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JOHN LA FAVE
REGISTER OF DEEDS

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**DECLARATION OF HOMEOWNERS
ASSOCIATION AND RESTRICTIONS
OF SHEPARD ORCHARD
SUBDIVISION**

Return to:
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9229069; 9229073; 9229077; 9229081
Parcel Identification Numbers (PIN)

THIS DECLARATION is made on this 22nd day of February, 2007 by MICJENSAR Development LLC, a Wisconsin limited liability company (hereinafter referred to as the "Declarant").

Recitals

WHEREAS, Declarant is the owner of certain real property in the City of Oak Creek, Milwaukee County, Wisconsin, more particularly described in Exhibit A attached hereto, which is called the "Shepard Orchard Subdivision" (hereinafter the "Subdivision");

WHEREAS, Declarant desires to impose certain reservations, obligations, easements, restrictions, liens, covenants and conditions (together, the "Restrictions") upon all real property in the Subdivision to ensure the uniformity of development and to protect the value, aesthetic appeal and overall desirability of the Subdivision to ensure the Subdivision will become, and remain, an attractive, high quality residential community; and

WHEREAS, Declarant intends that each of the restrictions shall run with all of the land within the Subdivision and each parcel therein (each such parcel hereinafter referred to as a "Lot"), shall be binding upon and inure to the benefit of all parties now or at any time hereafter having any right, title or interest in the properties composing the Subdivision or any of them, and shall bind their heirs, successors and assigns forever.

NOW THEREFORE, Declarant hereby declares that the Subdivision and each Lot therein is and shall be held, used, owned, occupied, transferred, sold and conveyed subject to the covenants, restrictions, obligations, easements, reservations, conditions, limitations, agreements, charges and liens set forth herein.

DEFINITIONS

For purposes of this Declaration, the following terms have the meanings set forth below:

“Association” shall mean Shepard Orchard Homeowners Association, Inc., a Wisconsin nonstock corporation, and its successors and assigns.

“Board” shall mean the Board of Directors of the Association.

“Code” shall mean the Internal Revenue Service of 1986 as amended from time to time, the corresponding provisions subsequently enacted, and shall encompass all regulations issued under such sections and provisions.

“Committee” shall mean the Architectural Control Committee established under Article II of this Declaration.

“Declarant” shall mean MICJENSAR Development LLC, a Wisconsin limited liability company, and its successors and assigns.

“Declaration” shall mean this Declaration of Homeowners Association and Restrictions, as it may be amended from time to time.

“Lot” shall mean any parcel within the Subdivision other than the Outlots or Prairie Pond.

“Outlots” shall mean Outlot One and Outlot Four, collectively, as reflected on the Plat of Survey of the Subdivision, which is attached hereto as Exhibit B. The Declarant shall retain ownership of Outlot 2 and Outlot 3 (hereinafter referred to as “Declarant’s Outlots”).

“Owner” shall mean the fee simple owner of a Lot, *provided, however*, that if more than one person or entity owns the fee simple title to a Lot, then all such persons and/or entities shall constitute one (1) Owner for purposes of this Declaration and, accordingly, shall be jointly and severally liable for all obligations as Owner. In the event a Lot is owned by an entity, all persons having an ownership interest in that entity shall be jointly and severally liable for all obligations as Owner.

“Prairie Pond” shall mean the pond located on Outlot One, as reflected on the Plat of Survey of the Subdivision.

"Prairie Pond Lots" shall mean Lots 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 20, 21, 22, 23 and 24, as reflected on the Plat of Survey of the Subdivision.

"Prairie Lot Owner" shall mean any Owner of a Prairie Pond Lot.

"Subdivision" shall mean that certain real property in the City of Oak Creek, Milwaukee County, Wisconsin, more particularly described in Exhibit A attached hereto, which is called the "Shepard Orchard Subdivision."

I. STATEMENT OF PURPOSES AND OWNERSHIP PROVISIONS

1.1 General. The general purposes of this Declaration are to help ensure that the Subdivision will become and remain an attractive community; to preserve and maintain the natural beauty of the Subdivision; to ensure the most appropriate development and improvement of each Lot, including construction of attractive and harmonious residential structures; and to ensure the highest and best residential development of the Subdivision.

1.2 Ownership of Outlots and Prairie Pond. Declarant, by recording the Plat of Survey for the Subdivision, has transferred all of its right, title and interest in the Outlots, including Prairie Pond located on Outlot One, to the Association and, by virtue of such conveyance, all of Declarant's right, title and interest in the Outlots will be owned by the Association. Initially, the Outlots will be the only property in the Subdivision which will be owned by the Association itself. The Association shall maintain, improve and preserve the Outlots and maintain such levels of property, casualty and liability insurance with respect thereto as the Board shall determine to be appropriate. Subject to Subsection (a), below, the Association shall also maintain in good condition and repair any and all facilities used to manage storm water in the Subdivision. The Association shall maintain the Outlots in a manner consistent with the lands maintained by the individual residents of the Subdivision. The Association may acquire additional land in the Subdivision on such terms as it may determine and, if it does so, the provisions contained in this Declaration relating to the rights and responsibilities of the Association with respect to the Outlots shall thereafter apply with equal force and effect to any additional land(s) acquired.

(a) Use and Maintenance of Outlot One and Prairie Pond. Prairie Lot Owners shall have the sole and exclusive right, to the exclusion of the other Owners and the general public, to access, use and enjoy Outlot 1 and Prairie Pond. Guests and invitees of Prairie Lot Owners shall be allowed to access, use and enjoy Prairie Pond only when accompanied by a Prairie Lot Owner or by a member of said Owner's immediate family. Prairie Lot Owners shall be solely responsible for the aesthetic maintenance of Outlot 1 and Prairie Pond. Said maintenance shall be undertaken by the Association and shall include, without limitation, landscaping of that portion of Outlot 1 surrounding Prairie Pond and maintenance of the mechanical equipment of the elements of the storm water management facilities of the Subdivision that are purely aesthetic in nature (e.g., equipment associated with a fountain in Prairie Pond). In addition, Prairie Lot Owners shall be responsible for the trimming of any trees or other vegetation encroaching onto Outlot 1. Prairie Lot Owners shall be assessed for the

expenses associated with any aesthetic maintenance required hereunder as provided in Section 5.5(b), below and the Bylaws of the Association.

(b) Use and Maintenance of Outlot 4. All Owners and their immediate family members residing in the Subdivision shall have the sole and exclusive right, to the exclusion of the general public, to access, use and enjoy Outlot 4. Guests and invitees of Owners shall be allowed to access, use and enjoy Outlot 4 only when accompanied by an Owner or an immediate family member of an Owner. All Owners shall be responsible for the maintenance of Outlot 4 and shall be assessed pursuant to Section 5.5, below.

1.3 Additional Land. Declarant expressly reserves the right to at any time and from time to time subject additional lands to this Declaration. Each time the Declarant elects to include additional lands, Declarant shall record an amendment subjecting such additional lands to this Declaration. No such amendment shall change the ownership of any Outlot. The Owners shall share (through the Association in the manner provided in Section 5.5, below) in all costs of managing and maintaining the Outlots. Further, upon the recording of each such amendment, easements shall be deemed to have been granted for the benefit of all Lots to access and use the Outlots. The decisions whether to subject additional lands to this Declaration shall be made at the sole discretion of the Declarant. Notwithstanding any other provision relating to the amendment of this Declaration, any and all amendments relating to the addition of lands to this Declaration shall only be executed by the Declarant.

1.4 Easements. Easements for the installation and maintenance of public utilities and other drainage facilities, as shown on the recorded plat for the Subdivision, are reserved to the City of Oak Creek, Milwaukee County, the State of Wisconsin and the public utilities as appropriate. Such other easements are hereby reserved to the Declarant and the Association to enter upon the Subdivision, if necessary, and to construct, operate, and maintain any other public improvements, whether under or above ground, including the right to ingress and egress, and the right to install, read, replace, repair, and maintain pipes, poles, wires, cable television systems, master television antenna systems, security and similar systems, roads, walkways, ponds, wetlands, drainage systems, street signs and all other forms of utilities or public improvements, including but not limited to water, sewers, meter boxes, telephone, gas and electricity, all to be placed along lot lines to the extent possible and practical. Should any governmental or private entity which furnishes a service covered by the general easement provided herein request a specific easement on any portion of the Subdivision, the Declarant (and after the Declarant no longer owns any of the Lots, the Association) shall have the right to grant such easement on such terms and conditions as it may deem reasonable.

1.5 Declarant's Outlots. Outlots 2 and 3, as shown on the Plat of Survey for the Subdivision, shall be retained by the Declarant. The Declarant hereby expressly reserves the right, in its sole discretion, to convey, assign or otherwise transfer ownership of the Declarant's Outlots for residential development or any other purpose which the Declarant, in its sole discretion, deems fit. Owners' rights to access, use and enjoy the Outlots is limited to Outlots 1 and 4, and shall not extend to the Declarant's Outlots.

1.6 Lot Ownership. Ownership of Lots in the Subdivision may be taken only in fee simple, and not in any other form such as a life estate or a term for years. Notwithstanding the preceding sentence, ownership may be taken as co-tenants (such as tenants in common, joint tenants, or survivorship marital property), and Lots may be owned by one or more estates, trusts, corporations, partnerships, limited liability companies, limited partnerships, or limited liability partnerships. In any event, if more than one person or entity owns the fee simple title to a Lot, then all such persons and/or entities shall constitute one (1) Owner for purposes of this Declaration and, accordingly, shall be jointly and severally liable for all obligations as Owner. In the event a Lot is owned by an entity, all persons having an ownership interest in that entity shall be jointly and severally liable for all obligations as Owner.

II. ARCHITECTURAL CONTROL

2.1 Architectural Control Committee. An Architectural Control Committee (the "Committee") is hereby established to govern the development of the Subdivision. The Committee shall consist of at least three (3) individuals. The initial members of the Committee shall be appointed by the Declarant. Each member of the Committee shall serve until replaced by the Board of Directors of the Association as set forth in the Bylaws of the Association.

2.2 Approval Required. No construction, including but not limited to, the construction of any residence, garage, deck, gazebo, outbuilding, patio, swimming pool, landscaping, grading or other improvements, may be commenced on any Lot unless the complete plans, specifications (including brand, style and color of the brick, shingles, and all other exterior surfaces) and building grades for such construction are first submitted to and approved in writing by the Committee. Any material changes made subsequent to the written approval by the Committee must be resubmitted and approved in writing prior to the implementation of such changes.

2.3 Required Submissions. In addition to any other information which the Committee might reasonably request, each Owner shall submit the following to the Committee in conjunction with any request for approval of any construction or improvements on any Lot:

(a) Three (3) sets of drawings and written specifications of the proposed structure(s) showing, at a minimum, floor plans, elevations of all views of the structure(s), exterior finishes, roofing type, driveway location, structure location(s), description of exterior materials and colors, and fence and wall details;

(b) Three (3) sets of landscaping and site plans for the Lot, including a narrative description of how the Owner will comply with the landscaping requirements set forth in Section 3.6 hereof and with any additional covenants or restrictions subsequently recorded;

(c) A completed Certificate of Approval on a form to be provided by the Committee, which shall be attached as a cover page to all three (3) sets of plans; and

(d) Address for mailing of the determination of the Committee.

A submission shall not be complete, and the thirty (30) day approval time set forth in Section 2.4 shall not commence, until all required documents and other requested information have been provided.

2.4 Committee Approval. The Committee shall approve or disapprove of a submission within thirty (30) days of its receipt. The Committee's decision shall be in writing and a favorable decision shall be designated by the execution and delivery to Owner of a Certificate of Approval. If the Committee fails to approve or disapprove a submission within said thirty (30) days, approval will be deemed to have been given and the applicable covenants and restrictions in this Declaration shall be deemed to have been complied with. If a submission is approved, by decision or otherwise, material changes to the approved submission must be resubmitted to, and approved by, the Committee.

2.5 Standards; Committee Discretion. The Committee shall have the right to reject any submission which, in the opinion of the Committee, is not in conformity with the provisions and purposes of this Declaration. The Committee shall exercise its approval authority and discretion in good faith. Each Owner, by acceptance of a deed to the Owner's Lot, shall and hereby does release the Declarant, the Association and the Committee from any liability based upon the good faith exercise of their duties under this Declaration. Refusal of submissions by the Committee may be based on any grounds, including purely aesthetic grounds, which the Committee in its sole and good faith discretion deems sufficient.

2.6 Variances. The Committee shall have the right, in its sole discretion, to grant a variance to any of the covenants and restrictions in this Declaration for good cause shown. The grant of any such variance shall not waive the Committee's right to enforce any such covenants and restrictions in the future.

2.7 Liability of the Declarant, the Association and the Committee.

(a) Except as provided in Section 2.7(b), neither the Declarant, the Association, nor the Committee shall be liable under any circumstances for any loss, cost or damage suffered or claimed to have been suffered on account of the approval or disapproval of any submissions, or on account of the development or non-development of any property within the Lots.

(b) An Owner shall have the right to injunctive and/or declaratory relief against the Declarant, the Association or the Committee if, in bad faith, the Committee acts or fails to act upon a request made to the Committee. If an Owner brings an action for such injunctive and/or declaratory relief and fails to establish that the Declarant, the Association and/or the Committee were guilty of bad faith in acting or failing to act upon the Owner's request, the Owner shall be obligated to pay all of the reasonable attorneys' fees and disbursements paid or incurred by such party(ies) in connection with the action.

2.8 Building Permit Application. Declarant must submit a Certificate of Approval executed by the Committee with any Building Permit Application made to the City.

III. ARCHITECTURAL RESTRICTIONS

3.1 Building Sites. All buildings constructed on Lots shall have front, side and back yards that, at a minimum, conform to applicable zoning ordinances. The Committee reserves the right, in its sole discretion, to require front, side and back set-backs that are greater than those set forth in the applicable zoning ordinances. The Committee shall have the right to grant variances from such setback requirements from time to time, in its sole discretion, provided that any such variances are in conformity with all applicable zoning ordinances.

3.2 Surface Elevation.

(a) No Owner shall grade, alter or obstruct any drainage swale or comprehensive drainage flows in effect at the time of development by the Owner in a way which deviates or impedes the flow of drainage water from other Lots across the swale or flows. Any Owner who violates this section shall be required to repair or restore the drainage swale or flows at the Owner's sole expense. In addition, if an Owner violates this section and/or any grading plan approved by the City, any affected Owner shall have a cause of action against the violating Owner for both damages and injunctive relief. No earth, rock, gravel or clay shall be excavated or removed from any Lot without the prior written approval of the Committee.

(b) Declarant shall have the right at any time to grade or regrade the Lots to accommodate, alter or establish drainage flows. The Declarant shall not be liable to any Owner for any such grading or regrading, except that if the grading or regrading occurs after the Owner has established turf on the Owner's Lot, and if the grading or regrading damages such turf, the Declarant shall be obligated to reasonably restore the turf to its condition prior to the grading or regrading.

3.3 Building Requirements.

(a) Number of Residence Buildings. No lot shall be used for any purpose other than single-family residential. No more than one (1) residential building may be erected on any Lot.

(b) Size of Residence. All houses constructed in the Subdivision shall meet the following minimum square footage requirements:

- (i) One-story houses shall have a minimum square footage of living space of at least 2,000 square feet.
- (ii) One and one-half story houses and two story houses shall have a minimum square footage of living space of not less than 2,000 square feet, with not less than 1,200 square feet of living space on the first floor. Provided, however, that if the total square footage of living space equals or exceeds 2,500 square feet, the minimum square footage required on the first floor shall be 1,500 square feet.

- (iii) Split-level houses shall have a minimum square footage of living space of 2,100 square feet, with not less than 1,600 square feet of total living space on the upper two levels.
- (iv) No bi-level houses shall be permitted in the Subdivision.

The term "living space" is generally determined by the outside dimensions (exclusive of garages, porches, patios, breezeways and similar additions) of interior walls of the above-grade portion of the living structure. Living space does not include floor space which is partially or completely below grade (e.g., basement space).

(c) Exterior. The exterior siding of all houses, garages and any other structure on a Lot shall consist of natural wood siding, hardi-panel, or similar product, natural stone, brick and/or stucco. No types of metal or vinyl siding shall be permitted. The Committee, in its sole discretion, may permit other types of siding on a portion of the house not to exceed twenty-five percent (25%). No exposed poured concrete or concrete block over eight (8) inches above grade shall be permitted on any house. All roofs shall consist of wood, tile, or fully dimensional asphalt shingles. The Committee, in its sole discretion, may permit or prohibit the use of other types roofing materials with substantially the same appearance as the permitted materials. Unless otherwise approved on a case-by-case basis by the Committee, in its sole discretion, all roofs shall have a minimum 8/12 pitch.

(d) Grading. The maximum finished grade line and the minimum finished grade line of each lot shall conform to the Subdivisions's Final Grading Certification as approved by the City.

3.4 Construction Deadline. Construction of each approved building shall be completed within twelve (12) months after issuance of a building permit for the building. Landscaping (including grading, sodding and seeding) and installation of any driveway on any Lot shall be completed within ninety (90) days of completion of construction, provided weather conditions so allow. If construction or landscaping is delayed due to matter beyond the control of the Owner, the time for completion shall be extended by the period of the delay.

3.5 Garages. All homes shall have an attached garage with the capacity to hold, at a minimum, 2.5 cars, and, at a maximum, 3.5 cars. In addition, all garages must have a minimum of 600 square feet of interior space and a maximum of 864 square feet of interior space. All garages must be attached to the main residence.

3.6 Landscaping

(a) Requirements and Restrictions. All existing trees shall be protected during construction and preserved by wells or islands and proper grading in such a manner as may be required by the Committee. In no event shall any existing living tree with a diameter of eight inches or more be cut down, destroyed, mutilated, moved or disfigured without the prior written approval of the Committee. The existence of any such tree shall be considered by the Committee in granting an approval for the location of a house on a Lot. A permanent lawn must be

established within one (1) year after the issuance of an occupancy permit. The landscape plan for a Lot must include at least one (1) ornamental tree in the front yard and side yards. Fruit-bearing trees may only be planted in back yards. Additional shrubbery or other greenery should be incorporated into a Landscape Plan and may be specifically required by the Committee.

(b) Ongoing Maintenance. Each Owner shall be responsible for the ongoing landscaping maintenance of the Owner's Lot. During the growing season, each Owner shall mow the vacant portion of the Owner's Lot at least once every three weeks to a height not exceeding six inches. All areas of a Lot not used as a building site or an approved landscaped area or under cultivation as a family garden shall be sodded or seeded, as applicable, and be kept free of obnoxious weeds.

(c) Fencing; Screening. In order to preserve the open, natural feeling of the Subdivisions, no barrier fences or containment fences of any kind may be erected on or adjacent to any lot line without the prior written approval of the Committee.

3.7 Driveways. Unless otherwise approved by the Committee, all driveways shall be concrete and shall be installed within ninety (90) days of occupancy, unless not permitted by weather conditions. If weather conditions delay completion of a driveway, the driveway shall be completed as soon as weather permits.

3.8 Mailboxes and Post Light. To provide continuity throughout the Subdivision, each Owner shall, at their own expense and within ten (10) days of occupancy, purchase and install a mailbox/post and a post light of the Committee's choosing. The Declarant intends that all Lots shall have identical mailboxes/posts, including the color of the mailbox post, and identical post lights.

3.9 Signs. No sign of any kind shall be permanently displayed on any lot or on any of the Outlots, except one sign not more than two (2) square feet in size which identifies the owner of the lot. Signs advertising the property for sale, and signs used by builders to advertise their services, or to advertise the house on a lot as a model home, may be displayed temporarily during the applicable sales and/or construction period for such lot. The Developer shall have an unlimited right to display signs in conjunction with initial lot sales in the Subdivisions, and may display one or more entrance signs to the Subdivisions for the period during which lots within the Subdivisions are for sale.

3.10 Utilities. No exterior fuel tanks, including, but not limited to, fuel oil tanks, propane gas tanks and/or motor vehicle fuel tanks, whether above ground or below ground, shall be permitted on any lot or on any of the Outlots. All lots shall be provided with electric, natural gas, and telephone service by means of underground installation only. No residence or other building or structure on any lot shall be serviced by the use of any secondary overhead service wires. Cable television lines, if installed, shall be by means of underground installation only. All costs and expenses associated with installing underground utility service connections on any lot between the utility companies' secondary pedestals and the buildings on any lots shall be paid by the owner of said lot.

3.11 Auxiliary Structures. No trailer, basement, tent, shack, garage, barn or other outbuilding shall ever be used as a residence, temporary or permanent, on any Lot. No outbuildings or accessory buildings, including, without limitation, dog houses and storage sheds, shall be permitted on any Lot without prior written approval of the Committee.

3.12 Storage Restrictions. Outside storage of any of the following will not be permitted on any lot in the Subdivision: (i) boats, motorcycles, snowmobiles, all-terrain vehicles, motor homes, recreational vehicles, trailers, tractors or similar vehicles; (ii) any vehicle larger than a one ton pickup truck; or (iii) any type of truck used as a commercial vehicle containing any type of signage. In addition, no outside storage of any vehicles that are not operational shall be permitted on any Lot for longer than twenty-four (24) hours. There shall be no outside storage of any vehicle or other item on any Outlot unless expressly permitted by the Committee.

3.13 Exterior Lighting. Any exterior lighting installed on a Lot shall either be indirect or of such controlled focus and intensity that the lighting will not disturb the owners of adjacent Lots. The exterior post light shall be of a design of the Committee's choosing, as provided in Section 3.8, shall remain lit at all times from dusk to dawn and may not be removed, altered or replaced at any time without the prior written consent of the Committee.

3.14 Gardens. Vegetable gardens may only be permitted on a Lot, in the sole discretion of the Committee, to the extent they are not visible from the street.

3.15 Other Restrictions.

(a) No wind-powered electric generators, exterior television or radio receiving or transmission antenna or satellite signal receiving station or dish shall be placed or maintained upon any portion of a Lot or building without prior written approval of the Committee. None of such which are visible shall exceed 36 inches in diameter. Satellite dishes of 36 inches or less shall be permitted only in the back of a building in the most unobtrusive location, as that location is approved in writing by the Committee.

(b) No firewood or wood pile shall be kept outside a structure unless it is neatly stacked, placed in a side yard not adjacent to a street and screened from street view by plantings or a fence approved by the Committee.

(c) No active solar collector or apparatus may be installed on any Lot unless such installation is first approved in writing by the Committee, which shall consider the aesthetic and sun reflection effects on neighboring structures. Solar collectors or apparatus installed flat or parallel to the plane of the roof are preferred but still must be approved by the Committee.

(d) No garbage, refuse, rubbish or cuttings shall be deposited on any street or road or on any Lot or Outlot unless placed in a suitable container. No Lot or Outlot shall be used or maintained as a dumping ground for rubbish, trash, leaves, lawn clippings, rocks or other materials, the storage of such materials as are necessary for and used in the course of approved construction. All outdoor trash cans and/or collection containers must be stored in the garage or

otherwise completely hidden from view at all times other than for a period of not more than twelve (12) hours immediately before and immediately after the City's scheduled pick-up.

(e) No building material of any kind or character shall be stored upon any Lot except in connection with construction approved by the Committee. Construction shall be promptly commenced and be diligently pursued as soon as any building materials are placed on any Lot.

(f) Front yard decorations, including wildlife reproductions, other than approved lighting, mailboxes or seasonal decorations, are prohibited.

(g) No outdoor wood burning furnaces shall be allowed on any Lot in the Subdivision.

3.16 Sports Equipment. No portable sports equipment, including, without limitation, basketball hoops and soccer or hockey goals may be placed on or near the streets in the Subdivision, or in a front yard.

3.17 Play Equipment and Structures. No swing set or other play equipment or structure shall be installed on any Lot without the prior written approval of the Committee. Any such structure or equipment shall be set back at least ten (10) feet from each property line of the Lot.

3.18 Swimming Pools. No in-ground or above-ground swimming pool shall be installed on any Lot without the prior written approval of the Committee.

IV. USE RESTRICTIONS

4.1 Pets. No poultry or livestock of any kind shall be raised, bred or kept on any Lot, except for dogs, cats and other common household pets; *provided, however*, that no animals shall be kept, bred or maintained on any Lot for commercial purposes. In no event, unless otherwise approved in writing by the Committee, shall there be allowed more than three (3) permitted pets. No animals having vicious propensities shall be kept on a Lot. No noxious or offensive odors or excessive, offensive or objectionable noise, whether arising on account of maintenance of Permitted Pets, or otherwise, will be permitted on any Lot.

