

PROTECTIVE COVENANTS
FOR
MASON CREEK

REVISED 12/7/2021

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PROTECTIVE COVENANTS FOR MASON CREEK

THESE PROTECTIVE COVENANTS made this ___ day of August, 2004, by MLG Real Estate 2002 LLC (hereinafter the "Developer").

WITNESSETH:

WHEREAS, Developer is the owner of the real property described herein, which property is located in the Town of Merton, Waukesha County, Wisconsin; and

WHEREAS, Developer desires to subject the property to the conditions, restrictions, covenants, and reservations contained herein for the benefit of the property and the benefit of each owner of any part of the property, and for the purpose of creating a desirable utilization of the land in an aesthetically pleasing residential environment;

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

ARTICLE 1 – PROPERTY SUBJECT TO PROTECTIVE COVENANTS.

1.1 **Existing Property.** The real property subject to the provisions of these Protective Covenants is described on **Exhibit A** attached hereto (hereinafter the "Subdivision" or "Mason Creek"). The Subdivision is composed of twenty-four (24) individual residential lots (hereinafter "Lots").

1.2 **Additional Property.** Developer reserves the right, at any time during the term of these Protective Covenants, to subject other real property (the "Additional Properties") to the provisions of these Protective Covenants and to add the Additional Properties to the Subdivision. The Additional Properties shall be located in Waukesha County, Wisconsin and, when added to the Subdivision, shall be adjacent to the Subdivision. Developer shall add Additional Properties to the Subdivision by recording with the Register of Deeds for Waukesha County one or more amendments to these Protective Covenants, with each amendment setting forth the legal description of the Additional Properties thereby added to the Subdivision.

ARTICLE 2 – GENERAL.

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

2.1 Disclaimer. Although the Developer is implementing these Protective Covenants with the intentions set forth above, the Developer makes no assurances, representations or guaranty that the stated intentions of these Protective Covenants shall be achieved, or as to the ultimate value of Lots in Mason Creek or as to any stability or increase in value as a result of the imposition of these Protective Covenants.

ARTICLE 3 – DEFINITIONS.

The following terms as used in this document shall have the definitions set forth below:

3.1 Association. The term "Association" shall mean the non-profit corporation to be known as Mason Creek Owners Association, Inc., which shall serve as an organization of all owners of Lots in the Subdivision, and collect assessments from Lot Owners for payment of Association obligations and maintenance of Association properties, as set forth herein.

3.2 Common Area. The term "Common Area" shall mean all areas of the real property as described on Exhibit A other than the Subdivision, public streets, Outlot 2 and any part of any other Outlot that shall be deemed to be owned by the Town. Common Area shall also specifically include those areas throughout the Subdivision the Association is required to maintain as set forth in these Covenants.

3.3 Developer. The term "Developer" shall mean MLG Real Estate 2002 LLC.

3.4 Dwelling Unit. The term "dwelling unit" or "dwelling" shall mean a living unit within Mason Creek which is intended to be occupied by one (1) family.

3.5 Lot. The term "Lot" shall mean an individual residential lot numbered from 1 to 24 inclusive in the Subdivision, as shown on the final plat, attached hereto as Exhibit B ("Plat"). No Lot may be further divided without the prior approval of the Town Board of the Town of Merton. The minimum Lot size shall be 40,000 square feet.

3.6 Lot Owner. The term "Lot Owner" shall mean the current owner(s) of any Lot in the Subdivision, whose name(s) appear in the recorded deed of conveyance.

3.7 Outlot. The term "Outlot" shall mean an outlot as shown on the Plat. The reference to an Outlot by a number shall mean that particular Outlot as shown on such Plat.

3.8 Plans and Specifications. The term "Plans and Specifications" shall mean complete written construction plans and detailed specifications as to materials and colors for construction of any building, wall, fence, sign, pool, deck, patio or other improvement in Mason Creek, including a site plan showing location of all improvements, driveways, walks, elevation and grade of the Lot and improvements, as set forth in Section 4.1.

3.9 Review Board. The term "Review Board" shall mean that board composed of three members initially appointed by the Developer to review and approve or disapprove of Plans and Specifications for construction of dwelling units and any other structures or improvements in the Subdivision.

3.10 Subdivision. The term "Subdivision" shall mean Mason Creek Subdivision, which means the residential lots numbered 1-24 inclusive as described in Exhibit A and as shown in Exhibit B attached hereto and incorporated herein. The Subdivision Plat for Mason Creek is recorded with the Register of Deeds for Waukesha County, Wisconsin. The terms "Subdivision" and "Mason Creek" do not include the Outlots shown on Exhibit B and on the Subdivision Plat for Mason Creek.

ARTICLE 4. DESIGN CONTROL.

