascribed to them in the Declaration.

3. Expansion. The Declarant hereby submits the Second Addition to Creekwood Highlands to all of the terms, conditions, restrictions, covenants, rights, and obligations of the Declaration, as if the Declaration had been entirely restated herein. From and after the date hereof, the term "**Creekwood Highlands**" as used in the Declaration shall include all of the real property described on Exhibit A, Exhibit B, and Exhibit C attached hereto, and shown on the Final Plat of Creekwood Highlands Addition No. 2 (the "**Final Plat**"), a copy of which is attached hereto as Exhibit D.

3. Condominium Development on Parcel 104 of Second Addition to Creekwood Highlands. The Declaration contemplated single-family, two-family and multi-family residential units in Creekwood Highlands. It is the Declarant's intention to subject Parcel 104, as shown on the Second Addition Plat, to the declaration of condominium (the "**Condominium Declaration**") pursuant to Chapter 703 of the Wisconsin Statutes (the "**Condominium**"). Each condominium unit contained within the Condominium shall be considered a "Single Family Residence" and an individual "Lot" for purposes of the Declaration and shall sometimes be referred to herein as "Condominium Units". Each Owner of a Condominium Unit shall be considered an "Owner" of a "Lot" for all purposes of the Declaration (with each having all rights, responsibilities, obligations and restrictions commensurate therewith, including, but not limited to, one vote in the Association per Condominium Unit). The Developer currently intends to develop 34 Condominium

Units on Parcel 104, provided, however, the Declarant reserves the right to add or subtract from the foregoing total estimated Condominium Units based on the actual approvals the Declarant obtains from the Village of Menomonee Falls to develop the Condominium Units. Nothing contained in the Declaration shall be deemed to grant any Owner of a Lot in Creekwood which is not a Condominium Unit any right or authority to participate in the internal affairs and governance of the Condominium, and, except for and subject in all events to the express restrictions, obligations and rights granted to the Owners under this Declaration, the internal affairs and governance of the Condominium shall be as provided under Section 703 of the Wisconsin Statutes and the Condominium Declaration. The Declarant further reserves the right to include an expansion of the Condominium into any Future Stages of Development as provided in Article C of the Declaration.

4. Requirements and Restrictions Applicable to Second Addition to Creekwood Highlands. Notwithstanding anything contained in the First Amendment, Second Amendment, Third Amendment, or the Declaration to the contrary, the following shall be special restrictions pertaining only to the Lots in the Second Addition to Creekwood:

(a) All Lot setbacks shall be approved in writing by the Declarant. Except for Parcel 104 (i.e., the Condominium), the minimum setbacks for a Single-Family Residence shall be: (i) forty (40) feet from any abutting street right-of-way; (ii) fifteen (15) feet from any side yard; and (iii) thirty (30) feet from any rear yard. In addition, any corner Lots (other than Parcel 104) are required to maintain a forty (40) foot set back from both street rights-of-way; provided, however, upon written approval of the Declarant (in its sole discretion) the street yard set backs for a corner Lot may be decreased to a minimum set back of twenty-five (25) feet. If any Owner desires to rotate its proposed Single-Family Residence to face toward the corner of a Lot, the Declarant reserves the right to determine the street yard setbacks that the Declarant believes to be the most beneficial to the overall appearance of the Subdivision.

A setback of twenty-five (25) feet may be allowed at the sole discretion of the Developer in cases where the Declarant determines due to aesthetics, size of lot, lot frontage, topography, or other reasons that the twenty-five (25) foot setback is necessary.

(b) Other than Parcel 104, all driveways on any Lot shall have a minimum of a three (3) foot side yard setback, unless otherwise approved in writing by the Declarant (in its sole discretion).

(c) Any Lot that contains wetlands, as delineated on the Second Addition Plat, shall be subject to a requirement

that the Owner of such Lot maintain a twenty-five (25) foot natural and unmowed buffer on such Owner's Lot along and from the edge of such delineated wetland pursuant to current specifications set by Wisconsin Department of Natural Resources (the "DNR"), as the same may be amended from time to time. Any Lot Owner failing to comply with the foregoing wetland buffer requirement may be subject to penalties and fines as determined by the DNR. In addition, all Owners shall be subject to and shall comply with the wetland restrictions set forth on the Second Addition Plat.

(d) Any Lots bordering the unnamed tributary to the Fox River, including, but not limited to, Lots 78 through 83, 91, and 92 shall be subject to a requirement that the Owner of such Lot maintain a minimum of a fifty (50) foot natural and unmowed buffer of such Owner's Lot along and from the edge of such unnamed tributary. Any owner failing to comply with this requirement may be subject to penalties and fines as determined by the DNR.

(e) Parcel 104, as shown on the Second Amendment Plat, shall not be subject to the requirement that a lamppost be installed as required under Article A, Section 18 of the Declaration.

(f) The Condominium Units may be constructed with aluminum siding, fascia, or soffits deemed acceptable to the Declarant, in its sole discretion.

(g) All Lots in Second Addition to Creekwood Highlands shall also be subject to any and all restrictions contained on the Second Addition Plat.