4.2 Appearance. Each Owner shall be responsible for maintaining the Lot and all its buildings in a neat appearance at all times. This covenant shall apply to all Lots from the date of purchase, regardless of whether a building has been or is in the process of construction. The Owner's obligation shall include, but is not limited to the following:

(a) Obnoxious Weeds. All areas of any Lot not used as a building site or lawn or under cultivation as a vegetable garden shall have a cover crop or be so cultivated or tended as to keep the areas free from obnoxious weeds. All lawns shall be free from obnoxious weeds.

(b) General Upkeep. The Owner shall keep the Owner's Lot and its buildings and other improvements in good order and repair and free of debris, including, but not limited to, the

pruning of all trees and shrubbery, the painting or other external care of all buildings and other improvements, and the tasks described in Section 3.6, all in a manner and with such frequency as is consistent with good property management.

(c) Refuse/Recycling. Trash and recycling containers shall be kept inside of garages and may be placed upon the curb only on days of trash collection and must be removed from the curb within twenty-four (24) hours of collection. No rubbish, trash garbage or recycling shall be placed upon the curb unless in a suitable container. Leaves and other lawn and tree cuttings may be placed near the curb without a container only at times designated by the City.

4.3 Activities. No hazardous or offensive activity may be carried out on a Lot or Outlot which will become a nuisance to the neighborhood or any other Lot or Outlot within the Subdivision.

4.4 Sexual Predators. No person who has been convicted or adjudicated delinquent of a "sex offense," as that term is currently defined in Section 301.45 of the Wisconsin statutes, or any similar term in any successor statute thereto, or any person who has been convicted or adjudicated of a similar offense in another jurisdiction, and who is required to register as a sex offender in Wisconsin or any other jurisdiction shall be permitted to live in the Subdivision.

V. SHEPARD ORCHARD HOMEOWNERS ASSOCIATION

5.1 Membership. Each Owner shall be a member of the Shepard Orchard Homeowners Association, Inc., a Wisconsin nonstock corporation (the "Association"). By acquiring a Lot, every Owner shall be conclusively deemed to have consented to such membership.

5.2 Rights and Duties of Members. The Articles of Incorporation and the Bylaws of the Association are incorporated by reference. Among other matters, the Articles and Bylaws restrict the voting rights of certain members and obligate all members other than Declarant to pay regular and special assessments to the Association for its operations. The members shall have the rights set forth in this Declaration, the Articles of Incorporation and Bylaws of the Association, all as amended from time to time, and as provided by applicable law. Any authority of the Association and/or its members shall be subject to the authority given to the Declarant and the Committee in this Declaration.

5.3 Management of the Association. The affairs of the Association shall be managed by its Board of Directors (the "Board"). The Board shall be selected in the manner, and shall have the duties, powers and responsibilities, set forth in this Declaration and/or in the Articles of Incorporation and Bylaws of the Association, all as amended from time to time, and as may be provided by applicable law.

5.4 Obligations of the Association.

(a) General. The Association shall be responsible for each Association Outlot and the Storm Water Management Practices Maintenance Agreement, a copy of which is attached

hereto as Exhibit C, to the extent provided above. The Association, through its Board of Directors, as provided in Section 5.3, above and the Bylaws of the Association, shall also be responsible for the enforcement of the restrictions herein contained, for adoption and enforcement of rules and regulations with respect to land use and construction in the Subdivision and all activities contemplated herein, and for the management and operation of the Association itself. Further, the Association shall be responsible for the continuing obligations imposed upon the Declarant by the Shepard Orchard Subdivision Development Agreement between the Declarant as Subdivider and the City of Oak Creek, a copy of which is attached hereto as Exhibit D, as may be amended, relating to the development of the Subdivision, and for compliance with all laws, ordinances and permits relating to the Subdivision.

(b) The Association shall have all powers and authority consistent with Chapter 181 of the Wisconsin Statutes with respect to the carrying out of its responsibilities hereunder, including but not limited to, the power to make and collect assessments as set forth below, to enforce, by action or proceeding at law or in equity (including foreclosure of any lien arising from any such assessment), any or all of the restrictions and the rules and regulations of the Association, and to defend itself in any action or proceeding brought against it. The rules and regulations adopted by the Association shall be binding upon and fully enforceable against all Owners as though set forth herein. In the event that the Association substantially prevails in any enforcement action against any member(s) or in any action brought against it by any member(s), the expenses of the Association incurred in connection therewith, including reasonable attorneys' fees, shall be borne (jointly and severally) by such member(s).

5.5 Assessments.

(a) General. The Association shall have the power to assess each Lot, other than a Lot owned by Declarant, for such expenses as may be authorized by the Association pursuant to its Bylaws. Each Owner of a Lot, by acceptance of a deed for such Lot (whether or not so expressed in such deed), is deemed to have assumed and agreed to pay to the Association any assessments levied against such Lot during the period of such Owner's ownership.

(b) Prairie Lot Owners. Prairie Lot Owners shall be solely responsible for all costs and expenses attributable to the aesthetic maintenance of Outlot 1 and Prairie Pond, including, without limitation, maintenance of the mechanical equipment of the storm water management facilities of the Subdivision that are purely aesthetic in nature (e.g., equipment associated with a fountain in Prairie Pond). In addition, the Board shall allocate any costs for property, casualty and liability insurance to Prairie Lot Owners in the manner it deems appropriate. All such expenses shall be passed-through solely to Prairie Lot Owners and shall hereinafter be referred to as "Prairie Lot Assessments."

(c) Method of Assessment. Assessments shall be due and payable in the manner and upon the schedule determined by the Board as provided in the Association's Bylaws. Such assessments shall be either maintenance assessments, particular assessments, special assessments or Prairie Lot Assessments. Maintenance assessments shall be levied upon the Lots in equal shares or in shares based on a fraction, the numerator of which is the square footage of a Lot and the denominator of which is the total square footage of all of the Lots in the Subdivision, as the

Board shall elect. Particular assessments shall be levied upon particular Lots or groups of Lots as the Board shall determine. Special assessments shall be levied upon lots or groups of lots when special circumstances arise requiring an assessment to be levied at a time subsequent to the levy of other assessments provided hereunder. Prairie Lot Assessments shall be assessed and levied as provided in Subsection (b), above. Maintenance assessments, as well as Prairie Lot Assessments, shall be assessed and levied as provided for in Wis. Stat. § 779.70.

(d) Collection; Lien Rights. The Association shall pursue collection and/or enforcement of all assessments to the extent reasonable. Each Owner of a Lot shall be personally obligated to pay assessments which were assessed or accrued upon such Lot during such Owner's period of ownership. Assessments shall be a lien on the Lots on which they are levied. The Association shall be entitled to collect any unpaid assessment, together with interest thereon from the due date at twelve percent (12%) per annum and reasonable legal fees and expenses incurred in connection with the enforcement of its lien rights in a foreclosure action or otherwise. Any unpaid assessments, together with any accrued interest and reasonable legal fees and expenses, shall also be the personal obligation of an Owner. The Association may sue any Owner personally to recover such amounts. The transfer of ownership of any Lot, by whatever means, shall not extinguish the lien for any unpaid assessment, accrued interest and/or reasonable legal fees and expenses. The Association may, however, release or subordinate its lien rights hereunder on such terms and to such extent as it may deem advisable with respect to any one or more of the Lots within the Subdivision, and doing so shall not affect its right to collect any amounts otherwise secured by such lien from the person or persons otherwise personally obligated with respect thereto. Also, in the event that the City of Oak Creek is required to enter the Subdivision to maintain any Association Outlot, easement, or stormwater drainage, the costs of said maintenance shall be charged to the Association and may be placed as a lien against the Lots of the Subdivision if not paid as required by this provision.

5.6 Liability of Association. Each Owner and their guests and invitees have the right to access and use certain portions certain of the Outlots and common areas of the Subdivision as provided in this Declaration. By acquiring a Lot, each Owner hereby agrees that the Association and the Declarant, and their respective agents, employees, officers, members and owners, shall not be liable for any claim, loss, liability, cost or expense arising out of or relating to the access and use of the Outlots and common areas by such Owner or their guests and invitees. Each Owner that accesses or uses the Outlots and common areas hereby agrees to defend, indemnify and hold the Association and the Declarant harmless from and against any and all claims, damages, liabilities and expenses (including attorneys' fees and court costs) incurred by the Association or the Declarant as a result of the access and use of the Outlots and common areas by such Owner or their guests and invitees.

VI. GENERAL PROVISIONS

6.1 Term. This Declaration shall run with the land and shall be binding upon and inure to the benefit of all parties and all persons claiming an interest in any of the Lots for a period of thirty (30) years from and after the recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years, unless terminated as provided in Section 6.2.

6.2 Amendment.

(a) While the Declarant owns any Lot, the Declarant by its sole act shall have the right to terminate or amend this Declaration by an instrument signed by the Declarant and recorded with the Milwaukee County Register of Deeds.

(b) After the Declarant ceases to own any Lot, the Owners, by the vote or consent of Owners owning two-thirds (2/3) or more of the Lots then comprising the Subdivision, shall have the right to amend or terminate this Declaration by an instrument recorded with the Milwaukee County Register of Deeds.

6.3 Severability. In the event that any provision of this Declaration is ever finally determined to be wholly or partially illegal, invalid or unenforceable, either in all circumstances or in particular circumstances, such provision shall be deemed severed herefrom in those circumstances as to which it is so determined to be wholly illegal, invalid or unenforceable and shall be deemed limited to the extent required in those circumstances as to which it is so determined to be partially illegal, invalid or unenforceable, and such severance or limitation shall not affect the legality, validity or enforceability of any of the other provisions hereof or of such provision to the extent not so severed or limited.

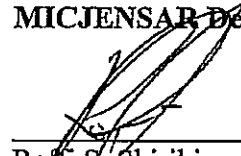
6.4 Enforcement. The Declarant, the Committee and the Association shall each be entitled to obtain temporary restraining orders and temporary and permanent injunctions to prevent the breach of, or to enforce the observance of, this Declaration, in addition to such other legal and/or equitable relief as may be appropriate. In addition to money damages to which the Declarant, the Committee, the Association or any of the other Owners may otherwise be entitled, each Owner shall indemnify and hold the Association harmless from and against reasonable attorneys' fees and other expenses incurred thereby as the result of any such breach and related violations of their other rights, including, without limitation, their rights under the legal doctrines listed in Section 5.5 hereof, and in the enforcement of their rights under this Agreement and otherwise in connection with any such breach or violations.

6.5 Other Law. The rights of the Declarant, the Committee and/or the Association under this Agreement shall be in addition to those to which they may otherwise be entitled under contract, tort or other law.

[SIGNATURE ON FOLLOWING PAGE]

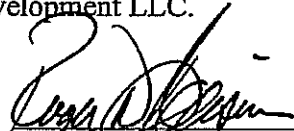
2007 IN WITNESS WHEREOF, the undersigned Declarant has executed this document this
day of February, 2007.

MICJENSAR Development LLC


Raffi S. Shirikian
Authorized Agent

STATE OF WISCONSIN)
) ss.
COUNTY OF MILWAUKEE)

This instrument was acknowledged before me on February 22, 2007, by Raffi S. Shirikian as authorized agent for MICJENSAR Development LLC.


Notary Public, State of Wisconsin
My Commission expires August 8, 2010

THIS INSTRUMENT WAS DRAFTED BY
AND SHOULD BE RETURNED TO:
Joshua R. Welsh, Esq.
Meissner Tierney Fisher & Nichols S.C.
111 East Kilbourn Avenue
19th Floor
Milwaukee, WI 53202-6622

19



DOC.# 09114557

Document Number	SHEPARD ORCHARD SUBDIVISION Development Agreement Document Title
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REGISTER'S OFFICE | SS
Milwaukee County, WI

RECORDED 10/20/2005 10:08AM

JOHN LA FAVE
REGISTER OF DEEDS

AMOUNT: 47.00

Recording Area

Douglas W. Seymour, Director
 Dept. of Community Development
 8640 South Howell Avenue
 Oak Creek, WI 53154
 Name and Return Address

922-9073, 922-9029-001, 922-9069

Parcel Identification Number (PIN)

THIS AGREEMENT, made and entered into this 1 day of August, 2005, by and between MICJENSAR Development, LLC, 9667 South 20th Street, Oak Creek, WI, 53154, hereinafter referred to as the "Developer", and the City of Oak Creek, hereinafter referred to as the "City";

WITNESSETH:

WHEREAS, the Developer proposes to develop the following described lands situated in the City of Oak Creek, County of Milwaukee and State of Wisconsin, to-wit:

PART OF OUTLOT 1 OF CERTIFIED SURVEY MAP 6449, PART OF PARCELS 1 AND 2 OF CERTIFIED SURVEY MAP 2525, PART OF THE STREET RESERVATION OF CERTIFIED SURVEY MAP 2940, OUTLOT 2 OF CERTIFIED SURVEY MAP 6932, OUTLOT 1 OF CERTIFIED SURVEY MAP 7042, AND PART OF PARCEL 1 OF CERTIFIED SURVEY MAP 7398, LOCATED IN THE NORTHWEST QUARTER (N.W. ¼) AND THE SOUTHWEST QUARTER (S.W. ¼) OF THE SOUTHEAST QUARTER (S.E. ¼) OF SECTION 28, TOWN 5 NORTH, RANGE 22 EAST, CITY OF OAK CREEK, MILWAUKEE COUNTY, WISCONSIN DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 28, AFORESAID; THENCE NORTH 89°36'03" EAST, ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER, 1,321.02 FEET TO THE EAST LINE OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 28; THENCE NORTH 00°08'47" EAST, ALONG SAID EAST LINE, 659.42 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°37'23" WEST, 389.96 FEET; THENCE SOUTH 24°43'13" WEST, 165.77 FEET TO A POINT OF CURVE; THENCE SOUTHWESTERLY ALONG A CURVE TO THE LEFT 32.64 FEET, HAVING A RADIUS OF 550.00 FEET, THE CHORD BEARING SOUTH 23°01'13" WEST, 32.63 FEET; THENCE NORTH 89°50'00" WEST, 186.64 FEET; THENCE NORTH 58°10'00" WEST, 334.50 FEET; THENCE SOUTH 89°37'23" WEST, 60.16 FEET; THENCE NORTH 00°01'48" WEST, 549.79 FEET; THENCE NORTH 89°39'01" EAST, 30.00 FEET; THENCE NORTH 00°01'48" WEST, 110.17 FEET TO A POINT OF CURVE; THENCE NORTHEASTERLY ALONG A CURVE TO THE RIGHT 63.80 FEET, HAVING A RADIUS OF 312.00 FEET, THE CHORD BEARING NORTH 05°49'40" EAST, 63.69 FEET; THENCE NORTH 78°18'52" WEST, 156.24 FEET; THENCE NORTH 11°41'08" EAST, 97.92 FEET; THENCE NORTH 78°18'52" WEST, 15.00 FEET; THENCE NORTH 00°01'48" WEST, 464.89 FEET; THENCE NORTH 89°40'21" EAST, 1,118.38 FEET; THENCE SOUTH 00°08'47" WEST, 400.25 FEET; THENCE SOUTH 89°41'43" WEST, 4.91 FEET TO A POINT OF CURVE; THENCE NORTHWESTERLY ALONG A CURVE TO THE RIGHT 103.27 FEET, HAVING A RADIUS OF 230.00 FEET, THE CHORD BEARING NORTH 77°26'32" WEST, 102.40 FEET; THENCE NORTH 64°34'46" WEST, 72.27 FEET TO A POINT OF CURVE; THENCE SOUTHWESTERLY ALONG A CURVE TO THE LEFT 49.75 FEET, HAVING A RADIUS OF 25.00 FEET, THE CHORD BEARING SOUTH 58°24'40" WEST, 41.94 FEET TO A POINT OF COMPOUND CURVE; THENCE SOUTHWESTERLY ALONG A CURVE TO THE LEFT 8.15 FEET, HAVING A RADIUS OF 370.00 FEET, THE CHORD BEARING SOUTH 00°46'14" WEST, 8.15 FEET; THENCE SOUTH 00°08'23" WEST, 283.57 FEET; THENCE NORTH 89°39'01" EAST, 206.00 FEET; THENCE SOUTH 00°08'47" WEST, 659.34 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 31.946 ACRES OR 1,391,574 SQUARE FEET.

WHEREAS, the Developer has submitted a preliminary subdivision plat, titled Shepard Orchard Subdivision, Tax Key Nos. 922-9073, 922-9029-001, and 922-9069, encompassing the hereinabove described lands in accordance with the provisions of Chapter 236 of the Wisconsin Statutes and Chapter 14 of the Municipal Code of the City for the purpose of creating a forty-six-lot and four outlots subdivision, and

WHEREAS, the proposed preliminary site development was conditionally approved by the Plan Commission of the City as required by law, subject, however, to the Developer entering into an agreement with the City relative to certain undertakings and/or actions to be performed by the Developer prior to approval by the City, and

WHEREAS, S.236.13(2)(a), Wis. Stats., and Chapter 14 of the Municipal Code of the City, provide that as a condition of approval, the Common Council of the City of Oak Creek may require that the Developer make and install any public improvements reasonably necessary, and

WHEREAS, the City's Capital Improvement plan and budget does not now include funds necessary to install improvements for this development, and

WHEREAS, the City believes that the orderly, planned development of the said lands will best promote the health, safety and general welfare of the community, and hence is willing to approve the proposed development providing that the Developer agrees to undertake and assume certain obligations and conditions and/or performed as hereinafter described, and

NOW, THEREFORE, in consideration of the payment of \$1.00, and in consideration of the mutual covenants listed below, the parties agree:

1. The proposed plat is served and will benefit by the existing sanitary sewer and water main as installed within S. Shepard Avenue and E. Oak Lane.
2. Special Assessments and Waiver - There are no outstanding special assessment payments required for this agreement. The Developer shall sign the Waiver of Special Assessment Notice and Hearing attached as Exhibit B.
3. Bike Path and Impact Fees - A bike path acquisition fee of \$50.00 per parcel or dwelling unit, as applicable, is required of all residential developments. The impact fees established for the Prairie View neighborhood shall also apply to this plat. The Developer agrees to pay the \$50.00 bike path fee and the appropriate Prairie View neighborhood impact fees, per dwelling unit, created by this plat, at the time a building permit is issued.
4. Time Period to Install Improvements - The Developer, entirely at his expense, shall complete the public improvements as described in Exhibit A.
 - A. The Developer shall, without charge to the City and upon certification by the City Engineer, unconditionally grant and fully dedicate all public improvements to the City. Dedication of public improvements shall occur at final plat and/or the termination of this agreement.
 - B. In the event the Developer does not complete the installation of improvements, the City shall, upon written notice to the Developer, have the authority to complete same and take title of the improvements. The City shall, without notice of hearing, impose a special assessment for the amount of said completion costs, upon each and every building site (or tax key parcel) in the development, payable with the next succeeding tax roll.

- C. In accordance with Section 3.06 of the Oak Creek Municipal Code and under Sections 66.0703 and 66.0701 of the Wisconsin Statutes and other statutory provisions, the City may exercise its power to levy special assessments for the required improvements that shall benefit the development.
5. Items Prior to Construction - Prior to the commencement of construction of required improvements, the City Engineer shall ensure that the following requirements are met:
- A. Approval of plans required in Exhibit A.
 - B. Developer has issued a notice to proceed to his contractor(s).
 - C. Developer and City have arranged a preconstruction conference.
 - D. all pertinent approvals have been attained from the Milwaukee Metropolitan Sewerage District, the State of Wisconsin Department of Natural Resources, and the State of Wisconsin Department of Transportation, or other required jurisdictional agencies. The review and approval of sanitary sewer plans by the City (and its Utility) and MMSD occur independently. Approvals are based in part on each system's ability to handle the proposed additional sanitary sewer waste flows.
 - E. Arrangements made for the City to inspect the proposed construction.
6. Final Plat Approval – Only upon final certification by the City Engineer that all of the required public improvements and requirements as outlined in this agreement are constructed, inspected and found to be in compliance with City requirements and, 1.) proof is filed with the City Engineer that a Homeowner's Association has been created and/or said Association is on file with the Register of Deeds office; and 2.) proof of the public infrastructure costs associated with streets, sewers, water main, lights, trees, etc., have been filed with the City Accountant, shall final plat approval be presented to the Plan Commission and Common Council.
7. Reimbursement of Costs - The Developer shall reimburse the City for all outstanding fees, expenses, costs, and disbursements which were incurred by the City for the design, review, construction, inspection, dedication, administration, enforcement, or acceptance of the development's improvements covered by this agreement. In addition, the Developer shall provide copies of lien waivers from all contractors, material suppliers, or consultants who performed work or supplied materials.
8. Workmanship Guarantee - Developer shall guarantee the public improvements described in Exhibit A, against defects due to faulty materials or workmanship, for a period of two years from the date of dedication; i.e. at final plat approval or at close out of the agreement. Pursuant to Paragraph 10(B), the Developer shall establish a security deposit,

in an amount not less than 10% of construction costs of the sanitary sewer and water main, to cover the guarantee period for each of these public improvements (part of the "collateral") . The maintenance obligations regarding the streets shall begin upon completion of the asphalt binder course installation. Responsibility for the streets will be assigned as follows:

- A. Pavement maintenance, including any repairs and street sweeping, shall be the Developer's responsibility. Snow plowing will be the City's responsibility after approval of final plat.
- B. If street repairs, plowing, and/or street sweeping are not satisfactorily performed by the Developer, the City shall perform such with its own forces and charge the Developer accordingly for actual manpower, equipment and materials, plus 25% administration and overhead. Developer's responsibility with respect to the streets shall terminate upon dedication of the streets to the City.

9. Hold Harmless - The Developer shall indemnify and save harmless the City, its officers, agents and employees, from all liability claims, loss, damages, interest, actions, suits, judgments, costs, expenses, attorney's fees, and the like to whomsoever is owed, which may in any manner result from the negligent construction or maintenance of improvements by the Developer pursuant to the terms of this agreement, the violation of any law or ordinance, the infringement of any patent, trademark, tradename or copyright, and the use of road improvements prior to their formal dedication to the City as provided in Paragraph 4 thereof.

10. Financial Guarantees

- A. Letters of Credit/Bonds – No letter of credit or bond is required for this agreement.
- B. Security Deposit

Prior to and as a condition of final plat approval, the Developer shall deposit the Collateral to secure the prompt, full and faithful performance by Developer of each and every provision of this agreement and all obligations of the Developer hereunder. The City is not required to hold the Collateral in any special or trust account, but may commingle the Collateral with other funds of the City. Interest shall be paid to the Developer on the Collateral. If the Developer fails to perform any of its obligations hereunder, the City may use, apply or retain the whole or any part of the Collateral together with interest therein, if any, for payment of: (a) Sums of money due from the Developer under this agreement; (b) Any sum expended by the City on the Developer's behalf in accordance with this agreement; and/or (c) Any sum which the City may expend or be required to expend by reason of the Developer's default under this agreement.

The use, application or retention of the Collateral, or any portion thereof, by the City shall not prevent the City from exercising any other right or remedy provided by this agreement or by law (it being intended that the City shall not first be required to proceed against the Collateral) and shall not operate as a limitation on any recovery to which the City may otherwise be entitled. If any portion of the Collateral is used, applied or retained by the City, prior to the termination of this agreement, for the purposes set forth above, Developer agrees, within ten days after the written demand therefore is made by the City, to deposit cash with the City in an amount sufficient to restore the Collateral to its original amount.

Without limitation as to the obligations secured, the Collateral shall also secure the following specific obligations of the Developer to the City.

- 1) Completion of final asphalt surface course – asphalt base repair, curb repair and final catch basin setting.
- 2) Completion of landscaping: including establishment of vegetative cover.
- 3) Payment of reasonable in-house administrative and inspection fees.
- 4) Maintenance fund for public improvements as described in paragraph 8.
- 5) Street Trees

The City will release to the Developer all funds from the Collateral, including interest, upon the earliest of the termination of this agreement or when the Developer fully and faithfully complies with all of the provisions of this agreement and completes the above-listed items, all to the satisfaction of the City Engineer, less amounts, if any previously applied by the City for the obligations secured hereby. .