4.1 Plans and Specifications. No building, sign, driveway, walkway, swimming pool, deck, patio, play equipment or other structure or improvement shall be erected, constructed or maintained upon any Lot, nor shall any change or alteration be made thereto, unless complete plans and specifications have been submitted in duplicate to, and approved in writing by, the Review Board. The plans and specifications submitted shall include, in addition to detailed construction plans, a site plan showing the exact size and location of each building or other

structure, the elevation thereof, the grade of the Lot, grades adjacent to the Lot, the proposed finished grade and garage floor grade for the building, sump pump discharge locations, a building elevation or rendering of the building or structure to be constructed, a detailed landscaping plan, and detailed specifications as to materials, colors (including samples) and equipment to be installed in the structure (collectively the "Plans and Specifications"). The address and telephone number of the Lot Owner and other person designated to receive the response of the Review Board shall be included with any submission of Plans and Specifications. Each Lot owner must strictly adhere to and finish grade its lot in accordance with the Master Site Grading Plan or any amendment thereto approved by the Town Engineer on file at the office of the Town Clerk. The Developer and/or the Town and/or their agents, employees or independent contractors, upon written notice to the owner of a vacant lot, shall have the right to enter upon any Lot, at any time, for the purpose of inspection, maintenance, correction of any drainage condition, and the Lot owner is responsible for the cost of the same.

4.2 Review Board. The decision of a majority of the members of the Review Board shall be the decision of the Review Board and shall be final and binding upon all interested parties. The Review Board shall meet in closed sessions. Members of the Review Board shall not be entitled to any compensation from Lot Owners for services performed pursuant to these Protective Covenants. In the event of death, resignation, or refusal to act by any member of the Review Board, or vacancy on the Review Board for any reason, while any Lot remains vacant without a dwelling unit in the Subdivision, the successor to such member shall be appointed to the Review Board by the Developer or by its successors or assigns. When all the Lots in the Subdivision have been sold by the Developer, or its successors or assigns, and houses have been built on all the Lots in the Subdivision (or at such earlier time determined by the Developer) the Review Board shall thereafter consist of five (5) persons, who shall be the persons appointed or elected as directors of the Association as described in Section 8.3.

4.3 Submission of Plans. A Lot Owner shall submit Plans and Specifications to the Review Board at the earlier of (i) at least fifteen (15) days prior to the time that such Plans and Specifications are submitted to the Building Inspector of the Town of Merton for approval, or (ii) thirty (30) days prior to commencement of construction of the dwelling unit or any other improvement. Plans and Specifications must comply with the standards set forth in Section 5 herein and must be approved by the Review Board in writing prior to any application for a building

permit to the Town of Merton, and before any construction or alteration of any improvement may be commenced on any Lot. Plans and Specifications shall be submitted ~~in duplicate~~ to the Review Board at the following address, which address may be changed by notice in writing to the purchaser of a Lot at the time of purchase:

Mason Creek Owners Association

PO BOX 121

North Lake, WI 53064

hoamasoncreek@gmail.com

(Amended 12/7/2021, vote 20-0)

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

4.4 Review. The Review Board shall review and approve such Plans or Specifications, or disapprove those that in its judgment are not in conformity with these Protective Covenants or are inconsistent with the purposes set forth in Article 2. The Review Board may require enhanced architectural treatment on all building elevations. In reviewing the Plans and Specifications, the Review Board may take into consideration, among other things, the following:

The suitability of the proposed home or other structure in the Subdivision;

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

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

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

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

The decision of the Review Board shall be final and binding with regard to approval or disapproval of the Plans and Specifications. The Review Board does not review nor is responsible for the technical, engineering, mechanical or structural nature of the design or components of the building plans, dwelling unit, functional layout of the Lot, drainage plan, home elevation or other non-aesthetic features.

4.5 Approval. The Review Board shall approve Plans and Specifications by letter sent to the Lot Owner at the address included in the Plans and Specifications.

4.6 Disapproval. If the Review Board disapproves of Plans and Specifications, the Review Board shall specify the reasons for such disapproval to the Lot Owner in writing. The Lot Owner shall then be entitled to submit revised Plans and Specifications for review by the Review Board, in which event another receipt shall be issued by the Review Board.

4.7 Waiver. The Review Board shall be entitled to waive or grant a variance from the requirements of these Protective Covenants and the standards set forth herein upon written application therefor to the Review Board as a part of a submission of Plans and Specifications to the Review Board, or otherwise, for reasons deemed adequate and reasonable to the Review Board, and in consideration of the purposes of these Protective Covenants as set forth in Article 2. The decision of the Review Board shall be final and binding with regard to any waiver or variance, whether or not such waiver or variance is specifically granted by the Review Board in writing, or is a part of or necessitated by Plans and Specifications approved by the Review Board; provided, however, that the waiver shall not be effective until written approval for the specific variance request is granted by the Town of Merton.

4.8 Erosion Control and Surface Drainage. During construction of a dwelling unit on a Lot, adequate measures shall be undertaken to comply with applicable Town erosion control ordinances. The topography and ground elevation of each Lot shall be finished as required by the Plans and Specifications approved by the Review Board for the efficient discharge and drainage of surface groundwater and sump pump discharge throughout the Subdivision. Final grading of a Lot shall be completed within two (2) months following the date of occupancy of a dwelling unit thereon, weather and seasonal considerations permitting.

