DECLARATION OF RESTRICTIONS AND COVENANTS

FOR

BRIGHTWATER ON UPPER GENESEE LAKE

Revised 11/20/08

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BRIGHTWATER ON UPPER GENESEE LAKE

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DECLARATION OF RESTRICTIONS AND COVENANTS

FOR

BRIGHTWATER ON UPPER GENESEE LAKE

KNOW ALL PERSONS BY THESE PRESENTS; that JAMES B. KENEHAN AND BARBARA A. KENEHAN, (herein referred to as the "Developer," which term shall also include the duly authorized agent of Developer) are the owners of BRIGHTWATER ON UPPER GENESEE LAKE, being a subdivision part of Government Lot 1 Section 22 and part of the NW ¼ and SW ¼ of the NW ¼ of Section 23, Town 7 North, Range 17 East, Town of Summit, Waukesha County, Wisconsin, (herein referred to as "BRIGHTWATER"). Developer intends to establish a general plan for the use, occupancy and enjoyment of BRIGHTWATER, and in furtherance of the general purpose set forth in Section I, below, does hereby declare for the mutual benefit of present and future owners of lands in BRIGHTWATER and any future stages of development added pursuant to Section 9.5, below (herein referred to individually as "Owner" and collectively as "Owners"), that BRIGHTWATER shall be subject to the following restrictions and covenants.

I. GENERAL PURPOSE

1.1. The general purpose of this Declaration of Restrictions and Covenants for BRIGHTWATER (herein referred to as the “Declaration”) is (1) to promote the harmonious development of BRIGHTWATER into a residential community of high quality while protecting the natural beauty and quality of the environment; (2) to help insure that BRIGHTWATER will become and remain an attractive community; (3) to preserve the open space within BRIGHTWATER; (4) to guard against the erection of poorly designed or proportioned structures; (5) to require harmonious use of materials; (6) to promote the highest and best residential development of BRIGHTWATER; (7) to require the erection of attractive homes in appropriate locations on building sites; (8) to require proper setbacks from streets and the lake shore and adequate free spaces between structures; and (9) in general, by such actions to maintain and enhance the value of investments made by purchasers of properties in BRIGHTWATER.

II. BUILDING RESTRICTIONS

2.1. All lots in BRIGHTWATER are restricted to the erection of a single one story, story and one-half, or two story single family residence building with a minimum square footage of living space (excluding basement level areas) of two thousand eight hundred (2,800) square feet.

2.1.1. The combined total floor area of the residence (excluding basement level areas), attached garage and any other structures used, designed, or intended for the protection, shelter

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or enclosure of persons, animals and property shall not exceed ten thousand (10,000) square feet on any lot.

2.1.2. The total surface area of any lot which is covered by the residence, attached garage, porches, decks, patios, swimming pools, driveways, parking areas, walkways and other impervious surfaces shall not exceed the amount allowed by Town of Summit (hereinafter referred to as the "Town") ordinances.

2.2. Each single-family residence in BRIGHTWATER must have a garage that accommodates at least 3 cars, that is attached to the residence directly or by breezeway, and that is constructed at the same time as the residence (such single family residence and garage together shall be referred to herein as the "Building"). The maximum size of the garage portion of the Building shall conform to Town ordinances. Garage entrances must be on the side or rear of the Building. (Courtyard-style garage entrances conform with this requirement.)

2.3. The exterior walls and fascia of the Building and any Permitted Improvements (as defined in Section 4.1, below) must be constructed of brick, stone, stucco, solid wood siding, Hardiplank siding, or its equivalent. At least 30% of the aggregate of the exterior wall surface areas above the basement level of the Building, after deducting the surface area of doors and windows, shall be constructed of full-size brick, natural stone or stucco. Developer may, in its sole discretion, approve the use of artificial stone products. Siding materials such as aluminum, vinyl, steel, pressed board, Masonite or plywood will not be permitted on the exterior of the Building or any Permitted Improvements, except on soffits. Soffits (but not fascia) may be made of aluminum, vinyl or the siding materials permitted above for exterior walls. Fascia may only be made of the siding materials permitted above for exterior walls (not aluminum or vinyl). Any exposed basement or foundation wall must be covered with masonry veneer, plaster or the siding materials used on the exterior walls above such exposed wall. Fireplace chimneys shall be either of full masonry construction or have a masonry veneer.