(h) All garages shall be attached to the Single-Family Residence, directly or by enclosed breezeway, or built into the basement of the Single-Family Residence, and all garages shall be constructed at the same time the Single-Family Residence is constructed. Although garage entrances shall be side entry garages, front entry garages may be allowed at the sole discretion of the Developer in cases where the Declarant determines due to aesthetics, size of lot, lot frontage, topography, or other reasons front garage is appropriate. The Declarant shall have the final determination of architectural design, including garage entrances. Notwithstanding the foregoing, in all cases the Declarant in sole discretion shall have the right to determine the location of the garage entrance. All driveways shall be paved (either with asphalt, cement or brick).

(i) A single story Single-Family Residence shall have an appropriate pitch of eight feet in height for each twelve feet in length (8/12), except for special circumstances. All other roof areas, including a story and one-half, two story, split level, and tri-level Single-Family Residences shall have an appropriate pitch of six feet in height for each twelve feet in length (6/12), except for rear dormers on story and one-half Single-Family Residences and other special circumstances (in sole discretion of Declarant for the architectural aesthetics of the building) if the same are approved in writing by the Declarant, and all roof areas shall be covered with wood shakes, fiberglass or asphalt shingles, tile, or other roofing material; provided, however, the Declarant shall have the right to approve

other roofing materials if they are of comparable or superior quality and are better suited to the approved building design of the Single-Family Residence.

5. Tree Plantings. The Village of Menomonee Falls has required all of the Owners of Lots in the Second Addition to Creekwood Highlands to plant certain shade trees (of a type approved by the Village of Menomonee Falls) on the Lots parallel to and approximately five (5) feet into the Lots from the street right-of-way line. Pursuant to the current Village of Menomonee Falls ordinances, such shade trees shall be planted at an interval of at least one (1) tree per 40 linear feet of street right-of-way frontage or fraction thereof along both sides of the street right-of-way. The minimum size of such trees at planting shall approximately two and one-half to three inch (2.5-3") calipers or larger. Each Owner shall be responsible to maintain such plantings located on its respective Lot; provided, however, with respect to Lot 104, the Condominium Association shall be responsible to maintain any such tree plantings (other than as required in Section 7(b) herein).

6. Common Areas.

(a) The storm water detention easement area located on Parcel 104, in the locations more particularly shown on the Second Addition Plat, shall be deemed to be "Common Area" as defined in the Declaration and the storm water detention pond located thereon shall be maintained by the Association as provided in the Declaration. In addition, the Owners acknowledge that the Declarant has granted an easement to the Village of Menomonee Falls to utilize the storm water detention ponds located on Parcel 104 as provided on the Second Amendment Plat.

(b) The landscaping and other plantings located along or to be planted and installed in the area marked "Pedestrian Easement, Landscape, Landscape Planting and Landscape Maintenance Easement" shall be deemed to be "Common Areas" as defined in the Declaration (as contemplated in Article B, Section 2, Subsection C) and shall be maintained by the Association as provided in the Declaration and as may be required by the Village of Menomonee Falls.

IN WITNESS WHEREOF, the undersigned has executed this Fourth Amendment to Declaration of Restrictions this ____ day of October, 2001.

PILGRIM PARK LIMITED PARTNERSHIP, a
Wisconsin Limited partnership

By: FIDUCIARY REAL ESTATE
DEVELOPMENT, INC., General

EXHIBIT A

Legal Description of Creekwood Highlands

Creekwood Highlands, being a subdivision of part of the NE 1/4, SE 1/4, SW 1/4, and NW 1/4 of the NW 1/4 of Section 34, Township 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin.

EXHIBIT B

Legal Description of Creekwood Highlands Addition No. 1

Creekwood Highlands Addition No. 1, being a subdivision of part of the Northwest 1/4 and Southwest 1/4 of the Northwest 1/4 of Section 34 and part of the Northeast 1/4 and Southeast 1/4 of the Northeast 1/4 of Section 33, all in Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin.

EXHIBIT C

Legal Description of Creekwood Highlands Addition No. 2

Creekwood Highlands Addition No. 2, being a subdivision of part of the Southwest 1/4 of the Northwest ¼ of Section 34 and part of the Northeast 1/4 and Southeast 1/4 of the Northeast 1/4 of Section 33, all in Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin.

EXHIBIT D

Plat of Creekwood Highlands Second Addition No. 2

**FIFTH AMENDMENT TO
DECLARATION OF
RESTRICTIONS FOR
CREEKWOOD HIGHLANDS AT
MENOMONEE FALLS**

Document Number

Document Title

Recording Area

Name and Return Address

Brett K. Miller, Esq.
Davis & Kuelthau, s.c.
111 E. Kilbourn Ave., Ste. 1400
Milwaukee, WI 53202

Parcel Identification Number (PIN)

**FIFTH AMENDMENT
TO
DECLARATION OF RESTRICTIONS
FOR
CREEKWOOD HIGHLANDS AT MENOMONEE FALLS**

Dated: December ___, 2001

**FIFTH AMENDMENT TO
DECLARATION OF RESTRICTIONS
FOR
CREEKWOOD HIGHLANDS AT MENOMONEE FALLS**

THIS FIFTH AMENDMENT, made as of the ____ day of December, 2001, by **PILGRIM PARK LIMITED PARTNERSHIP**, a Wisconsin limited partnership (the "**Declarant**").