4.9 Ground Fill on Building Site. Where ground fill is necessary on any Lot to obtain the proper topography and finished ground elevation, the Lot Owner shall ensure that the ground fill shall be free of waste and noxious materials. The topography and ground elevation of each Lot shall be finished by Lot Owner as required by the Developer and in accordance with the Master Grading Plan on file with the Town of Merton and applicable municipal ordinance(s), for the efficient discharge and drainage of surface groundwater throughout the Subdivision. Final grading of the Lot shall be completed within two (2) months following the date an occupancy permit is issued for a dwelling unit. Except for drainage easements located on a Lot, which shall be maintained by the individual Lot Owner, any and all drainage easements, detention ponds or the like shall be repaired and/or maintained by the Association. Any drainage

easement or detention area located on the plat shall be maintained in a natural state and clean, clear and free of all obstructions or barrier of any kind. Landscaping within these areas shall be restricted to ground cover to inhibit erosion. Any maintenance deficiency, obstruction or barrier shall be removed by the Lot Owner. In failing therein, shall be removed, repaired and/or maintained by the Association. The Association shall be empowered to determine whether or not the cost incurred therein shall be assessed the individual Lot Owner. Any maintenance deficiency not remedied thereby, may be removed by the Town. Should it become necessary for the Town to maintain any drainage easement, detention pond or the like, the Town may assess a special charge pursuant to §66.0627, Wis. Stats. and imposed by levy an assessment on a pro rata basis for such expenses incurred in maintained such area in the event the Association and/or the Lot Owner fails to maintain such area. Such special assessment or special charge shall be collected on the next succeeding tax roll pursuant to §66.0627, Wis. Stats. Prior to taking any corrective action the Town must first determine a deficiency exists under these Declarations concerning the maintenance of the drainage easements and the public interest required compliance. Thereafter the Town shall give written notice of the deficiency to the Lot Owner and the Association, which notice shall specify the time in which to rectify the deficiency and if the deficiency is not rectified within the time period, the Town shall have the right to enter upon such Lot using its own employees and equipment or contracting with others for such work to rectify the condition. The cost of such work shall be billed to the Lot Owner if the deficiency relates to a drainage easement located on the Lot Owner's property and the Association for all other deficiencies. The Lot Owner and the Association do hereby consent in the levying of such special charges and hereby waive any notice and hearings that may otherwise be required by State statutes for the levying of such special charges. Upon completion of the final grading, the Lot Owner shall submit to the Review Board a grading recertification prepared by a qualified land surveyor or professional engineer certifying that the finished ground elevation and drainage patterns of the Lot comply with this Section.

4.10 Building Materials. All exterior walls shall be constructed with Hardiplank or natural materials such as brick, stone, stucco or wood the Review Board approves. Windows may be vinyl or aluminum clad. Garage and service doors must have a raised panel or similar design. Any exposed basement or foundation walls must be covered with masonry veneer, plaster or

siding materials used on exterior walls.

4.11 Masonry. Although there is no minimum masonry requirement, if masonry material is used on the exterior walls, the masonry should terminate at an inside corner. If it is not possible to terminate at an inside corner, the masonry must then terminate at a corner board that is at least 4 inches in width.

4.12 Construction. During construction of a dwelling unit or any other improvement, the construction site shall be kept free of refuse and litter. Rubbish and construction materials shall be stored on the site only as long as necessary under the circumstances. Any natural vegetation and tree debris removed during the stripping of the building pad shall be removed immediately. Construction sites shall remain as organized and neat in appearance as possible throughout the construction period.

4.13 Completion; Occupancy. Any dwelling unit construction on any Lot in the Subdivision shall be enclosed and under roof with the finished exterior material in place within twelve (12) months after the commencement of construction. No dwelling unit shall be occupied until the exterior surfacing of said dwelling unit is completed and the Lot is finished to rough grade.

ARTICLE 5 – SUBDIVISION STANDARDS.

5.1 General. All Lots in the Subdivision shall be subject to the standards set forth herein. Dwellings that are too similar in appearance will not be permitted to be constructed in close proximity to one another.

5.2 Unit Size. The total minimum finished living area of a two-story dwelling unit shall be 2,400 square feet. The total minimum finished living area of a one-story dwelling shall be 2,200 square feet.

5.3 Unit Measurement. The square footage of a dwelling unit shall be measured along the perimeter of the dwelling unit at and above the grade (measured along the exterior walls exclusive of garages, porches, patios, breezeways and similar additions). For purposes of calculating total area, the Review Board, in its sole discretion, shall determine what constitutes a one-story or multi-level dwelling unit.

5.4 Windows. Windows that do not open and are for appearances only shall not be permitted. When shutters, window grids and other trim features are used with windows on the

front of a dwelling unit, they must also be used with appropriate windows on the sides and rear of the dwelling unit. The Review Board may require the location of certain windows to be moved. Trim of at least four (4) inches in width must be used on all windows without shutters and on all doors, vents, and louvers. The Review Board may require the placement of windows in walls that would otherwise be blank or featureless and shall place more importance on an attractive, balanced exterior design than over concerns about the design or placement of interior features.

5.5 Roof Pitch. The roofs on all multi-story dwelling units must have a minimum pitch of eight (8) feet in height for each twelve (12) feet in length (8/12), except for rear dormers on one and one-half (1 ½) story dwelling units. All one (1) story dwelling unit roofs shall have a minimum pitch of ten feet in height for each twelve feet in length (10/12). All roofs must have 25-year textured dimensional shingles or wood shakes.