2.4. All two story and story and one-half Building roofs shall have a minimum pitch of eight feet in height for each twelve feet in length (8/12), except for a porch roof, a shed-style roof or rear dormers on story and one-half Buildings. All one-story Building roofs shall have a minimum pitch of ten feet in height for each twelve feet in length (10/12). All roofs shall be covered with either wood shakes or 40 year dimensional shingles in a "weatherwood" color.

2.5. The minimum setback from any abutting street right-of-way is 50 feet. The minimum side yard offset is 20 feet. The minimum rear yard is 20 feet. The minimum setback from the shoreline of Upper Genesee Lake shall be as depicted on the recorded final plat of BRIGHTWATER.

2.6. Each Owner must obtain Approval of the plans and specifications outlined in Section 2.6.2, below (referred to hereinafter as "Design/Layout Plan"), prior to application for a building permit. For purposes of this Declaration, the term "Approval" shall mean the prior written approval of Developer. The Developer may assign its Approval right to the Association (as defined in Section 6.1, below) by a written instrument recorded with the Register of Deeds for Waukesha County, Wisconsin.

2.6.1. Before submitting Final Design/Layout Plans each Owner must submit at least one preliminary plan for review by Developer.

2.6.2. Each Owner must submit to Developer in connection with its application for Approval of the Design/Layout Plan three complete sets of the following final plans (2-full-size sets and 1-11" x 17" reduction) which shall incorporate the plan changes, if any, required by Developer as noted in its review of the preliminary plans:

(a) Exterior elevations drawn to scale (1/4" = 1' minimum)

(b) Floor plans drawn to scale (1/4" = 1' minimum)

(c) Identification of all exterior building materials;

(d) Stake-out survey showing the proposed location of the Building, existing and proposed yard grades and location of silt fences.

(e) The square footage of living area by floor.

(f) A computation of the percentage of exterior wall surface areas (above the basement level) to be constructed of brick, stone or stucco.

(g) Other things that may be required from time to time as set forth in the Requirements and Guidelines.

2.6.3. Approval of the Design/Layout Plan shall be based upon the building and use restrictions contained herein and the **Requirements and Guidelines for Building Construction and Improvements for Brightwater Subdivision** (herein referred to as the **"Requirements and Guidelines")**, as may be adopted from time to time by Developer. Developer may assign its right to adopt **Requirements and Guidelines** to the Association by a written instrument recorded with the Register of Deeds of Waukesha County, Wisconsin. **Owner shall obtain and review the Requirements and Guidelines from Developer prior to applying for Design/Layout Plan Approval.**

2.6.4. Design/Layout Plan Approval may be withheld if the design is too similar in appearance to other Buildings in close proximity.

2.6.5. If in the opinion of Developer the submitted plans do not comply with the Brightwater Requirements and Guidelines and the Declaration Developer may, at its option, but only with Owner's consent, refer the plans to a professional home designer for redesign so that the plans will comply with the Brightwater Requirements and Guidelines and Declaration. The Owner will be responsible for the payment of any fees charged by such professional.

2.6.6. In its decision to grant Approval, Developer will take into consideration not only the required minimum setbacks but also the relationship of the location and position of the

proposed Building and Permitted Improvements to the street and to the Buildings that have been constructed or that may be constructed on the adjoining lots.

2.7. Developer, and no other, shall have the right and authority to modify the Building Restrictions set forth in this Section II with respect to lot 22 because of the improvements existing on said lot as of the date of this Declaration. No changes to the existing buildings located on lot 22 shall be required by reason of the execution and recording of this Declaration, nor shall any requirement hereof which is inconsistent with the current condition of existing buildings on said lot 22 apply to lot 22. However, any and all changes to, modifications of or remodeling of the exterior of the existing buildings shall be subject to the review and Approval of Developer. In the event that the existing buildings are razed or destroyed, any new Buildings or improvements constructed on lot 22 shall be in compliance with this Declaration.

