



Meeting Date: June 20, 2011
Agenda Item: 12 & 13

**VILLAGE OF HOWARD PLAN COMMISSION
STAFF REPORT**

REPORT TO: Burt R. McIntyre, Village President
Village Plan Commission

REPORT FROM: Dave Wiese, Executive Director of Community Development

REPORT WRITTEN: June 15, 2011

REPORT SUBJECT: **#12) Review and take action on Third Amendment to Declaration of Covenants, Restrictions, and Easements for lots in the 29/41 Retail Centre Plat Zoned Business, B-1.**
This is a recommendation to the Village Board.

#13) Review and take action on Fourth Amendment to Declaration of Covenants, Restrictions, and Easements for lots in the 29/41 Retail Centre Plat Zoned Business, B-1.
This is a recommendation to the Village Board.

ACTION REQUESTED

Bret Backus, Vice President of Woodman's Real Estate and President of Raven Development, is requesting the Village approve the proposed amendments as presented.

BACKGROUND

As part of the original Woodman's Development, the Village was signatory to the restrictive covenants for the 29/41 Retail Centre Plat. Two sets of covenants are recorded and in place. Covenants are recorded for the Business/Retail lots and a separate document addresses the Residential lots. The original Business/Retail Covenants were very restrictive on the amount of outside storage and outside activities. Since the original adoption in 2000, there have been two amendments to the original covenants. The first amendment allowed for a variance procedure, and the second amendment allowed outside storage for Gander Mountain.

The proposed third amendment is for Schroeder's Flowers. It makes it clear a use such as Schroeder's Flowers in the Woodman's parking lot is allowed. The fourth amendment as proposed

cleans up some of the outlot numbering language and also specifically allows Menards to be constructed as proposed.

RECOMMENDATION

If the Plan Commission were in favor of the proposed amendments a motion would be: “Motion to approve 3rd and 4th amendments to the Declaration of Covenants, Restrictions, and Easements for lots in the 29/41 Retail Centre Plat Zoned Business, B-1.”

ATTACHMENTS

- I. Third amendment**
- II. Fourth amendment**
- III. Original Covenants**
- IV. First amendment**
- V. Second amendment**
- VI. 29/41 Plat**

Attachment I

**THIRD AMENDMENT TO DECLARATION OF
COVENANTS, RESTRICTIONS AND EASEMENTS
FOR LOTS IN THE 29/41 RETAIL CENTRE PLAT
ZONED BUSINESS, B-1**

Name & Return Address:
Woodman's Food Market, Inc.
Attn: Bret A. Backus,
Vice President of Real Estate
2631 Liberty Lane
Janesville, WI 53545

Parcel Identification Nos.: See attached Exhibit A

RECITALS

A. Woodman's Food Market, Inc. (Developer), with the consent of the Village of Howard (Village), executed and recorded a declaration of covenants, restrictions and easements for lots in the 29/51 Retail Centre Plat zoned business, B-1, which lots are described on Exhibit A. The declaration was recorded with the Brown County Register of Deeds on July 5, 2000, as Document No. 1761355. The declaration was amended by a first amendment recorded with the Brown County Register of Deeds on March 20, 2001 as Document No. 1800806. The declaration was amended by a second amendment recorded with the Brown County Register of Deeds on June __, 2011 as Document No. _____. The declaration, as amended to date, will be called the "Declaration".

B. Capitalized words and terms used in this third amendment shall have the meanings given in the Declaration. Developer is still the Class B member of the Association.

AGREEMENT

In accordance with the procedures set forth in Section 13.2(a) of the Declaration, Developer amends the Declaration as follows:

1. The recitals are incorporated and approved.

2. The Owner of Lot 42 shall have the right to construct temporary greenhouses within the parking areas located within Lot 42 in the spring of each year for a period not exceeding ninety (90) days, and to use the greenhouses for the storage and sale of plants, flowers, fertilizers and other products and tools typically sold by a greenhouse or florist. The Owner of Lot 42 shall have the right to exercise this right beginning in 2007, but shall not exercise this right in 2008 and subsequent years unless the Owner obtains any required consent from the Wisconsin Department of Transportation. This right shall constitute a permitted exception to the prohibitions on outside storage found in Section 8.12(a)(vi) and Section 9.3 of the Declaration.

3. The Declaration is ratified and confirmed, except as modified by this third amendment.

The effective date of this Amendment is February 28, 2005.

Dated: June 1, 2011

WOODMAN'S FOOD MARKET, INC.

By: _____

Bret Backus, Vice President of Real Estate

Signature of Bret A. Backus authenticated this 1st day of June, 2011.

Notary Public, State of Wisconsin

My commission: 8/5/2012



Consent of Village of Howard

The Village of Howard hereby consents to the foregoing third amendment.

VILLAGE OF HOWARD

By: _____
Burt R. McIntyre, Village President

Dated: June _____, 2011

By: _____
Robert Bartelt, Village Administrator

Dated: June _____, 2011

By: _____
Dennis M. Duffy, Village Attorney

Dated: June _____, 2011

Signature of Burt R. McIntyre authenticated this _____ day of June, 2011.

Notary Public, State of Wisconsin
My commission: _____

Signature of Robert Bartelt authenticated this _____ day of June, 2011.

Notary Public, State of Wisconsin
My commission: _____

Signature of Dennis M. Duffy authenticated this _____ day of June, 2011.

Notary Public, State of Wisconsin
My commission: _____

EXHIBIT A

Legal Description of Lots in 29/41 Retail Centre Plat Zoned B-1

Lot Number	Parcel Identification Number
32	VH-2037
33	VH-2038
34	VH-2039
35	VH-2040
36	VH-2041
37	VH-2042
38	VH-2043
39	VH-2044
41	VH-2046
42	VH-2047
Lot 1 of Certified Survey Map 6335	VH-2048
Lot 2 of Certified Survey Map 6335	VH-2048-1
Lot 3 of Certified Survey Map 6335	VH-2049
Outlot 2	VH-2051
Outlot 3	VH-2052

Attachment II

FOURTH AMENDMENT TO DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR LOTS IN THE 29/41 RETAIL CENTRE PLAT ZONED BUSINESS, B-1

Name & Return Address:
Woodman's Food Market, Inc.
c/o Raven Development, Inc.
Attn: Bret A. Backus, President
7818 Big Sky Drive, Suite 201
Madison, WI 53719

Parcel Identification Nos.: See attached Exhibit A

RECITALS

A. Woodman's Food Market, Inc. (Developer), with the consent of the Village of Howard (Village), executed and recorded a declaration of covenants, restrictions and easements for lots in the 29/41 Retail Centre Plat zoned business, B-1, which lots are described on Exhibit A. The declaration was recorded with the Brown County Register of Deeds on July 5, 2000, as Document No. 1761355. The declaration was amended by a first amendment recorded with the Brown County Register of Deeds on March 20, 2001 as Document No. 1800806, a second amendment recorded with the Brown County Register of Deeds on _____, 2011 as Document No. _____, and a third amendment recorded with the Brown County Register of Deeds on _____, 2011 as Document No. _____. The declaration as so amended will be called the "Declaration".

B. Capitalized words and terms used in this fourth amendment shall have the meanings given in the Declaration. Developer is still the Class B member of the Association.

C. Menard, Inc. ("Menard") is the contractual owner of real estate described on attached Exhibit C (the "Menard Lot"). Menard desires to use the Menard Lot for the operation by Menard itself of a Menard's store as such may exist from time to time, including the retail sale of building materials and other home improvement materials by Menard itself (said

operation being referred to herein as the “Menard Use”) from the building to be constructed on the Menard Lot (the Menard Building).

D. Menard desires to construct and use an enclosed outdoor sales and storage yard (“Menard Outside Yard”) in connection with the construction and use of the Menard Building, generally as depicted on Exhibit B attached hereto.

E. Section 8.12(a)(vi) of the Declaration prohibits outside storage. Menard has requested that this section be modified to allow Menard to construct and use the Menard Outside Yard.

F. Section 9.3 of the Declaration requires that roof objects and equipment either be enclosed or reasonably screened from public view. Menard has requested that the Menard Building be exempted from this requirement.

AGREEMENT

In accordance with the procedures set forth in Section 13.2(a) of the Declaration, Developer amends the Declaration as follows:

1. The recitals are incorporated and approved.
2. Developer has recently become aware that the Declaration incorrectly identifies the Outlots in several places. To correct those inadvertent errors, the Declaration shall be amended as follows:
 - (a) In the definition of Common Elements, the references to Outlots 1 and 2 shall be changed to references to Outlots 2 and 3.
 - (b) The references to Outlots 1 and 2 in Section 4.3 shall be changed to references to Outlots 2 and 3.
 - (c) The references to Outlots 3 and 4 in Section 4.4 shall be changed to references to Outlots 1 and 4.
 - (d) The references to Outlots 1, 2 and 3 in Section 4.5 shall be changed to references to Outlots 2, 3 and 4.