C. Billing

The City shall bill the Developer quarterly for costs incurred and backed up by the City. In the event the Developer fails to make payment to the City within 30 days of billing, interest shall accrue on the unpaid balance at the rate of 15% per annum. If unsuccessful, the City, upon written notice to the Developer, shall, without notice of hearing, impose a special assessment for the amount of said costs upon each tax key parcel in the development, payable with the next succeeding tax roll.

11. Inspection - The City, or its agents, shall provide full-time inspection of all improvements enumerated in Exhibit A, at the Developer's cost.
12. Deed Restrictions - The Developer shall prepare and submit for review and approval, a draft of deed restrictions governing the proposed parcels. The City-approved deed restrictions shall be recorded separately with the Register of Deeds for Milwaukee County, Wisconsin, along with the final plat. Said restrictions shall incorporate, but not be limited to those set forth in Exhibit C of this agreement. The City does not enforce deed restrictions, except for those that are supported by City ordinance.
13. Easements - The Developer shall acquire and dedicate to the City all public easements necessary to install and maintain public improvements required by this agreement. Permanent easements and deeds, on forms acceptable to the City, on or through private lands, shall be negotiated and obtained by the Developer, at his expense.
14. Changes to Plans and Specifications - The City Engineer may make reasonable changes to the approved plans and specifications for any of the improvements covered under this agreement which are necessary to correct oversights, omissions, and errors, to compensate for changing site conditions, or to complete fully the work in accordance with sound engineering practice. The Developer shall perform the work as changed entirely at his expense without any claim for reimbursement.
15. Miscellaneous
 - A. All construction required by this agreement shall be carried out and performed in a sequence agreed upon by the City Engineer.
 - B. Developer shall properly locate and install all survey or other monuments required by State statute or City ordinance.
 - C. Recording of this agreement shall be accepted by the City as adequate provision for improvements specified in Chapter 14 of the Municipal Code.
 - E. This agreement shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.
 - E. This agreement shall be recorded by the City with the Register of Deeds of Milwaukee County.
 - F. Some or all obligations of the Developer shall terminate upon final plat approval and passage of a resolution by the Common Council of the City of Oak Creek releasing the Developer from the terms of this agreement.
 - G. Developer shall provide specifications on a 3½" disk in the City's most current Microsoft Word version.

- H. Developer shall provide all construction plans on a 3½" disk in the City's most current version of AutoCAD and an original 4 mil. double-matte mylar.
- I. Developer agrees to allow the City to grant utility construction permits within proposed City right-of-way prior to final plat approval and dedication of said right-of-way.
- J. No building permits will be issued until final plat approval.

IN WITNESS WHEREOF, the parties hereto have executed this instrument under their several seals the day and year first above written, the name and corporate seal of each corporate body being hereto affixed and the instrument duly signed by its duly authorized representatives.

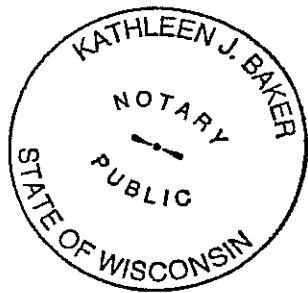
In presence of:

MICJENSAR Development, LLC

Michael H. Polaski
 Michael H. Polaski, Manager

STATE OF WISCONSIN)
 (SS.
 MILWAUKEE COUNTY)

Personally came before me this 28 day of July, 2005, the above-named, Michael H. Polaski, of MICJENSAR Development, LLC, to me known to be the person who executed the foregoing instrument and to me known to be such Manager of said corporation, acknowledged that he executed the foregoing instrument as such officer.



Kathleen J. Baker
 Notary Public

Milwaukee County, Wisconsin

My commission expires 02.25.07

CITY OF OAK CREEK



Richard R. Bolender
RICHARD R. BOLENDER, Mayor

Countersigned:

Beverly A. Buretta
BEVERLY A. BURETTA, City Clerk

STATE OF WISCONSIN)
(SS.
MILWAUKEE COUNTY)

Personally came before me this 9 day of August, 2005, RICHARD R. BOLENDER, Mayor and BEVERLY A. BURETTA, City Clerk, of the above-named municipal corporation, CITY OF OAK CREEK, to me known to be the persons who executed the foregoing instrument to me known to be such Mayor and City Clerk of said municipal corporation, and acknowledged that they executed the foregoing instrument as such officers, as the deed of said municipal corporation, by its authority, and pursuant to Resolution No. 10535-080105 adopted by its Common Council on the 1st day of August, 2005.

[Signature]
Lawrence J. Haskin, Notary Public
Milwaukee County, Wisconsin
My commission is permanent.

This instrument was drafted by Henry W. Jackson of the City of Oak Creek Engineering Department.

Approved as to form:

[Signature]
Lawrence J. Haskin, City Attorney

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EXHIBIT A
CITY OF OAK CREEK
CITY ENGINEER'S REPORT
SHEPARD ORCHARD SUBDIVISION

I. INTRODUCTION

The detailed standards for the design and construction of all improvements required in this exhibit shall conform to the City of Oak Creek Engineering Design Manual, adopted by the Common Council on March 16, 2004, and all future amendments thereof.

The Developer is responsible for required improvements, plans, and conditions:

II. DEVELOPMENT GRADING AND DRAINAGE

A. Required Improvements

Design, install, and provide grading of land as necessary to establish lot pads for future buildings, provide adequate drainage to prevent flooding, accept upstream runoff, and safely discharge runoff downstream to avoid property damage.

B. Plans and Specifications

1. A grading and drainage plan shall be prepared showing 2' contours for both existing and proposed condition, and proposed finished yard grades.
2. System plan showing all tributary areas to the proposed subdivision drainage and downstream analysis. Included on the system plan shall be all proposed and existing drainage structures.
3. House grade plan showing only minimum setback and offset dimensions and proposed house grades.
4. Storm water management plan that meets current City ponding ordinance requirements along with the MMSD Chapter 13 storm water requirements.
5. As-built grading plan certifying that all grading was performed in accordance with the approved grading and drainage plan. All grades shall be with $\pm .3'$ of proposed grade. Certification shall be performed after

topsoil installation. The plan shall be prepared by a consulting engineer, selected by and reimbursed by the Developer.

- C. Prior to the installation of any public improvements, the Developer shall perform rough grading, including planned street areas, lot pads, and drainage swales. All lot pads may be graded 1' below finished proposed yard grade to accommodate basement spoils.
- D. Establish permanent vegetative cover on all exposed soil by topsoiling, seeding, and mulching to prevent erosion.
- E. The Developer, at his expense, shall provide detailed soil analysis and compaction results by a competent soils engineer for all areas requiring fill. The results shall be submitted to the City Engineer as soon as they are available.
- F. The Developer is responsible for restoring all damage to finish grades and vegetative cover caused, but not restored by, utility companies.
- G. If soil borings determine that the existing soil material on site is unsuitable for structural areas such as road or building construction, the Developer shall remove the material and replace with approved engineered fill.
- H. After site grading is completed, the Developer shall place 3" of topsoil on all exposed soil and seed, fertilize and mulch.

III. STORM DRAINAGE SYSTEM

A. Required Improvements

Design, install, and provide a complete storm drainage system, including culverts, curb and gutter, storm sewer and/or open ditches as required to adequately convey surface water from and through the development.

B. Plans and Specifications

1. Storm sewer plans showing plan and profile views.
2. Storm sewer calculations.
3. Storm sewer system plan update.

- C. Additional considerations will be required on all ditch slopes exceeding five percent. All areas within drainage easements shall have a minimum one percent slope. Ditch slopes with less than one percent will require storm sewer.

- D. Mainline storm sewer must be installed to provide a sump pump and downspout connection to all lots. All sump lines will discharge into a storm sewer or to other outlets approved by the City Engineer.

IV. EROSION AND RUN-OFF CONTROL

A. Required Improvements

Installation and construction of Best Management Practices in the proposed development that shall conform with the most current edition of the Department of Natural Resources publication, "Wisconsin Construction Site Best Management Practice Handbook."

B. Plans and Specifications

Control plan for land-disturbing activities showing existing contours at least 200' into adjacent parcels. This plan will show locations and dimensions of all construction site management measures to control erosion and sedimentation.

- C. The Developer shall not commence land-disturbing activities until all erosion control measures are installed and approved by the City. An erosion control permit must be obtained, which requires the Developer to construct and maintain such measures in conformance with the City's erosion control ordinance.
- D. Both during and after construction, the surface of exposed bare soils shall be protected by mulches and perennial grasses. This does not apply to the immediate building site area that is subject to men and equipment working in and around the perimeter of a new structure.

V. SANITARY SEWER

A. Required Improvements

Design, install, and provide a complete sanitary sewer system designed to meet the ultimate needs of this development and all tributary areas, in accordance with the City's sanitary sewer system plan with rules, regulations and procedures of the City, Milwaukee Metropolitan Sewerage District, and the State of Wisconsin Department of Natural Resources.

B. Plans and Specifications

- 1. Sanitary sewer plans, specifications, design calculations, and copies of all easements.

2. The City will furnish "as-built" plans of the entire system, including location and elevation of laterals to mains to meet MMSD requirements. All other "as-built" requirements are the responsibility of the Developer.
 3. Sanitary sewer system plan update.
 4. All reports required by the Milwaukee Metropolitan Sewerage District, the State of Wisconsin, and Southeastern Wisconsin Regional Planning Commission.
 5. Separate sanitary sewer easements, where appropriate, shown on the final plat.
- C. Installation of one sanitary sewer lateral from the sanitary sewer main to property line, for each proposed lot.

VI. WATER

A. Required Improvements

Design, install, and provide a complete water distribution system and install water main designed to meet the ultimate needs of this development and all tributary areas, in accordance with the City's water main system plan and with the rules, regulations, and procedures of the City and the State of Wisconsin Department of Natural Resources.

B. Plans and Specifications

1. Water main plans, specifications, design calculations, and copies of all easements.
 2. The City will create "as-built" plans of the entire system on mylar, including hydrant and valve locations, and the location and elevation of laterals to the lot lines, all for the use of the City of Oak Creek Water and Sewer Utility. All other "as-built" requirements are the responsibility of the Developer.
 3. Separate water main easements for each parcel, where appropriate, recorded on the final plat.
- C. Upon completion, furnish and provide to the City a complete summary of the actual construction costs for water distribution, itemized in sufficient detail to satisfy the requirements of the Public Service Commission of the State of

Wisconsin in establishing or revising a rate base.

- D. Installation of one water lateral from the water main to the property line , for each proposed lot.
- E. Provide hydrant marker flags for each installed fire hydrant.

VII. STREETS

A. Required Improvements

A 29-foot, back of curb to back of curb, roadway construction with 31" concrete curb and asphalt pavement. The pavement section shall be comprised of a 8" crushed stone base, pavement edge drains, 4½" asphalt binder course and a 1½" layer of asphalt surface course.

B. Plans and Specifications

- 1. Street plans, including plan and profile view, road cross-section and specifications.
- 2. Pavement design calculations.
- 3. Proposed established street grade drawing.

- C. The initial binder course shall be installed prior to approval of the final plat, and the final surface course may be installed within three years or at such time as homes representing 50% of the buildable lots are issued occupancy permits, or as directed by the City Engineer. Surface course shall be laid no later than one year after 75% occupancy.
- D. Clean up, repairs, and restoration of all pavement, subgrade, shoulder, or curb and gutter defects shall be performed prior to the placement of the final asphalt surface course.
- E. If directed by the City Engineer, soil borings shall be taken within the roadway at sufficient intervals to determine sub-base composition. If material is determined unsuitable for a stable road base, the material shall be removed and replaced with material approved by the City Engineer.

VIII. MISCELLANEOUS

DEVELOPER SHALL:

- A. The Developer is responsible to preserve existing trees, brush, or shrubs, not approved for removal. If unauthorized removal occurs, landscaping will be replaced at the Developer's expense.
- B. The Developer shall repair all damage to City streets caused by construction operations.
- C. Developer shall arrange for installation of approved street signs.
- D. The Developer shall submit a landscape plan for screen plantings, berms, and entrances. Installation of landscaping shall be in accordance with approved plan with allowance made for street trees. The number of street trees is based on, but not limited to, one tree every forty feet, on each side of the roadway.
- E. Developer shall acquire all required underground utility easements.
- F. All sanitary, drainage, and other public utility easements must be shown on the certified survey map or plat. If required easements are omitted, or errors are detected on the plat, the Developer shall make all necessary modifications to the plat at his expense.
- G. Developer shall design and install all required sidewalk and/or bikeways.
- H. Developer shall design and install ornamental street lighting concurrently with road construction.
- I. Provide permanent Class III barricades at all dead end streets.

IX. SPECIFICATIONS

The improvements shall be constructed in accordance with the following specifications.

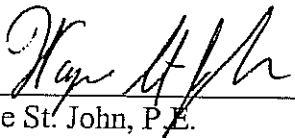
- A. City of Oak Creek Engineering Design Manual, most recent edition.
- B. Applicable Specifications and Regulations of the Milwaukee Metropolitan Sewerage District.
- C. Standard Specifications for Sewer and Water Construction in Wisconsin, Sixth Edition, December 22, 2003.

- D. The Wisconsin Construction Site Best Management Practice Handbook for Erosion Control.
- E. State of Wisconsin, Department of Transportation Standard Specifications for Highway and Structure Construction, 1996 and supplemental specifications.

X. **SPECIAL PROVISIONS**

The development process shall strictly conform to the conditions set forth in the development agreement. Request for final plat approval is subject to the City Engineer's certification that all public improvements required to be installed are satisfactorily completed, a homeowner's association is in place and project construction costs have been reported to the City Accountant. Security deposit will only be allowed for the final asphalt surface course, public improvement maintenance fund, street trees and landscaping. Apart from the above, the City will not accept escrows in lieu of completion of the improvement prior to final plat approval.

Approved by:



Wayne St. John, P.E.
City Engineer

8/8/05

Date

EXHIBIT B

**WAIVER OF SPECIAL ASSESSMENT
NOTICES AND HEARINGS**

City of Oak Creek
8640 South Howell Avenue
Oak Creek, WI 53154

We, the undersigned being owners of the property that shall benefit by the following proposed public improvements:

Sanitary sewer, storm sewer, water main, streets, lights, sidewalk, trees, and drainage facilities

all made in the City of Oak Creek, Milwaukee County, Wisconsin, in consideration of the construction of said improvements by the City of Oak Creek, Wisconsin, hereby admit that such public improvement will benefit our property and consent to the levying of special assessments against our premises under Section 66.62 of the Wisconsin Statutes and Section 3.06 of the Municipal Code of the City of Oak Creek for the cost of such improvement.

In accordance with Section 3.06 (14) of the Municipal Code of the City of Oak Creek, we hereby waive all special assessment notices and hearings required by Section 66.62 of the Wisconsin Statutes and Section 3.06 (9) of the Municipal Code of the City of Oak Creek, and we further agree and admit that the benefit to our properties from the construction of such improvement.

Description of premises that shall benefit:

PART OF OUTLOT 1 OF CERTIFIED SURVEY MAP 6449, PART OF PARCELS 1 AND 2 OF CERTIFIED SURVEY MAP 2525, PART OF THE STREET RESERVATION OF CERTIFIED SURVEY MAP 2940, OUTLOT 2 OF CERTIFIED SURVEY MAP 6932, OUTLOT 1 OF CERTIFIED SURVEY MAP 7042, AND PART OF PARCEL 1 OF CERTIFIED SURVEY MAP 7398, LOCATED IN THE NORTHWEST QUARTER (N.W. ¼) AND THE SOUTHWEST QUARTER (S.W. ¼) OF THE SOUTHEAST QUARTER (S.E. ¼) OF SECTION 28, TOWN 5 NORTH, RANGE 22 EAST, CITY OF OAK CREEK, MILWAUKEE COUNTY, WISCONSIN DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 28, AFORESAID; THENCE NORTH 89°36'03" EAST, ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER, 1,321.02 FEET TO THE EAST LINE OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 28; THENCE NORTH 00°08'47" EAST, ALONG SAID EAST LINE, 659.42 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 89°37'23" WEST, 389.96 FEET; THENCE SOUTH 24°43'13" WEST, 165.77 FEET TO A POINT OF CURVE; THENCE SOUTHWESTERLY ALONG A CURVE TO THE LEFT 32.64 FEET, HAVING A RADIUS OF 550.00 FEET, THE CHORD BEARING SOUTH 23°01'13" WEST, 32.63 FEET; THENCE NORTH 89°50'00" WEST, 186.64 FEET; THENCE NORTH 58°10'00" WEST, 334.50 FEET; THENCE SOUTH 89°37'23" WEST, 60.16 FEET; THENCE NORTH 00°01'48" WEST, 549.79 FEET; THENCE NORTH 89°39'01" EAST, 30.00 FEET; THENCE NORTH 00°01'48" WEST, 110.17 FEET TO A POINT OF CURVE; THENCE NORTHEASTERLY ALONG A CURVE TO THE RIGHT 63.80 FEET, HAVING A RADIUS OF 312.00 FEET, THE CHORD BEARING NORTH 05°49'40" EAST, 63.69 FEET; THENCE NORTH 78°18'52" WEST, 156.24 FEET; THENCE NORTH 11°41'08" EAST, 97.92 FEET; THENCE NORTH 78°18'52" WEST, 15.00 FEET; THENCE NORTH 00°01'48" WEST, 464.89 FEET; THENCE NORTH 89°40'21" EAST, 1,118.38 FEET; THENCE SOUTH 00°08'47" WEST, 400.25 FEET; THENCE SOUTH 89°41'43" WEST, 4.91 FEET TO A POINT OF CURVE; THENCE NORTHWESTERLY ALONG A CURVE TO THE RIGHT 103.27 FEET, HAVING A RADIUS OF 230.00 FEET, THE CHORD BEARING NORTH 77°26'32" WEST, 102.40 FEET; THENCE NORTH 64°34'46" WEST, 72.27 FEET TO A POINT OF CURVE; THENCE SOUTHWESTERLY ALONG A CURVE TO THE LEFT 49.75 FEET, HAVING A RADIUS OF 25.00 FEET, THE CHORD BEARING SOUTH 58°24'40" WEST, 41.94 FEET TO A POINT OF COMPOUND CURVE; THENCE SOUTHWESTERLY ALONG A CURVE TO THE LEFT 8.15 FEET, HAVING A RADIUS OF 370.00 FEET, THE CHORD BEARING SOUTH 00°46'14" WEST, 8.15 FEET; THENCE SOUTH 00°08'23" WEST, 283.57 FEET; THENCE NORTH 89°39'01" EAST, 206.00 FEET; THENCE SOUTH 00°08'47" WEST, 659.34 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 31.946 ACRES OR 1,391,574 SQUARE FEET.

MICJENSAR Development, LLC



Michael H. Polaski, Manager

Date

EXHIBIT C

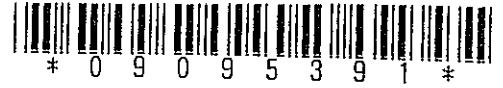
SHEPARD ORCHARD SUBDIVISION

DEED RESTRICTIONS

- A. Developer, as used in the context of these deed restrictions shall mean the Developer, his heirs, personal representatives, successors and assigns.
- B. Electric, telephone and cable television services shall be provided by the installation of underground service lines.
- C. A copy of the approved grading plans referred to in Exhibit A of the development agreement shall be on file at the office of the City Engineer.
- D. The installation of any type of improvement on the public street right-of-way (walks, drives, sprinkler systems, etc.) requires the issuance of a permit by the City and/or the State of Wisconsin, as may be applicable.
- E. The Developer shall provide certification from a registered land surveyor or professional engineer that the final grade along all lot lines, in the invert of all drainage swales, lot pads, and at other critical locations as determined by the City Engineer, complies with the approved grading plan. Such certification shall be on a plan copy with the elevations as existing so indicated. All such elevations shall be within plus or minus 0.3 feet of the accepted grading plan elevations. If not in compliance, appropriate regrading shall be performed.

Such certification shall be provided to the City Engineer prior to final plat approval. Property owner is responsible to conform to the master grading plan.
- F. A permanent lawn shall be established on each parcel within one year after the issuance of the occupancy permit.
- G. The permanent maintenance of all drainage swales shall be vested with the Developer until individual lots are deeded over to the new property owner.
- H. A driveway approach in accord with the provisions of Chapter 6 of the Oak Creek Municipal Code shall be installed to service each parcel within one year after the issuance of the occupancy permit. A permit from the City Engineer is required for this construction.
- I. The City does not enforce deed restrictions, except for those that are supported by City ordinance.

RESOLUTION No. 10543-090605



DOC.# 09095391

REGISTER'S OFFICE | SS
Milwaukee County, WI

RECORDED 09/22/2005 01:59PM

JOHN LA FAVE
REGISTER OF DEEDS

AMOUNT: 23.00

Recording Area

Ref to:

Wayne St. John
Engineering Department
8640 South Howell Avenue
Oak Creek, WI 53154
Name and Return Address

922-9029-001, 922-9063, 922-9069, 922-9073

Parcel Identification Number (PIN)

STORM WATER MANAGEMENT PRACTICES MAINTENANCE AGREEMENT

THIS AGREEMENT, made and entered into this 9TH day of SEPTEMBER, 2005, by and between Michael H. Polaski, MICJENSAR DEVELOPMENT, LLC, 9667 South 20th Street, Oak Creek, WI, 53154, hereinafter called the "Owner", and the City of Oak Creek, hereinafter called the "City".

WITNESSETH:

WHEREAS, the Owner is the owner of the following described lands situated in the City of Oak Creek, County of Milwaukee, State of Wisconsin, to-wit:

PART OF OUTLOT 1 OF CERTIFIED SURVEY MAP 6449, PART OF PARCELS 1 AND 2 OF CERTIFIED SURVEY MAP 2525, PART OF THE STREET RESERVATION OF CERTIFIED SURVEY MAP 2940, OUTLOT 2 OF CERTIFIED SURVEY MAP 6932, OUTLOT 1 OF CERTIFIED SURVEY MAP 7042, AND PART OF PARCEL 1 OF CERTIFIED SURVEY MAP 7398, LOCATED IN THE NORTHWEST QUARTER (N.W. ¼) AND THE SOUTHWEST QUARTER (S.W. ¼) OF THE SOUTHEAST QUARTER (S.E. ¼) OF SECTION 28, TOWN 5 NORTH, RANGE 22 EAST, CITY OF OAK CREEK, MILWAUKEE COUNTY, WISCONSIN DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 28, AFORESAID; THENCE NORTH 89°36'03" EAST, ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER, 1,321.02 FEET TO THE EAST LINE OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 28;

THENCE NORTH 00°08'47" EAST, ALONG SAID EAST LINE, 659.42 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°37'23" WEST, 389.96 FEET; THENCE SOUTH 24°43'13" WEST, 165.77 FEET TO A POINT OF CURVE; THENCE SOUTHWESTERLY ALONG A CURVE TO THE LEFT 32.64 FEET, HAVING A RADIUS OF 550.00 FEET, THE CHORD BEARING SOUTH 23°01'13" WEST, 32.63 FEET; THENCE NORTH 89°50'00" WEST, 186.64 FEET; THENCE NORTH 58°10'00" WEST, 334.50 FEET; THENCE SOUTH 89°37'23" WEST, 60.16 FEET; THENCE NORTH 00°01'48" WEST, 549.79 FEET; THENCE NORTH 89°39'01" EAST, 30.00 FEET; THENCE NORTH 00°01'48" WEST, 110.17 FEET TO A POINT OF CURVE; THENCE NORTHEASTERLY ALONG A CURVE TO THE RIGHT 63.80 FEET, HAVING A RADIUS OF 312.00 FEET, THE CHORD BEARING NORTH 05°49'40" EAST, 63.69 FEET; THENCE NORTH 78°18'52" WEST, 156.24 FEET; THENCE NORTH 11°41'08" EAST, 97.92 FEET; THENCE NORTH 78°18'52" WEST, 15.00 FEET; THENCE NORTH 00°01'48" WEST, 464.89 FEET; THENCE NORTH 89°40'21" EAST, 1,118.38 FEET; THENCE SOUTH 00°08'47" WEST, 400.25 FEET; THENCE SOUTH 89°41'43" WEST, 4.91 FEET TO A POINT OF CURVE; THENCE NORTHWESTERLY ALONG A CURVE TO THE RIGHT 103.27 FEET, HAVING A RADIUS OF 230.00 FEET, THE CHORD BEARING NORTH 77°26'32" WEST, 102.40 FEET; THENCE NORTH 64°34'46" WEST, 72.27 FEET TO A POINT OF CURVE; THENCE SOUTHWESTERLY ALONG A CURVE TO THE LEFT 49.75 FEET, HAVING A RADIUS OF 25.00 FEET, THE CHORD BEARING SOUTH 58°24'40" WEST, 41.94 FEET TO A POINT OF COMPOUND CURVE; THENCE SOUTHWESTERLY ALONG A CURVE TO THE LEFT 8.15 FEET, HAVING A RADIUS OF 370.00 FEET, THE CHORD BEARING SOUTH 00°46'14" WEST, 8.15 FEET; THENCE SOUTH 00°08'23" WEST, 283.57 FEET; THENCE NORTH 89°39'01" EAST, 206.00 FEET; THENCE SOUTH 00°08'47" WEST, 659.34 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 31.946 ACRES OR 1,391,574 SQUARE FEET

hereinafter called the "Property".