5.6 Setbacks. The required minimum building setbacks areas follows:

Front Yard	50 feet
Side Yard	25 feet
Corner Lot Side Yard	50Feet
Rear Yard	50Feet

5.7 Driveways. Driveways shall be approved in advance by the Review Board and shall be located at least six (6) feet from all side and rear Lot lines. In no event shall driveway flares or parking slabs be permitted. Within twelve (12) months from the issuance of an occupancy permit by the Town of Merton for any dwelling unit, all driveways on the Lot must be paved with concrete, asphalt, or other hard and impervious paving substance. All driveways shall be installed in accordance with the Town of Merton specifications. Specifically Town Ordinance, 8.02(3)(C) "Interference with Street" must be adhered to, which provides that no driveway apron shall extend out into the street further than the face of the curb or the edge of the paved portion. All driveway entrances and approaches shall be so constructed that they shall not interfere with the drainage of streets, side ditches or roadside areas or with existing structures on the right-of-way. Concrete drives shall not extend beyond the edge of the highway right-of-way. Driveway approaches between the edge of highway right-of-way and the edge of pavement must be gravel or bituminous pavement. No abutment at culvert ends shall be constructed so as to interfere with snowplowing. Driveway parking slabs or driveway flares are not permitted.

5.8 Walkways. Within twelve (12) months of the issuance of an occupancy permit by

the Town of Merton for any dwelling unit, all walkways on the Lot shall be paved with concrete, brick or other hard and impervious paving substance approved in advance by the Review Board.

5.9 Garage. Each dwelling unit shall have a side-entry garage for not more than four (4) nor less than two and one-half (2 1/2) cars. The maximum size of the garage must conform to the Town of Merton ordinances. Garage entrances must be on the side of the dwelling unit facing away from the street entrance. All garages must be constructed on the high side of the Lot unless otherwise approved in writing by the Developer. The Developer reserves the right to enter any lot for the purpose of performing the required maintenance and charge the lot owner a reasonable fee for doing so.

5.10 Landscaping. All homeowners will be required to submit a landscaping plan for approval prior to landscaping. Before a Lot Owner builds a house and/or completes landscaping, the Lot Owner shall be responsible for maintaining the Lot by trimming weeds and grass to a height not exceeding twelve (12) inches.

5.11 Outbuildings and Temporary Structures. Other than dwelling units and other structures and improvements approved in advance by the Review Board pursuant to Section 4.1, no structure of any kind, including, but not limited to, any shed, storage bins, gazebo, skateboard ramp, stable, barn or kennel shall be moved onto or constructed upon any Lot within the Subdivision.

One outbuilding subject to the following provisions and approvals will be allowed:

- A) The outbuilding shall not have a footprint larger than 400 ft² and shall not have walls to be taller than 9 feet with a minimum roof pitch of 10 feet height for 12 feet length (10/12).**
- B) The outbuilding must be constructed of matching color scheme of the corresponding home with like materials.**
- C) No aluminum or metal outbuildings are permitted.**
- D) The outbuildings must comply with the Town of Merton and Waukesha County ordinances and codes.**
- E) Windows, decorative features, and proper landscaping around the outbuilding may be required.**
- F) All outbuildings must be approved by the HOA board prior to any construction activities.**

Note: Approval may be denied solely based on the harmony of external designs as determined by the HOA board. All approvals must be in writing. Municipal authorities should be contacted under

separate application for approval, if needed, as the HOA board does not constitute an approval from any municipal authority. (Amended 5/2014)

5.12 Swimming Pools/Spas. Swimming pools, hot tubs or spas may be erected, altered or modified in Mason Creek only with the prior written approval of the Review Board. No above ground swimming pools shall be permitted in Mason Creek.

5.13 Fences and Walls. No fences or walls of any height or for any purpose, including for decorative purposes, shall be permitted on any Lot except in the case of in-ground swimming pools. All fencing must be approved in advance by the Review Board. With in-ground swimming pools, the fence shall be decorative and placed around the pool area. The Developer may permit fences in the other areas of the Subdivision besides Lots subject to Developer's sole discretion.

5.14 Motorized Vehicles. Only automobiles and other four-wheel passenger vehicles may be parked on a Lot outside of a garage in the Subdivision, and they may be parked only on driveways that have been approved in advance by the Review Board pursuant to Article 4. The Review Board will not approve driveway parking slabs or driveway flares. No lawn or farm vehicle or equipment, recreational vehicle, trailer, boat, boat trailer or similar vehicle or equipment shall be parked or stored on any Lot other than in a garage on a permanent basis. **Temporary parking (48 hours or less) of said vehicles, will be permitted for preparation/cleaning on the designated driveway area adjacent to the lot garage. In exceptional circumstances, after obtaining prior permission from the board, such vehicles may be parked for a longer period. It should be noted that up to 48 hours parking for preparation/storage does not mean 48 hours parking, move for 48 hours and store/park again. Routine, seasonal storage must not be on the lot (Amended 02/10/2017).** No commercial vehicles, including semi-trailer tractors, dump trucks, delivery trucks, and similar vehicles, irrespective of ownership, may be parked or stored on a Lot other than temporarily for the delivery of materials or merchandise, and other than during temporary periods of construction or remodeling upon the Lot. Motorcycles, snowmobiles, trail bikes, dune buggies, off-street motorized vehicles and recreation vehicles of any kind shall not be operated on any Lot or parking area within the Subdivision.

5.15 Antennas/Microwave Dishes. External antennas, satellite or microwave dishes and solar panels of any type or for any purpose may be installed and maintained on a Lot in the Subdivision only with the prior written approval of the Review Board. In no event may any satellite or microwave dish be larger than two (2) feet in diameter. In no event may any antenna, satellite or microwave dish or solar panels be visible from the street in front of the dwelling. Any

proposal for any such installation shall be submitted to the Review Board for approval, and shall show the size, location and appearance of such installation, prior to any such installation in the Subdivision.