(e) The references to Outlot 2 in Section 9.14 shall be changed to references to Outlot 3.

(f) The references to Outlots 1 and 2 in Exhibit A to the original Declaration shall be changed to references to Outlots 2 and 3.

3. The following Section 8.12(a)(vi)(c) is added to the Declaration:

(c) As long as the Menard Lot is used primarily for the Menard Use, the Menard Outside Yard shall be considered part of and within the Menard Building, and may be used for the sale and storage of merchandise, provided that the Menard Outside Yard is constructed and maintained in substantial compliance with applicable law, Exhibit B (as such may be modified pursuant to the terms of the Declaration) and the Declaration as amended by this amendment.

4. The following is added to the end of Section 9.3 of the Declaration:

The Menard Building shall not be subject to the foregoing requirement.

5. The foregoing Sections 3 and 4 of this fourth amendment shall be effective only if a deed to Menard for the Menard Lot is recorded on or before October 1, 2011.

6. The Declaration is ratified and confirmed, except as modified by this fourth amendment.

[SIGNATURES APPEAR ON FOLLOWING PAGE(S)]

Dated: June ____, 2011

WOODMAN'S FOOD MARKET, INC.

By: _____
Bret A. Backus, Vice President-Real Estate

Signature of Bret A. Backus authenticated this ____ day of June ____, 2011

Notary Public, State of Wisconsin
My commission: _____

Consent of Village of Howard

The Village of Howard hereby consents to the foregoing fourth amendment.

VILLAGE OF HOWARD

By: _____ Dated: June ____, 2011
Burt R. McIntyre, Village President

By: _____ Dated: June ____, 2011
Robert Bartelt, Village Clerk/Interim Administrator

By: _____ Dated: June ____, 2011
Dennis M. Duffy, Village Attorney

Signature of Burt R. McIntyre authenticated this _____ day of June ____, 2011

Notary Public, State of Wisconsin
My commission: _____

Signature of Robert Bartelt authenticated this _____ day of June ____, 2011

Notary Public, State of Wisconsin
My commission: _____

Signature of Dennis M. Duffy authenticated this _____ day of June ____, 2011

Notary Public, State of Wisconsin
My commission: _____

Drafted by Timothy C. Enyeart

EXHIBIT A

Legal Description of Lots in 29/41 Retail Centre Plat Zoned B-1

Lot Number	Parcel Identification Number
32	VH-2037
33	VH-2038
34	VH-2039
35	VH-2040
36	VH-2041
37	VH-2042
38	VH-2043
39	VH-2044
41	VH-2046
42	VH-2047
Lot 3 of Certified Survey Map 6307	VH-2048, 2049
Lots 1 and 2 of Certified Survey Map 6335	VH-2048, 2049

EXHIBIT B

Menard Site Plan

EXHIBIT C

Legal Description and Depiction of Menard Lot

PLAN COMMISSION STAFF REPORT

AGENDA #: 9b

DESCRIPTION: Review Residential and Commercial Covenants for proposed 29/41 Retail Centre

OWNER/APPLICANT: Woodmans Development

AUTHOR: D. Wiese

DATE PREPARED: February 15, 2000

APP. W/ CONDITIONS
2/21/00
(SEE MINUTES)

DISCUSSION: Attached are updated working drafts of the proposed commercial and residential restrictive covenants for the 29/41 Retail Centre Plat. At Monday's meeting staff will be presenting the covenants for your consideration.

LAW OFFICES

WIETING, CALEWARTS, DUFFY & MAXWELL
ASSOCIATED ATTORNEYS

716 PINE STREET, P.O. BOX 488
GREEN BAY, WISCONSIN 54305-0488

TELEPHONE - (920) 432-4391
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FREDERICK C. WIETING
KENNETH G. CALEWARTS
DENNIS M. DUFFY
CRAIG T. MAXWELL

RAYMOND E. EVRARD
(1894-1974)

JOHN P. DUFFY
(1921-1990)

JOSEPH P. HOLMAN
(Retired)

WAYNE R. PETERSON
(Retired)

October 16, 2000

Hand Delivered (10/17/00)

✓ Mr. Hugh L. Thomas
Village Administrator
P.O. Box 12207
Green Bay, WI 54307-2207

Mr. Dave Wiese
Village Planner
P.O. Box 12207
Green Bay, WI 54307-2207

Re: Lots 5-8, 29/41 Retail Centre Plat

Gentlemen:

For your review and files I am enclosing a copy of the original recorded Declaration of Covenants and Restrictions for Residential Lots in the 29/41 Retail Centre Plat for Woodman's. After reviewing the uses and restrictions that the Village of Howard would be subject to upon ownership of the lots, I would recommend that we request Woodman's as the Developer to amend the Declaration for the release of these lots from the Declaration. Kindly advise.

Best regards,

WIETING, CALEWARTS, DUFFY & MAXWELL



Dennis M. Duffy

DMD/bms
Enclosure

1761355

BROWN COUNTY
REGISTER OF DEEDS
CATHY WILLIQUETTE

2000 JUL -5 A 11: 58

DECLARATION OF COVENANTS,
RESTRICTIONS AND EASEMENTS FOR LOTS
IN THE 29/41 RETAIL CENTRE PLAT ZONED
BUSINESS, B-1

EVANS TITLE

64
10/10/00
298

Name & Return Address:
Woodman's Food Market, Inc.
c/o Raven Development, Inc.
7818 Big Sky Drive, Suite 201
Madison, WI 53719

Parcel Identification Nos.: See attached Exhibit A

Article 1. Definitions.

ACC: The architectural control committee established by Article 8.

Association: WRC Howard, Inc., the Wisconsin nonstock corporation which will repair and maintain the Common Elements, and perform other duties as provided in this Declaration.

Board: The board of directors of Association.

Center: The real estate described on Exhibit A and all buildings and other improvements from time to time constructed on that real estate. A site plan of the Center is attached as Exhibit B.

Common Elements: The following portions and improvements of the Center:

Outlots 1 and 2; the detention ponds, storm and surface water systems and outlet structures located within Outlots 1 and 2: (except for the storm sewer and appurtenances located within public streets or within easements dedicated to Village); the trees, shrubbery, flowers and other landscaping from time to time planted within Outlots 1 and 2; and any other elements defined as "Developer On-Site Improvements" in the Development Agreement dated December 22, 1999, between Village and Developer and any amendments to such Development Agreement.

The Lots, and the buildings, driveways, walkways, parking lots, landscaping and other similar improvements constructed or to be constructed within the Lots by the Owners and Tenants of the Lots are not Common Elements.

Common Expenses: All reasonable, actual, direct expenses of owning, operating and maintaining the Common Elements and of operating the Association, including but not limited to:

- (a) Water, sewer, electricity and other utility services for the Common Elements.
- (b) Public liability insurance.
- (c) Such insurance against loss or damage to the Common Elements by fire and other hazards as the Association deems necessary or desirable.
- (d) Such other insurance, including fidelity insurance, as the Association may determine.
- (e) Landscaping, grass cutting, gardening, snow removal, painting, cleaning, maintenance, repair and replacement of Common Elements.
- (f) The acquisition of tools, equipment and supplies for the repair, maintenance and replacement of the Common Elements.
- (g) Salaries and wages of employees of the Association.
- (h) Real estate taxes and special assessments levied against the Common Elements, and any other taxes to which Association is subject.
- (i) Any other materials, supplies, labor, personnel services, maintenance, repairs and structural alterations which the Association deems necessary or desirable for the maintenance and operation of the Common Elements in a first class manner or for enforcement of this Declaration.
- (j) Any amount necessary to discharge any construction lien or other encumbrance levied against the Common Elements which in the opinion of the Association constitutes a lien against the Common Elements. If the lien or encumbrance is the

responsibility of one or more Owners, the Association shall specially assess any costs incurred by the Association by reason of the lien or encumbrance against that Owner or Owners by the procedure provided elsewhere in this Declaration.

- (k) Such amounts as the Association may deem proper for working capital, for a general operating reserve, for a reserve fund for replacements or to make up any deficit in the payment of Common Expenses for any prior year.

Declaration: This declaration, as amended from time to time.

Default Interest Rate: 18% per year.

Developer: Woodman's Food Market, Inc.

Lot or Lots: All lots described on Exhibit A other than the Outlots. Each Lot in the Plat will be described by its number. For example, Lot 2 shall mean Lot 2 of the Plat. If any Lots are validly subdivided or combined in compliance with this Declaration and applicable law, "Lot" shall also mean any parcel resulting from such subdivision or combination which is a legal, buildable lot under applicable law.

Outlots: The outlots of the Plat described on Exhibit A.

Owner: The owner of the fee title to any Lot, except if the Lot has been sold on land contract, the purchaser shall be the Owner.