WHEREAS, the Owner is developing the Property; and

WHEREAS, the Site Plan/Subdivision Plan known as Shepards Orchard Subdivision, hereinafter called the "Plan", which is expressly made a part hereof, as approved or to be approved by the City, provides for on-site storm water management practices within the confines of the Property; and

WHEREAS, the City and the Owner, its successors and assigns, including any homeowners association, agree that the health, safety, and welfare of the residents of the City of Oak Creek, require that on-site storm water management practices as defined in Section 13.103 of the Oak Creek Municipal Code be constructed and maintained on the Property; and

WHEREAS, the City requires that on-site storm water management practices as shown on the Plan be constructed and adequately maintained by the Owner, its successors and assigns, including any homeowners association.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The on-site storm water management practices shall be constructed by the Owner, its successors and assigns, including any homeowners association, in accordance with the plans and specifications identified in the Plan. The storm water management practices shall serve the drainage area designated in the Plan.
2. The Owner, its successors and assigns, including any homeowners association, shall regularly inspect the storm water management practices as often as conditions require, but in any event at least once each year. The standard Operation and Maintenance Report attached to this agreement as Exhibit A and by this reference made a part hereof shall be used for the purpose of the regular inspections of the storm water management practices. The Owner, its successors and assigns shall keep the Operation and Maintenance Reports from past inspections as well as a log of maintenance activity indicating the date and type of maintenance completed. The Reports and maintenance log shall be made available to the City for review. The purpose of the inspections is to assure safe and proper functioning of the facilities. The inspections shall cover all facilities including but not limited to berms, outlet structures, subsurface structures, infiltration areas, pond areas and access roads. Deficiencies shall be noted in the Operation and Maintenance Report.

3. The Owner, its successors and assigns, including any homeowners association, shall adequately maintain the storm water management practices, including but not limited to all pipes and channels built to convey storm water to the facility, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the storm water. Adequate maintenance is herein defined as keeping the storm water management facilities in good working condition so that these facilities are performing their design functions and are in accordance with the Detention Basin Maintenance Standards attached to this agreement as Exhibit B and by this reference made a part hereof, and the Rain Garden Maintenance Standards attached to this agreement as Exhibit C and by this reference made a part hereof.
4. The Owner, its successors and assigns, including any homeowners association, hereby grant permission to the City, its authorized agents and employees, to enter upon the Property and to inspect the storm water management practices whenever the City deems necessary. The purpose of inspection is to investigate reported deficiencies and/or to respond to citizen complaints. The City shall provide the Owner, its successors and assigns, including any homeowners association, copies of the inspection findings and a directive to commence with the repairs if necessary. Corrective actions shall be taken within a reasonable time frame as established by the City Engineer.
5. If the Owner, its successors and assigns, including any homeowners association, fails to maintain the storm water management practices in good working condition acceptable to the City and does not perform the required corrective actions in the specified time, the City may:
 - a) Issue a citation to the Owner, its successors and assigns. The penalty for violation of this section shall be not less than \$50.00 nor more than \$500.00 for each offense, together with the costs of prosecution. Each day that the violation exists shall constitute a separate offense, and
 - b) Perform the corrective actions identified in the inspection report and assess the Owner, its successors and assigns for the cost of such work. The cost of such work shall be specially assessed against the Property pursuant to Wisconsin Statutes Section 66.0703. If the facilities are located on an outlot owned collectively by a homeowners association, the City may assess each member of the homeowners association according to the ownership interest in the facilities located on the property. This provision shall not be construed to allow the City to erect any structure of permanent nature on the land of the Owner outside of the easement for the storm water management practices. It is expressly understood and agreed that the City is under no obligation to routinely maintain or repair said storm water management practices, and in no event shall this Agreement be construed to impose any such obligation on the City.
6. The Owner, its successors and assigns, including any homeowners association, will perform the work necessary to keep these facilities in good working order as appropriate. In the event a maintenance schedule for the storm water management practices (including sediment removal) is outlined on the approved plans, the schedule will be followed. The minimal amount of maintenance on the storm water management practices shall be in accordance with the Detention Basin Maintenance Standards (Exhibit B) and the Rain Garden Maintenance Standards (Exhibit C).
7. In the event the City pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Owner, its successors and assigns, including any homeowners association, shall reimburse the City upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the City hereunder.
8. This Agreement imposes no liability of any kind whatsoever on the City and the Owner agrees to hold the City harmless from any liability in the event the storm water management practices fail to operate properly.
9. This Agreement shall be attached as an exhibit to any document which creates a homeowners association that is responsible for maintenance of the storm water management practices and be recorded at the Milwaukee County Register of Deeds, and shall constitute a covenant running with the land, and shall be binding on the Owner, its administrators, executors, assigns, heirs and any other successors in interests,

including any homeowners association. The owner shall provide the City with a copy of any document which creates a homeowners association that is responsible for the storm water management practices.

WITNESS the following signatures and seals:

MICJENSAR DEVELOPMENT, LLC

Michael H. Polaski
Michael H. Polaski, Manager

The foregoing Agreement was acknowledged before me this 18 day of AUGUST, 2005,

by MICHAEL H. POLASKI

Richard R. Bolender
NOTARY PUBLIC

My Commission Expires: 12-05-06

CITY OF OAK CREEK, WISCONSIN

Richard R. Bolender
Richard R. Bolender, Mayor

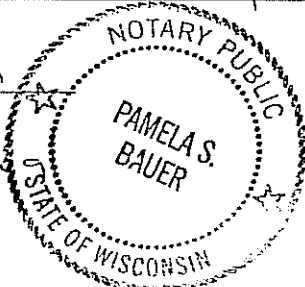
Beverly A. Buretta
Beverly A. Buretta, City Clerk

The foregoing Agreement was acknowledged before me this 9 day of Sept, 2005,

by Richard Bolender + Beverly Buretta

Pamela S. Bauer
NOTARY PUBLIC

My Commission Expires: 12/24/06



This document was prepared by Philip J. Beiermeister, P.E. of the City of Oak Creek Engineering Division.

Approved as to Form:

City Attorney

Date

EXHIBIT A



OPERATION AND MAINTENANCE INSPECTION REPORT
STORM WATER MANAGEMENT PONDS

Inspector Name: _____

Tax Key No.: _____

Inspection Date: _____

Location: _____

Detention Basin Type: Wet Pond _____ Underground _____
Extended Dry _____
Artificial Wetland _____

Watershed _____

Items Inspected (Pond components)	Checked (Yes/ No/ NA)	Maintenance Needed (Yes/ No/ NA)	Remarks
Embankment and Emergency spillway			
1. Trash and debris			
2. Vegetation and ground cover adequate			
3. Embankment erosion			
4. Animal burrows			
5. Unauthorized plantings/tree growth			
6. Cracking, bulging, or sliding of embankment			
a. Upstream face and toe of slope			
b. Downstream face and toe of slope			
7. Settlement			
8. Seeps/leaks on downstream face			
9. Emergency spillway			
a. Clear of trash and debris			
b. Settlement			
c. Slope protection or riprap failures			
10. Other (specify)			
Inlet/Outlet Structures			
Type: Pipe (RCP/CMP/Plastic)			
Stand pipe/inlet box with orifice			
Weir (V-notch/Rectangular)			
Other _____			
1. Erosion/scouring/undermining at inlet or outlet			
2. Primary outlet structure			
a. Debris or sediment removal necessary			
b. Damaged			
c. Orifice plate damaged, out of place or missing			
3. Trash rack/hood maintenance			
a. Trash or debris removal necessary			
b. Damaged or missing			
c. Corrosion/rust control			
Pond Bottom/Pool Area			
1. Sediment accumulation (estimate depth)			
2. Water level at normal pool elevation			
3. Oil sheen on water			

EXHIBIT B
DETENTION BASIN MAINTENANCE STANDARDS

Maintenance Component	Defect	Conditions When Maintenance Is Needed	Results Expected When Maintenance Is Performed
Side Slopes and Embankments	Trash & Debris	Any visual evidence of dumping, trash or debris.	Trash and debris cleared from site.
	Unmowed vegetation/ Ground Cover	Unless designated by the Common Council as a nature center or wildlife preserve, if the facility is located in a platted subdivision, multi-family apartment complex, planned development or a mobile home district, mowing is needed when vegetation exceeds 6 inches in height. In all other areas, mowing is needed when vegetation exceeds one foot in height. Mowed vegetation should be removed from areas where it could enter the pond, either when the pond level rises or by rainfall runoff.	When mowing is needed, grass/ground cover should be mowed to 2 inches in height. Trees and bushes should be removed where they interfere with pond maintenance activities; that is, at the inlet, outlet and near engineered structures. Nature centers and wildlife preserves should follow the maintenance guidelines in the approving resolution and approved storm water management plan.
	Rodent Holes	Any evidence of rodent holes if facility is acting as a dam or berm, or any evidence of water piping through dam or berm via rodent holes.	Rodents destroyed and dam or berm repaired.
	Tree Growth	Tree growth does not allow maintenance access or interferes with maintenance activity (i.e., slope mowing, silt removal or equipment movements).	Trees do not hinder maintenance activities.
	Erosion	Eroded damage over 2 inches deep where cause of damage is still present or where there is potential for continued erosion.	Slopes should be stabilized by using appropriate erosion control measures; e.g., rock rip-rap, planting of grass, erosion mat, compaction.
Inlet/ Outlet Pipe	Debris and Sediment	Sediment and/or debris clogging more than 10% of the pipe opening.	No clogging or blockage in the inlet and outlet piping.
	Damaged	Rust is causing more than 50% deterioration to any part of metal pipes, cracks in plastic pipe or cracks or exposed rebar in concrete pipes.	Pipe repaired or replaced.
		Any dent that decreases the cross section area of pipe by more than 10% or retards the flowage of water.	Pipe repaired or replaced.
	Erosion/Scouring	Eroded or scoured bottom at inlet or outlet pipes; undermining of structure or end section.	Area should be stabilized by using appropriately sized rock rip-rap.
	Damaged or Missing Orifice Plate	Control device is not working properly due to missing, out of place, or bent orifice plate.	Plate is in place and works as designed.
	Orifice Plate Obstructions	Any trash, debris, sediment, or vegetation blocking the plate.	Plate is free of all obstructions and works as designed.
Trash Racks/Hoods	Trash and Debris	Trash or debris that is plugging more than 20% of the openings in the barrier.	Barrier clear to receive capacity flow.
	Damaged/ Missing Bars or Hood.	Bars or hood are bent out of shape more than 3 inches.	Bars in place with no bends more than 3/4 inch.
		Bars are missing or entire barrier missing.	Bars in place according to design.
Pool Area	Sediment Accumulation in Pond Bottom	Sediment accumulations in pond bottom that exceeds the design sediment depth.	Sediment cleaned out to designed pond shape and depth; pond reseeded if necessary to control erosion.
		Water Level	Water level does not drain down to normal designed pool elevation.
	Oil Sheen on Water	Prevalent and visible oil sheen.	Remove oil from water by use of oil-absorbent pads or by vacator truck. Refer problem to locate source and correct.
Emergency Overflow/Spillway and Dikes	Settlements	Any part of these components that has settled 4-inches lower than the design elevation, or inspector determines dike/ berm is unsound.	Dike should be built back to the design elevation and repaired to specifications.
	Rock Missing	Only one layer of rock exists above native soil in area five square feet or larger, or any exposure of native soil at the top emergency spillway.	Replace rocks to design standards.

EXHIBIT C
RAIN GARDEN MAINTENANCE STANDARDS

Maintenance Component	Defect	Conditions When Maintenance Is Needed	Results Expected When Maintenance Is Performed
Side Slopes and Embankments	Trash & Debris	Any visual evidence of dumping, trash or debris.	Trash and debris cleared from site.
	Unmowed vegetation/ Ground Cover	If facility is located in a platted subdivision, multi-family apartment complex, planned development or a mobile home district, mowing the exterior perimeter of the garden and adjacent slopes is needed when vegetation exceeds 6 inches in height. In all other areas, mowing is needed when vegetation exceeds one foot in height.	When mowing is needed, grass/ground cover should be mowed to 2 inches in height. Trees and bushes should be removed where they interfere with maintenance activities or provide too much shade to the garden.
	Rodent Holes	Any evidence of rodent holes if facility is acting as a dam or berm, or any evidence of water piping through dam or berm via rodent holes.	Rodents destroyed and dam or berm repaired.
	Erosion	Eroded damage over 2 inches deep where cause of damage is still present or where there is potential for continued erosion.	Slopes should be stabilized by using appropriate erosion control measures; e.g., rock rip-rap, planting of grass, erosion mat.
Inlet/ Outlet Pipe	Debris and Sediment	Trash, debris, sediment or vegetation blocking or clogging more than 10% of the pipe opening.	No clogging or blockage in the inlet and outlet/overflow piping.
	Damaged	Rust is causing more than 50% deterioration to any part of metal pipes, cracks in plastic pipe or cracks or exposed rebar in concrete pipes.	Pipe repaired or replaced.
		Any dent that decreases the cross section area of pipe by more than 10% or retards the flowage of water.	Pipe repaired or replaced.
	Erosion/Scouring	Eroded or scoured bottom at inlet or outlet pipes; undermining of structure or end section.	Area should be stabilized by using appropriately sized rock rip-rap.
Garden Area	Weeds	Weed growth in garden.	Weeds removed by hand. Uniform layer (3"-5") of shredded woods chips placed over exposed soil until plants fill out garden.
	Dead Plants	Annually each spring when new growth is 3"-5" tall.	Dead stalks and seed heads from previous seasons growth are cut and removed.
		Individual dead or diseased plants.	Remove and replace plants.
	Thinning Plants	Plants become crowded or begin to decline or die in the center of a clump.	Plant growth is improved by removing or dividing plants in spring before they are 4" tall.
	Standing Water	When water stands in the garden between storms and does not drain freely.	Sediment or debris blockages are removed. Check outlet pipes and downstream conveyance system for obstructions. Loosen bare soil areas and add a layer of shredded wood chips or compost to prevent the surface from sealing.
	Drought	Rainfall less than an inch per week when the garden is being established.	Garden is watered twice per week until plants are established.
		Extended periods of drought after the garden is established.	Garden is watered about one inch per week.
Leaves	Leaves collect in the bottom of the garden in excess of 4" deep.	Leaves are removed in fall or spring. A 2"-4" layer of shredded leaves is okay provided they do not clog or go down the outlet pipe.	

5



DOC.# 09114558

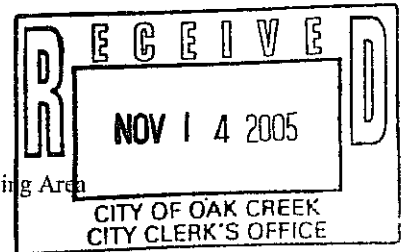
Document Number	SHEPARD ORCHARD SUBDIVISION Document Title DEED RESTRICTIONS
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REGISTER'S OFFICE | SS
Milwaukee County, WI

RECORDED 10/20/2005 10:08AM

JOHN LA FAVE
REGISTER OF DEEDS

AMOUNT: 19.00



Recording Area

Douglas W. Seymour, Director
 Dept. of Community Development
 8640 South Howell Avenue
 Oak Creek, WI 53154
 Name and Return Address

922=9073, 922-9029=001, 922-9069

Parcel Identification Number (PIN)

This Declaration of Restrictions, made this 1 day of August, 2005.

WHEREAS, MICJENSAR Development, LLC, is the owner of the following described parcel of real estate:

PART OF OUTLOT 1 OF CERTIFIED SURVEY MAP 6449, PART OF PARCELS 1 AND 2 OF CERTIFIED SURVEY MAP 2525, PART OF THE STREET RESERVATION OF CERTIFIED SURVEY MAP 2940, OUTLOT 2 OF CERTIFIED SURVEY MAP 6932, OUTLOT 1 OF CERTIFIED SURVEY MAP 7042, AND PART OF PARCEL 1 OF CERTIFIED SURVEY MAP 7398, LOCATED IN THE NORTHWEST QUARTER (N.W. ¼) AND THE SOUTHWEST QUARTER (S.W. ¼) OF THE SOUTHEAST QUARTER (S.E. ¼) OF SECTION 28, TOWN 5 NORTH, RANGE 22 EAST, CITY OF OAK CREEK, MILWAUKEE COUNTY, WISCONSIN DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 28, AFORESAID; THENCE NORTH 89°36'03" EAST, ALONG THE SOUTH LINE

OF THE SOUTHEAST QUARTER, 1,321.02 FEET TO THE EAST LINE OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 28; THENCE NORTH 00°08'47" EAST, ALONG SAID EAST LINE, 659.42 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°37'23" WEST, 389.96 FEET; THENCE SOUTH 24°43'13" WEST, 165.77 FEET TO A POINT OF CURVE; THENCE SOUTHWESTERLY ALONG A CURVE TO THE LEFT 32.64 FEET, HAVING A RADIUS OF 550.00 FEET, THE CHORD BEARING SOUTH 23°01'13" WEST, 32.63 FEET; THENCE NORTH 89°50'00" WEST, 186.64 FEET; THENCE NORTH 58°10'00" WEST, 334.50 FEET; THENCE SOUTH 89°37'23" WEST, 60.16 FEET; THENCE NORTH 00°01'48" WEST, 549.79 FEET; THENCE NORTH 89°39'01" EAST, 30.00 FEET; THENCE NORTH 00°01'48" WEST, 110.17 FEET TO A POINT OF CURVE; THENCE NORTHEASTERLY ALONG A CURVE TO THE RIGHT 63.80 FEET, HAVING A RADIUS OF 312.00 FEET, THE CHORD BEARING NORTH 05°49'40" EAST, 63.69 FEET; THENCE NORTH 78°18'52" WEST, 156.24 FEET; THENCE NORTH 11°41'08" EAST, 97.92 FEET; THENCE NORTH 78°18'52" WEST, 15.00 FEET; THENCE NORTH 00°01'48" WEST, 464.89 FEET; THENCE NORTH 89°40'21" EAST, 1,118.38 FEET; THENCE SOUTH 00°08'47" WEST, 400.25 FEET; THENCE SOUTH 89°41'43" WEST, 4.91 FEET TO A POINT OF CURVE; THENCE NORTHWESTERLY ALONG A CURVE TO THE RIGHT 103.27 FEET, HAVING A RADIUS OF 230.00 FEET, THE CHORD BEARING NORTH 77°26'32" WEST, 102.40 FEET; THENCE NORTH 64°34'46" WEST, 72.27 FEET TO A POINT OF CURVE; THENCE SOUTHWESTERLY ALONG A CURVE TO THE LEFT 49.75 FEET, HAVING A RADIUS OF 25.00 FEET, THE CHORD BEARING SOUTH 58°24'40" WEST, 41.94 FEET TO A POINT OF COMPOUND CURVE; THENCE SOUTHWESTERLY ALONG A CURVE TO THE LEFT 8.15 FEET, HAVING A RADIUS OF 370.00 FEET, THE CHORD BEARING SOUTH 00°46'14" WEST, 8.15 FEET; THENCE SOUTH 00°08'23" WEST, 283.57 FEET; THENCE NORTH 89°39'01" EAST, 206.00 FEET; THENCE SOUTH 00°08'47" WEST, 659.34 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 31.946 ACRES OR 1,391,574 SQUARE FEET.

NOW, THEREFORE, Michael H. Polaski of MICJENSAR Development, LLC, hereby declares the property as described above shall be subject to the following restrictions:

- A. Developer, as used in the context of these deed restrictions shall mean the Developer, his heirs, personal representatives, successors and assigns.
- B. Electric, telephone and cable television services shall be provided by the installation of underground service lines.
- C. A copy of the approved grading plans referred to in Exhibit A of the development agreement shall be on file at the office of the City Engineer.
- D. The installation of any type of improvement on the public street right-of-way (walks, drives, sprinkler systems, etc.) requires the issuance of a permit by the City and/or the State of Wisconsin, as may be applicable.

E. The Developer shall provide certification from a registered land surveyor or professional engineer that the final grade along all lot lines, in the invert of all drainage swales, lot pads, and at other critical locations as determined by the City Engineer, complies with the approved grading plan. Such certification shall be on a plan copy with the elevations as existing so indicated. All such elevations shall be within plus or minus 0.3 feet of the accepted grading plan elevations. If not in compliance, appropriate regrading shall be performed.

Such certification shall be provided to the City Engineer prior to final plat approval. Property owner is responsible to conform to the master-grading plan.

F. A permanent lawn shall be established on each parcel within one year after the issuance of the occupancy permit.

G. The permanent maintenance of all drainage swales shall be vested with the Developer until the two-year guaranty period lapses. It shall then revert to the individual property owner.

H. A driveway approach in accord with the provisions of Chapter 6 of the Oak Creek Municipal Code shall be installed to service each parcel within one year after the issuance of the occupancy permit. A permit from the City Engineer is required for this construction.

I. The City does not enforce deed restrictions, except for those that are supported by City ordinance.

IN WITNESS WHEREOF, the said owner has caused these presents to be signed by Michael H. Polaski, at Oak Creek, Wisconsin, this 28 day of July, 2005.

In presence of:

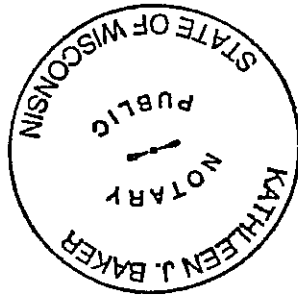
MICJENSAR Development, LLC



Michael H. Polaski Manager

STATE OF WISCONSIN)
(SS.
MILWAUKEE COUNTY)

Personally came before me this 28 day of July, 2005, the above-named, Michael H. Polaski of MICJENSAR Development, LLC., to me known to be the person who executed the foregoing instrument and to me known to be such Manager of said corporation and acknowledged that he executed the foregoing instrument as such officer.



Kathleen J. Baker

Notary Public

Milwaukee

County, WI


My commission expires 02.25.07

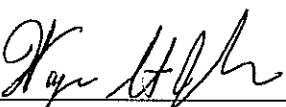
APPROVAL

The foregoing Declaration of Restrictions is hereby approved by the City of Oak Creek dated this _____ day of _____, 2005.

CITY OF OAK CREEK

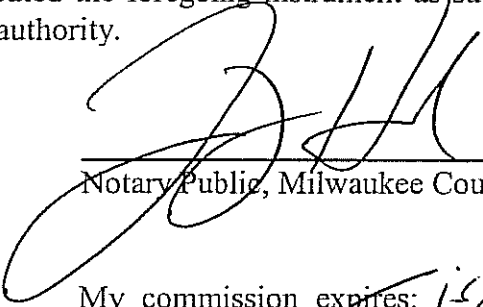
COUNTERSIGNED:

BY: 
Douglas W. Seymour, AICP
Director of Community Development


Wayne St. John, P.E.
City Engineer

STATE OF WISCONSIN)
(SS.
MILWAUKEE COUNTY)

Personally came before me this 9 day of August, 2005, DOUGLAS W. SEYMOUR, Director of Community Development and WAYNE ST. JOHN, City Engineer, of the above-named municipal corporation, CITY OF OAK CREEK, to me known to be such Director of Community Development and City Engineer of said municipal corporation and acknowledged that they executed the foregoing instrument as such officers, as the deed of said municipal corporation, by its authority.


Notary Public, Milwaukee County, WI
My commission expires: 12/31/2008

This instrument was drafted by Henry W. Jackson of the City of Oak Creek Engineering Division.