5.16 Post Lights. Uniform post lights specified by the Developer shall be purchased by each Lot Owner from the Developer at the time of closing. Each post light shall be installed on the Lot at the time of finished grading of the yard at a location specified by the Developer, but in any event, each post light shall be installed within nine (9) months from the date the residence is occupied. Each post light shall be connected to an electrical power source at the time of installation and shall be maintained in a clean and operating condition at all times thereafter. The post light specified by the Developer is equipped with a photoelectric sensor; therefore, no Lot Owner may install a tum-off switch for the post light. Any replacement of such post lights shall be accomplished by the Lot Owner, and only with a post light of the same specifications, height, appearance and in the same location as the original post light. If the original post light is no longer available, the original shall be replaced with one as similar as possible to the original post light.

5.17 Mailboxes. Uniform mail/paper boxes shall be purchased by each Lot Owner from the Developer at the time of closing. All mail/paper boxes will be installed by the Lot Owner in accordance with the requirements of the U.S. Post Office. Any replacement of such mail/paper box shall be accomplished by the Lot Owner, and only with a mail/paper box of the same specifications, height and appearance as the original mail/paper box at Lot Owner's expense. No other mailbox, paper box or other receptacle of any kind for use in the delivery of mail, newspapers or magazines or similar materials shall be erected or installed by a Lot Owner.

5.18 Signs. No sign of any kind shall be displayed to the public view on any Lot except as follows:

- (a) A sign placed on the Lot by a Lot Owner or the real estate agent of the Lot Owner advertising the property for sale. No such sign shall exceed six (6) square feet in size.
- (b) A sign erected by a building/contractor of a dwelling unit in the Subdivision during the time the dwelling unit is under construction. No such sign shall exceed 6 square feet in size.

- (c) Signs by an owner/contractor advertising a dwelling unit as a "model home."
No such sign shall exceed twenty-four (24) square feet in size.

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

5.19 Animals. No animals, livestock, poultry or pigs of any kind shall be raised, bred or kept on any Lot nor shall animals of any kind be maintained for any commercial purposes, except that dogs, cats or other small household pets may be kept in a manner that will not disturb the quality of life and the environment of the Subdivision and provided that no more than **three (3)** dogs or two (2) cats shall be maintained in any household. Lot owners shall be responsible for promptly cleaning up all pet refuse. **(Amended 12/7/2021, vote 17-2)**

5.20 Garbage and Refuse Storage and Disposal. No Lot shall be used in whole or in part for the storage of rubbish in any form whatsoever, nor shall any portion of a Lot or dwelling unit thereon be used for the storage of any property or thing that will cause such Lot and dwelling unit to appear in an unclean or untidy condition or that will be offensive to community standards. All trash, garbage or waste materials shall be kept in sanitary containers either inside a garage or, when outside, in sanitary containers adjacent to the dwelling unit, suitably screened from view from streets and adjoining Lots. Outside incinerators are not permitted. No building or construction material shall be stored on any Lot outside of a dwelling unit or garage, other than during periods of actual construction or remodeling, and then only for as long as may be reasonably necessary. ~~Each Lot Owner may store up to a maximum of one cord of wood behind and adjacent to the dwelling unit in a manner consistent with the other provisions of this Section 5.19.~~ **(Amended 12/7/2021 vote 19-1; see Article 5.23 - Woodpiles)**

5.21 Nuisances. No noxious or offensive odor, activities or conditions shall be created, conducted or permitted to exist in, on or about any dwelling or Lot, which may be, or may become, an annoyance or nuisance to the neighborhood or which may cause any noise which disturbs or might disturb the peace, quiet, comfort or serenity of the occupants of surrounding property.

5.22 **Building Permits.** Lot Owners hereby acknowledge that the Town has adopted a requirement providing for allotment of building permits, which restricts building permits issued or issuable in any one-year. This Subdivision shall have the right to have building permits issued in 2004 to a total of ten (10), 2005 to a total of nine (9) and 2006 to a total of three (3). Notwithstanding the above restrictions, if the maximum required building permits are not issued in any one-year, there shall be the right to carryover the un-issued building permits and said building permits shall be issuable in any such subsequent year.

5.23 Woodpiles. Each lot owner may store up to a maximum of one face cord of firewood, neatly stacked, behind the dwelling unit or in a location approved by the review board in accordance with the purposes set forth in Article 2. (Amended 12/7/2021, vote 19-1)

ARTICLE 6 – TERM AND AMENDMENT.

6.1 **Term.** These Protective Covenants shall be in full force and effect for a period of thirty (30) years from the date these Protective Covenants are recorded, after which time these Protective Covenants shall automatically be extended for successive periods of ten (10) years each; provided, however, that an instrument terminating these Protective Covenants, if signed by Lot Owners possessing a majority of the votes available in the Association, shall be effective as of the end of the original term or ten (10) year extension within which it is recorded.