WITNESSETH:

WHEREAS, on February 16, 1999, the Declarant entered into that certain Declaration of Restrictions for Creekwood Highlands at Menomonee Falls (the "**Declaration**") wherein the Declarant subjected that certain real property described on Exhibit A attached hereto and then owned by the Declarant ("**Creekwood Highlands**") to the terms and conditions contained in the Declaration; and

WHEREAS, the Declaration was recorded on February 26, 1999, at the Waukesha County Register of Deeds Office as Document No. 2424559; and

WHEREAS, on March 25, 1999, the Declarant entered into that certain First Amendment to Declaration of Restrictions for Creekwood Highlands at Menomonee Falls (the "**First Amendment**"); and

WHEREAS, the First Amendment was recorded on June 29, 2000, at the Waukesha County Register of Deeds Office as Document No. 2571909; and

WHEREAS, on July 12, 2000, the Declarant entered into that certain Second Amendment to the Declaration of Restrictions for Creekwood Highlands at Menomonee Falls (the "**Second Amendment**"); and

WHEREAS, the Second Amendment was recorded on February 27, 2001, in the Waukesha County Register of Deeds Office as Document No. 2628282; and

WHEREAS, on February 23, 2001, the Declarant entered into that certain Third Amendment to the Declaration of Restrictions for Creekwood Highlands at Menomonee Falls (the "**Third Amendment**"); and

WHEREAS, the Third Amendment was recorded on February 28, 2001, in the Waukesha County Register of Deeds Office as Document No. 2628668; and

WHEREAS, on November ____, 2001, the Declarant entered into that certain Fourth Amendment to the Declaration of Restrictions for Creekwood Highlands at Menomonee Falls (the "**Fourth Amendment**"); and

WHEREAS, the Fourth Amendment was recorded on November _____, 2001, in the Waukesha County Register of Deeds Office as Document No. _____; and

WHEREAS, the Declarant holds title to that certain real estate located immediately adjacent to the west and northwest of Creekwood

Highlands, as more particularly described on Exhibit C attached hereto (the "**Second Addition to Creekwood Highlands**") and shown on the Plat of Creekwood Highlands Addition No. 2 that was recorded in the Office of the Waukesha County Register of Deeds as Document No. _____ (the "**Second Addition Plat**"); and

WHEREAS, the Declarant now desires to amend the Declaration to clarify Paragraph 6(a) of the Fourth Amendment as hereinafter set forth.

IN WITNESS WHEREOF, the Declarant hereby amends the Declaration as follows:

1. Defined Terms. All defined terms used herein, but not otherwise defined herein, shall have the same meaning ascribed to them in the Declaration.

2. Amendment. Paragraph 6(a) of the Fourth Amendment is amended to read as follows (modifications are underlined):

6. Common Areas.

(a) The storm water detention easement area located on Parcel 104, in the locations more particularly shown on the Second Addition Plat, shall be deemed to be "Common Area" as defined in the Declaration, and the storm water detention pond located thereon shall be maintained by the Association as provided in the Declaration. In addition, the Owners acknowledge that the Declarant (i) has granted an easement to the Village of Menomonee Falls to utilize the storm water detention ponds located on Outlot 4 and as may be partially located on Parcel 104 all as provided on the Second Addition Plat ("Detention Ponds"), (ii) reserves the right to grant additional easements to the owners of adjacent properties to utilize the Detention Ponds, and such easements may include provisions for sharing the cost of the maintenance, repair, and upkeep of the storm water detention ponds, and (iii) reserves the right to receive easements from the owners of adjacent properties to utilize any storm water detention ponds located on adjacent properties, and such easements may include provisions for sharing the cost of the maintenance, repair, and upkeep of the storm water detention ponds.

3. Effect. All of the terms, conditions, and provisions of the Declaration including, but not limited to, the Fourth Amendment, remain the same except as specifically modified or amended herein.

IN WITNESS WHEREOF, the undersigned has executed this Fifth Amendment to Declaration of Restrictions this ____ day of December, 2001.

PILGRIM PARK LIMITED PARTNERSHIP, a
Wisconsin Limited partnership

By: FIDUCIARY REAL ESTATE
DEVELOPMENT, INC., General Partner

By: _____
William R. Arpe, President

STATE OF WISCONSIN)
) ss.

COUNTY OF MILWAUKEE)

Personally came before me this ____ day of November, 2001, the above-named William R. Arpe, the President, of Fiduciary Real Estate Development, Inc., to me known to be the person who executed the foregoing instrument and acknowledged the same in such capacity.

Notary Public, County of Milwaukee
State of Wisconsin
My Commission expires on:_____

*This Instrument Drafted by,
and should be returned to:*

*Brett K. Miller, Esq.
Davis & Kuelthau, s.c.
111 East Kilbourn Avenue
Suite 1400
Milwaukee, WI 53202-6613*

EXHIBIT A

Legal Description of Creekwood Highlands

Creekwood Highlands, being a subdivision of part of the NE 1/4, SE 1/4, SW 1/4, and NW 1/4 of the NW 1/4 of Section 34, Township 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin.

EXHIBIT B

Legal Description of Creekwood Highlands Addition No. 1

Creekwood Highlands Addition No. 1, being a subdivision of part of the Northwest 1/4 and Southwest 1/4 of the Northwest 1/4 of Section 34 and part of the Northeast 1/4 and Southeast 1/4 of the Northeast 1/4 of Section 33, all in Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin.