44



DOC.# 09390656

REGISTER'S OFFICE | SS
Milwaukee County, WI

RECORDED 02/23/2007 02:28PM

JOHN LA FAVE
REGISTER OF DEEDS

AMOUNT: 101.00

**DECLARATION OF HOMEOWNERS
ASSOCIATION AND RESTRICTIONS
OF SHEPARD ORCHARD
SUBDIVISION**

Return to:
Joshua R. Welsh, Esq.
Meissner Tierney Fisher & Nichols S.C.
111 East Kilbourn Avenue, 19th Floor
Milwaukee, WI 53202-6622

9229069; 9229073; 9229077; 9229081
Parcel Identification Numbers (PIN)

THIS DECLARATION is made on this 22nd day of February, 2007 by MICJENSAR Development LLC, a Wisconsin limited liability company (hereinafter referred to as the "Declarant").

Recitals

WHEREAS, Declarant is the owner of certain real property in the City of Oak Creek, Milwaukee County, Wisconsin, more particularly described in Exhibit A attached hereto, which is called the "Shepard Orchard Subdivision" (hereinafter the "Subdivision");

WHEREAS, Declarant desires to impose certain reservations, obligations, easements, restrictions, liens, covenants and conditions (together, the "Restrictions") upon all real property in the Subdivision to ensure the uniformity of development and to protect the value, aesthetic appeal and overall desirability of the Subdivision to ensure the Subdivision will become, and remain, an attractive, high quality residential community; and

WHEREAS, Declarant intends that each of the restrictions shall run with all of the land within the Subdivision and each parcel therein (each such parcel hereinafter referred to as a "Lot"), shall be binding upon and inure to the benefit of all parties now or at any time hereafter having any right, title or interest in the properties composing the Subdivision or any of them, and shall bind their heirs, successors and assigns forever.

NOW THEREFORE, Declarant hereby declares that the Subdivision and each Lot therein is and shall be held, used, owned, occupied, transferred, sold and conveyed subject to the covenants, restrictions, obligations, easements, reservations, conditions, limitations, agreements, charges and liens set forth herein.

DEFINITIONS

For purposes of this Declaration, the following terms have the meanings set forth below:

“Association” shall mean Shepard Orchard Homeowners Association, Inc., a Wisconsin nonstock corporation, and its successors and assigns.

“Board” shall mean the Board of Directors of the Association.

“Code” shall mean the Internal Revenue Service of 1986 as amended from time to time, the corresponding provisions subsequently enacted, and shall encompass all regulations issued under such sections and provisions.

“Committee” shall mean the Architectural Control Committee established under Article II of this Declaration.

“Declarant” shall mean MICJENSAR Development LLC, a Wisconsin limited liability company, and its successors and assigns.

“Declaration” shall mean this Declaration of Homeowners Association and Restrictions, as it may be amended from time to time.

“Lot” shall mean any parcel within the Subdivision other than the Outlots or Prairie Pond.

“Outlots” shall mean Outlot One and Outlot Four, collectively, as reflected on the Plat of Survey of the Subdivision, which is attached hereto as Exhibit B. The Declarant shall retain ownership of Outlot 2 and Outlot 3 (hereinafter referred to as “Declarant’s Outlots”).

“Owner” shall mean the fee simple owner of a Lot, *provided, however*, that if more than one person or entity owns the fee simple title to a Lot, then all such persons and/or entities shall constitute one (1) Owner for purposes of this Declaration and, accordingly, shall be jointly and severally liable for all obligations as Owner. In the event a Lot is owned by an entity, all persons having an ownership interest in that entity shall be jointly and severally liable for all obligations as Owner.

“Prairie Pond” shall mean the pond located on Outlot One, as reflected on the Plat of Survey of the Subdivision.

"Prairie Pond Lots" shall mean Lots 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 20, 21, 22, 23 and 24, as reflected on the Plat of Survey of the Subdivision.

"Prairie Lot Owner" shall mean any Owner of a Prairie Pond Lot.

"Subdivision" shall mean that certain real property in the City of Oak Creek, Milwaukee County, Wisconsin, more particularly described in Exhibit A attached hereto, which is called the "Shepard Orchard Subdivision."

I. STATEMENT OF PURPOSES AND OWNERSHIP PROVISIONS

1.1 General. The general purposes of this Declaration are to help ensure that the Subdivision will become and remain an attractive community; to preserve and maintain the natural beauty of the Subdivision; to ensure the most appropriate development and improvement of each Lot, including construction of attractive and harmonious residential structures; and to ensure the highest and best residential development of the Subdivision.

1.2 Ownership of Outlots and Prairie Pond. Declarant, by recording the Plat of Survey for the Subdivision, has transferred all of its right, title and interest in the Outlots, including Prairie Pond located on Outlot One, to the Association and, by virtue of such conveyance, all of Declarant's right, title and interest in the Outlots will be owned by the Association. Initially, the Outlots will be the only property in the Subdivision which will be owned by the Association itself. The Association shall maintain, improve and preserve the Outlots and maintain such levels of property, casualty and liability insurance with respect thereto as the Board shall determine to be appropriate. Subject to Subsection (a), below, the Association shall also maintain in good condition and repair any and all facilities used to manage storm water in the Subdivision. The Association shall maintain the Outlots in a manner consistent with the lands maintained by the individual residents of the Subdivision. The Association may acquire additional land in the Subdivision on such terms as it may determine and, if it does so, the provisions contained in this Declaration relating to the rights and responsibilities of the Association with respect to the Outlots shall thereafter apply with equal force and effect to any additional land(s) acquired.

(a) Use and Maintenance of Outlot One and Prairie Pond. Prairie Lot Owners shall have the sole and exclusive right, to the exclusion of the other Owners and the general public, to access, use and enjoy Outlot 1 and Prairie Pond. Guests and invitees of Prairie Lot Owners shall be allowed to access, use and enjoy Prairie Pond only when accompanied by a Prairie Lot Owner or by a member of said Owner's immediate family. Prairie Lot Owners shall be solely responsible for the aesthetic maintenance of Outlot 1 and Prairie Pond. Said maintenance shall be undertaken by the Association and shall include, without limitation, landscaping of that portion of Outlot 1 surrounding Prairie Pond and maintenance of the mechanical equipment of the elements of the storm water management facilities of the Subdivision that are purely aesthetic in nature (e.g., equipment associated with a fountain in Prairie Pond). In addition, Prairie Lot Owners shall be responsible for the trimming of any trees or other vegetation encroaching onto Outlot 1. Prairie Lot Owners shall be assessed for the

expenses associated with any aesthetic maintenance required hereunder as provided in Section 5.5(b), below and the Bylaws of the Association.

(b) Use and Maintenance of Outlot 4. All Owners and their immediate family members residing in the Subdivision shall have the sole and exclusive right, to the exclusion of the general public, to access, use and enjoy Outlot 4. Guests and invitees of Owners shall be allowed to access, use and enjoy Outlot 4 only when accompanied by an Owner or an immediate family member of an Owner. All Owners shall be responsible for the maintenance of Outlot 4 and shall be assessed pursuant to Section 5.5, below.

1.3 Additional Land. Declarant expressly reserves the right to at any time and from time to time subject additional lands to this Declaration. Each time the Declarant elects to include additional lands, Declarant shall record an amendment subjecting such additional lands to this Declaration. No such amendment shall change the ownership of any Outlot. The Owners shall share (through the Association in the manner provided in Section 5.5, below) in all costs of managing and maintaining the Outlots. Further, upon the recording of each such amendment, easements shall be deemed to have been granted for the benefit of all Lots to access and use the Outlots. The decisions whether to subject additional lands to this Declaration shall be made at the sole discretion of the Declarant. Notwithstanding any other provision relating to the amendment of this Declaration, any and all amendments relating to the addition of lands to this Declaration shall only be executed by the Declarant.

1.4 Easements. Easements for the installation and maintenance of public utilities and other drainage facilities, as shown on the recorded plat for the Subdivision, are reserved to the City of Oak Creek, Milwaukee County, the State of Wisconsin and the public utilities as appropriate. Such other easements are hereby reserved to the Declarant and the Association to enter upon the Subdivision, if necessary, and to construct, operate, and maintain any other public improvements, whether under or above ground, including the right to ingress and egress, and the right to install, read, replace, repair, and maintain pipes, poles, wires, cable television systems, master television antenna systems, security and similar systems, roads, walkways, ponds, wetlands, drainage systems, street signs and all other forms of utilities or public improvements, including but not limited to water, sewers, meter boxes, telephone, gas and electricity, all to be placed along lot lines to the extent possible and practical. Should any governmental or private entity which furnishes a service covered by the general easement provided herein request a specific easement on any portion of the Subdivision, the Declarant (and after the Declarant no longer owns any of the Lots, the Association) shall have the right to grant such easement on such terms and conditions as it may deem reasonable.

1.5 Declarant's Outlots. Outlots 2 and 3, as shown on the Plat of Survey for the Subdivision, shall be retained by the Declarant. The Declarant hereby expressly reserves the right, in its sole discretion, to convey, assign or otherwise transfer ownership of the Declarant's Outlots for residential development or any other purpose which the Declarant, in its sole discretion, deems fit. Owners' rights to access, use and enjoy the Outlots is limited to Outlots 1 and 4, and shall not extend to the Declarant's Outlots.

1.6 Lot Ownership. Ownership of Lots in the Subdivision may be taken only in fee simple, and not in any other form such as a life estate or a term for years. Notwithstanding the preceding sentence, ownership may be taken as co-tenants (such as tenants in common, joint tenants, or survivorship marital property), and Lots may be owned by one or more estates, trusts, corporations, partnerships, limited liability companies, limited partnerships, or limited liability partnerships. In any event, if more than one person or entity owns the fee simple title to a Lot, then all such persons and/or entities shall constitute one (1) Owner for purposes of this Declaration and, accordingly, shall be jointly and severally liable for all obligations as Owner. In the event a Lot is owned by an entity, all persons having an ownership interest in that entity shall be jointly and severally liable for all obligations as Owner.

II. ARCHITECTURAL CONTROL

2.1 Architectural Control Committee. An Architectural Control Committee (the "Committee") is hereby established to govern the development of the Subdivision. The Committee shall consist of at least three (3) individuals. The initial members of the Committee shall be appointed by the Declarant. Each member of the Committee shall serve until replaced by the Board of Directors of the Association as set forth in the Bylaws of the Association.

2.2 Approval Required. No construction, including but not limited to, the construction of any residence, garage, deck, gazebo, outbuilding, patio, swimming pool, landscaping, grading or other improvements, may be commenced on any Lot unless the complete plans, specifications (including brand, style and color of the brick, shingles, and all other exterior surfaces) and building grades for such construction are first submitted to and approved in writing by the Committee. Any material changes made subsequent to the written approval by the Committee must be resubmitted and approved in writing prior to the implementation of such changes.

2.3 Required Submissions. In addition to any other information which the Committee might reasonably request, each Owner shall submit the following to the Committee in conjunction with any request for approval of any construction or improvements on any Lot:

(a) Three (3) sets of drawings and written specifications of the proposed structure(s) showing, at a minimum, floor plans, elevations of all views of the structure(s), exterior finishes, roofing type, driveway location, structure location(s), description of exterior materials and colors, and fence and wall details;

(b) Three (3) sets of landscaping and site plans for the Lot, including a narrative description of how the Owner will comply with the landscaping requirements set forth in Section 3.6 hereof and with any additional covenants or restrictions subsequently recorded;

(c) A completed Certificate of Approval on a form to be provided by the Committee, which shall be attached as a cover page to all three (3) sets of plans; and

(d) Address for mailing of the determination of the Committee.

A submission shall not be complete, and the thirty (30) day approval time set forth in Section 2.4 shall not commence, until all required documents and other requested information have been provided.

2.4 Committee Approval. The Committee shall approve or disapprove of a submission within thirty (30) days of its receipt. The Committee's decision shall be in writing and a favorable decision shall be designated by the execution and delivery to Owner of a Certificate of Approval. If the Committee fails to approve or disapprove a submission within said thirty (30) days, approval will be deemed to have been given and the applicable covenants and restrictions in this Declaration shall be deemed to have been complied with. If a submission is approved, by decision or otherwise, material changes to the approved submission must be resubmitted to, and approved by, the Committee.

2.5 Standards; Committee Discretion. The Committee shall have the right to reject any submission which, in the opinion of the Committee, is not in conformity with the provisions and purposes of this Declaration. The Committee shall exercise its approval authority and discretion in good faith. Each Owner, by acceptance of a deed to the Owner's Lot, shall and hereby does release the Declarant, the Association and the Committee from any liability based upon the good faith exercise of their duties under this Declaration. Refusal of submissions by the Committee may be based on any grounds, including purely aesthetic grounds, which the Committee in its sole and good faith discretion deems sufficient.

2.6 Variances. The Committee shall have the right, in its sole discretion, to grant a variance to any of the covenants and restrictions in this Declaration for good cause shown. The grant of any such variance shall not waive the Committee's right to enforce any such covenants and restrictions in the future.

2.7 Liability of the Declarant, the Association and the Committee.

(a) Except as provided in Section 2.7(b), neither the Declarant, the Association, nor the Committee shall be liable under any circumstances for any loss, cost or damage suffered or claimed to have been suffered on account of the approval or disapproval of any submissions, or on account of the development or non-development of any property within the Lots.

(b) An Owner shall have the right to injunctive and/or declaratory relief against the Declarant, the Association or the Committee if, in bad faith, the Committee acts or fails to act upon a request made to the Committee. If an Owner brings an action for such injunctive and/or declaratory relief and fails to establish that the Declarant, the Association and/or the Committee were guilty of bad faith in acting or failing to act upon the Owner's request, the Owner shall be obligated to pay all of the reasonable attorneys' fees and disbursements paid or incurred by such party(ies) in connection with the action.

2.8 Building Permit Application. Declarant must submit a Certificate of Approval executed by the Committee with any Building Permit Application made to the City.

III. ARCHITECTURAL RESTRICTIONS

3.1 Building Sites. All buildings constructed on Lots shall have front, side and back yards that, at a minimum, conform to applicable zoning ordinances. The Committee reserves the right, in its sole discretion, to require front, side and back set-backs that are greater than those set forth in the applicable zoning ordinances. The Committee shall have the right to grant variances from such setback requirements from time to time, in its sole discretion, provided that any such variances are in conformity with all applicable zoning ordinances.

3.2 Surface Elevation.

(a) No Owner shall grade, alter or obstruct any drainage swale or comprehensive drainage flows in effect at the time of development by the Owner in a way which deviates or impedes the flow of drainage water from other Lots across the swale or flows. Any Owner who violates this section shall be required to repair or restore the drainage swale or flows at the Owner's sole expense. In addition, if an Owner violates this section and/or any grading plan approved by the City, any affected Owner shall have a cause of action against the violating Owner for both damages and injunctive relief. No earth, rock, gravel or clay shall be excavated or removed from any Lot without the prior written approval of the Committee.

(b) Declarant shall have the right at any time to grade or regrade the Lots to accommodate, alter or establish drainage flows. The Declarant shall not be liable to any Owner for any such grading or regrading, except that if the grading or regrading occurs after the Owner has established turf on the Owner's Lot, and if the grading or regrading damages such turf, the Declarant shall be obligated to reasonably restore the turf to its condition prior to the grading or regrading.

3.3 Building Requirements.

(a) Number of Residence Buildings. No lot shall be used for any purpose other than single-family residential. No more than one (1) residential building may be erected on any Lot.

(b) Size of Residence. All houses constructed in the Subdivision shall meet the following minimum square footage requirements:

- (i) One-story houses shall have a minimum square footage of living space of at least 2,000 square feet.
- (ii) One and one-half story houses and two story houses shall have a minimum square footage of living space of not less than 2,000 square feet, with not less than 1,200 square feet of living space on the first floor. Provided, however, that if the total square footage of living space equals or exceeds 2,500 square feet, the minimum square footage required on the first floor shall be 1,500 square feet.

- (iii) Split-level houses shall have a minimum square footage of living space of 2,100 square feet, with not less than 1,600 square feet of total living space on the upper two levels.
- (iv) No bi-level houses shall be permitted in the Subdivision.

The term "living space" is generally determined by the outside dimensions (exclusive of garages, porches, patios, breezeways and similar additions) of interior walls of the above-grade portion of the living structure. Living space does not include floor space which is partially or completely below grade (e.g., basement space).

(c) Exterior. The exterior siding of all houses, garages and any other structure on a Lot shall consist of natural wood siding, hardi-panel, or similar product, natural stone, brick and/or stucco. No types of metal or vinyl siding shall be permitted. The Committee, in its sole discretion, may permit other types of siding on a portion of the house not to exceed twenty-five percent (25%). No exposed poured concrete or concrete block over eight (8) inches above grade shall be permitted on any house. All roofs shall consist of wood, tile, or fully dimensional asphalt shingles. The Committee, in its sole discretion, may permit or prohibit the use of other types roofing materials with substantially the same appearance as the permitted materials. Unless otherwise approved on a case-by-case basis by the Committee, in its sole discretion, all roofs shall have a minimum 8/12 pitch.

(d) Grading. The maximum finished grade line and the minimum finished grade line of each lot shall conform to the Subdivisions's Final Grading Certification as approved by the City.

3.4 Construction Deadline. Construction of each approved building shall be completed within twelve (12) months after issuance of a building permit for the building. Landscaping (including grading, sodding and seeding) and installation of any driveway on any Lot shall be completed within ninety (90) days of completion of construction, provided weather conditions so allow. If construction or landscaping is delayed due to matter beyond the control of the Owner, the time for completion shall be extended by the period of the delay.

3.5 Garages. All homes shall have an attached garage with the capacity to hold, at a minimum, 2.5 cars, and, at a maximum, 3.5 cars. In addition, all garages must have a minimum of 600 square feet of interior space and a maximum of 864 square feet of interior space. All garages must be attached to the main residence.

3.6 Landscaping

(a) Requirements and Restrictions. All existing trees shall be protected during construction and preserved by wells or islands and proper grading in such a manner as may be required by the Committee. In no event shall any existing living tree with a diameter of eight inches or more be cut down, destroyed, mutilated, moved or disfigured without the prior written approval of the Committee. The existence of any such tree shall be considered by the Committee in granting an approval for the location of a house on a Lot. A permanent lawn must be

established within one (1) year after the issuance of an occupancy permit. The landscape plan for a Lot must include at least one (1) ornamental tree in the front yard and side yards. Fruit-bearing trees may only be planted in back yards. Additional shrubbery or other greenery should be incorporated into a Landscape Plan and may be specifically required by the Committee.

(b) Ongoing Maintenance. Each Owner shall be responsible for the ongoing landscaping maintenance of the Owner's Lot. During the growing season, each Owner shall mow the vacant portion of the Owner's Lot at least once every three weeks to a height not exceeding six inches. All areas of a Lot not used as a building site or an approved landscaped area or under cultivation as a family garden shall be sodded or seeded, as applicable, and be kept free of obnoxious weeds.

(c) Fencing; Screening. In order to preserve the open, natural feeling of the Subdivisions, no barrier fences or containment fences of any kind may be erected on or adjacent to any lot line without the prior written approval of the Committee.

3.7 Driveways. Unless otherwise approved by the Committee, all driveways shall be concrete and shall be installed within ninety (90) days of occupancy, unless not permitted by weather conditions. If weather conditions delay completion of a driveway, the driveway shall be completed as soon as weather permits.

3.8 Mailboxes and Post Light. To provide continuity throughout the Subdivision, each Owner shall, at their own expense and within ten (10) days of occupancy, purchase and install a mailbox/post and a post light of the Committee's choosing. The Declarant intends that all Lots shall have identical mailboxes/posts, including the color of the mailbox post, and identical post lights.

3.9 Signs. No sign of any kind shall be permanently displayed on any lot or on any of the Outlots, except one sign not more than two (2) square feet in size which identifies the owner of the lot. Signs advertising the property for sale, and signs used by builders to advertise their services, or to advertise the house on a lot as a model home, may be displayed temporarily during the applicable sales and/or construction period for such lot. The Developer shall have an unlimited right to display signs in conjunction with initial lot sales in the Subdivisions, and may display one or more entrance signs to the Subdivisions for the period during which lots within the Subdivisions are for sale.

3.10 Utilities. No exterior fuel tanks, including, but not limited to, fuel oil tanks, propane gas tanks and/or motor vehicle fuel tanks, whether above ground or below ground, shall be permitted on any lot or on any of the Outlots. All lots shall be provided with electric, natural gas, and telephone service by means of underground installation only. No residence or other building or structure on any lot shall be serviced by the use of any secondary overhead service wires. Cable television lines, if installed, shall be by means of underground installation only. All costs and expenses associated with installing underground utility service connections on any lot between the utility companies' secondary pedestals and the buildings on any lots shall be paid by the owner of said lot.

3.11 Auxiliary Structures. No trailer, basement, tent, shack, garage, barn or other outbuilding shall ever be used as a residence, temporary or permanent, on any Lot. No outbuildings or accessory buildings, including, without limitation, dog houses and storage sheds, shall be permitted on any Lot without prior written approval of the Committee.

3.12 Storage Restrictions. Outside storage of any of the following will not be permitted on any lot in the Subdivision: (i) boats, motorcycles, snowmobiles, all-terrain vehicles, motor homes, recreational vehicles, trailers, tractors or similar vehicles; (ii) any vehicle larger than a one ton pickup truck; or (iii) any type of truck used as a commercial vehicle containing any type of signage. In addition, no outside storage of any vehicles that are not operational shall be permitted on any Lot for longer than twenty-four (24) hours. There shall be no outside storage of any vehicle or other item on any Outlot unless expressly permitted by the Committee.

3.13 Exterior Lighting. Any exterior lighting installed on a Lot shall either be indirect or of such controlled focus and intensity that the lighting will not disturb the owners of adjacent Lots. The exterior post light shall be of a design of the Committee's choosing, as provided in Section 3.8, shall remain lit at all times from dusk to dawn and may not be removed, altered or replaced at any time without the prior written consent of the Committee.

3.14 Gardens. Vegetable gardens may only be permitted on a Lot, in the sole discretion of the Committee, to the extent they are not visible from the street.

3.15 Other Restrictions.

(a) No wind-powered electric generators, exterior television or radio receiving or transmission antenna or satellite signal receiving station or dish shall be placed or maintained upon any portion of a Lot or building without prior written approval of the Committee. None of such which are visible shall exceed 36 inches in diameter. Satellite dishes of 36 inches or less shall be permitted only in the back of a building in the most unobtrusive location, as that location is approved in writing by the Committee.

(b) No firewood or wood pile shall be kept outside a structure unless it is neatly stacked, placed in a side yard not adjacent to a street and screened from street view by plantings or a fence approved by the Committee.

(c) No active solar collector or apparatus may be installed on any Lot unless such installation is first approved in writing by the Committee, which shall consider the aesthetic and sun reflection effects on neighboring structures. Solar collectors or apparatus installed flat or parallel to the plane of the roof are preferred but still must be approved by the Committee.

(d) No garbage, refuse, rubbish or cuttings shall be deposited on any street or road or on any Lot or Outlot unless placed in a suitable container. No Lot or Outlot shall be used or maintained as a dumping ground for rubbish, trash, leaves, lawn clippings, rocks or other materials, the storage of such materials as are necessary for and used in the course of approved construction. All outdoor trash cans and/or collection containers must be stored in the garage or

otherwise completely hidden from view at all times other than for a period of not more than twelve (12) hours immediately before and immediately after the City's scheduled pick-up.

(e) No building material of any kind or character shall be stored upon any Lot except in connection with construction approved by the Committee. Construction shall be promptly commenced and be diligently pursued as soon as any building materials are placed on any Lot.

(f) Front yard decorations, including wildlife reproductions, other than approved lighting, mailboxes or seasonal decorations, are prohibited.

(g) No outdoor wood burning furnaces shall be allowed on any Lot in the Subdivision.

3.16 Sports Equipment. No portable sports equipment, including, without limitation, basketball hoops and soccer or hockey goals may be placed on or near the streets in the Subdivision, or in a front yard.

3.17 Play Equipment and Structures. No swing set or other play equipment or structure shall be installed on any Lot without the prior written approval of the Committee. Any such structure or equipment shall be set back at least ten (10) feet from each property line of the Lot.

3.18 Swimming Pools. No in-ground or above-ground swimming pool shall be installed on any Lot without the prior written approval of the Committee.