6.2 **Amendment.** These Protective Covenants may be amended at any time by the signature and recording of an amendment to these Protective Covenants by Lot Owners possessing 75% of the votes available in the Subdivision; provided, however, as long as the Developer owns a Lot, no amendment shall be effective unless such amendment is approved in writing by the Developer, and no amendment annulling, waiving, changing, modifying or amending the provisions of these Protective Covenants shall be effective unless such amendment is approved in writing by the Plan Commission of the Town of Merton. Such amendment shall take effect upon the date of the recording thereof. Notwithstanding anything in Section 6.2 to the contrary, these Protective Covenants may be amended by the Developer alone in accordance with Section 1.2, subject only to the written approval thereof by the Plan Commission of the Town of Merton, the Town Board and the Town Attorney.

ARTICLE 7 – EASEMENTS.

7.1 Utility Easements. Developer hereby declares, creates and reserves easements over each Lot in the Subdivision for purposes of underground installation and maintenance of electric, gas, water, telephone, cable television lines, and such other utilities or lines and equipment as may be necessary or desirable to service Lots within the Subdivision ("Utility Easements"). The Utility Easements are shown on the Plat or on separate easement instruments recorded in the Waukesha County Register of Deeds. Developer further reserves the right to sign and record specific grants of easements to utilities or similar entities on standard terms and conditions, which easements shall in all cases be located as described or reserved on the recorded plat for the Subdivision or on a separate easement document.

7.2 Drainage Easement. Developer hereby declares, creates and reserves easements over Lots identified on the Plat, including but not limited to Lots 1, 15, 16, 17, 18, 19 and 20 in the Subdivision and Outlots 1 and 3 for purposes of drainage to aid storm water runoff and drainage ("Drainage Easements"). The Drainage Easements are shown on the Plat and are identified as "Stormwater Drainage Easement." No structures of any sort nor any trees, shrubs or other plantings besides grass shall be permitted on the Drainage Easement. Each Lot Owner shall be responsible for maintaining the Drainage Easement on their individual Lot. Maintenance shall include mowing the surface area on a regular basis to maintain a manicured look with a grass height of no more than four (4) to six (6) inches. Notwithstanding the foregoing, the following restrictions and regulations shall apply to the Drainage Easements on Outlots 1 and 3:

- (a) The Association shall be responsible for maintenance of the stormwater management measures on Outlots 1 and 3.
- (b) The Association shall maintain the stormwater management measures installed on those Lots and Outlot in accordance with the approved stormwater management plan dated _____ on file in the offices of the Town as required by the Waukesha County Construction Site Erosion Control and Stormwater Management Ordinance.
- (c) The Town is authorized to access the foregoing easements to conduct inspections of stormwater practices as necessary to ascertain that the practices are being maintained and operated in accordance with the approved stormwater management plan.
- (d) The Association, on an annual basis, shall provide maintenance of each

stormwater management measure, as necessary, including but not limited to, removal of debris, maintenance of vegetative area, maintenance of structural stormwater management measures and sediment removal.

- (e) The Town is authorized to perform the corrective actions if the Association does not make the required corrections within a reasonable time period. The costs and expenses for such corrections shall be entered on the tax roll as a special assessment or special charge against all Lots in the Subdivision on a pro rata basis and collected with any other taxes levied thereon for the year in which the work is completed.

7.2 (1) Town Remedy. In the event the Association does not properly maintain any stormwater retention basins, drainage easements, or the like, the Town may send written notice to the Association indicating that the Town has determined that the same are not being properly maintained and further indicating that the Town will perform such maintenance if not properly done by the Lot Owners or the Association. The above-mentioned notice shall give the Lot Owners and/or the Association a minimum of seven (7) days to correct the problem, unless an emergency exists, in which case less than seven (7) days may be allowed for correction of the problem. If maintenance is not properly performed within the time granted by the above-referenced notice, the Town shall then have the authority to perform the maintenance referred to in said notice and shall have the right to charge the Lot Owners or the Association on a pro rata basis for any costs incurred by the Town as a result of such maintenance. Said costs shall be assessed as special charges pursuant to §66.0627, Wis. Stats. If such charges are not paid by the Lot Owners or the Association within the period fixed by the Town, the charges shall become a lien upon the Lots within the Subdivision as provided in §66.0627, Wis. Stats., and shall be extended upon the tax rolls as a delinquent tax against the Lots within the Subdivision as provided in §66.0627, Wis. Stats.

7.3 Recreational or Other Easements. Declarant, or its successors and assigns, including the Board of Directors of the Association, shall have the right to (i) grant easements upon, over, through and across (a) an Outlot controlled or owned by the Association or Lot Owners in common with one another or (b) Common Areas as may be required for or by any type of utility services, including but not limited to, cable television or master antenna service, which easements may be granted by or to the Association or its nominee as may be necessary for excavation and construction of any of the services to be provided by the easements; and (ii) grant easements, upon, over, through or across the Common Areas or an Outlot for ingress and egress to

or from the Common Areas or an Outlot or for recreational purposes across the Common areas provided such proposed use would not have a material adverse impact on the Common Areas or an applicable Outlot.