Percentage Share: The percentage fraction which measures the obligation of each Owner to pay Common Expenses. The Percentage Share for each Lot in the Center shall be a fraction, the numerator of which shall be the number of square feet in the Lot, and the denominator of which shall be the total of the square footage of all Lots. Those Percentage Shares as of the date of this Declaration are shown on attached Exhibit C. If the area of any Lot changes, the Percentage Shares for the Lots shall be adjusted effective the first day of the first calendar month following the change.

Plat: 29/41 Retail Centre Plat located in the Village of Howard, Brown County, Wisconsin.

Tenant: Any person from time to time occupying all or part of a Lot or its improvements by a lease, sublease or other similar instrument.

Village: The Village of Howard, a Wisconsin municipal corporation.

Zoning Code: The zoning code of the Village, as from time to time amended.

Article 2. Recitations.

- 2.1 Association owns the Common Elements. Developer owns the balance of the Center and is in the process of developing the Lots as a regional retail center.
- 2.2 Developer at its expense through the service of various contractors will construct the Common Elements.
- 2.3 Developer intends to develop the Lots in an orderly manner as economic and financial markets allow, consistent with any state-mandated phasing of the development. The estimated time for development of all lots is 10 years, but that is not a deadline. Development may take more than 10 years. Each Lot may be separately owned and developed.

Article 3. Purpose and Imposition of Declaration.

- 3.1 The Lots shall be subject to the conditions, covenants, restrictions, easements and reservations in this Declaration, all of which shall be deemed to run with the land.
- 3.2 This Declaration is intended to assure proper use and appropriate development and improvement of the Center; to protect Owners and Tenants against such improper use and development of Lots as might depreciate the value and use of other Lots; to prevent the erection of buildings constructed of improper or unsuitable materials or with improper quality; to assure adequate and reasonably consistent development of the Center; to encourage and assure the construction of attractively designed buildings and landscaping appropriately located within the Center; to generally preserve the attractive design and quality and atmosphere of the Center; to provide adequate off-street parking and loading facilities; and generally to promote the welfare and safety of the Owners and Tenants, and their customers and invitees.

Article 4. Use.

- 4.1 Developer wants to achieve a reasonable mix of businesses in the Lots, and attract such businesses as will make the Lots a high-quality, family-oriented shopping center, which may include office buildings and other compatible uses. To attain this goal, the Lots shall be subject to this Article 4.
- 4.2 The Lots and Outlots 1 and 2 shall be subject to the following use restrictions:

- (a) Outlots 1 and 2 shall be used exclusively for the construction and maintenance of a stormwater management system for the Lots.
 - (b) The Lots are zoned business (B-1) under the Zoning Code. The Lots shall be used exclusively in compliance with that zoning.
- 4.3 Neither Outlot 1 or 2 or any Lot shall be used for any purpose other than that described in Section 4.2 without the prior written approval of the Village and the prior written approval of Developer.
- 4.4 Outlots 3 and 4 of the Plat are not subject to this Declaration. Developer intends to own and hold Outlots 3 and 4 as green space for possible future conveyance for widening of Highways 41 and 29.
- 4.5 Lot 41 and Outlots 1, 2 and 3 contain an environmentally sensitive area (ESA) as defined in the Brown County sewage plan. Development and land disturbing activities shall be restricted within the ESA, unless amendments are approved by the Brown County Planning Commission and the Wisconsin Department of Transportation.

Article 5. Easements.

- 5.1 Developer and Association hereby grant to each Owner and to such other parties as Developer or Association may subsequently designate, and Developer and Association reserve to themselves, the following non-exclusive, perpetual easement:
- An easement for the use of the Common Elements, including, as applicable to a particular Lot, the right to discharge water into the detention ponds located on Outlots 1 and 2.
- 5.2 Association shall have the right to grant utility easements above, on and under any of the Outlots. Certain Lots and Outlots are subject to utility easements shown on the Plat.
- 5.3 Developer reserves and shall have the right to modify, adjust, amend and relocate these easements as they affect the Lots, and Association reserves and shall have those rights over the easements as they affect the Outlots, provided that no such action materially and adversely affects beneficial enjoyment of the easements or the Lots by the Owners. The easements shall be subject to Association's rights under Article 11.
- 5.4 Association anticipates that it will retain private ownership of the Common Elements for the foreseeable future. Association shall, however, have the power to dedicate the Common Elements to the Village on such terms as the Village and Association may agree.

- 5.5 Developer and Association reserve the right, in their discretion, to extend the benefit and right to use any of the easements described in this Article 5 to parties other than those specifically identified in Section 5.1, including persons who may own real estate which is not part of the Center, whether or not that real estate is contiguous to the Center. Developer and Association shall not, however, grant any such extension if the extension would unreasonably overload a particular easement beyond its intended capacity or materially and adversely affect the use and enjoyment by any Owner of its Lot.
- 5.6 Developer reserves the right to subsequently grant additional or further easements for the installation, operation, maintenance, repair, replacement and relocation of underground utilities under the outer ten-foot perimeter of each Lot, provided that no such easement shall be granted in any portion of such perimeter where buildings are constructed or planned to be constructed. This reservation shall survive the conveyance of any Lot by Developer. Developer shall accomplish any such reservation by recording a separate instrument granting such an easement at a specified location within the permitted perimeter.

Article 6. The Association.

- 6.1 Association shall own and operate the Common Elements. It shall assess the Common Expenses to the Owners, and collect from each its Percentage Share. It shall perform such other duties as are described in this Declaration and in Association's operating agreement and bylaws.
- 6.2 Each Owner shall be a member of Association, and shall acquire its interest in Association when it acquires its Lot. Membership by each Owner is mandatory. Each Owner as member shall have the rights and duties described in this Declaration and in Association's articles of incorporation and bylaws, all as amended from time to time.
- 6.3 Association shall have two classes of membership, Class A and Class B. Initially, each Owner of a Lot other than Lot 42 shall be a Class A member. Developer as the Owner of Lot 42 shall be the sole Class B member.
- 6.4 Initially, the Class B member shall be the sole voting member of Association. The Class B member shall continue as the sole voting member of Association until the first to occur of the following:
- (a) The date on which any of Developer, an affiliate of Developer or any entity resulting from a reorganization to which Developer is a party ceases to own Lot 42, or
 - (b) The date Developer gives Association written notice that Developer wishes to convert its Class B membership to Class A membership.

When the Class A members obtain the right to vote, they shall vote as more fully described in the articles and bylaws of Association.

- 6.5 The affairs of Association shall be managed by the Board in accordance with Association's articles and bylaws, as they are amended from time to time.
- 6.6 Association shall have the powers and duties generally described in this Article 6 and in other parts of this Declaration and additionally shall have all other powers and duties reasonably necessary for the administration of the affairs of the Association; the maintenance, management, operation, repair and maintenance of the Common Elements; and the protection of rights and enforcement of duties conferred by this Declaration. The powers and duties of Association shall include, for example only and not for limitation:
- (a) The power and duty to pay the Common Expenses.
 - (b) The exclusive right to contract for all goods and services necessary or desirable for the payment and performance of the Common Expenses.
 - (c) The power and duty to designate a banking institution or institutions as depository for Association's funds; and the officer or officers from time to time authorized to make withdrawals from such accounts and to execute contracts on behalf of Association.
 - (d) The power and duty to levy and collect assessments as provided in Article 7.
 - (e) The power to cause additional improvements to be made as part of the Common Elements.
 - (f) The power to acquire, hold, encumber, mortgage, lease and convey the Common Elements, and any right, title or interest in and to personal property and other real property reasonably needed to benefit Association's ownership and operation of the Common Elements.
 - (g) The power to grant easements through or over the Common Elements.
 - (h) The power to establish reasonable rules and regulations of uniform application for the effective implementation and administration of Association's powers and duties.

Article 7. Assessments.