IV. USE RESTRICTIONS

4.1 Pets. No poultry or livestock of any kind shall be raised, bred or kept on any Lot, except for dogs, cats and other common household pets; *provided, however*, that no animals shall be kept, bred or maintained on any Lot for commercial purposes. In no event, unless otherwise approved in writing by the Committee, shall there be allowed more than three (3) permitted pets. No animals having vicious propensities shall be kept on a Lot. No noxious or offensive odors or excessive, offensive or objectionable noise, whether arising on account of maintenance of Permitted Pets, or otherwise, will be permitted on any Lot.

4.2 Appearance. Each Owner shall be responsible for maintaining the Lot and all its buildings in a neat appearance at all times. This covenant shall apply to all Lots from the date of purchase, regardless of whether a building has been or is in the process of construction. The Owner's obligation shall include, but is not limited to the following:

(a) Obnoxious Weeds. All areas of any Lot not used as a building site or lawn or under cultivation as a vegetable garden shall have a cover crop or be so cultivated or tended as to keep the areas free from obnoxious weeds. All lawns shall be free from obnoxious weeds.

(b) General Upkeep. The Owner shall keep the Owner's Lot and its buildings and other improvements in good order and repair and free of debris, including, but not limited to, the

pruning of all trees and shrubbery, the painting or other external care of all buildings and other improvements, and the tasks described in Section 3.6, all in a manner and with such frequency as is consistent with good property management.

(c) Refuse/Recycling. Trash and recycling containers shall be kept inside of garages and may be placed upon the curb only on days of trash collection and must be removed from the curb within twenty-four (24) hours of collection. No rubbish, trash garbage or recycling shall be placed upon the curb unless in a suitable container. Leaves and other lawn and tree cuttings may be placed near the curb without a container only at times designated by the City.

4.3 Activities. No hazardous or offensive activity may be carried out on a Lot or Outlot which will become a nuisance to the neighborhood or any other Lot or Outlot within the Subdivision.

4.4 Sexual Predators. No person who has been convicted or adjudicated delinquent of a "sex offense," as that term is currently defined in Section 301.45 of the Wisconsin statutes, or any similar term in any successor statute thereto, or any person who has been convicted or adjudicated of a similar offense in another jurisdiction, and who is required to register as a sex offender in Wisconsin or any other jurisdiction shall be permitted to live in the Subdivision.

V. SHEPARD ORCHARD HOMEOWNERS ASSOCIATION

5.1 Membership. Each Owner shall be a member of the Shepard Orchard Homeowners Association, Inc., a Wisconsin nonstock corporation (the "Association"). By acquiring a Lot, every Owner shall be conclusively deemed to have consented to such membership.

5.2 Rights and Duties of Members. The Articles of Incorporation and the Bylaws of the Association are incorporated by reference. Among other matters, the Articles and Bylaws restrict the voting rights of certain members and obligate all members other than Declarant to pay regular and special assessments to the Association for its operations. The members shall have the rights set forth in this Declaration, the Articles of Incorporation and Bylaws of the Association, all as amended from time to time, and as provided by applicable law. Any authority of the Association and/or its members shall be subject to the authority given to the Declarant and the Committee in this Declaration.

5.3 Management of the Association. The affairs of the Association shall be managed by its Board of Directors (the "Board"). The Board shall be selected in the manner, and shall have the duties, powers and responsibilities, set forth in this Declaration and/or in the Articles of Incorporation and Bylaws of the Association, all as amended from time to time, and as may be provided by applicable law.

5.4 Obligations of the Association.

(a) General. The Association shall be responsible for each Association Outlot and the Storm Water Management Practices Maintenance Agreement, a copy of which is attached

hereto as Exhibit C, to the extent provided above. The Association, through its Board of Directors, as provided in Section 5.3, above and the Bylaws of the Association, shall also be responsible for the enforcement of the restrictions herein contained, for adoption and enforcement of rules and regulations with respect to land use and construction in the Subdivision and all activities contemplated herein, and for the management and operation of the Association itself. Further, the Association shall be responsible for the continuing obligations imposed upon the Declarant by the Shepard Orchard Subdivision Development Agreement between the Declarant as Subdivider and the City of Oak Creek, a copy of which is attached hereto as Exhibit D, as may be amended, relating to the development of the Subdivision, and for compliance with all laws, ordinances and permits relating to the Subdivision.

(b) The Association shall have all powers and authority consistent with Chapter 181 of the Wisconsin Statutes with respect to the carrying out of its responsibilities hereunder, including but not limited to, the power to make and collect assessments as set forth below, to enforce, by action or proceeding at law or in equity (including foreclosure of any lien arising from any such assessment), any or all of the restrictions and the rules and regulations of the Association, and to defend itself in any action or proceeding brought against it. The rules and regulations adopted by the Association shall be binding upon and fully enforceable against all Owners as though set forth herein. In the event that the Association substantially prevails in any enforcement action against any member(s) or in any action brought against it by any member(s), the expenses of the Association incurred in connection therewith, including reasonable attorneys' fees, shall be borne (jointly and severally) by such member(s).

5.5 Assessments.

(a) General. The Association shall have the power to assess each Lot, other than a Lot owned by Declarant, for such expenses as may be authorized by the Association pursuant to its Bylaws. Each Owner of a Lot, by acceptance of a deed for such Lot (whether or not so expressed in such deed), is deemed to have assumed and agreed to pay to the Association any assessments levied against such Lot during the period of such Owner's ownership.

(b) Prairie Lot Owners. Prairie Lot Owners shall be solely responsible for all costs and expenses attributable to the aesthetic maintenance of Outlot 1 and Prairie Pond, including, without limitation, maintenance of the mechanical equipment of the storm water management facilities of the Subdivision that are purely aesthetic in nature (e.g., equipment associated with a fountain in Prairie Pond). In addition, the Board shall allocate any costs for property, casualty and liability insurance to Prairie Lot Owners in the manner it deems appropriate. All such expenses shall be passed-through solely to Prairie Lot Owners and shall hereinafter be referred to as "Prairie Lot Assessments."

(c) Method of Assessment. Assessments shall be due and payable in the manner and upon the schedule determined by the Board as provided in the Association's Bylaws. Such assessments shall be either maintenance assessments, particular assessments, special assessments or Prairie Lot Assessments. Maintenance assessments shall be levied upon the Lots in equal shares or in shares based on a fraction, the numerator of which is the square footage of a Lot and the denominator of which is the total square footage of all of the Lots in the Subdivision, as the

Board shall elect. Particular assessments shall be levied upon particular Lots or groups of Lots as the Board shall determine. Special assessments shall be levied upon lots or groups of lots when special circumstances arise requiring an assessment to be levied at a time subsequent to the levy of other assessments provided hereunder. Prairie Lot Assessments shall be assessed and levied as provided in Subsection (b), above. Maintenance assessments, as well as Prairie Lot Assessments, shall be assessed and levied as provided for in Wis. Stat. § 779.70.

(d) Collection; Lien Rights. The Association shall pursue collection and/or enforcement of all assessments to the extent reasonable. Each Owner of a Lot shall be personally obligated to pay assessments which were assessed or accrued upon such Lot during such Owner's period of ownership. Assessments shall be a lien on the Lots on which they are levied. The Association shall be entitled to collect any unpaid assessment, together with interest thereon from the due date at twelve percent (12%) per annum and reasonable legal fees and expenses incurred in connection with the enforcement of its lien rights in a foreclosure action or otherwise. Any unpaid assessments, together with any accrued interest and reasonable legal fees and expenses, shall also be the personal obligation of an Owner. The Association may sue any Owner personally to recover such amounts. The transfer of ownership of any Lot, by whatever means, shall not extinguish the lien for any unpaid assessment, accrued interest and/or reasonable legal fees and expenses. The Association may, however, release or subordinate its lien rights hereunder on such terms and to such extent as it may deem advisable with respect to any one or more of the Lots within the Subdivision, and doing so shall not affect its right to collect any amounts otherwise secured by such lien from the person or persons otherwise personally obligated with respect thereto. Also, in the event that the City of Oak Creek is required to enter the Subdivision to maintain any Association Outlot, easement, or stormwater drainage, the costs of said maintenance shall be charged to the Association and may be placed as a lien against the Lots of the Subdivision if not paid as required by this provision.

5.6 Liability of Association. Each Owner and their guests and invitees have the right to access and use certain portions certain of the Outlots and common areas of the Subdivision as provided in this Declaration. By acquiring a Lot, each Owner hereby agrees that the Association and the Declarant, and their respective agents, employees, officers, members and owners, shall not be liable for any claim, loss, liability, cost or expense arising out of or relating to the access and use of the Outlots and common areas by such Owner or their guests and invitees. Each Owner that accesses or uses the Outlots and common areas hereby agrees to defend, indemnify and hold the Association and the Declarant harmless from and against any and all claims, damages, liabilities and expenses (including attorneys' fees and court costs) incurred by the Association or the Declarant as a result of the access and use of the Outlots and common areas by such Owner or their guests and invitees.

VI. GENERAL PROVISIONS

6.1 Term. This Declaration shall run with the land and shall be binding upon and inure to the benefit of all parties and all persons claiming an interest in any of the Lots for a period of thirty (30) years from and after the recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years, unless terminated as provided in Section 6.2.

6.2 Amendment.

(a) While the Declarant owns any Lot, the Declarant by its sole act shall have the right to terminate or amend this Declaration by an instrument signed by the Declarant and recorded with the Milwaukee County Register of Deeds.

(b) After the Declarant ceases to own any Lot, the Owners, by the vote or consent of Owners owning two-thirds (2/3) or more of the Lots then comprising the Subdivision, shall have the right to amend or terminate this Declaration by an instrument recorded with the Milwaukee County Register of Deeds.

6.3 Severability. In the event that any provision of this Declaration is ever finally determined to be wholly or partially illegal, invalid or unenforceable, either in all circumstances or in particular circumstances, such provision shall be deemed severed herefrom in those circumstances as to which it is so determined to be wholly illegal, invalid or unenforceable and shall be deemed limited to the extent required in those circumstances as to which it is so determined to be partially illegal, invalid or unenforceable, and such severance or limitation shall not affect the legality, validity or enforceability of any of the other provisions hereof or of such provision to the extent not so severed or limited.

6.4 Enforcement. The Declarant, the Committee and the Association shall each be entitled to obtain temporary restraining orders and temporary and permanent injunctions to prevent the breach of, or to enforce the observance of, this Declaration, in addition to such other legal and/or equitable relief as may be appropriate. In addition to money damages to which the Declarant, the Committee, the Association or any of the other Owners may otherwise be entitled, each Owner shall indemnify and hold the Association harmless from and against reasonable attorneys' fees and other expenses incurred thereby as the result of any such breach and related violations of their other rights, including, without limitation, their rights under the legal doctrines listed in Section 5.5 hereof, and in the enforcement of their rights under this Agreement and otherwise in connection with any such breach or violations.

6.5 Other Law. The rights of the Declarant, the Committee and/or the Association under this Agreement shall be in addition to those to which they may otherwise be entitled under contract, tort or other law.

[SIGNATURE ON FOLLOWING PAGE]

2007 IN WITNESS WHEREOF, the undersigned Declarant has executed this document this
day of February, 2007.

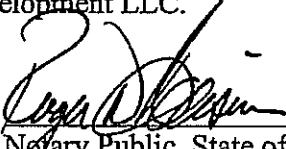
~~MICJENSAR Development LLC~~



Raffi S. Shirikian
Authorized Agent

STATE OF WISCONSIN)
) ss.
COUNTY OF MILWAUKEE)

This instrument was acknowledged before me on February 22, 2007, by Raffi S.
Shirikian as authorized agent for MICJENSAR Development LLC.



Notary Public, State of Wisconsin
My Commission expires August 8, 2010

THIS INSTRUMENT WAS DRAFTED BY
AND SHOULD BE RETURNED TO:
Joshua R. Welsh, Esq.
Meissner Tierney Fisher & Nichols S.C.
111 East Kilbourn Avenue
19th Floor
Milwaukee, WI 53202-6622

19



DOC.# 09114557

Document Number	SHEPARD ORCHARD SUBDIVISION Development Agreement Document Title
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REGISTER'S OFFICE | SS
Milwaukee County, WI

RECORDED 10/20/2005 10:08AM

JOHN LA FAVE
REGISTER OF DEEDS

AMOUNT: 47.00

Recording Area

Douglas W. Seymour, Director
 Dept. of Community Development
 8640 South Howell Avenue
 Oak Creek, WI 53154
 Name and Return Address

922-9073, 922-9029-001, 922-9069

Parcel Identification Number (PIN)

THIS AGREEMENT, made and entered into this 1 day of August, 2005, by and between MICJENSAR Development, LLC, 9667 South 20th Street, Oak Creek, WI, 53154, hereinafter referred to as the "Developer", and the City of Oak Creek, hereinafter referred to as the "City";

WITNESSETH:

WHEREAS, the Developer proposes to develop the following described lands situated in the City of Oak Creek, County of Milwaukee and State of Wisconsin, to-wit:

PART OF OUTLOT 1 OF CERTIFIED SURVEY MAP 6449, PART OF PARCELS 1 AND 2 OF CERTIFIED SURVEY MAP 2525, PART OF THE STREET RESERVATION OF CERTIFIED SURVEY MAP 2940, OUTLOT 2 OF CERTIFIED SURVEY MAP 6932, OUTLOT 1 OF CERTIFIED SURVEY MAP 7042, AND PART OF PARCEL 1 OF CERTIFIED SURVEY MAP 7398, LOCATED IN THE NORTHWEST QUARTER (N.W. ¼) AND THE SOUTHWEST QUARTER (S.W. ¼) OF THE SOUTHEAST QUARTER (S.E. ¼) OF SECTION 28, TOWN 5 NORTH, RANGE 22 EAST, CITY OF OAK CREEK, MILWAUKEE COUNTY, WISCONSIN DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 28, AFORESAID; THENCE NORTH 89°36'03" EAST, ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER, 1,321.02 FEET TO THE EAST LINE OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 28; THENCE NORTH 00°08'47" EAST, ALONG SAID EAST LINE, 659.42 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°37'23" WEST, 389.96 FEET; THENCE SOUTH 24°43'13" WEST, 165.77 FEET TO A POINT OF CURVE; THENCE SOUTHWESTERLY ALONG A CURVE TO THE LEFT 32.64 FEET, HAVING A RADIUS OF 550.00 FEET, THE CHORD BEARING SOUTH 23°01'13" WEST, 32.63 FEET; THENCE NORTH 89°50'00" WEST, 186.64 FEET; THENCE NORTH 58°10'00" WEST, 334.50 FEET; THENCE SOUTH 89°37'23" WEST, 60.16 FEET; THENCE NORTH 00°01'48" WEST, 549.79 FEET; THENCE NORTH 89°39'01" EAST, 30.00 FEET; THENCE NORTH 00°01'48" WEST, 110.17 FEET TO A POINT OF CURVE; THENCE NORTHEASTERLY ALONG A CURVE TO THE RIGHT 63.80 FEET, HAVING A RADIUS OF 312.00 FEET, THE CHORD BEARING NORTH 05°49'40" EAST, 63.69 FEET; THENCE NORTH 78°18'52" WEST, 156.24 FEET; THENCE NORTH 11°41'08" EAST, 97.92 FEET; THENCE NORTH 78°18'52" WEST, 15.00 FEET; THENCE NORTH 00°01'48" WEST, 464.89 FEET; THENCE NORTH 89°40'21" EAST, 1,118.38 FEET; THENCE SOUTH 00°08'47" WEST, 400.25 FEET; THENCE SOUTH 89°41'43" WEST, 4.91 FEET TO A POINT OF CURVE; THENCE NORTHWESTERLY ALONG A CURVE TO THE RIGHT 103.27 FEET, HAVING A RADIUS OF 230.00 FEET, THE CHORD BEARING NORTH 77°26'32" WEST, 102.40 FEET; THENCE NORTH 64°34'46" WEST, 72.27 FEET TO A POINT OF CURVE; THENCE SOUTHWESTERLY ALONG A CURVE TO THE LEFT 49.75 FEET, HAVING A RADIUS OF 25.00 FEET, THE CHORD BEARING SOUTH 58°24'40" WEST, 41.94 FEET TO A POINT OF COMPOUND CURVE; THENCE SOUTHWESTERLY ALONG A CURVE TO THE LEFT 8.15 FEET, HAVING A RADIUS OF 370.00 FEET, THE CHORD BEARING SOUTH 00°46'14" WEST, 8.15 FEET; THENCE SOUTH 00°08'23" WEST, 283.57 FEET; THENCE NORTH 89°39'01" EAST, 206.00 FEET; THENCE SOUTH 00°08'47" WEST, 659.34 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 31.946 ACRES OR 1,391,574 SQUARE FEET.

WHEREAS, the Developer has submitted a preliminary subdivision plat, titled Shepard Orchard Subdivision, Tax Key Nos. 922-9073, 922-9029-001, and 922-9069, encompassing the hereinabove described lands in accordance with the provisions of Chapter 236 of the Wisconsin Statutes and Chapter 14 of the Municipal Code of the City for the purpose of creating a forty-six-lot and four outlots subdivision, and

WHEREAS, the proposed preliminary site development was conditionally approved by the Plan Commission of the City as required by law, subject, however, to the Developer entering into an agreement with the City relative to certain undertakings and/or actions to be performed by the Developer prior to approval by the City, and

WHEREAS, S.236.13(2)(a), Wis. Stats., and Chapter 14 of the Municipal Code of the City, provide that as a condition of approval, the Common Council of the City of Oak Creek may require that the Developer make and install any public improvements reasonably necessary, and

WHEREAS, the City's Capital Improvement plan and budget does not now include funds necessary to install improvements for this development, and

WHEREAS, the City believes that the orderly, planned development of the said lands will best promote the health, safety and general welfare of the community, and hence is willing to approve the proposed development providing that the Developer agrees to undertake and assume certain obligations and conditions and/or performed as hereinafter described, and

NOW, THEREFORE, in consideration of the payment of \$1.00, and in consideration of the mutual covenants listed below, the parties agree:

1. The proposed plat is served and will benefit by the existing sanitary sewer and water main as installed within S. Shepard Avenue and E. Oak Lane.
2. Special Assessments and Waiver - There are no outstanding special assessment payments required for this agreement. The Developer shall sign the Waiver of Special Assessment Notice and Hearing attached as Exhibit B.
3. Bike Path and Impact Fees - A bike path acquisition fee of \$50.00 per parcel or dwelling unit, as applicable, is required of all residential developments. The impact fees established for the Prairie View neighborhood shall also apply to this plat. The Developer agrees to pay the \$50.00 bike path fee and the appropriate Prairie View neighborhood impact fees, per dwelling unit, created by this plat, at the time a building permit is issued.
4. Time Period to Install Improvements - The Developer, entirely at his expense, shall complete the public improvements as described in Exhibit A.
 - A. The Developer shall, without charge to the City and upon certification by the City Engineer, unconditionally grant and fully dedicate all public improvements to the City. Dedication of public improvements shall occur at final plat and/or the termination of this agreement.
 - B. In the event the Developer does not complete the installation of improvements, the City shall, upon written notice to the Developer, have the authority to complete same and take title of the improvements. The City shall, without notice of hearing, impose a special assessment for the amount of said completion costs, upon each and every building site (or tax key parcel) in the development, payable with the next succeeding tax roll.

- C. In accordance with Section 3.06 of the Oak Creek Municipal Code and under Sections 66.0703 and 66.0701 of the Wisconsin Statutes and other statutory provisions, the City may exercise its power to levy special assessments for the required improvements that shall benefit the development.
5. Items Prior to Construction - Prior to the commencement of construction of required improvements, the City Engineer shall ensure that the following requirements are met:
- A. Approval of plans required in Exhibit A.
 - B. Developer has issued a notice to proceed to his contractor(s).
 - C. Developer and City have arranged a preconstruction conference.
 - D. all pertinent approvals have been attained from the Milwaukee Metropolitan Sewerage District, the State of Wisconsin Department of Natural Resources, and the State of Wisconsin Department of Transportation, or other required jurisdictional agencies. The review and approval of sanitary sewer plans by the City (and its Utility) and MMSD occur independently. Approvals are based in part on each system's ability to handle the proposed additional sanitary sewer waste flows.
 - E. Arrangements made for the City to inspect the proposed construction.
6. Final Plat Approval – Only upon final certification by the City Engineer that all of the required public improvements and requirements as outlined in this agreement are constructed, inspected and found to be in compliance with City requirements and, 1.) proof is filed with the City Engineer that a Homeowner's Association has been created and/or said Association is on file with the Register of Deeds office; and 2.) proof of the public infrastructure costs associated with streets, sewers, water main, lights, trees, etc., have been filed with the City Accountant, shall final plat approval be presented to the Plan Commission and Common Council.
7. Reimbursement of Costs - The Developer shall reimburse the City for all outstanding fees, expenses, costs, and disbursements which were incurred by the City for the design, review, construction, inspection, dedication, administration, enforcement, or acceptance of the development's improvements covered by this agreement. In addition, the Developer shall provide copies of lien waivers from all contractors, material suppliers, or consultants who performed work or supplied materials.
8. Workmanship Guarantee - Developer shall guarantee the public improvements described in Exhibit A, against defects due to faulty materials or workmanship, for a period of two years from the date of dedication; i.e. at final plat approval or at close out of the agreement. Pursuant to Paragraph 10(B), the Developer shall establish a security deposit,

in an amount not less than 10% of construction costs of the sanitary sewer and water main, to cover the guarantee period for each of these public improvements (part of the "collateral") . The maintenance obligations regarding the streets shall begin upon completion of the asphalt binder course installation. Responsibility for the streets will be assigned as follows:

- A. Pavement maintenance, including any repairs and street sweeping, shall be the Developer's responsibility. Snow plowing will be the City's responsibility after approval of final plat.
- B. If street repairs, plowing, and/or street sweeping are not satisfactorily performed by the Developer, the City shall perform such with its own forces and charge the Developer accordingly for actual manpower, equipment and materials, plus 25% administration and overhead. Developer's responsibility with respect to the streets shall terminate upon dedication of the streets to the City.

9. Hold Harmless - The Developer shall indemnify and save harmless the City, its officers, agents and employees, from all liability claims, loss, damages, interest, actions, suits, judgments, costs, expenses, attorney's fees, and the like to whomsoever is owed, which may in any manner result from the negligent construction or maintenance of improvements by the Developer pursuant to the terms of this agreement, the violation of any law or ordinance, the infringement of any patent, trademark, tradename or copyright, and the use of road improvements prior to their formal dedication to the City as provided in Paragraph 4 thereof.

10. Financial Guarantees

- A. Letters of Credit/Bonds – No letter of credit or bond is required for this agreement.
- B. Security Deposit

Prior to and as a condition of final plat approval, the Developer shall deposit the Collateral to secure the prompt, full and faithful performance by Developer of each and every provision of this agreement and all obligations of the Developer hereunder. The City is not required to hold the Collateral in any special or trust account, but may commingle the Collateral with other funds of the City. Interest shall be paid to the Developer on the Collateral. If the Developer fails to perform any of its obligations hereunder, the City may use, apply or retain the whole or any part of the Collateral together with interest therein, if any, for payment of: (a) Sums of money due from the Developer under this agreement; (b) Any sum expended by the City on the Developer's behalf in accordance with this agreement; and/or (c) Any sum which the City may expend or be required to expend by reason of the Developer's default under this agreement.

The use, application or retention of the Collateral, or any portion thereof, by the City shall not prevent the City from exercising any other right or remedy provided by this agreement or by law (it being intended that the City shall not first be required to proceed against the Collateral) and shall not operate as a limitation on any recovery to which the City may otherwise be entitled. If any portion of the Collateral is used, applied or retained by the City, prior to the termination of this agreement, for the purposes set forth above, Developer agrees, within ten days after the written demand therefore is made by the City, to deposit cash with the City in an amount sufficient to restore the Collateral to its original amount.

Without limitation as to the obligations secured, the Collateral shall also secure the following specific obligations of the Developer to the City.

- 1) Completion of final asphalt surface course – asphalt base repair, curb repair and final catch basin setting.
- 2) Completion of landscaping: including establishment of vegetative cover.
- 3) Payment of reasonable in-house administrative and inspection fees.
- 4) Maintenance fund for public improvements as described in paragraph 8.
- 5) Street Trees

The City will release to the Developer all funds from the Collateral, including interest, upon the earliest of the termination of this agreement or when the Developer fully and faithfully complies with all of the provisions of this agreement and completes the above-listed items, all to the satisfaction of the City Engineer, less amounts, if any previously applied by the City for the obligations secured hereby. .