7.4 Vacant Lot Maintenance Easement. Declarant hereby declares, creates and reserves a vacant lot maintenance easement to the Town granting the Town the right (but not the obligation) to enter upon any vacant Lot in the Subdivision in order to inspect, repair or restore any part of the Lot the Town deems necessary so that the Lot is in compliance with all applicable provisions of the Town of Merton Municipal Code. A vacant Lot shall include any Lot that does not have an occupied principal dwelling unit that is used for single-family purposes at the time of inspection, repair or restoration. All actual costs, including professional fees and all other fees as may be reimbursed pursuant to the applicable section of the Town of Merton Municipal Code, incurred by the Town in exercising its right to inspect, repair or restore the Lot, shall be borne by the owner of the Lot necessitating such inspection, repair or restoration and if not paid by such Lot owner within forty-five (45) days of receipt of any invoice therefore, may be placed against the tax roll for the Lot and collected as a special assessment or a special charge by the Town.

7.5 Visual Easement. Developer hereby declares, creates and reserves an easement over those certain Lots in the Subdivision shown on the Plat for purposes of maintaining a visual buffer along certain boundary lines as shown on the Plat (the "Visual Easement") of varying widths. The Visual Easement is shown on the Plat and identified as "Visual Easement." No structures of any sort shall be placed on the Visual Easement, but plantings and selective vegetation are permitted. Each individual Lot Owner shall be responsible for maintaining the Visual Easement on his or her Lot, including but not limited to controlling noxious weeds and removing debris.

7.6 Vision Comer Easement. Developer hereby declares, creates and reserves an easement over several Lots and Outlots identified on the Plat identified as "Vision Comer Easement" ("Vision Comer Easement"). In the Vision Comer Easement no planting of berms, fences, signs and other structures shall be permitted that exceed twenty-four (24) inches in height above the elevation of the center of the intersection, except for necessary traffic signs, public utility lines and open fences through which there is clear vision. In addition, no access to any roadway shall be permitted within the Vision Comer Easement.

7.7 Isolated Natural Resource Areas, Wetland and Primary Environmental Corridor Areas. Certain areas on the Final Plat are identified as Isolated Natural Resource Areas and Wetland and Primary Environmental Corridor Areas. Those areas are subject to various local and county rules and ordinances that must be observed. In addition, specific prohibitions for these areas are set forth on the Final Plat.

ARTICLE 8 – ASSOCIATION OF LOT OWNERS.

8.1 Homeowners' Association. The Developer has created a non-profit Wisconsin corporation known as Mason Creek Owners Association, Inc., referred to herein as the "Association," which corporation was formed for the purpose of maintaining any Subdivision entrance signs and landscaping and any other real estate for which the Association is responsible together with any other amenity that may be provided by the Developer or the Association from time to time. The Association shall assess the pro rata share of the costs of such maintenance and other expenses of operation of the Association against the individual Lot Owners, in accordance with terms set forth in the Articles of Incorporation and Bylaws of the Association.

8.2 Membership and Voting. Each Lot Owner, whether one or more, shall be a member of the Association, but each Lot shall represent one (1) vote only in the affairs of the Association, regardless of the number of owners of the Lot (if more than one (1) the vote of a majority of the owners shall represent the vote of such Lot). Person(s) owning more than one (1) Lot shall have one (1) vote for each such Lot owned. Membership in the Association by a Lot Owner shall terminate at such time as such Owner sells or otherwise conveys or transfers such Lot.

8.3 Directors and Officers of the Association. The Developer shall have the right to appoint an initial board of up to five (5) directors of the Association, which directors shall serve as provided in the By-Laws. After the Developer has sold the final Lot in the Subdivision, subsequent directors will be elected or appointed as provided in the By-Laws of the Association. The officers of the Association will be elected annually by the Board of Directors.

8.4 Operating Budget. Commencing with the calendar year 2005 and for each year thereafter, the Association shall prepare and adopt an operating budget covering the period January 1st through December 31st of such year. The budget shall be prepared and adopted by the Board of Directors before the beginning of the subsequent year, and shall be mailed to each Lot Owner at

least fourteen (14) calendar days prior to the annual meeting of the Association. In accordance with the financial needs of the Association, all of the Lots shall be subject to a general annual assessment, as contained in the annual budget, for the purposes of payment of costs and expenses of the Association and carrying out its stated purposes and functions. Such costs shall include, but not be limited to, payment for taxes on any Association property such as outlots, maintenance, repair, replacement and additions to subdivisions entrance monuments, landscaping, and storm water management areas and the cost of materials, management and supervision.

8.5 Tax Foreclosure. In the event Waukesha County or the Town acquires title to any Lot in the Subdivision through the foreclosure of a lien for delinquent taxes, the Association assessments pertaining to such Lot shall not be charged to Waukesha County or the Town of Merton, but shall be paid by all remaining Lot Owners through increased assessments by the Association.

8.6 Maintenance of Common Areas. The Association shall at its cost maintain in good condition and repair and replace and operate all Common Areas, including all island areas in the streets, any signage identifying common areas of the subdivision and all entrance areas or common areas of the subdivision. The Association shall also be responsible for the maintenance of the outlot areas. If the Association fails to maintain the Common Areas or signage as provided herein, the Town or its authorized agent may perform the necessary maintenance. The Town may add the cost thereof to the tax bill for each Lot in proportion to the total number of Lots in the entire Subdivision, may file a lien against each Lot for the proportional amount due with the Clerk of Courts for Waukesha County in the same manner as a Condominium lien under Wisconsin law.