- 7.1 Developer for each Lot it owns and each other Owner of a Lot, by acceptance of a deed or other conveyance for the Lot, whether or not expressly stated in the deed or other conveyance, hereby covenants to pay to Association its Percentage Share of general annual assessments of Common Expenses, and to pay to Association any special assessments of Common Expenses or other charges made against the Owner's Lot under this Declaration.
- 7.2 The assessments levied by Association shall be used exclusively for carrying out the purposes, powers and duties of Association, as stated in this Declaration and Association's articles and bylaws.
- 7.3 (a) Developer anticipates that the first businesses in the Lots will open in the second half of the year 2000. Before the year 2001, Association shall invoice the actual Common Expenses to the Owners as incurred. Each invoice shall be due 10 business days after its date.
- (b) For 2001 and for each succeeding calendar year, Association shall adopt an annual budget for Common Expenses. Association shall give each Owner notice of the budget of Common Expenses. Giving of that notice shall constitute levy of assessment against the Owners for their Percentage Shares of the budget of Common Expenses. All annual assessments for any calendar year shall be due and payable in advance in four equal installments due on January 1, April 1, July 1 and October 1 of the year. Any installment not paid on or within that 10 days following its scheduled due date shall bear interest at the Default Interest Rate until paid.
- (c) The failure or delay of Association to prepare or serve notice of any annual budget shall not constitute a waiver or release in any manner of the obligation of the Owners to pay their respective assessments whenever determined. In the absence of notice of any annual budget or adjusted budget, the Owners shall continue to pay quarterly assessments in accordance with the immediately preceding annual budgets.
- (d) If an annual budget proves deficient for any reason, including lack of payment of assessments, Association may at any time levy a further assessment. Any such assessment shall cover only the actual deficiency. Association shall serve notice of such further assessments on all persons liable for the further assessment. Any further assessment shall be due 10 business days after the giving of such notice.
- (e) Association shall keep full and correct books of accounts. The books shall be open for inspection and copying by any Owner or by the representative of any Owner authorized in writing during usual business hours upon reasonable notice.
- 7.4 In addition to the general annual assessments described in Section 7.4, Association shall have the right to levy in any calendar year a special assessment for the purpose of paying the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement or for carrying out other purpose of Association. Association shall give

reasonable notice of any special assessment to each person who will be liable for the assessment. The notice shall describe the need for the assessment and estimate its timing and amount. Each Owner shall pay its Percentage Share of the special assessment. All special assessments shall be paid in full or in such installments and at such times as may be specified by Association in its notice of levy. Any special assessment or installment of special assessment not paid on or within 10 days following its scheduled due date shall bear interest at the Default Interest Rate until paid.

- 7.5 Except as otherwise provided in Section 12.1, Association shall have the exclusive right to collect and enforce the collection of assessments. Each Owner shall be personally liable for the payment of any general or special assessments assessed or accrued during the period of the Owner's ownership of a Lot.

All assessments, until paid, together with interest and actual costs of collection, including reasonable attorneys' fees and disbursements, shall constitute a lien against an Owner's Lot. Association shall have the right to file a statement of lien with the Clerk of Circuit Court for Brown County, Wisconsin, or with such other governmental agency as is allowed by applicable law. Association shall have the right to follow the procedure provided in Section 779.70(4), 779.70(5) and 779.70(6) of the Wisconsin Statutes (1997-98). Those statutory sections are incorporated by reference and contractually made part of this Declaration.

Association may foreclose a lien in the manner provided in those incorporated statutory sections or in the same manner as an action to foreclose a real estate mortgage, whichever is chosen by Association.

In any collection action Association shall have the right to recover reasonable attorneys' fees and disbursements.

- 7.6 Upon the sale, exchange or other conveyance of any Lot, the grantor shall not have any liability for the payment of Common Expenses which accrue after the date of the recording of the conveyance. But the grantor shall remain liable for any Common Expenses which accrued through the date of such recording.
- 7.7 Upon the voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all assessments under this Article 7 which are unpaid as of the date of conveyance. The grantee shall have the right to recover the amount of such unpaid assessments from the grantor, subject to any contrary agreement between grantor and grantee allocating responsibility for the assessments.

Any Owner and any prospective grantee of an Owner shall have the right to request a written statement from Association setting forth the amount of any unpaid assessments. A grantee shall not be liable for, nor shall the Lot or portion of the Lot acquired by the grantee be subject to a lien for, any unpaid assessment against the grantor which is in excess of the amount stated in Association's statement. If Association does not provide a

requested statement within 15 business days after receipt of a written request for the statement, Association shall be barred from claiming any lien, notice of which was not filed with the Brown County Clerk of Court or recorded with the Brown County Register of Deeds prior to Association's receipt of the written request. Even if Association loses the right to collect unpaid assessments from a grantee or loses the right to claim a lien, Association shall retain its right to collect the unpaid assessment from the grantor and any other person personally liable for payment of the unpaid assessment.

- 7.8 No breach of this Declaration nor the enforcement of any lien provided by this Declaration shall affect, impair, defeat or render invalid the lien of any first mortgage made in good faith and for value encumbering any Lot. If the holder of a first mortgage on a Lot forecloses the mortgage, or accepts a deed in lieu of foreclosure, the lien of any assessment by Association shall be automatically extinguished, without the need to name Association as defendant in the foreclosure and without the need to take any other action. The purchaser at the foreclosure sale, the grantee named in the deed in lieu of foreclosure, and their heirs, representatives, successors and assigns shall not be liable for any Common Expenses or assessments accruing prior to the acquisition of title by such purchaser or grantee. The lien of a first purchase money mortgage shall be prior to all unpaid assessments accruing prior to the perfection of the mortgage lien. Any foreclosure of an assessment by Association, or acceptance of a deed in lieu of such foreclosure, shall be subject to any existing first mortgage on the Lot involved, and the lien of the mortgage shall not be affected by the foreclosure or deed.

The priority of the lien of any mortgage other than a first mortgage relative to any lien filed by Association under this Declaration shall be determined by applicable law.

Article 8. Architectural Control.

- 8.1 The bylaws of Association shall establish the ACC, which shall consist of at least two members who shall be natural persons. The members shall be appointed by the Board. The vote of a majority of the members shall constitute the action of the ACC.
- 8.2 No person shall construct a building or other improvements on any Lot until the ACC has approved or is deemed to have approved a site plan and rendering for the proposed development in accordance with this Article 8. Prior to any submission of a proposed development to Village, an Owner, Tenant, prospective Owner or prospective Tenant shall submit to the ACC:
- (a) An application fee of \$200.

- (b) Two full size (scale not less than one inch equals 50 feet) and two reduced size (11 inches by 17 inches) copies of the following documents (the Plans) for the proposed development:
 - (i) A site plan.
 - (ii) A landscape plan.
 - (iii) A building elevation plan.
 - (iv) A site lighting plan.
 - (v) A signage plan.
 - (vi) An architectural rendering, including exterior materials and colors.

The ACC shall approve, conditionally approve or deny each submission within 30 days after its receipt by the ACC. If the ACC does not so act in writing within that 30 days, the submission shall be deemed approved. The ACC shall not unreasonably delay action. Any decision of the ACC shall be in writing.

- 8.3 The ACC shall have the right to reject any submission which, in the opinion of the ACC, is not in keeping with the development of the Center as a high quality regional retail center, or which is contrary to the purposes of this Declaration or which is not compatible with the architectural design and quality of buildings already constructed within the Center. Any decision made by the ACC in good faith shall be final. Each Owner and Tenant, by acceptance of a deed or lease for the Owner's or Tenant's Lot, shall and hereby does release the ACC from any liability based upon the ACC's good faith exercise of its duties.

The ACC anticipated role is general oversight, not detailed imposition of design criteria. If the ACC in the future develops any specific design criteria, it shall furnish the criteria to any interested party upon request.

- 8.4 After the Owner or Tenant has obtained the approval or deemed approval of the ACC, the Owner or Tenant shall submit the Owner's or Tenant's Plans to Village for Village's site plan and architectural approval and for the issuance, if applicable, of a conditional use permit for the proposed development. The Owner or Tenant shall have the right to make reasonable revisions to the plan and rendering approved by the ACC to comply with requirements of Village. But if the Owner or Tenant voluntarily decides to materially revise the site plan and rendering approved by the ACC, the Owner or Tenant shall be obligated to submit the revised site plan and rendering to the ACC for approval in accordance with this Article 8.
- 8.5 None of Developer, Association; the directors, members, shareholders, officers and agents of Developer and Association; and none of the ACC and the ACC's members shall be liable, in

damages or otherwise, to anyone submitting plans for approval to the ACC or to any Owner or Tenant by reason of the ACC's approval or disapproval or failure to approve or to disapprove any submitted plans. Every person submitting plans to the ACC for approval agrees, by submission of the plans, and every Owner or Tenant agrees, by acquiring title to or a leasehold interest in a Lot, that the person or Owner or Tenant will not bring any action or suit against Developer, Association; the officers, directors, members, shareholders and agents of Developer and Association; and the ACC and its members, to recover damages or other relief.