EXHIBIT C

Legal Description of Creekwood Highlands Addition No. 2

Creekwood Highlands Addition No. 2, being a subdivision of part of the Southwest 1/4 of the Northwest ¼ of Section 34 and part of the Northeast 1/4 and Southeast 1/4 of the Northeast 1/4 of Section 33, all in Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin.

Document Number

**SIXTH AMENDMENT TO
DECLARATION OF
RESTRICTIONS FOR
CREEKWOOD HIGHLANDS AT
MENOMONEE FALLS**

Document Title

Recording Area

Name and Return Address

Brett K. Miller, Esq.
Davis & Kuelthau, s.c.
111 E. Kilbourn Ave., Ste. 1400
Milwaukee, WI 53202

Parcel Identification Number (PIN)

**SIXTH AMENDMENT
TO
DECLARATION OF RESTRICTIONS
FOR
CREEKWOOD HIGHLANDS AT MENOMONEE FALLS**

Dated: July __, 2002

**SIXTH AMENDMENT TO
DECLARATION OF RESTRICTIONS
FOR
CREEKWOOD HIGHLANDS AT MENOMONEE FALLS**

THIS SIXTH AMENDMENT, made as of the ____ day of June, 2002, by **PILGRIM PARK LIMITED PARTNERSHIP**, a Wisconsin limited partnership (the "**Declarant**").

WITNESSETH:

WHEREAS, on February 16, 1999, the Declarant entered into that certain Declaration of Restrictions for Creekwood Highlands at Menomonee Falls (the "**Declaration**") wherein the Declarant subjected that certain real property described on Exhibit A attached hereto and then owned by the Declarant ("**Creekwood Highlands**") to the terms and conditions contained in the Declaration; and

WHEREAS, the Declaration was recorded on February 26, 1999, at the Waukesha County Register of Deeds Office as Document No. 2424559; and

WHEREAS, on March 25, 1999, the Declarant entered into that certain First Amendment to Declaration of Restrictions for Creekwood Highlands at Menomonee Falls (the "**First Amendment**"); and

WHEREAS, the First Amendment was recorded on June 29, 2000, at the Waukesha County Register of Deeds Office as Document No. 2571909; and

WHEREAS, on July 12, 2000, the Declarant entered into that certain Second Amendment to the Declaration of Restrictions for Creekwood Highlands at Menomonee Falls (the "**Second Amendment**"); and

WHEREAS, the Second Amendment was recorded on February 27, 2001, in the Waukesha County Register of Deeds Office as Document No. 2628282; and

WHEREAS, on February 23, 2001, the Declarant entered into that certain Third Amendment to the Declaration of Restrictions for Creekwood Highlands at Menomonee Falls (the "**Third Amendment**"); and

WHEREAS, the Third Amendment was recorded on February 28, 2001, in the Waukesha County Register of Deeds Office as Document No. 2628668; and

WHEREAS, on November 26, 2001, the Declarant entered into that

certain Fourth Amendment to the Declaration of Restrictions for Creekwood Highlands at Menomonee Falls (the "**Fourth Amendment**"); and

WHEREAS, the Fourth Amendment was recorded on November 27, 2001, in the Waukesha County Register of Deeds Office as Document No. 2725339; and

WHEREAS, on January 10, 2002, the Declarant entered into that certain Fifth Amendment to the Declaration of Restrictions for Creekwood Highlands at Menomonee Falls (the "**Fifth Amendment**"); and

WHEREAS, the Fifth Amendment was recorded on January 16, 2002, in the Waukesha County Register of Deeds Office as Document No. 27455644 and

WHEREAS, Article C of the Declaration provides that the Declarant may subject additional real estate to the Declaration, provided such real estate is adjacent to Creekwood Highlands; and

WHEREAS, the Declarant is the sole owner of that certain real estate located immediately adjacent to the west and southwest of Creekwood Highlands, as more particularly described on Exhibit C attached hereto (the "**Third Addition to Creekwood Highlands**") and shown on the Plat of Creekwood Highlands Addition No. 3 attached hereto as Exhibit D (the "**Third Addition Plat**"); and

WHEREAS, the Declarant now desires to supplement and amend the Declaration to include the Third Addition to Creekwood Highlands to the Declaration as hereinafter set forth.

IN WITNESS WHEREOF, the Declarant hereby amends and supplements the Declaration as follows:

1. Defined Terms. All defined terms used herein, but not otherwise defined herein, shall have the same meaning ascribed to them in the Declaration.

4. Expansion. The Declarant hereby submits the Third Addition to Creekwood Highlands to all of the terms, conditions, restrictions, covenants, rights, and obligations of the Declaration, as if the Declaration had been entirely restated herein. From and after the date hereof, the term "**Creekwood Highlands**" as used in the Declaration shall include all of the real property described on Exhibit A, Exhibit B, and Exhibit C attached hereto, and shown on the Final Plat of Creekwood Highlands Addition No. 3 (the "**Final Plat**"), a copy of which is attached hereto as Exhibit D.