8.7 Ownership of Outlots. Each Lot shall have an appurtenant undivided interest in Outlots land, the numerator of which shall be one and the denominator of which shall be the total number of Lots subject to these Protective Covenants, and each lot shall be responsible for its proportional share of taxes assessed against the Outlots if the Association taxes are not otherwise paid; provided, however, that no Lot shall have an ownership interest in any portion of an Outlot that the Town owns or in Outlot 2. All deeds and other conveyances of any Lot shall be deemed to include such undivided interest in the Outlots. The Outlots are part of a Rural Cluster Development ("RCD") approved by the Town of Merton and shall forever be maintained as parks or open space pursuant to the zoning code of the Town. The density of the RCD is contingent upon

the perpetual care and maintenance of the Outlots by the appropriate persons or entities as set forth in these Protective Covenants.

ARTICLE 9 – MISCELLANEOUS

9.1 No Reversion of Title. No violation or breach of any covenant, condition, restriction or other term of these Protective Covenants shall cause a Lot Owner to lose title to a Lot.

9.2 Enforcement. Enforcement of these Protective Covenants shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any provisions of these Protective Covenants, either to restrain violation or to recover damages, or both. Any such action may be brought by the Association, any Lot Owner possessing a vote in the Association, the Developer or the Town. Enforcement of rules and regulations of the Association may also be accomplished pursuant to terms of the Association By-Laws. The Town shall have no obligation to enforce all or any portion of these Protective Covenants.

9.3 Severability. Invalidation of any of the provisions of these Protective Covenants by judgment or court order shall in no way affect any other provisions herein, which other provisions shall remain in full force and effect.

9.4 Binding Effect. These Protective Covenants shall run with the land and shall be binding upon and inure to the benefit of the Developer, all Lot Owners and their heirs, successors, and assigns, and any party hereafter having any interest in any of the Lots in the Subdivision, for the full term of these Protective Covenants.

9.5 Lots 11 and 24. The Owners of Lot 11 and Lot 24 desire to subject Lot 11 and Lot 24 to the conditions, restrictions, covenants, and reservations contained herein for the benefit of the Subdivision and for the purpose of creating a desirable utilization of the land in an aesthetically pleasing residential environment. Lots 11 and 24 may not be further divided without the permission of the Town of Merton and the Association. Notwithstanding anything to the contrary herein, the current Owners of Lots 11 and 24 are exempt from paying any Homeowner Association Dues and have no voting rights until such time that Lot 11 and/or Lot 24 is sold or transferred to non-Becker children. At the time of a sale or transfer, the new Lot 11 and 24 Owners shall comply fully with all covenants and restrictions contained herein including but not

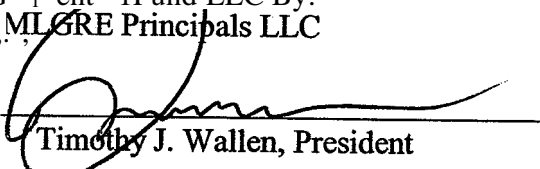
limited to paying Association Fees and have voting rights. Additionally, Lots 11 and 24 are excluded from the requirements contained in Articles 4, 5 and 7 herein until such time as the current buildings/improvements/structures currently existing on Lot 11 and Lot 24 are damaged or destroyed to such an extent that requires rebuilding. At such time Lots 11 and 24 shall become subject to all of the requirements contained in Articles 4, 5 and 7.

9.6 Applicable Laws. The Lot Owners are advised that they are subject to all rules, codes, regulations and ordinances of the Town, the County of Waukesha, the State of Wisconsin and the federal government and the same may be more restrictive than these Protective Covenants. In the event there is a conflict between the requirements of these restrictions and any provision of any Town, County, State or federal law or regulation, the more restrictive shall apply.

9.7 Controlling Document. If there is a conflict between any of the terms contained in these Protective Covenants, the Homeowners' documents, the Rural Cluster Development conditions or Final Development Plan conditions, the more restrictive terms shall apply.

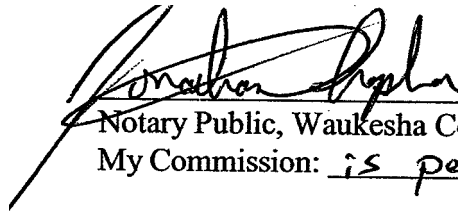
IN WITNESS WHEREOF, Developer has signed and sealed this instrument by its duly authorized representatives.

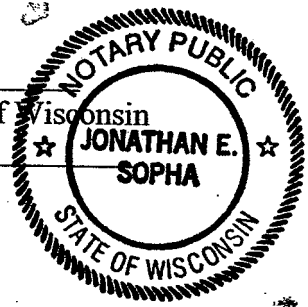
By: MLG Real Estate 2002, LLC
By: MLG Investment Fund LLC By:
MLGRE Principals LLC

By: 
Timothy J. Wallen, President

STATE OF WISCONSIN)
ss)
COUNTY OF WAUKESHA)

Personally came before me this 6th day of JUNE, 2005, the above-named Timothy J. Wallen, the President of MLG Real Estate 2002 LLC, who executed the foregoing instrument and acknowledged the same as the act and deed of said entity.


Notary Public, Waukesha County, State of Wisconsin
My Commission: is permanent



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

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

000425 JUN 27 2018

EXHIBIT A

Legal

Description

Mason Creek

Subdivision



Mason Creek Legal
Description.pdf

000426 JUN 27 2018

EXHIBIT B

Plat

Mason Creek

Subdivision

(Attached)



Mason Creek
Official Plat.pdf