C. Billing

The City shall bill the Developer quarterly for costs incurred and backed up by the City. In the event the Developer fails to make payment to the City within 30 days of billing, interest shall accrue on the unpaid balance at the rate of 15% per annum. If unsuccessful, the City, upon written notice to the Developer, shall, without notice of hearing, impose a special assessment for the amount of said costs upon each tax key parcel in the development, payable with the next succeeding tax roll.

11. Inspection - The City, or its agents, shall provide full-time inspection of all improvements enumerated in Exhibit A, at the Developer's cost.
12. Deed Restrictions - The Developer shall prepare and submit for review and approval, a draft of deed restrictions governing the proposed parcels. The City-approved deed restrictions shall be recorded separately with the Register of Deeds for Milwaukee County, Wisconsin, along with the final plat. Said restrictions shall incorporate, but not be limited to those set forth in Exhibit C of this agreement. The City does not enforce deed restrictions, except for those that are supported by City ordinance.
13. Easements - The Developer shall acquire and dedicate to the City all public easements necessary to install and maintain public improvements required by this agreement. Permanent easements and deeds, on forms acceptable to the City, on or through private lands, shall be negotiated and obtained by the Developer, at his expense.
14. Changes to Plans and Specifications - The City Engineer may make reasonable changes to the approved plans and specifications for any of the improvements covered under this agreement which are necessary to correct oversights, omissions, and errors, to compensate for changing site conditions, or to complete fully the work in accordance with sound engineering practice. The Developer shall perform the work as changed entirely at his expense without any claim for reimbursement.
15. Miscellaneous
 - A. All construction required by this agreement shall be carried out and performed in a sequence agreed upon by the City Engineer.
 - B. Developer shall properly locate and install all survey or other monuments required by State statute or City ordinance.
 - C. Recording of this agreement shall be accepted by the City as adequate provision for improvements specified in Chapter 14 of the Municipal Code.
 - E. This agreement shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.
 - E. This agreement shall be recorded by the City with the Register of Deeds of Milwaukee County.
 - F. Some or all obligations of the Developer shall terminate upon final plat approval and passage of a resolution by the Common Council of the City of Oak Creek releasing the Developer from the terms of this agreement.
 - G. Developer shall provide specifications on a 3½" disk in the City's most current Microsoft Word version.

- H. Developer shall provide all construction plans on a 3½" disk in the City's most current version of AutoCAD and an original 4 mil. double-matte mylar.
- I. Developer agrees to allow the City to grant utility construction permits within proposed City right-of-way prior to final plat approval and dedication of said right-of-way.
- J. No building permits will be issued until final plat approval.

IN WITNESS WHEREOF, the parties hereto have executed this instrument under their several seals the day and year first above written, the name and corporate seal of each corporate body being hereto affixed and the instrument duly signed by its duly authorized representatives.

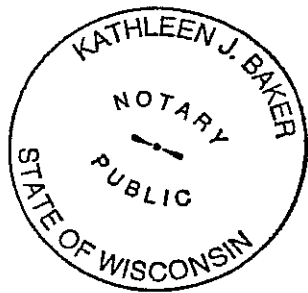
In presence of:

MICJENSAR Development, LLC

Michael H. Polaski
 Michael H. Polaski, Manager

STATE OF WISCONSIN)
 (SS.
 MILWAUKEE COUNTY)

Personally came before me this 28 day of July, 2005, the above-named, Michael H. Polaski, of MICJENSAR Development, LLC, to me known to be the person who executed the foregoing instrument and to me known to be such Manager of said corporation, acknowledged that he executed the foregoing instrument as such officer.



Kathleen J. Baker
 Notary Public

Milwaukee County, Wisconsin

My commission expires 02.25.07

CITY OF OAK CREEK



Richard R. Bolender
RICHARD R. BOLENDER, Mayor

Countersigned:

Beverly A. Buretta
BEVERLY A. BURETTA, City Clerk

STATE OF WISCONSIN)
(SS.
MILWAUKEE COUNTY)

Personally came before me this 9 day of August, 2005, RICHARD R. BOLENDER, Mayor and BEVERLY A. BURETTA, City Clerk, of the above-named municipal corporation, CITY OF OAK CREEK, to me known to be the persons who executed the foregoing instrument to me known to be such Mayor and City Clerk of said municipal corporation, and acknowledged that they executed the foregoing instrument as such officers, as the deed of said municipal corporation, by its authority, and pursuant to Resolution No. 10535-080105 adopted by its Common Council on the 15 day of August, 2005.

Lawrence J. Haskin
Lawrence J. Haskin, Notary Public
Milwaukee County, Wisconsin
My commission is permanent.

This instrument was drafted by Henry W. Jackson of the City of Oak Creek Engineering Department.

Approved as to form:

Lawrence J. Haskin
Lawrence J. Haskin, City Attorney

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EXHIBIT A
CITY OF OAK CREEK
CITY ENGINEER'S REPORT
SHEPARD ORCHARD SUBDIVISION

I. INTRODUCTION

The detailed standards for the design and construction of all improvements required in this exhibit shall conform to the City of Oak Creek Engineering Design Manual, adopted by the Common Council on March 16, 2004, and all future amendments thereof.

The Developer is responsible for required improvements, plans, and conditions:

II. DEVELOPMENT GRADING AND DRAINAGE

A. Required Improvements

Design, install, and provide grading of land as necessary to establish lot pads for future buildings, provide adequate drainage to prevent flooding, accept upstream runoff, and safely discharge runoff downstream to avoid property damage.

B. Plans and Specifications

1. A grading and drainage plan shall be prepared showing 2' contours for both existing and proposed condition, and proposed finished yard grades.
2. System plan showing all tributary areas to the proposed subdivision drainage and downstream analysis. Included on the system plan shall be all proposed and existing drainage structures.
3. House grade plan showing only minimum setback and offset dimensions and proposed house grades.
4. Storm water management plan that meets current City ponding ordinance requirements along with the MMSD Chapter 13 storm water requirements.
5. As-built grading plan certifying that all grading was performed in accordance with the approved grading and drainage plan. All grades shall be with $\pm .3'$ of proposed grade. Certification shall be performed after

topsoil installation. The plan shall be prepared by a consulting engineer, selected by and reimbursed by the Developer.

- C. Prior to the installation of any public improvements, the Developer shall perform rough grading, including planned street areas, lot pads, and drainage swales. All lot pads may be graded 1' below finished proposed yard grade to accommodate basement spoils.
- D. Establish permanent vegetative cover on all exposed soil by topsoiling, seeding, and mulching to prevent erosion.
- E. The Developer, at his expense, shall provide detailed soil analysis and compaction results by a competent soils engineer for all areas requiring fill. The results shall be submitted to the City Engineer as soon as they are available.
- F. The Developer is responsible for restoring all damage to finish grades and vegetative cover caused, but not restored by, utility companies.
- G. If soil borings determine that the existing soil material on site is unsuitable for structural areas such as road or building construction, the Developer shall remove the material and replace with approved engineered fill.
- H. After site grading is completed, the Developer shall place 3" of topsoil on all exposed soil and seed, fertilize and mulch.

III. STORM DRAINAGE SYSTEM

A. Required Improvements

Design, install, and provide a complete storm drainage system, including culverts, curb and gutter, storm sewer and/or open ditches as required to adequately convey surface water from and through the development.

B. Plans and Specifications

1. Storm sewer plans showing plan and profile views.
 2. Storm sewer calculations.
 3. Storm sewer system plan update.
- C. Additional considerations will be required on all ditch slopes exceeding five percent. All areas within drainage easements shall have a minimum one percent slope. Ditch slopes with less than one percent will require storm sewer.

- D. Mainline storm sewer must be installed to provide a sump pump and downspout connection to all lots. All sump lines will discharge into a storm sewer or to other outlets approved by the City Engineer.

IV. EROSION AND RUN-OFF CONTROL

- A. Required Improvements

Installation and construction of Best Management Practices in the proposed development that shall conform with the most current edition of the Department of Natural Resources publication, "Wisconsin Construction Site Best Management Practice Handbook."

- B. Plans and Specifications

Control plan for land-disturbing activities showing existing contours at least 200' into adjacent parcels. This plan will show locations and dimensions of all construction site management measures to control erosion and sedimentation.

- C. The Developer shall not commence land-disturbing activities until all erosion control measures are installed and approved by the City. An erosion control permit must be obtained, which requires the Developer to construct and maintain such measures in conformance with the City's erosion control ordinance.
- D. Both during and after construction, the surface of exposed bare soils shall be protected by mulches and perennial grasses. This does not apply to the immediate building site area that is subject to men and equipment working in and around the perimeter of a new structure.

V. SANITARY SEWER

- A. Required Improvements

Design, install, and provide a complete sanitary sewer system designed to meet the ultimate needs of this development and all tributary areas, in accordance with the City's sanitary sewer system plan with rules, regulations and procedures of the City, Milwaukee Metropolitan Sewerage District, and the State of Wisconsin Department of Natural Resources.

- B. Plans and Specifications

- 1. Sanitary sewer plans, specifications, design calculations, and copies of all easements.

2. The City will furnish "as-built" plans of the entire system, including location and elevation of laterals to mains to meet MMSD requirements. All other "as-built" requirements are the responsibility of the Developer.
 3. Sanitary sewer system plan update.
 4. All reports required by the Milwaukee Metropolitan Sewerage District, the State of Wisconsin, and Southeastern Wisconsin Regional Planning Commission.
 5. Separate sanitary sewer easements, where appropriate, shown on the final plat.
- C. Installation of one sanitary sewer lateral from the sanitary sewer main to property line, for each proposed lot.

VI. WATER

A. Required Improvements

Design, install, and provide a complete water distribution system and install water main designed to meet the ultimate needs of this development and all tributary areas, in accordance with the City's water main system plan and with the rules, regulations, and procedures of the City and the State of Wisconsin Department of Natural Resources.

B. Plans and Specifications

1. Water main plans, specifications, design calculations, and copies of all easements.
 2. The City will create "as-built" plans of the entire system on mylar, including hydrant and valve locations, and the location and elevation of laterals to the lot lines, all for the use of the City of Oak Creek Water and Sewer Utility. All other "as-built" requirements are the responsibility of the Developer.
 3. Separate water main easements for each parcel, where appropriate, recorded on the final plat.
- C. Upon completion, furnish and provide to the City a complete summary of the actual construction costs for water distribution, itemized in sufficient detail to satisfy the requirements of the Public Service Commission of the State of

Wisconsin in establishing or revising a rate base.

- D. Installation of one water lateral from the water main to the property line , for each proposed lot.
- E. Provide hydrant marker flags for each installed fire hydrant.

VII. STREETS

A. Required Improvements

A 29-foot, back of curb to back of curb, roadway construction with 31" concrete curb and asphalt pavement. The pavement section shall be comprised of a 8" crushed stone base, pavement edge drains, 4½" asphalt binder course and a 1½" layer of asphalt surface course.

B. Plans and Specifications

- 1. Street plans, including plan and profile view, road cross-section and specifications.
- 2. Pavement design calculations.
- 3. Proposed established street grade drawing.

- C. The initial binder course shall be installed prior to approval of the final plat, and the final surface course may be installed within three years or at such time as homes representing 50% of the buildable lots are issued occupancy permits, or as directed by the City Engineer. Surface course shall be laid no later than one year after 75% occupancy.
- D. Clean up, repairs, and restoration of all pavement, subgrade, shoulder, or curb and gutter defects shall be performed prior to the placement of the final asphalt surface course.
- E. If directed by the City Engineer, soil borings shall be taken within the roadway at sufficient intervals to determine sub-base composition. If material is determined unsuitable for a stable road base, the material shall be removed and replaced with material approved by the City Engineer.

VIII. MISCELLANEOUS

DEVELOPER SHALL:

- A. The Developer is responsible to preserve existing trees, brush, or shrubs, not approved for removal. If unauthorized removal occurs, landscaping will be replaced at the Developer's expense.
- B. The Developer shall repair all damage to City streets caused by construction operations.
- C. Developer shall arrange for installation of approved street signs.
- D. The Developer shall submit a landscape plan for screen plantings, berms, and entrances. Installation of landscaping shall be in accordance with approved plan with allowance made for street trees. The number of street trees is based on, but not limited to, one tree every forty feet, on each side of the roadway.
- E. Developer shall acquire all required underground utility easements.
- F. All sanitary, drainage, and other public utility easements must be shown on the certified survey map or plat. If required easements are omitted, or errors are detected on the plat, the Developer shall make all necessary modifications to the plat at his expense.
- G. Developer shall design and install all required sidewalk and/or bikeways.
- H. Developer shall design and install ornamental street lighting concurrently with road construction.
- I. Provide permanent Class III barricades at all dead end streets.

IX. SPECIFICATIONS

The improvements shall be constructed in accordance with the following specifications.

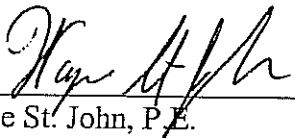
- A. City of Oak Creek Engineering Design Manual, most recent edition.
- B. Applicable Specifications and Regulations of the Milwaukee Metropolitan Sewerage District.
- C. Standard Specifications for Sewer and Water Construction in Wisconsin, Sixth Edition, December 22, 2003.

- D. The Wisconsin Construction Site Best Management Practice Handbook for Erosion Control.
- E. State of Wisconsin, Department of Transportation Standard Specifications for Highway and Structure Construction, 1996 and supplemental specifications.

X. **SPECIAL PROVISIONS**

The development process shall strictly conform to the conditions set forth in the development agreement. Request for final plat approval is subject to the City Engineer's certification that all public improvements required to be installed are satisfactorily completed, a homeowner's association is in place and project construction costs have been reported to the City Accountant. Security deposit will only be allowed for the final asphalt surface course, public improvement maintenance fund, street trees and landscaping. Apart from the above, the City will not accept escrows in lieu of completion of the improvement prior to final plat approval.

Approved by:



Wayne St. John, P.E.
City Engineer

8/8/05

Date

EXHIBIT B

**WAIVER OF SPECIAL ASSESSMENT
NOTICES AND HEARINGS**

City of Oak Creek
8640 South Howell Avenue
Oak Creek, WI 53154

We, the undersigned being owners of the property that shall benefit by the following proposed public improvements:

Sanitary sewer, storm sewer, water main, streets, lights, sidewalk, trees, and drainage facilities

all made in the City of Oak Creek, Milwaukee County, Wisconsin, in consideration of the construction of said improvements by the City of Oak Creek, Wisconsin, hereby admit that such public improvement will benefit our property and consent to the levying of special assessments against our premises under Section 66.62 of the Wisconsin Statutes and Section 3.06 of the Municipal Code of the City of Oak Creek for the cost of such improvement.

In accordance with Section 3.06 (14) of the Municipal Code of the City of Oak Creek, we hereby waive all special assessment notices and hearings required by Section 66.62 of the Wisconsin Statutes and Section 3.06 (9) of the Municipal Code of the City of Oak Creek, and we further agree and admit that the benefit to our properties from the construction of such improvement.

Description of premises that shall benefit:

PART OF OUTLOT 1 OF CERTIFIED SURVEY MAP 6449, PART OF PARCELS 1 AND 2 OF CERTIFIED SURVEY MAP 2525, PART OF THE STREET RESERVATION OF CERTIFIED SURVEY MAP 2940, OUTLOT 2 OF CERTIFIED SURVEY MAP 6932, OUTLOT 1 OF CERTIFIED SURVEY MAP 7042, AND PART OF PARCEL 1 OF CERTIFIED SURVEY MAP 7398, LOCATED IN THE NORTHWEST QUARTER (N.W. ¼) AND THE SOUTHWEST QUARTER (S.W. ¼) OF THE SOUTHEAST QUARTER (S.E. ¼) OF SECTION 28, TOWN 5 NORTH, RANGE 22 EAST, CITY OF OAK CREEK, MILWAUKEE COUNTY, WISCONSIN DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 28, AFORESAID; THENCE NORTH 89°36'03" EAST, ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER, 1,321.02 FEET TO THE EAST LINE OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 28; THENCE NORTH 00°08'47" EAST, ALONG SAID EAST LINE, 659.42 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 89°37'23" WEST, 389.96 FEET; THENCE SOUTH 24°43'13" WEST, 165.77 FEET TO A POINT OF CURVE; THENCE SOUTHWESTERLY ALONG A CURVE TO THE LEFT 32.64 FEET, HAVING A RADIUS OF 550.00 FEET, THE CHORD BEARING SOUTH 23°01'13" WEST, 32.63 FEET; THENCE NORTH 89°50'00" WEST, 186.64 FEET; THENCE NORTH 58°10'00" WEST, 334.50 FEET; THENCE SOUTH 89°37'23" WEST, 60.16 FEET; THENCE NORTH 00°01'48" WEST, 549.79 FEET; THENCE NORTH 89°39'01" EAST, 30.00 FEET; THENCE NORTH 00°01'48" WEST, 110.17 FEET TO A POINT OF CURVE; THENCE NORTHEASTERLY ALONG A CURVE TO THE RIGHT 63.80 FEET, HAVING A RADIUS OF 312.00 FEET, THE CHORD BEARING NORTH 05°49'40" EAST, 63.69 FEET; THENCE NORTH 78°18'52" WEST, 156.24 FEET; THENCE NORTH 11°41'08" EAST, 97.92 FEET; THENCE NORTH 78°18'52" WEST, 15.00 FEET; THENCE NORTH 00°01'48" WEST, 464.89 FEET; THENCE NORTH 89°40'21" EAST, 1,118.38 FEET; THENCE SOUTH 00°08'47" WEST, 400.25 FEET; THENCE SOUTH 89°41'43" WEST, 4.91 FEET TO A POINT OF CURVE; THENCE NORTHWESTERLY ALONG A CURVE TO THE RIGHT 103.27 FEET, HAVING A RADIUS OF 230.00 FEET, THE CHORD BEARING NORTH 77°26'32" WEST, 102.40 FEET; THENCE NORTH 64°34'46" WEST, 72.27 FEET TO A POINT OF CURVE; THENCE SOUTHWESTERLY ALONG A CURVE TO THE LEFT 49.75 FEET, HAVING A RADIUS OF 25.00 FEET, THE CHORD BEARING SOUTH 58°24'40" WEST, 41.94 FEET TO A POINT OF COMPOUND CURVE; THENCE SOUTHWESTERLY ALONG A CURVE TO THE LEFT 8.15 FEET, HAVING A RADIUS OF 370.00 FEET, THE CHORD BEARING SOUTH 00°46'14" WEST, 8.15 FEET; THENCE SOUTH 00°08'23" WEST, 283.57 FEET; THENCE NORTH 89°39'01" EAST, 206.00 FEET; THENCE SOUTH 00°08'47" WEST, 659.34 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 31.946 ACRES OR 1,391,574 SQUARE FEET.

MICJENSAR Development, LLC



Michael H. Polaski, Manager

Date

EXHIBIT C

SHEPARD ORCHARD SUBDIVISION

DEED RESTRICTIONS

- A. Developer, as used in the context of these deed restrictions shall mean the Developer, his heirs, personal representatives, successors and assigns.
- B. Electric, telephone and cable television services shall be provided by the installation of underground service lines.
- C. A copy of the approved grading plans referred to in Exhibit A of the development agreement shall be on file at the office of the City Engineer.
- D. The installation of any type of improvement on the public street right-of-way (walks, drives, sprinkler systems, etc.) requires the issuance of a permit by the City and/or the State of Wisconsin, as may be applicable.
- E. The Developer shall provide certification from a registered land surveyor or professional engineer that the final grade along all lot lines, in the invert of all drainage swales, lot pads, and at other critical locations as determined by the City Engineer, complies with the approved grading plan. Such certification shall be on a plan copy with the elevations as existing so indicated. All such elevations shall be within plus or minus 0.3 feet of the accepted grading plan elevations. If not in compliance, appropriate regrading shall be performed.

Such certification shall be provided to the City Engineer prior to final plat approval. Property owner is responsible to conform to the master grading plan.
- F. A permanent lawn shall be established on each parcel within one year after the issuance of the occupancy permit.
- G. The permanent maintenance of all drainage swales shall be vested with the Developer until individual lots are deeded over to the new property owner.
- H. A driveway approach in accord with the provisions of Chapter 6 of the Oak Creek Municipal Code shall be installed to service each parcel within one year after the issuance of the occupancy permit. A permit from the City Engineer is required for this construction.
- I. The City does not enforce deed restrictions, except for those that are supported by City ordinance.

RESOLUTION No. 10543-090605



DOC.# 09095391

REGISTER'S OFFICE | SS
Milwaukee County, WI

RECORDED 09/22/2005 01:59PM

JOHN LA FAVE
REGISTER OF DEEDS

AMOUNT: 23.00

Recording Area

Ref to:

Wayne St. John
Engineering Department
8640 South Howell Avenue
Oak Creek, WI 53154
Name and Return Address

922-9029-001, 922-9063, 922-9069, 922-9073

Parcel Identification Number (PIN)

STORM WATER MANAGEMENT PRACTICES MAINTENANCE AGREEMENT

THIS AGREEMENT, made and entered into this 9TH day of SEPTEMBER, 2005, by and between Michael H. Polaski, MICJENSAR DEVELOPMENT, LLC, 9667 South 20th Street, Oak Creek, WI, 53154, hereinafter called the "Owner", and the City of Oak Creek, hereinafter called the "City".

WITNESSETH:

WHEREAS, the Owner is the owner of the following described lands situated in the City of Oak Creek, County of Milwaukee, State of Wisconsin, to-wit:

PART OF OUTLOT 1 OF CERTIFIED SURVEY MAP 6449, PART OF PARCELS 1 AND 2 OF CERTIFIED SURVEY MAP 2525, PART OF THE STREET RESERVATION OF CERTIFIED SURVEY MAP 2940, OUTLOT 2 OF CERTIFIED SURVEY MAP 6932, OUTLOT 1 OF CERTIFIED SURVEY MAP 7042, AND PART OF PARCEL 1 OF CERTIFIED SURVEY MAP 7398, LOCATED IN THE NORTHWEST QUARTER (N.W. ¼) AND THE SOUTHWEST QUARTER (S.W. ¼) OF THE SOUTHEAST QUARTER (S.E. ¼) OF SECTION 28, TOWN 5 NORTH, RANGE 22 EAST, CITY OF OAK CREEK, MILWAUKEE COUNTY, WISCONSIN DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 28, AFORESAID; THENCE NORTH 89°36'03" EAST, ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER, 1,321.02 FEET TO THE EAST LINE OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 28;

THENCE NORTH 00°08'47" EAST, ALONG SAID EAST LINE, 659.42 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°37'23" WEST, 389.96 FEET; THENCE SOUTH 24°43'13" WEST, 165.77 FEET TO A POINT OF CURVE; THENCE SOUTHWESTERLY ALONG A CURVE TO THE LEFT 32.64 FEET, HAVING A RADIUS OF 550.00 FEET, THE CHORD BEARING SOUTH 23°01'13" WEST, 32.63 FEET; THENCE NORTH 89°50'00" WEST, 186.64 FEET; THENCE NORTH 58°10'00" WEST, 334.50 FEET; THENCE SOUTH 89°37'23" WEST, 60.16 FEET; THENCE NORTH 00°01'48" WEST, 549.79 FEET; THENCE NORTH 89°39'01" EAST, 30.00 FEET; THENCE NORTH 00°01'48" WEST, 110.17 FEET TO A POINT OF CURVE; THENCE NORTHEASTERLY ALONG A CURVE TO THE RIGHT 63.80 FEET, HAVING A RADIUS OF 312.00 FEET, THE CHORD BEARING NORTH 05°49'40" EAST, 63.69 FEET; THENCE NORTH 78°18'52" WEST, 156.24 FEET; THENCE NORTH 11°41'08" EAST, 97.92 FEET; THENCE NORTH 78°18'52" WEST, 15.00 FEET; THENCE NORTH 00°01'48" WEST, 464.89 FEET; THENCE NORTH 89°40'21" EAST, 1,118.38 FEET; THENCE SOUTH 00°08'47" WEST, 400.25 FEET; THENCE SOUTH 89°41'43" WEST, 4.91 FEET TO A POINT OF CURVE; THENCE NORTHWESTERLY ALONG A CURVE TO THE RIGHT 103.27 FEET, HAVING A RADIUS OF 230.00 FEET, THE CHORD BEARING NORTH 77°26'32" WEST, 102.40 FEET; THENCE NORTH 64°34'46" WEST, 72.27 FEET TO A POINT OF CURVE; THENCE SOUTHWESTERLY ALONG A CURVE TO THE LEFT 49.75 FEET, HAVING A RADIUS OF 25.00 FEET, THE CHORD BEARING SOUTH 58°24'40" WEST, 41.94 FEET TO A POINT OF COMPOUND CURVE; THENCE SOUTHWESTERLY ALONG A CURVE TO THE LEFT 8.15 FEET, HAVING A RADIUS OF 370.00 FEET, THE CHORD BEARING SOUTH 00°46'14" WEST, 8.15 FEET; THENCE SOUTH 00°08'23" WEST, 283.57 FEET; THENCE NORTH 89°39'01" EAST, 206.00 FEET; THENCE SOUTH 00°08'47" WEST, 659.34 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 31.946 ACRES OR 1,391,574 SQUARE FEET

hereinafter called the "Property".