3. Requirements and Restrictions Applicable to Third Addition to Creekwood Highlands. Notwithstanding anything

contained in the First Amendment, Second Amendment, Third Amendment, Fourth Amendment, Fifth Amendment, or the Declaration to the contrary, the following shall be special restrictions pertaining only to the Lots in the Third Addition to Creekwood:

(a) All Lot setbacks shall be approved in writing by the Declarant. The minimum setbacks for a Single-Family Residence shall be: (i) forty (40) feet from any abutting street right-of-way; (ii) thirty (30) feet from any rear yard, and (iii) fifteen (15) feet from any side yard; provided, however the Declarant hereby reserves the right in Declarant's sole discretion to approve a reduction in the side yard requirement from fifteen (15) feet to not less than twelve and one-half (12.5) feet upon written application by the Owner to the Declarant (in conjunction with the building plans submittal) requesting a side yard reduction. Such reduction in the side yard will not adversely impact any adjoining Lot, and the integrity and aesthetics of Creekwood Highlands will be maintained. In addition, any corner Lots are required to maintain a forty (40) foot set back from both street rights-of-way; provided, however, upon written approval of the Declarant (in its sole discretion) the street yard set backs for a corner Lot may be decreased to a minimum set back of twenty-five (25) feet. If any Owner desires to rotate its proposed Single-Family Residence to face toward the corner of a Lot, the Declarant reserves the right to determine the street yard setbacks that the Declarant believes to be the most beneficial to the overall appearance of the Subdivision.

A setback of twenty-five (25) feet may be allowed at the sole discretion of the Developer in cases where the Declarant determines due to aesthetics, size of lot, lot frontage, topography, or other reasons that the twenty-five (25) foot setback is necessary.

(b) All driveways on any Lot shall have a minimum of a three (3) foot side yard setback, unless otherwise approved in writing by the Declarant (in its sole discretion).

(c) Any Lot that contains wetlands, as delineated on the Third Addition Plat, shall be subject to a requirement that the Owner of such Lot maintain a twenty-five (25) foot natural and unmowed buffer on such Owner's Lot along and from the edge of such delineated wetland pursuant to current specifications set by Wisconsin Department of Natural Resources (the "DNR"), as the same may be amended from time to time. Any Lot Owner failing to comply with the foregoing wetland buffer requirement may be subject to penalties and fines as determined by the DNR. In addition, all Owners shall be subject to and shall comply with the wetland restrictions set forth on the Third Addition Plat.

(d) Any Lots bordering the unnamed tributary to the Fox River, including, but not limited to, Lots 118 through 120, 113, and 114 shall be subject to a requirement that the Owner of such Lot maintain a minimum of a fifty (50) foot natural and unmowed buffer of such Owner's Lot along and from the edge of such unnamed tributary. Any owner failing to comply with this requirement may be subject to penalties and fines as determined by the DNR.

(j) All Lots in Third Addition to Creekwood Highlands shall also be subject to any and all restrictions contained on the Third Addition Plat.

(k) All garages shall be attached to the Single-Family Residence, directly or by enclosed breezeway, or built into the basement of the Single-Family Residence, and all garages shall be constructed at the same time the Single-Family Residence is constructed. Although garage entrances shall be side entry garages, front entry garages may be allowed at the sole discretion of the Developer in cases where the Declarant determines due to aesthetics, size of lot, lot frontage, topography, or other reasons front garage is appropriate. The Declarant shall have the final determination of architectural design, including garage entrances. Notwithstanding the foregoing, in all cases the Declarant in sole discretion shall have the right to determine the location of the garage entrance. All driveways shall be paved (either with asphalt, cement or brick).

(l) A single story Single-Family Residence shall have an appropriate pitch of eight feet in height for each twelve feet in length (8/12), except for special circumstances. All other roof areas, including a story and one-half, two story, split level, and tri-level Single-Family Residences shall have an appropriate pitch of six feet in height for each twelve feet in length (6/12), except for rear dormers on story and one-half Single-Family Residences and other special circumstances (in sole discretion of Declarant for the architectural aesthetics of the building) if the same are approved in writing by the Declarant, and all roof areas shall be covered with wood shakes, fiberglass or asphalt shingles, tile, or other roofing material; provided, however, the Declarant shall have the right to approve other roofing materials if they are of comparable or superior quality and are better suited to the approved building design of the Single-Family Residence.

(m) All elevation windows on Single-Family Residences including front, side, and rear must be trimmed out using casing, shutters or any other trim approved in writing by the Declarant

5. Tree Plantings. The Village of Menomonee Falls has required all of the Owners of Lots in the Third Addition to Creekwood Highlands to plant certain shade trees (of a type approved by the Village of Menomonee Falls) on the Lots parallel to and approximately five (5) feet into the Lots from the street right-of-way line. Pursuant to the current Village of Menomonee Falls ordinances, such shade trees shall be planted at an interval of at least one (1) tree per 40 linear feet of street right-of-way frontage or fraction thereof along both sides of the street right-of-way. The minimum size of

same in such capacity.

Milwaukee

Notary Public, County of
State of Wisconsin
My Commission expires on:_____

*This Instrument Drafted by,
and should be returned to:*

*Brett K. Miller, Esq.
Davis & Kuelthau, s.c.
111 East Kilbourn Avenue
Suite 1400
Milwaukee, WI 53202-6613*

EXHIBIT A

Legal Description of Creekwood Highlands

Creekwood Highlands, being a subdivision of part of the NE 1/4, SE 1/4, SW 1/4, and NW 1/4 of the NW 1/4 of Section 34, Township 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin.