8.6 Any person desiring architectural approval of the person's Plans shall apply to Village's Director of Code Administration on forms provided by the Village, and shall pay an application fee of \$200 or the fee then in effect. Applications shall include the names, mailing addresses and telephone numbers of all current and proposed Owners and Tenants, a legal description of the proposed development site, and the following information in sufficient detail for Village's Board to determine the acceptability of the proposal and whether it conforms to the approval criteria described in Section 8.12:

- (a) A statement describing the general character of the proposed development.
- (b) An accurate topographical map showing elevation and contour data at two (2) foot intervals both within and extending one hundred (100) feet beyond the exterior boundaries of the site, and showing all public rights-of-way and existing building(s) within the project area. Such map shall show size and capacities of all available utilities and high water elevations along any rivers and bodies of water.
- (c) A scale plot map showing the location, size, type and use of all building(s) and structure(s); driveways, walks and access roads; parking facilities and loading docks; exterior lighting; open spaces and recreation areas; site drainage; screening and fencing; landscaping; and utility easements.
- (d) Architectural drawings of all building(s) and structure(s), typical building floor plans, and sketches showing the design characteristics and treatment of exterior building elevations, and treatment of all exterior building elevations.
- (e) A statement confirming the anticipated commencement and completion dates.
- (f) Building size(s) in square feet; proportions of building(s) devoted to office, production, warehousing, retail and other uses and proposed number of employees in each such area; proposed uses and manner of operation; and municipal services required to serve the site.
- (g) Any pertinent information, data, statements, drawings or plans which may be reasonably required by Village's Board such as a site plan, landscape plan, a signage plan, a lighting plan and a storm water management plan.

- 8.7 The Director of Code Administration shall inform Village's Plan Commission of such request, shall schedule a date for discussions between the applicant and the Plan Commission, and shall notify the applicant of such date.
- 8.8 After such discussions have taken place and after thorough review of the application for approval, the Plan Commission shall submit its recommendation for approval or disapproval of the proposed development to Village's Board. The recommendation of the Plan Commission shall be made to Village's Board no later than sixty (60) days from the date of application with the Director of Code Administration. A recommendation of approval by the Plan Commission shall in no way be binding on Village's Board. Village's Board shall either approve or disapprove the proposed development project without material modification.
- 8.9 No construction shall commence on any building site until Village's Board has granted architectural and site plan approval, except such construction as shall be in compliance with underlying zoning district regulations. Such approval shall not constitute permission to begin construction of any building or structure prior to the issuance of required permits from Village.
- 8.10 Minor alterations shall be allowed subject to the approval of Village's Director of Code Administration. There shall be no fee payable to Village for a minor alteration.
- 8.11 Any request for a material amendment (as distinguished from a minor alteration) to an approval shall be accompanied by an additional fee of \$200 or the fee then in effect. No material amendment shall be allowed or permitted until approval is granted by Village's Board.
- 8.12 Village shall consider the following criteria in deciding whether to approve a proposed development:
- (a) Architectural Design and Style of Building:
 - (i) Building materials shall consist of stone, brick, stucco, drivet, architectural concrete panels (without visible fasteners), or textured masonry on all sides. Roof-top screening and/or building accents may include the use of architectural metal.
 - (ii) Building colors shall consist primarily of earth tones.
 - (iii) All buildings in the Center shall have some compatible architectural characteristics and features.

- (iv) All at-grade electrical, HVAC and mechanical equipment shall be screened from public view and roof-top equipment shall be softened in appearance by painting to blend with the building walls.
- (v) Buildings with wall lengths over 100 linear feet shall have a change in material or color or be broken, where possible.
- (vi) No outside storage is allowed. All dumpster areas shall be screened by landscape material or by fences or by walls made primarily of the same materials as the principal structure.
- (vii) Loading areas shall be screened by berms, walls, fences or landscape plantings. No loading areas shall face Woodman Drive or Dousman Street unless screened from public view.

(b) Landscaping and Greenspace Requirements:

- (i) Ten percent (10%) of the area of each Lot (excluding right-of-way) shall be greenspace. For Lots fronting on Dousman Street, greenspace may include the area of the 30 foot landscape easement affecting such Lots. For Lots fronting on Woodman Drive and containing a portion of the 100 foot buffer zone easement, the greenspace requirement shall be 10% of the area of the Lot excluding the area contained in the 100 foot easement.
- (ii) Detention areas within Lots shall be incorporated into site design. For any Lot containing detention areas, the greenspace requirement shall be 10% of the area of the Lot excluding the detention areas.
- (iii) Landscape buffers shall be adjacent and across from residential areas.
- (iv) Maintenance of landscaping, greenspace, and berms within a Lot shall be the responsibility of the Owner of the Lot. If the landscaping and greenspace areas are not maintained consistent with Village standards, Village may maintain the landscaping and greenspace areas and assess the Owner for the cost of such maintenance.
- (v) Each individual Lot shall contain six trees and 12 shrubs per acre. The species of the trees and shrubs shall be approved by Village's forester.

(c) Signage:

- (i) Only wall-mounted and monument signs shall be allowed. The total area of all signs on a lot shall not exceed 300 square feet except as specifically allowed

a conditional use in accordance with Chapter 17.20 (10) of the Village of Howard Municipal Code.

- (ii) Wall-mounted signs shall be limited to 5% of wall area.
 - (iii) One monument sign shall be allowed per Lot. Monument signs shall have a 12 foot maximum height measured as the vertical distance from the grade at the street right-of-way where the sign is located, to the highest point of such sign. A sign's base shall not exceed four feet in height. The display area of a monument sign shall not exceed 100 square feet per side. The height of any monument sign (excluding the base) shall not exceed 75% of the width of the sign.
 - (iv) Monument signs shall be located on the same Lot as principal structures.
 - (v) The content of wall-mounted and monument signs shall be limited to name, logo, product(s), service(s) and address.
 - (vi) If the Village's ordinance is ever revised to allow "main identification" signs for commercial developments, such signs shall be allowed in association with Section 9.8.
- (d) Streets and Parking Lots:
- (i) Except for the front yard of lots adjoining Woodman Drive, parking setbacks shall be consistent with Village Code. For lots adjoining Woodman Drive the parking setback measured from the edge of the right-of-way of Woodman Drive to the edge of the parking lot shall be twelve (12) feet for lots located south of Woodman Drive and fifteen (15) feet for lots located north of Woodman Drive.
 - (ii) Development fronting on limited access roads shall have parking behind principal structures or behind landscape plantings installed to screen parking from road views.
 - (iii) Curb and gutter shall be required on all streets, parking lots and loading areas.
 - (iv) Parking lot lights shall be low level, and shall not exceed 30 feet in mounting height or the height of the principal building, whichever is less.
 - (v) Parking lot and pedestrian lights shall be uniform in color and fixturing throughout the Center.

Article 9. Regulation of Improvements.

- 9.1 All improvements constructed, erected, placed or maintained on any Lot shall at all times comply with all applicable laws, ordinances, codes and regulations, including without limitation building codes and zoning ordinances. Nothing in this Declaration shall in any way be deemed or construed to amend, alter, vary or diminish any requirements imposed by law. To the extent of any difference between the standards and requirements imposed by this Declaration and those imposed by law, the stricter of the two shall prevail and govern.
- 9.2 No parking shall be permitted on any Outlot. Each Owner shall provide parking spaces within the Owner's Lot adequate for all off-street parking required by applicable law.
- 9.3 Except for temporary storage during construction, no materials, supplies, equipment, finished or semi-finished products or articles of any nature shall be stored or permitted to remain on any Lot except within the building constructed on the Lot.
- 9.4 Roof objects and equipment such as fans, vents, cooling towers and antennas shall either be enclosed or reasonably screened from public view.
- 9.5 All utility connections shall be made underground from the nearest available source. Transformers, meters and other utility appliances and apparatus shall be located within buildings or underground or shall be reasonably screened from public view.
- 9.6 No fence shall be constructed or maintained on a Lot without the prior written approval of the ACC.
- 9.7 Each Owner shall at all times repair and maintain in a first class condition the Owner's building, landscaping and other improvements.
- 9.8 No freestanding signs other than monument signs shall be constructed within the Center without: (i) the prior written approval of the ACC and the Village and (ii) such freestanding sign being allowed shall be consistent with the then current Zoning Ordinance.
- 9.9 Loading docks and service areas shall be located at the rear of building and, if required by the ACC for a Lot, shall be reasonably screened from view by adjacent and neighboring properties.

- 9.10 There shall be no storage of trash and waste outside of buildings except in dumpsters reasonably screened from public view. Each Owner shall promptly remove any spilled trash and waste from such Owner's property.
- 9.11 No Owner shall excavate such Owner's property except in conjunction with the construction of a properly-approved building. Once an Owner commences construction, the Owner shall diligently pursue the construction to its completion and shall not leave such Owner's property in a partly-finished condition any longer than reasonably necessary. To the extent that the prior written approval of the ACC is required for any construction, the construction shall conform to the plans approved by the ACC.
- 9.12 Once a building is constructed on any Lot, any commercial trucks serving that Lot shall use only Dousman Street and Woodman Drive for access to the Lot. The Village shall have the right to prohibit commercial trucks from using Memorial Drive for access to a completed building on any Lot.
- 9.13 The land on all side and rear Lot lines of all Lots shall be graded by the Owner and maintained by the Owners of abutting Lots to provide for adequate drainage of service water.
- 9.14 Beaver Dam Creek lies southeasterly of the southeast boundary of Outlot 2. No buildings shall be constructed within Outlot 2 within 20 feet from the top of the bank associated with the former meander area of Beaver Dam Creek.