WHEREAS, the Owner is developing the Property; and

WHEREAS, the Site Plan/Subdivision Plan known as Shepards Orchard Subdivision, hereinafter called the "Plan", which is expressly made a part hereof, as approved or to be approved by the City, provides for on-site storm water management practices within the confines of the Property; and

WHEREAS, the City and the Owner, its successors and assigns, including any homeowners association, agree that the health, safety, and welfare of the residents of the City of Oak Creek, require that on-site storm water management practices as defined in Section 13.103 of the Oak Creek Municipal Code be constructed and maintained on the Property; and

WHEREAS, the City requires that on-site storm water management practices as shown on the Plan be constructed and adequately maintained by the Owner, its successors and assigns, including any homeowners association.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The on-site storm water management practices shall be constructed by the Owner, its successors and assigns, including any homeowners association, in accordance with the plans and specifications identified in the Plan. The storm water management practices shall serve the drainage area designated in the Plan.
2. The Owner, its successors and assigns, including any homeowners association, shall regularly inspect the storm water management practices as often as conditions require, but in any event at least once each year. The standard Operation and Maintenance Report attached to this agreement as Exhibit A and by this reference made a part hereof shall be used for the purpose of the regular inspections of the storm water management practices. The Owner, its successors and assigns shall keep the Operation and Maintenance Reports from past inspections as well as a log of maintenance activity indicating the date and type of maintenance completed. The Reports and maintenance log shall be made available to the City for review. The purpose of the inspections is to assure safe and proper functioning of the facilities. The inspections shall cover all facilities including but not limited to berms, outlet structures, subsurface structures, infiltration areas, pond areas and access roads. Deficiencies shall be noted in the Operation and Maintenance Report.

3. The Owner, its successors and assigns, including any homeowners association, shall adequately maintain the storm water management practices, including but not limited to all pipes and channels built to convey storm water to the facility, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the storm water. Adequate maintenance is herein defined as keeping the storm water management facilities in good working condition so that these facilities are performing their design functions and are in accordance with the Detention Basin Maintenance Standards attached to this agreement as Exhibit B and by this reference made a part hereof, and the Rain Garden Maintenance Standards attached to this agreement as Exhibit C and by this reference made a part hereof.
4. The Owner, its successors and assigns, including any homeowners association, hereby grant permission to the City, its authorized agents and employees, to enter upon the Property and to inspect the storm water management practices whenever the City deems necessary. The purpose of inspection is to investigate reported deficiencies and/or to respond to citizen complaints. The City shall provide the Owner, its successors and assigns, including any homeowners association, copies of the inspection findings and a directive to commence with the repairs if necessary. Corrective actions shall be taken within a reasonable time frame as established by the City Engineer.
5. If the Owner, its successors and assigns, including any homeowners association, fails to maintain the storm water management practices in good working condition acceptable to the City and does not perform the required corrective actions in the specified time, the City may:
 - a) Issue a citation to the Owner, its successors and assigns. The penalty for violation of this section shall be not less than \$50.00 nor more than \$500.00 for each offense, together with the costs of prosecution. Each day that the violation exists shall constitute a separate offense, and
 - b) Perform the corrective actions identified in the inspection report and assess the Owner, its successors and assigns for the cost of such work. The cost of such work shall be specially assessed against the Property pursuant to Wisconsin Statutes Section 66.0703. If the facilities are located on an outlot owned collectively by a homeowners association, the City may assess each member of the homeowners association according to the ownership interest in the facilities located on the property. This provision shall not be construed to allow the City to erect any structure of permanent nature on the land of the Owner outside of the easement for the storm water management practices. It is expressly understood and agreed that the City is under no obligation to routinely maintain or repair said storm water management practices, and in no event shall this Agreement be construed to impose any such obligation on the City.
6. The Owner, its successors and assigns, including any homeowners association, will perform the work necessary to keep these facilities in good working order as appropriate. In the event a maintenance schedule for the storm water management practices (including sediment removal) is outlined on the approved plans, the schedule will be followed. The minimal amount of maintenance on the storm water management practices shall be in accordance with the Detention Basin Maintenance Standards (Exhibit B) and the Rain Garden Maintenance Standards (Exhibit C).
7. In the event the City pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Owner, its successors and assigns, including any homeowners association, shall reimburse the City upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the City hereunder.
8. This Agreement imposes no liability of any kind whatsoever on the City and the Owner agrees to hold the City harmless from any liability in the event the storm water management practices fail to operate properly.
9. This Agreement shall be attached as an exhibit to any document which creates a homeowners association that is responsible for maintenance of the storm water management practices and be recorded at the Milwaukee County Register of Deeds, and shall constitute a covenant running with the land, and shall be binding on the Owner, its administrators, executors, assigns, heirs and any other successors in interests,

including any homeowners association. The owner shall provide the City with a copy of any document which creates a homeowners association that is responsible for the storm water management practices.

WITNESS the following signatures and seals:

MICJENSAR DEVELOPMENT, LLC

Michael H. Polaski
Michael H. Polaski, Manager

The foregoing Agreement was acknowledged before me this 18 day of AUGUST, 2005,

by MICHAEL H. POLASKI

Richard R. Bolender
NOTARY PUBLIC

My Commission Expires: 12-05-06

CITY OF OAK CREEK, WISCONSIN

Richard R. Bolender
Richard R. Bolender, Mayor

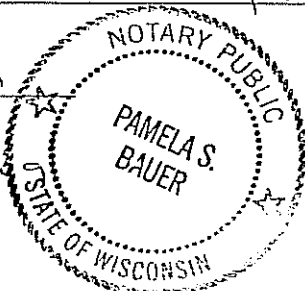
Beverly A. Buretta
Beverly A. Buretta, City Clerk

The foregoing Agreement was acknowledged before me this 9 day of Sept, 2005,

by Richard Bolender + Beverly Buretta

Pamela S. Bauer
NOTARY PUBLIC

My Commission Expires: 12/24/05



This document was prepared by Philip J. Beiermeister, P.E. of the City of Oak Creek Engineering Division.

Approved as to Form:

City Attorney

Date

EXHIBIT A



OPERATION AND MAINTENANCE INSPECTION REPORT
STORM WATER MANAGEMENT PONDS

Inspector Name: _____

Tax Key No.: _____

Inspection Date: _____

Location: _____

Detention Basin Type: Wet Pond _____ Underground _____
Extended Dry _____
Artificial Wetland _____

Watershed _____

Items Inspected (Pond components)	Checked (Yes/ No/ NA)	Maintenance Needed (Yes/ No/ NA)	Remarks
Embankment and Emergency spillway			
1. Trash and debris			
2. Vegetation and ground cover adequate			
3. Embankment erosion			
4. Animal burrows			
5. Unauthorized plantings/tree growth			
6. Cracking, bulging, or sliding of embankment			
a. Upstream face and toe of slope			
b. Downstream face and toe of slope			
7. Settlement			
8. Seeps/leaks on downstream face			
9. Emergency spillway			
a. Clear of trash and debris			
b. Settlement			
c. Slope protection or riprap failures			
10. Other (specify)			
Inlet/Outlet Structures			
Type: Pipe (RCP/CMP/Plastic)			
Stand pipe/inlet box with orifice			
Weir (V-notch/Rectangular)			
Other _____			
1. Erosion/scouring/undermining at inlet or outlet			
2. Primary outlet structure			
a. Debris or sediment removal necessary			
b. Damaged			
c. Orifice plate damaged, out of place or missing			
3. Trash rack/hood maintenance			
a. Trash or debris removal necessary			
b. Damaged or missing			
c. Corrosion/rust control			
Pond Bottom/Pool Area			
1. Sediment accumulation (estimate depth)			
2. Water level at normal pool elevation			
3. Oil sheen on water			

EXHIBIT B
DETENTION BASIN MAINTENANCE STANDARDS

Maintenance Component	Defect	Conditions When Maintenance Is Needed	Results Expected When Maintenance Is Performed
Side Slopes and Embankments	Trash & Debris	Any visual evidence of dumping, trash or debris.	Trash and debris cleared from site.
	Unmowed vegetation/ Ground Cover	Unless designated by the Common Council as a nature center or wildlife preserve, if the facility is located in a platted subdivision, multi-family apartment complex, planned development or a mobile home district, mowing is needed when vegetation exceeds 6 inches in height. In all other areas, mowing is needed when vegetation exceeds one foot in height. Mowed vegetation should be removed from areas where it could enter the pond, either when the pond level rises or by rainfall runoff.	When mowing is needed, grass/ground cover should be mowed to 2 inches in height. Trees and bushes should be removed where they interfere with pond maintenance activities; that is, at the inlet, outlet and near engineered structures. Nature centers and wildlife preserves should follow the maintenance guidelines in the approving resolution and approved storm water management plan.
	Rodent Holes	Any evidence of rodent holes if facility is acting as a dam or berm, or any evidence of water piping through dam or berm via rodent holes.	Rodents destroyed and dam or berm repaired.
	Tree Growth	Tree growth does not allow maintenance access or interferes with maintenance activity (i.e., slope mowing, silt removal or equipment movements).	Trees do not hinder maintenance activities.
	Erosion	Eroded damage over 2 inches deep where cause of damage is still present or where there is potential for continued erosion.	Slopes should be stabilized by using appropriate erosion control measures; e.g., rock rip-rap, planting of grass, erosion mat, compaction.
Inlet/ Outlet Pipe	Debris and Sediment	Sediment and/or debris clogging more than 10% of the pipe opening.	No clogging or blockage in the inlet and outlet piping.
	Damaged	Rust is causing more than 50% deterioration to any part of metal pipes, cracks in plastic pipe or cracks or exposed rebar in concrete pipes.	Pipe repaired or replaced.
		Any dent that decreases the cross section area of pipe by more than 10% or retards the flowage of water.	Pipe repaired or replaced.
	Erosion/Scouring	Eroded or scoured bottom at inlet or outlet pipes; undermining of structure or end section.	Area should be stabilized by using appropriately sized rock rip-rap.
	Damaged or Missing Orifice Plate	Control device is not working properly due to missing, out of place, or bent orifice plate.	Plate is in place and works as designed.
	Orifice Plate Obstructions	Any trash, debris, sediment, or vegetation blocking the plate.	Plate is free of all obstructions and works as designed.
Trash Racks/Hoods	Trash and Debris	Trash or debris that is plugging more than 20% of the openings in the barrier.	Barrier clear to receive capacity flow.
	Damaged/ Missing Bars or Hood.	Bars or hood are bent out of shape more than 3 inches.	Bars in place with no bends more than 3/4 inch.
		Bars are missing or entire barrier missing.	Bars in place according to design.
Pool Area	Sediment Accumulation in Pond Bottom	Sediment accumulations in pond bottom that exceeds the design sediment depth.	Sediment cleaned out to designed pond shape and depth; pond reseeded if necessary to control erosion.
		Water Level	Water level does not drain down to normal designed pool elevation.
	Oil Sheen on Water	Prevalent and visible oil sheen.	Remove oil from water by use of oil-absorbent pads or by vacator truck. Refer problem to locate source and correct.
Emergency Overflow/Spillway and Dikes	Settlements	Any part of these components that has settled 4-inches lower than the design elevation, or inspector determines dike/ berm is unsound.	Dike should be built back to the design elevation and repaired to specifications.
	Rock Missing	Only one layer of rock exists above native soil in area five square feet or larger, or any exposure of native soil at the top emergency spillway.	Replace rocks to design standards.

EXHIBIT C
RAIN GARDEN MAINTENANCE STANDARDS

Maintenance Component	Defect	Conditions When Maintenance Is Needed	Results Expected When Maintenance Is Performed
Side Slopes and Embankments	Trash & Debris	Any visual evidence of dumping, trash or debris.	Trash and debris cleared from site.
	Unmowed vegetation/ Ground Cover	If facility is located in a platted subdivision, multi-family apartment complex, planned development or a mobile home district, mowing the exterior perimeter of the garden and adjacent slopes is needed when vegetation exceeds 6 inches in height. In all other areas, mowing is needed when vegetation exceeds one foot in height.	When mowing is needed, grass/ground cover should be mowed to 2 inches in height. Trees and bushes should be removed where they interfere with maintenance activities or provide too much shade to the garden.
	Rodent Holes	Any evidence of rodent holes if facility is acting as a dam or berm, or any evidence of water piping through dam or berm via rodent holes.	Rodents destroyed and dam or berm repaired.
	Erosion	Eroded damage over 2 inches deep where cause of damage is still present or where there is potential for continued erosion.	Slopes should be stabilized by using appropriate erosion control measures; e.g., rock rip-rap, planting of grass, erosion mat.
Inlet/ Outlet Pipe	Debris and Sediment	Trash, debris, sediment or vegetation blocking or clogging more than 10% of the pipe opening.	No clogging or blockage in the inlet and outlet/overflow piping.
	Damaged	Rust is causing more than 50% deterioration to any part of metal pipes, cracks in plastic pipe or cracks or exposed rebar in concrete pipes.	Pipe repaired or replaced.
		Any dent that decreases the cross section area of pipe by more than 10% or retards the flowage of water.	Pipe repaired or replaced.
	Erosion/Scouring	Eroded or scoured bottom at inlet or outlet pipes; undermining of structure or end section.	Area should be stabilized by using appropriately sized rock rip-rap.
Garden Area	Weeds	Weed growth in garden.	Weeds removed by hand. Uniform layer (3"-5") of shredded woods chips placed over exposed soil until plants fill out garden.
	Dead Plants	Annually each spring when new growth is 3"-5" tall.	Dead stalks and seed heads from previous seasons growth are cut and removed.
		Individual dead or diseased plants.	Remove and replace plants.
	Thinning Plants	Plants become crowded or begin to decline or die in the center of a clump.	Plant growth is improved by removing or dividing plants in spring before they are 4" tall.
	Standing Water	When water stands in the garden between storms and does not drain freely.	Sediment or debris blockages are removed. Check outlet pipes and downstream conveyance system for obstructions. Loosen bare soil areas and add a layer of shredded wood chips or compost to prevent the surface from sealing.
	Drought	Rainfall less than an inch per week when the garden is being established.	Garden is watered twice per week until plants are established.
		Extended periods of drought after the garden is established.	Garden is watered about one inch per week.
Leaves	Leaves collect in the bottom of the garden in excess of 4" deep.	Leaves are removed in fall or spring. A 2"-4" layer of shredded leaves is okay provided they do not clog or go down the outlet pipe.	

5



DOC.# 09114558

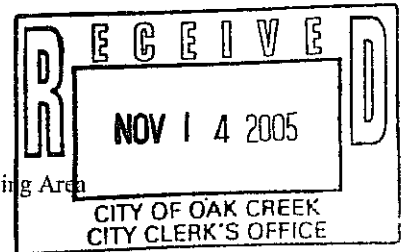
Document Number	SHEPARD ORCHARD SUBDIVISION Document Title DEED RESTRICTIONS
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REGISTER'S OFFICE | SS
Milwaukee County, WI

RECORDED 10/20/2005 10:08AM

JOHN LA FAVE
REGISTER OF DEEDS

AMOUNT: 19.00



Recording Area

Douglas W. Seymour, Director
 Dept. of Community Development
 8640 South Howell Avenue
 Oak Creek, WI 53154
 Name and Return Address

922=9073, 922-9029=001, 922-9069

Parcel Identification Number (PIN)

This Declaration of Restrictions, made this 1 day of August, 2005.

WHEREAS, MICJENSAR Development, LLC, is the owner of the following described parcel of real estate:

PART OF OUTLOT 1 OF CERTIFIED SURVEY MAP 6449, PART OF PARCELS 1 AND 2 OF CERTIFIED SURVEY MAP 2525, PART OF THE STREET RESERVATION OF CERTIFIED SURVEY MAP 2940, OUTLOT 2 OF CERTIFIED SURVEY MAP 6932, OUTLOT 1 OF CERTIFIED SURVEY MAP 7042, AND PART OF PARCEL 1 OF CERTIFIED SURVEY MAP 7398, LOCATED IN THE NORTHWEST QUARTER (N.W. ¼) AND THE SOUTHWEST QUARTER (S.W. ¼) OF THE SOUTHEAST QUARTER (S.E. ¼) OF SECTION 28, TOWN 5 NORTH, RANGE 22 EAST, CITY OF OAK CREEK, MILWAUKEE COUNTY, WISCONSIN DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 28, AFORESAID; THENCE NORTH 89°36'03" EAST, ALONG THE SOUTH LINE

OF THE SOUTHEAST QUARTER, 1,321.02 FEET TO THE EAST LINE OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 28; THENCE NORTH 00°08'47" EAST, ALONG SAID EAST LINE, 659.42 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°37'23" WEST, 389.96 FEET; THENCE SOUTH 24°43'13" WEST, 165.77 FEET TO A POINT OF CURVE; THENCE SOUTHWESTERLY ALONG A CURVE TO THE LEFT 32.64 FEET, HAVING A RADIUS OF 550.00 FEET, THE CHORD BEARING SOUTH 23°01'13" WEST, 32.63 FEET; THENCE NORTH 89°50'00" WEST, 186.64 FEET; THENCE NORTH 58°10'00" WEST, 334.50 FEET; THENCE SOUTH 89°37'23" WEST, 60.16 FEET; THENCE NORTH 00°01'48" WEST, 549.79 FEET; THENCE NORTH 89°39'01" EAST, 30.00 FEET; THENCE NORTH 00°01'48" WEST, 110.17 FEET TO A POINT OF CURVE; THENCE NORTHEASTERLY ALONG A CURVE TO THE RIGHT 63.80 FEET, HAVING A RADIUS OF 312.00 FEET, THE CHORD BEARING NORTH 05°49'40" EAST, 63.69 FEET; THENCE NORTH 78°18'52" WEST, 156.24 FEET; THENCE NORTH 11°41'08" EAST, 97.92 FEET; THENCE NORTH 78°18'52" WEST, 15.00 FEET; THENCE NORTH 00°01'48" WEST, 464.89 FEET; THENCE NORTH 89°40'21" EAST, 1,118.38 FEET; THENCE SOUTH 00°08'47" WEST, 400.25 FEET; THENCE SOUTH 89°41'43" WEST, 4.91 FEET TO A POINT OF CURVE; THENCE NORTHWESTERLY ALONG A CURVE TO THE RIGHT 103.27 FEET, HAVING A RADIUS OF 230.00 FEET, THE CHORD BEARING NORTH 77°26'32" WEST, 102.40 FEET; THENCE NORTH 64°34'46" WEST, 72.27 FEET TO A POINT OF CURVE; THENCE SOUTHWESTERLY ALONG A CURVE TO THE LEFT 49.75 FEET, HAVING A RADIUS OF 25.00 FEET, THE CHORD BEARING SOUTH 58°24'40" WEST, 41.94 FEET TO A POINT OF COMPOUND CURVE; THENCE SOUTHWESTERLY ALONG A CURVE TO THE LEFT 8.15 FEET, HAVING A RADIUS OF 370.00 FEET, THE CHORD BEARING SOUTH 00°46'14" WEST, 8.15 FEET; THENCE SOUTH 00°08'23" WEST, 283.57 FEET; THENCE NORTH 89°39'01" EAST, 206.00 FEET; THENCE SOUTH 00°08'47" WEST, 659.34 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 31.946 ACRES OR 1,391,574 SQUARE FEET.

NOW, THEREFORE, Michael H. Polaski of MICJENSAR Development, LLC, hereby declares the property as described above shall be subject to the following restrictions:

- A. Developer, as used in the context of these deed restrictions shall mean the Developer, his heirs, personal representatives, successors and assigns.
- B. Electric, telephone and cable television services shall be provided by the installation of underground service lines.
- C. A copy of the approved grading plans referred to in Exhibit A of the development agreement shall be on file at the office of the City Engineer.
- D. The installation of any type of improvement on the public street right-of-way (walks, drives, sprinkler systems, etc.) requires the issuance of a permit by the City and/or the State of Wisconsin, as may be applicable.

- E. The Developer shall provide certification from a registered land surveyor or professional engineer that the final grade along all lot lines, in the invert of all drainage swales, lot pads, and at other critical locations as determined by the City Engineer, complies with the approved grading plan. Such certification shall be on a plan copy with the elevations as existing so indicated. All such elevations shall be within plus or minus 0.3 feet of the accepted grading plan elevations. If not in compliance, appropriate regrading shall be performed.
- Such certification shall be provided to the City Engineer prior to final plat approval. Property owner is responsible to conform to the master-grading plan.
- F. A permanent lawn shall be established on each parcel within one year after the issuance of the occupancy permit.
- G. The permanent maintenance of all drainage swales shall be vested with the Developer until the two-year guaranty period lapses. It shall then revert to the individual property owner.
- H. A driveway approach in accord with the provisions of Chapter 6 of the Oak Creek Municipal Code shall be installed to service each parcel within one year after the issuance of the occupancy permit. A permit from the City Engineer is required for this construction.
- I. The City does not enforce deed restrictions, except for those that are supported by City ordinance.

IN WITNESS WHEREOF, the said owner has caused these presents to be signed by Michael H. Polaski, at Oak Creek, Wisconsin, this 28 day of July, 2005.

In presence of:

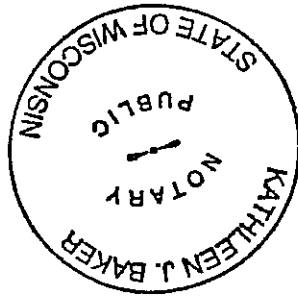
MICJENSAR Development, LLC



Michael H. Polaski Manager

STATE OF WISCONSIN)
(SS.
MILWAUKEE COUNTY)

Personally came before me this 28 day of July, 2005, the above-named, Michael H. Polaski of MICJENSAR Development, LLC., to me known to be the person who executed the foregoing instrument and to me known to be such Manager of said corporation and acknowledged that he executed the foregoing instrument as such officer.



Kathleen J. Baker

Notary Public

Milwaukee

County, WI


My commission expires 02.25.07

APPROVAL

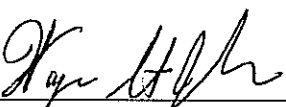
The foregoing Declaration of Restrictions is hereby approved by the City of Oak Creek dated this _____ day of _____, 2005.

CITY OF OAK CREEK

COUNTERSIGNED:

BY: 

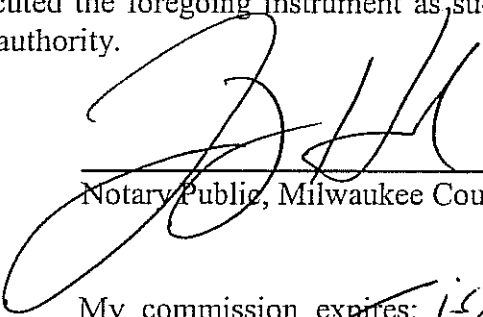
Douglas W. Seymour, AICP
Director of Community Development



Wayne St. John, P.E.
City Engineer

STATE OF WISCONSIN)
(SS.
MILWAUKEE COUNTY)

Personally came before me this 9 day of August, 2005, DOUGLAS W. SEYMOUR, Director of Community Development and WAYNE ST. JOHN, City Engineer, of the above-named municipal corporation, CITY OF OAK CREEK, to me known to be such Director of Community Development and City Engineer of said municipal corporation and acknowledged that they executed the foregoing instrument as such officers, as the deed of said municipal corporation, by its authority.



Notary Public, Milwaukee County, WI
My commission expires: 12/31/2008

This instrument was drafted by Henry W. Jackson of the City of Oak Creek Engineering Division.