EXHIBIT B

Legal Description of Creekwood Highlands Addition No. 1

Creekwood Highlands Addition No. 1, being a subdivision of part of the Northwest 1/4 and Southwest 1/4 of the Northwest 1/4 of Section 34 and part of the Northeast 1/4 and Southeast 1/4 of the Northeast 1/4 of Section 33, all in Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin.

EXHIBIT C

Legal Description of Creekwood Highlands Addition No. 2

Creekwood Highlands Addition No. 2, being a subdivision of part of the Southwest 1/4 of the Northwest ¼ of Section 34 and part of the Northeast 1/4 and Southeast 1/4 of the Northeast 1/4 of Section 33, all in Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin.

EXHIBIT D

Plat of Creekwood Highlands Second Addition No. 2

Document Number

**SEVENTH AMENDMENT TO
DECLARATION OF
RESTRICTIONS FOR
CREEKWOOD HIGHLANDS AT
MENOMONEE FALLS**

Document Title

Recording Area

Name and Return Address

Jennifer Busalacchi
Fiduciary Real Estate Developme
225 E. Mason Street, Ste. 900
Milwaukee, WI 53202

Parcel Identification Number (PIN)

**SEVENTH AMENDMENT
TO
DECLARATION OF RESTRICTIONS
FOR
CREEKWOOD HIGHLANDS AT MENOMONEE FALLS**

Dated: July __, 2003

This Instrument Drafted by:

Brett K. Miller, Esq.
Davis & Kuelthau, s.c.
111 East Kilbourn Avenue

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Suite 1400
Milwaukee, WI 53202-6613

**SEVENTH AMENDMENT TO
DECLARATION OF RESTRICTIONS
FOR
CREEKWOOD HIGHLANDS AT MENOMONEE FALLS**

THIS SEVENTH AMENDMENT, made as of the ____ day of July, 2003, by **PILGRIM PARK LIMITED PARTNERSHIP**, a Wisconsin limited partnership (the "**Declarant**").

WITNESSETH:

WHEREAS, on February 16, 1999, the Declarant entered into that certain Declaration of Restrictions for Creekwood Highlands at Menomonee Falls (the "**Declaration**") wherein the Declarant subjected that certain real property described on Exhibit A attached hereto and then owned by the Declarant ("**Creekwood Highlands**") to the terms and conditions contained in the Declaration; and

WHEREAS, the Declaration was recorded on February 26, 1999, at the Waukesha County Register of Deeds Office as Document No. 2424559; and

WHEREAS, on March 25, 1999, the Declarant entered into that certain First Amendment to Declaration of Restrictions for Creekwood Highlands at Menomonee Falls (the "**First Amendment**"); and

WHEREAS, the First Amendment was recorded on June 29, 2000, at the Waukesha County Register of Deeds Office as Document No. 2571909; and

WHEREAS, on July 12, 2000, the Declarant entered into that certain Second Amendment to the Declaration of Restrictions for Creekwood Highlands at Menomonee Falls (the "**Second Amendment**"); and

WHEREAS, the Second Amendment was recorded on February 27, 2001, in the Waukesha County Register of Deeds Office as Document No. 2628282; and

WHEREAS, on February 23, 2001, the Declarant entered into that certain Third Amendment to the Declaration of Restrictions for Creekwood Highlands at Menomonee Falls (the "**Third Amendment**"); and

WHEREAS, the Third Amendment was recorded on February 28, 2001, in the Waukesha County Register of Deeds Office as Document No. 2628668; and

WHEREAS, on November 26, 2001, the Declarant entered into that certain Fourth Amendment to the Declaration of Restrictions for Creekwood Highlands at Menomonee Falls (the "**Fourth Amendment**"); and

WHEREAS, the Fourth Amendment was recorded on November 27, 2001, in the Waukesha County Register of Deeds Office as Document No. 2725339; and

WHEREAS, on January 10, 2002, the Declarant entered into that certain Fifth Amendment to the Declaration of Restrictions for Creekwood Highlands at Menomonee Falls (the "**Fifth Amendment**"); and

WHEREAS, the Fifth Amendment was recorded on January 16, 2002, in the Waukesha County Register of Deeds Office as Document No. 27455644 and

WHEREAS, on September 17, 2002, the Declarant entered into that certain Sixth Amendment to the Declaration of Restrictions for Creekwood Highlands at Menomonee Falls (the "**Sixth Amendment**"); and

WHEREAS, the Sixth Amendment was recorded on October 2, 2002, in the Waukesha County Register of Deeds Office as Document No. 2853762 and

WHEREAS, Article C of the Declaration provides that the Declarant may subject additional real estate to the Declaration, provided such real estate is adjacent to Creekwood Highlands; and

WHEREAS, the Declarant is the sole owner of that certain real estate located immediately adjacent to the west of Creekwood Highlands, as more particularly described on Exhibit C attached hereto (the "**Fourth Addition to Creekwood Highlands**") and shown on the Plat of Creekwood Highlands Addition No. 4 attached hereto as Exhibit D (the "**Fourth Addition Plat**"); and

WHEREAS, the Declarant now desires to supplement and amend the Declaration to include the Fourth Addition to Creekwood Highlands to the Declaration as hereinafter set forth.

IN WITNESS WHEREOF, the Declarant hereby amends and supplements the Declaration as follows:

1. Defined Terms. All defined terms used herein, but not otherwise defined herein, shall have the same meaning ascribed to them in the Declaration.