Article 10. Maintenance.

- 10.1 Each Owner and Tenant shall, at the person's expense, keep the person's Lot, including all its improvements, in a well maintained, safe, clean and attractive condition at all times. Such maintenance shall include but not be limited to:
- (a) Promptly removing all litter, trash, refuse and wastes.
 - (b) Keeping all landscaping maintained and attractive.
 - (c) Keeping exterior lighting and mechanical facilities in working order.
 - (d) Keeping parking areas, driveways, and roads in good repair.
 - (e) Complying with all governmental statutes, ordinances, regulations and health, fire and police requirements.
 - (f) Striping of parking areas and repainting of improvements.

-
- (g) Repairing exterior damage to improvements.
 - (h) Maintaining utility lines.
- 10.2 As an example of compliance with law, each Owner and Tenant shall comply with all applicable environmental laws. No such person shall use the Center for the generation, transportation, storage, treatment or disposal of any hazardous substance, except that the person may store small amounts of hazardous substances used in the operation and maintenance of the person's property, if that storage complies with all applicable environmental regulations; and except the person may sell hazardous substances like gasoline or fuel oil, if they are sold and stored in compliance with all applicable environmental regulations. No asbestos, polychlorinated biphenyl compounds or any other hazardous substances shall be used in the construction of improvements in the Center.
- 10.3 No trailer, temporary building or structure of any kind shall be permitted in the Center except temporary buildings, trailers or structures used during construction of a permanent building. Such temporary buildings, trailers or structures shall be removed as promptly as practicable after completion of construction, and in any event not later than 30 days after the issuance of a certificate of occupancy for the permanent improvement by the Village.
- 10.4 If any building located within the Center is damaged or destroyed by fire or other casualty, the owner of the building shall, as promptly as possible, but in no event later than six months after the date of the damage or destruction, either commence and diligently pursue to completion the restoration of the building to the condition existing prior to the damage or destruction, or raze and remove the building, and landscape the land in a sightly manner, or construct a new building in compliance with this Declaration.
- 10.5 Lots 34 through 39 are subject to a buffer zone easement 100 feet in width as shown on the Plat. Developer will construct a berm within the buffer zone easement. After the initial construction of the berms, the Owner of each Lot affected by the buffer zone easement shall maintain and repair the area subject to the easement, including repair and maintenance of the berm, the cutting of grass and the maintenance of any landscaping.

Article 11. Common Elements.

- 11.1 Developer has dedicated and conveyed ownership of the Common Elements to Association by the Plat. Association shall have authority to accept the dedication and conveyance. Association shall be responsible for the operation, maintenance and insurance of the Common Elements as provided in this Declaration.

- 11.2 Association shall maintain, repair, replace and keep the Common Elements in a safe and clean condition and shall comply in all respects with all governmental statutes, ordinances, regulations, health, and police and fire requirements, all as Common Expenses.
- 11.3 Association shall pay any real estate taxes and special assessments applicable to the Common Elements.
- 11.4 Perpetual non-exclusive easements for ingress and egress over, under, across, in and upon the Center are hereby declared, created and reserved by Developer and Association for the benefit and use of Developer, Association and the Village, and their respective successors and assigns, for the exercise of any applicable self-help remedies to provide reasonable and necessary access to the Common Elements for the purpose of performing the construction, installation, maintenance, replacement or repair of the Common Elements. No such easement, however, shall materially and adversely interfere with the use and occupancy of any Lot or access to any Lot. Each person performing any such work to the Common Elements shall proceed with reasonable diligence and shall restore the surface to its prior condition after completion of the work.
- 11.5 Enjoyment of the easements provided in Article 5 shall be subject to the following:
- (a) The right of Association to prescribe rules and regulations for the use, enjoyment and maintenance of the Common Elements.
 - (b) The right of Association to borrow money for the purpose of improving the Common Elements, and to mortgage the Common Elements or any part of the Common Elements.
 - (c) The right of Association to take such steps as are reasonably necessary to protect the Common Elements against foreclosure.

Article 12. Enforcement.

- 12.1 This Declaration shall run with the land and shall be binding upon and inure to the benefit of Association, the Owners, the Tenants and their successors and assigns. Association shall have the power to enforce this Declaration on behalf of itself, the ACC and all Owners and Tenants. Each Owner and Tenant hereby irrevocably appoints Association as attorney-in-fact for that purpose.

If Village or any Owner or Tenant gives Association notice of an alleged violation of this Declaration and Association fails to act to cure the alleged violation within 30 days after receipt of the notice, the complaining party shall have the right to enforce the Declaration.

Except as provided in this paragraph, the right of Association to enforce this Declaration shall be exclusive to the Association.

Any party beginning legal action to enforce this Declaration shall have the right to obtain all remedies allowed by applicable law, including without limitation injunction and money damages.

12.2 Every violation of these Declarations shall constitute a nuisance. Every remedy allowed by applicable law for abatement of a nuisance shall be available in any legal action brought under Section 12.1.

12.3 If any Owner or Tenant fails to comply with its maintenance obligations under Article 10, Association may, in its discretion, give the defaulting party notice of default. The defaulting party shall cure the default within 60 days after the giving of the notice. If the default cannot reasonably be cured within the 60 days, the defaulting party shall promptly commence the cure and complete the cure as soon as reasonably possible. If the defaulting party does not timely cure, Association, in its discretion, shall have the right, through authorized agents and contractors and after reasonable notice to the defaulting party, to enter the defaulting party's property at reasonable business times and on any business day to perform the required maintenance at the cost of the defaulting party.

If the defaulting party is a Tenant, the Owner who leases to the Tenant and the Tenant shall be jointly and severally liable for all expenses so incurred by the Association.

The expenses shall bear interest at the Default Interest Rate from the date incurred by Association to the date paid. Association shall have the right to levy a special assessment against the defaulting party for the expenses, and shall have the right to file and foreclose a lien against the defaulting party's property for the expenses, all as provided in Article 7.

12.4 In any legal action brought to enforce this Declaration, the prevailing party shall have the right to collect its reasonable attorneys' fees and disbursements from the losing party.

12.5 The failure to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so for any subsequent violation or a waiver of the right to enforce any other provision of the Declaration. The Association may waive any particular violation without waiving any subsequent or prior violation.

If any provision of this Declaration is declared invalid or unenforceable, the remaining provisions shall continue in full force and effect. All remedies provided in this Declaration shall be cumulative and not exclusive.

Article 13. Miscellaneous.

- 13.1 This Declaration shall continue in effect until December 31, 2040 and shall then automatically extend from year to year unless terminated as provided in Section 13.2.
- 13.2 (a) As long as the Class B membership in the Association exists, the Class B member shall have the right to amend this Declaration by an instrument recorded with the Brown County Register of Deeds, but only with the prior written consent of Village. No such amendment shall materially and adversely affect the use or enjoyment of an Owner's Lot without the Owner's prior written consent. The Class B member shall act reasonably and in good faith in making any such amendment. The Class B member shall promptly give Association notice of any amendment, and Association in turn shall give each of its members notice of the amendment.
- (b) After the Class B membership in Association ceases, the Class A members, by the vote or the written consent of a majority of the Percentage Shares, shall have the right to amend this Declaration by an instrument recorded with the Brown County Register of Deeds. Any such vote or consent shall be obtained in accordance with Association's articles, bylaws and operating agreement.
- (c) No amendment, by whomever made, shall deprive any Owner of the right to maintain the Owner's then existing building on the Owner's Lot, or to use the Lot for its then existing use, without the prior written consent of the Owner.
- 13.3 As an example of the reserved right of amendment in Section 13.2, Developer as the Class B member reserves and shall have the right from time to time to subdivide, resubdivide and combine Lots which are owned by Developer for the purpose of creating different or additional parcels within the Center, without the consent of any Owner or anyone else. Each such person hereby irrevocably appoints Developer as the person's attorney-in-fact to sign any plats or certified survey maps which may be required by applicable law. This power of attorney shall be deemed coupled with an interest.
- 13.4 Each Owner and Tenant shall at all times keep Association informed of the person's correct legal name and preferred mailing address. Association shall maintain a roster of the names and preferred addresses of all Owners and Tenants.

Any notice given in connection with this Declaration shall be in writing and may be given in any one of the following ways:

- (a) By personal delivery,
- (b) By delivery by an express mail service,

- (c) By mailing via the first class United States mail, postage prepaid, addressed to the last known address of the recipient;
- (d) By facsimile transmission, electronic mail or other comparable means.

Notice by mailing in the first class United States mail as described shall be deemed given three days after mailing. All other forms of notice shall be effective upon receipt.

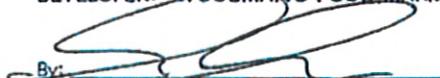
13.5 The easements, benefits, grants, agreements, liens, burdens and obligations described in this Declaration shall be construed as covenants and not as conditions, and shall constitute equitable servitudes upon the Lots. This Declaration shall create privity of contract and estate with and among all Owners and Tenants, and their respective representatives, successors and assigns.

13.6 The exhibits attached to and made part of this Declaration are Exhibits A through C, identified as:

- A Legal description of Lots and Outlots
- B Site Plan
- C Schedule of Current Percentage Shares

Dated June 23, 2000

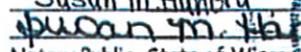
DEVELOPER: WOODMAN'S FOOD MARKET, INC.

By: 
Bret Backus, Vice President Real Estate

ASSOCIATION: WRC HOWARD, INC

By: 
Bret Backus, Vice President

Signatures of Bret Backus authenticated this 23rd day of June, 2000.

Susan M. Hancock

Notary Public, State of Wisconsin
My commission expires: 2/2/02

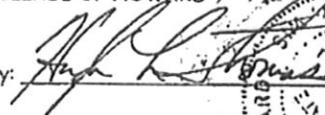


APPROVAL OF VILLAGE

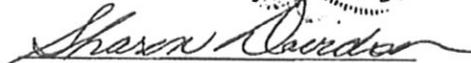
The Village approves the declaration, as required by a certain development agreement between Developer and the Village.

Dated June 29, 2000

VILLAGE OF HOWARD

By: 

Attest:




Drafted by:
Thomas J. Sobota
Boardman, Suhr, Curry & Field LLP
P.O. Box 927
Madison, WI 53701-0927

EXHIBIT A

The following Lots and Outlots in the 29/41 Retail Centre Plat:

Lot Number	Tax Parcel No.
32	
33	
34	
35	
36	

37	
38	
39	
41	
42	
43	
44	

AND

Outlot No.	Tax Parcel No.
1	
2	

EXHIBIT B

Site Plan:

1761355

EXHIBIT C

Schedule of Current Percentage Shares:

Lot #	Lot Size (SF)	Percentage Share
32	124,430	5.06%
33	104,496	4.24%
34	180,142	7.32%
35	156,384	6.35%
36	163,821	6.66%
37	167,347	6.80%
38	163,583	6.64%
39	120,634	4.90%
41	246,055	10.00%
42	790,048	32.10%
43	129,733	5.27%
44	114,730	4.66%
Total	2,461,403	100.00%

Attachment IV



GREEN BAY TITLE COMPANY, INC.

126 SOUTH WASHINGTON STREET, GREEN BAY, WI 54301 (920) 435-0035 FAX (920) 435-9304

12/21/00

Attorney Dennis M. Duffy
Wieting, Calewarts, Duffy & Maxwell
716 Pine Street
P.O. Box 488
Green Bay, WI 54305-0488

Enclosed please find a copy of the Declaration of Covenants, Restrictions and Easements you requested for the 29/41 Retail Centre Plat.

If you should need anything further, please do not hesitate to contact our office.

Customer Service Department

Anticipating Needs - Exceeding Expectations

1800806

BROWN COUNTY
REGISTER OF DEEDS
CATHY WILLIQUETTE

2001 MAR 20 P 3:42

FIRST AMENDMENT TO DECLARATION
OF COVENANTS, RESTRICTIONS AND
EASEMENTS FOR LOTS IN THE 29/41
RETAIL CENTRE PLAT ZONED
BUSINESS, B-1



16⁰⁰
④

Name & Return Address:
Raven Development, Inc.
Attn: Bret A. Backus, President
7818 Big Sky Drive, Suite 201
Madison, WI 53719

<p>FIRST AMENDMENT TO DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR LOTS IN THE 29/41 RETAIL CENTRE PLAT ZONED BUSINESS, B-1</p>	
	<p>Name & Return Address: Woodman's Food Market, Inc. c/o Raven Development, Inc. 7818 Big Sky Drive, Suite 201 Madison, WI 53719</p>

Parcel Identification Nos.: See attached Exhibit A

Woodman's Food Market, Inc. (Developer), with the consent of the Village of Howard (Village), executed and recorded a declaration of covenants, restrictions and easements for lots in the 29/41 Retail Centre Plat zoned business, B-1 (the Declaration). The Declaration was recorded with the Brown County Register of Deeds on July 5, 2000, as Document No. 1761355.

Capitalized words and terms used in this first amendment shall have the meanings given in the Declaration. Developer is still the Class B member of the Association.

In accordance with the procedures set forth in Section 13.2(a) of the Declaration, Developer amends the Declaration as follows:

1. Add a new Section 8.12(e) to the Declaration as follows:

(e) Variances: The criteria set forth in this Section 8.12 are development guidelines to be considered by Village and are not mandatory requirements. Village may, in its sole discretion, approve a proposed development which does not meet one or more of the criteria. If an approved plan does not meet one or more of the criteria, Village shall be conclusively deemed to have granted a variance from the applicable criteria for the proposed development.

2. Developer ratifies and confirms the Declaration, except as modified by this first amendment.

Woodman's Food Market, Inc.

By: [Signature]
Bret Backus, Vice President - Real Estate

Dated December 21, 2000.

Consent - Village of Howard

By: [Signature]
Bob Strazishar, Village President

Dated JANUARY 5, 2000.

Attest:

By: [Signature]
Hugh L. Thomas, Village Clerk/Administrator

Dated JANUARY 5, 2000.

Approved as to form:

By: [Signature]
Dennis M. Duffy, Village Attorney

Dated Jan 5, 2000.

Signature of Bret Backus authenticated this 21 day of Dec., 2000.

[Signature]
Susan M. Eddington
Notary Public, State of Wisconsin
My commission: 12-2-99

Signature of Bob Strazishar authenticated this 5 day of Jan, 2000.

[Signature]
Sharon Davidson
Notary Public, State of Wisconsin
My commission: 12/20/99

Signature of Hugh Thomas authenticated this 5 day of Jan, 2000.

[Signature]
Sharon Davidson
Notary Public, State of Wisconsin
My commission: 12/20/99

Drafted by Thomas J. Sobota

EXHIBIT A

Legal Descriptions and Parcel Identification Numbers

Lot No. of Lot in 29/41 Retail Centre Plat,
Located in the Village of Howard,
Brown County, Wisconsin

Parcel Identification Number

32	VH-2037
33	VH-2038
34	VH-2039
35	VH-2040
36	VH-2041
37	VH-2042
38	VH-2043
39	VH-2044
41	VH-2046
42	VH-2047
43	VH-2048
44	VH-2049

SECOND AMENDMENT TO DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR LOTS IN THE 29/41 RETAIL CENTRE PLAT ZONED BUSINESS, B-1

Name & Return Address:
Woodman's Food Market, Inc.
Attn: Bret A. Backus,
Vice President of Real Estate
2631 Liberty Lane
Janesville, WI 53545

Parcel Identification Nos.: See attached Exhibit A

RECITALS

A. Woodman's Food Market, Inc. (Developer), with the consent of the Village of Howard (Village), executed and recorded a declaration of covenants, restrictions and easements for lots in the 29/51 Retail Centre Plat zoned business, B-1, which lots are described on Exhibit A. The declaration was recorded with the Brown County Register of Deeds on July 5, 2000, as Document No. 1761355. The declaration was amended by a first amendment recorded with the Brown County Register of Deeds on March 20, 2001 as Document No. 1800806. The declaration as so amended will be called the "Declaration".

B. Capitalized words and terms used in this second amendment shall have the meanings given in the Declaration. Developer is still the Class B member of the Association.

C. BLP Holdings II LLC (BLP) owns Lot 41 and leases Lot 41 to Gander Mountain Company (Gander). Gander engages in the retail sale of hunting, fishing and camping merchandise (the Use) from the building currently located on Lot 41 (the Building).

D. BLP and Gander desire to expand the Building and to construct two outdoor storage areas in connection with the expanded Building. Those two areas, a partially covered "West Storage Area" having about 3,519 square feet, and a fully covered "East Storage Area" having about 2,400 square feet are depicted on attached Exhibits I and J.

E. Section 8.12(a)(vi) of the Declaration prohibits outside storage. BLP and Gander have requested that the section be modified to allow Gander to construct and use the East Storage Area and the West Storage Area.

AGREEMENT

In accordance with the procedures set forth in Section 13.2(a) of the Declaration, Developer amends the Declaration as follows:

1. The recitals are incorporated and approved.
2. Section 8.12(a)(vi) of the Declaration is revised to read:

(vi) All dumpster areas shall be screened by landscape materials or by fences or by walls made primarily of the same materials as the principal structure. No outside storage shall be allowed on any Lot except:

(a) Temporary storage of building materials and supplies on a Lot is permitted during the construction or repair or remodeling of the building located on the Lot;

(b) As long as Lot 41 is used primarily for the Use, the East and West Areas shall be considered part of the Building as expanded, and may be used for the storage of merchandise sold from the Building as expanded, provided that the Areas are constructed and maintained in substantial compliance with Exhibits I and J and with applicable law.