5. Expansion. The Declarant hereby submits the Fourth Addition to Creekwood Highlands to all of the terms, conditions, restrictions, covenants, rights, and obligations of the Declaration, as if the Declaration had been entirely restated herein. From and after the date hereof, the term "**Creekwood Highlands**" as used in the Declaration shall include all of the real property described on Exhibit A, Exhibit B, Exhibit C, Exhibit D, and Exhibit E attached hereto, and as shown on the Final Plat of Creekwood Highlands Addition No. 4 (the "**Final Plat**"), a copy of which is attached hereto as Exhibit F.

3. Requirements and Restrictions Applicable to Fourth

Addition to Creekwood Highlands. Notwithstanding anything contained in the First Amendment, Second Amendment, Third Amendment, Fourth Amendment, Fifth Amendment, Sixth Amendment, or the Declaration to the contrary, the following shall be special restrictions pertaining only to the Lots in the Fourth Addition to Creekwood:

(a) All Lot setbacks shall be approved in writing by the Declarant. The minimum setbacks for a Single-Family Residence shall be: (i) forty (40) feet from any abutting street right-of-way; (ii) thirty (30) feet from any rear yard, and (iii) fifteen (15) feet from any side yard; provided, however the Declarant hereby reserves the right in Declarant's sole discretion to approve a reduction in the side yard requirement from fifteen (15) feet to not less than twelve and one-half (12.5) feet upon written application by the Owner to the Declarant (in conjunction with the building plans submittal) requesting a side yard reduction. Such reduction in the side yard will not adversely impact any adjoining Lot, and the integrity and aesthetics of Creekwood Highlands will be maintained. In addition, any corner Lots are required to maintain a forty (40) foot set back from both street rights-of-way; provided, however, upon written approval of the Declarant (in its sole discretion) the street yard set backs for a corner Lot may be decreased to a minimum set back of twenty-five (25) feet. If any Owner desires to rotate its proposed Single-Family Residence to face toward the corner of a Lot, the Declarant reserves the right to determine the street yard setbacks that the Declarant believes to be the most beneficial to the overall appearance of the Subdivision. A setback of twenty-five (25) feet may be allowed at the sole discretion of the Developer in cases where the Declarant determines due to aesthetics, size of lot, lot frontage, topography, or other reasons that the twenty-five (25) foot setback is necessary.

(b) All driveways on any Lot shall have a minimum of a three (3) foot side yard setback, unless otherwise approved in writing by the Declarant (in its sole discretion).

(c) Any Lot that contains wetlands, as delineated on the Fourth Addition Plat, shall be subject to a requirement that the Owner of such Lot maintain a twenty-five (25) foot natural and unmowed buffer on such Owner's Lot along and from the edge of such delineated wetland pursuant to current specifications set by Wisconsin Department of Natural Resources (the "DNR"), as the same may be amended from time to time ("Wetland Buffer"), and the following restrictions for wetland areas as set forth on the Fourth Addition Plat ("Wetland Restrictions"):

1. Grading and filling shall be prohibited unless specifically authorized by the municipality in which they are 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 shall be prohibited.
3. The removal or destruction of any vegetative cover, i.e., trees, shrubs, grasses, etc. shall be prohibited with the exception of the removal of dead, diseased, or dying vegetation at the discretion of the landowner.
4. The introduction of plant material not indigenous to the existing environment of the conservancy/wetland preservation area shall be prohibited.
5. Construction of buildings in the wetland preservation area shall be prohibited.

Any Lot Owner failing to comply with the Wetland Buffer or Wetland Restrictions requirement may be subject to penalties and fines as determined by the DNR. In addition, all Owners shall be subject to and shall comply with the wetland restrictions set forth on the Fourth Addition Plat.

(d) Lots 163 through 165 shall be subject to a "natural buffer area" requirement in which the Owner of such Lot shall maintain a minimum of a twenty-five (25) foot natural and unmowed buffer area of such Owner's Lot as shown on the Fourth Addition Plat ("Natural Buffer Area"). Lots 163 and 164 shall also be subject to a "natural state area" requirement in which the Owner of such Lot shall leave those areas in a natural state ("Natural State Area") as shown on the Fourth Addition Plat. Any owner failing to comply with the Natural Buffer Area or Natural State Area requirement may be subject to penalties and fines as determined by the DNR.

(n) All Lots in Fourth Addition to Creekwood Highlands shall also be subject to any and all restrictions contained on the Fourth Addition Plat.

(o) All garages shall be attached to the Single-Family Residence, directly or by enclosed breezeway, or built into the basement of the Single-Family Residence, and all garages shall be constructed at the same time the Single-Family Residence is constructed. Although garage entrances shall be side entry garages, front entry garages may be allowed at the sole discretion of the Developer in cases where the Declarant determines due to aesthetics, size of lot, lot frontage, topography, or other reasons a front garage is appropriate. The Declarant shall have the final determination of architectural design, including garage entrances. Notwithstanding the foregoing, in all cases the Declarant in its sole discretion shall have the right to determine the location of the garage entrance. All driveways shall be paved (either with asphalt, cement or brick).