3. The Declaration is ratified and confirmed, except as modified by this second amendment.

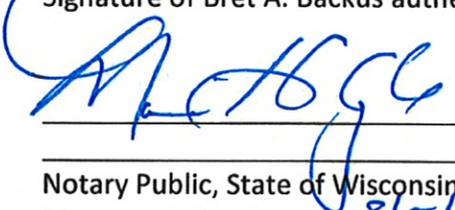
The effective date of this Amendment is February 28, 2005.

Dated: June 1, 2011

WOODMAN'S FOOD MARKET, INC.

By: 
Bret Backus, Vice President of Real Estate

Signature of Bret A. Backus authenticated this 1 day of June, 2011.



Notary Public, State of Wisconsin
My commission: 8/5/2012



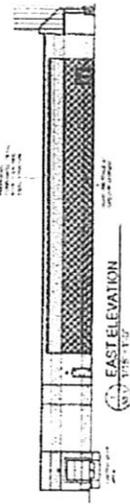
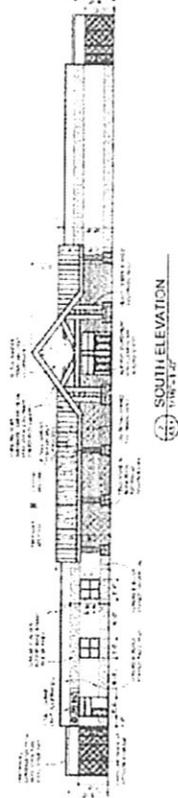
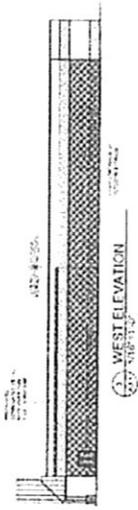
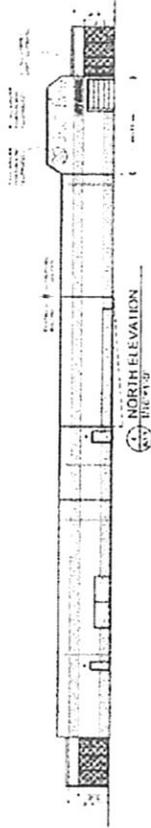
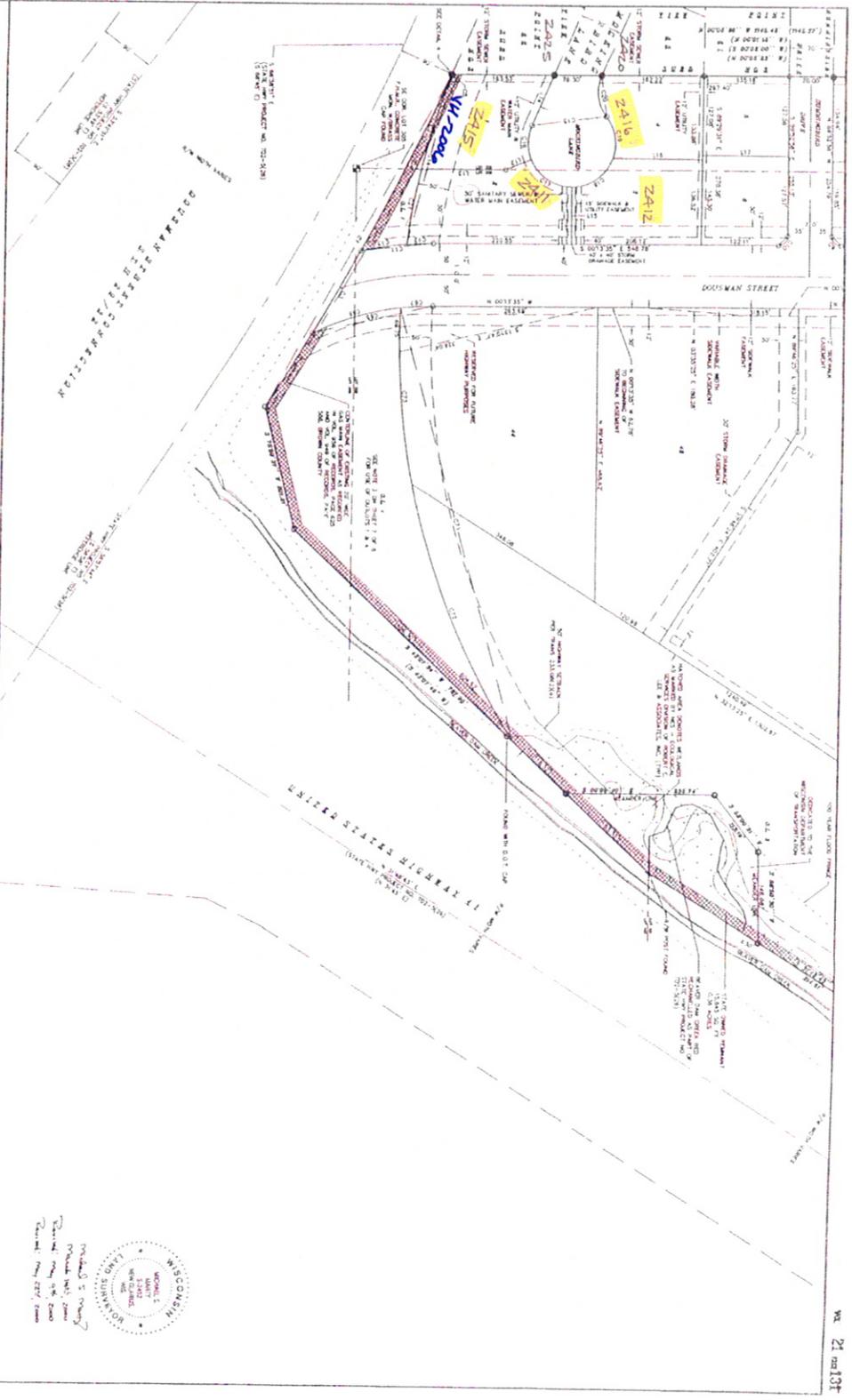


EXHIBIT A

Legal Description of Lots in 29/41 Retail Centre Plat Zoned B-1

Lot Number	Parcel Identification Number
32	VH-2037
33	VH-2038
34	VH-2039
35	VH-2040
36	VH-2041
37	VH-2042
38	VH-2043
39	VH-2044
41	VH-2046
42	VH-2047
Lot 1 of Certified Survey Map 6335	VH-2048
Lot 2 of Certified Survey Map 6335	VH-2048-1
Lot 3 of Certified Survey Map 6335	VH-2049
Outlot 2	VH-2051
Outlot 3	VH-2052



29/41 RETAIL CENTRE

ALL OF LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 15, 16, 17, 18, AND PART OF LOTS 14 & 19 OF AVARY PARK, AS RECORDED IN VOLUME 17 OF PLATS ON PAGE 191, AS DOCUMENT NUMBER 945331, BROWN COUNTY RECORDS, ALSO ALL OF CERTIFIED SURVEY MAP NUMBER 36-15, AS RECORDED IN VOLUME 31 OF PLATS ON PAGE 15, AS DOCUMENT NUMBER 1567198, BROWN COUNTY RECORDS, ALSO ALL OF VACATED PUFFIN LANE & TOUCAN DRIVE AND ALL CERTIFIED SURVEY MAPS AND LOTS 101, 102, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, & 308 OF FORT HOWARD MILITARY RESERVE, AS RECEIVED IN DOCUMENT NUMBER 1746857, EXCEPTING THEREFROM THAT PART OF TOUCAN DRIVE AS RECEIVED IN DOCUMENT NUMBER 1721641, BROWN COUNTY RECORDS, ALSO ALL OF VACATED WAGAW DRIVE, AS RECEIVED IN DOCUMENT NUMBER 1721641, BROWN COUNTY RECORDS, ALSO PART OF LOTS 101, 102, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, & 308 OF FORT HOWARD MILITARY RESERVE, TOWNSHIP 24 NORTH, RANGE 20 EAST, ALL IN THE VILLAGE OF HOWARD, BROWN COUNTY, WISCONSIN

DEPARTMENT OF ADMINISTRATION

WISCONSIN
LAND SURVEYING
MILITARY RESERVE
MILITARY RESERVE
MILITARY RESERVE

FOR THE DEPARTMENT OF ADMINISTRATION
MILITARY RESERVE
MILITARY RESERVE
MILITARY RESERVE

WISCONSIN
LAND SURVEYING
MILITARY RESERVE
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LAND SURVEYING
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