(p) A single story Single-Family Residence shall have an appropriate pitch of eight feet in height for each twelve feet in length (8/12), except for special circumstances. All other roof areas, including a story and one-half, two story, split level, and tri-level Single-Family Residences shall have an appropriate pitch of six feet in height for each twelve feet in length (6/12),

except for rear dormers on story and one-half Single-Family Residences and other special circumstances (in the sole discretion of Declarant for the architectural aesthetics of the building) if the same are approved in writing by the Declarant, and all roof areas shall be covered uniformly with wood shakes, dimensional fiberglass or asphalt shingles, tile, or other roofing material; provided, however, the Declarant shall have the right to approve other roofing materials if they are of comparable or superior quality and are better suited to the approved building design of the Single-Family Residence.

(q) All elevation windows on Single-Family Residences including front, side, and rear must be trimmed out using casing or any other trim approved in writing by the Declarant.

5. **Street Tree Plantings.** The Village of Menomonee Falls has required all of the Owners of Lots in the Fourth Addition to Creekwood Highlands to plant certain shade trees (of a type approved by the Village of Menomonee Falls) on the Lots parallel to and approximately five (5) feet into the Lots from the street right-of-way line. Pursuant to the current Village of Menomonee Falls ordinances, such shade trees shall be planted at an interval of at least one (1) tree per 40 linear feet of street right-of-way frontage or fraction thereof along both sides of the street right-of-way. The minimum size of such trees at planting shall approximately two and one-half to three inch (2.5-3") calipers or larger. Each Owner shall be responsible to maintain such plantings located on its respective Lot.

The Developer shall guarantee the trees for a period of one year from the date the trees are planted. Under this guarantee, the Developer shall be responsible for the care and maintenance of the trees. This responsibility includes, but is not limited to, replacement, trimming and pruning.

At the end of the guarantee period set out in the preceding paragraph, the obligation to maintain and replace the trees shall be the responsibility of the property owner for trees planted on private property, and Homeowners Association for trees located on any area in the Subdivision that is the responsibility of the Association. Declarant or Homeowner Association reserves the right to replace the landscaping and charge and/or file a lien against the Lot owner for all costs incurred to replant the landscaping if trees are not maintained.

Landscape planting and landscape maintenance easement. The Developer reserves the right to install berms and landscape screening along the rear property line of Lots 146-162, which abut the commercial property. The lot owners are required to maintain the berms and landscape screening installed on the rear property line and may

plant additional plantings in this area. The Homeowners Association has the right to maintain this area if the homeowner does not maintain it.

Developer reserves the right to install a fence along the rear lot lines of lots that abut the commercial property (Lots 146-162). The fence must remain on the property and the homeowners association will maintain the fence in case of repairs or general maintenance.

6. Common Areas.

(a) The storm water detention easement area located on Parcel 104 of the Second Addition Plat, in the locations more particularly shown on the Second Addition Plat, is "Common Area" as defined in the Declaration and the storm water detention pond located thereon is maintained by the Association as provided in the Declaration. In addition, the Owners acknowledge that the Declarant has (i) granted an easement to the Village of Menomonee Falls to utilize the storm water detention ponds located on Outlot 4 and as may be partially located on Parcel 104 all as provided and depicted on the Second Addition Plat ("Detention Ponds"), (ii) reserves the right to grant additional easements to the owners of adjacent properties to utilize the Detention Ponds, and such easements may include provisions for sharing the cost of the maintenance, repair, and upkeep of the storm water detention ponds, and (iii) reserves the right to receive easements from the owners of adjacent properties to utilize any storm water detention ponds located on adjacent properties, and such easements may include provisions for sharing the cost of the maintenance, repair, and upkeep of the storm water detention ponds.

(b) The landscaping and other plantings located along or to be planted and installed in the area marked "Pedestrian Easement, Landscape, Landscape Planting and Landscape Maintenance Easement" shall be deemed to be "Common Areas" as defined in the Declaration (as contemplated in Article B, Section 2, Subsection C) and shall be maintained by the Association as provided in the Declaration and as may be required by the Village of Menomonee Falls.

EXHIBIT A

Legal Description of Creekwood Highlands

Creekwood Highlands, being a subdivision of part of the NE 1/4, SE 1/4, SW 1/4, and NW 1/4 of the NW 1/4 of Section 34, Township 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin.

EXHIBIT B

Legal Description of Creekwood Highlands Addition No. 1

Creekwood Highlands Addition No. 1, being a subdivision of part of the Northwest 1/4 and Southwest 1/4 of the Northwest 1/4 of Section 34 and part of the Northeast 1/4 and Southeast 1/4 of the Northeast 1/4 of Section 33, all in Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin.

EXHIBIT C

Legal Description of Creekwood Highlands Addition No. 2

Creekwood Highlands Addition No. 2, being a subdivision of part of the Southwest 1/4 of the Northwest ¼ of Section 34 and part of the Northeast 1/4 and Southeast 1/4 of the Northeast 1/4 of Section 33, all in Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin.

EXHIBIT D

Legal Description of Creekwood Highlands Addition No. 3

Creekwood Highlands Addition No. 3, being a subdivision of part of the Southwest 1/4 of the Northwest ¼ of Section 34 and part of the Northeast 1/4 and Southeast 1/4 of the Northeast 1/4 of Section 33, all in Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin.

EXHIBIT E

Legal Description of Creekwood Highlands Addition No. 4

EXHIBIT F

Plat of Creekwood Highlands Addition No. 4