2.8. Primary Environmental Corridor and Floodplain Preservation Restrictions. Those areas of land which are identified as Primary Environmental Corridor and Floodplain on the recorded final plat of BRIGHTWATER are subject to the following additional restrictions.

2.8.1. Lots 4 through 11 are permitted one 3 foot wide (or wider if permitted by the Waukesha County Planning and Zoning Division) private access walkway to the lake within a 30 foot wide view corridor as allowed under Chapter NR-115 of the Wisconsin Administrative Code. Prior to any earth-altering activities to construct the walkway or the view corridor, a detailed and selective Cutting and Grading Plan must be submitted to and approved by the Waukesha County Planning and Zoning Division Staff, by each property Owner prior to commencement of construction. No other clearing, cutting, or any vegetative removal beyond what is approved in the Cutting and Grading Plan, above, will be permitted. Waukesha County strongly recommends that any proposed view corridors or walkways be designated on a plat of survey at the same time as any Zoning Permit application is made for lots 4 through 11.

2.8.2. Grading and filling shall be prohibited unless specifically authorized by the Town and, if applicable, the Waukesha County Department of Parks and Land Use, the Wisconsin Department of Natural Resources and the Army Corps of Engineers.

2.8.3. The removal of topsoil or other earthen materials shall be prohibited.

2.8.4. The removal or destruction of any vegetative cover, i.e., trees, shrubs, grasses, etc., shall be prohibited, with the exception of the removal of dead, diseased or dying vegetation at the discretion of Owner, forester or naturalist, and with the approval of the Waukesha County Department of Parks and Land Use.

2.8.5. Grazing by domesticated animals, i.e. horses, cows, etc, shall be prohibited.

2.8.6. The introduction of plant material not indigenous to the existing environment in the Primary Environmental Corridor and Floodplain shall be prohibited.

2.8.7. Construction of buildings is prohibited except within the building envelope area noted on the recorded final plat of BRIGHTWATER.

2.8.8. Lots 4 through 11 shall have varying setbacks from the lake, with a minimum setback of 100 feet, and no earth-altering activities shall occur in the area zoned Primary Environmental Corridor, except for the noted building envelope area, view corridor and access walkway described above.

2.8.9. No boathouses shall be allowed on any of the lots.

2.8.10. No land altering or disturbance activities or the construction of principal buildings or accessory buildings, decks, patio, or fences shall be permitted outside of the designated building envelopes, except for activities that are authorized as being in conformance with the conditions detailed above unless a detailed description of the intended use and the purpose for said use is approved by the Town Plan Commission and Waukesha County Planning and Zoning Division.

2.9. The Buildings constructed on all lots in BRIGHTWATER are required to have one foot of vertical separation distance between any basement floor and the seasonal high water table.

III. CONSTRUCTION

3.1. The Building must be constructed in accordance with the Design/Layout Plan which has received Approval and must be completed within 12 months after the date the building permit has been issued by the Town. A sodded or seeded lawn and a driveway paved with concrete, asphalt or brick must be installed within 6 months after the date that the occupancy permit has been issued by the Town.

3.2. At the time of construction of the Building, the Owner shall install at a location designated by Developer, one Approved outdoor electric post lamp with an unswitched photoelectric control. The design of the post lamp shall be uniform throughout BRIGHTWATER. The Owner shall maintain the operation and appearance of the post lamp. If the post lamp is not so maintained, and the condition has not been rectified by the Owner within 15 days after receipt of a notice from the Association specifying the violations of this Paragraph 3.2, the Owner shall be subject to a penalty at a per diem rate established in the Rules and Regulations (as defined in Section 6.3.4, below) from the date of notice until the date the condition has been rectified, in addition to all other rights and remedies available to Developer and the Association. The penalty shall be assessed against the Owner and, if not paid, will be enforced as provided below.

3.3. Each Owner must adhere to the grading plan or any amendment thereto approved by the Town Engineer and on file with the Town ("Master Grading Plan"), and grade such Owner's lot in accordance with the Master Grading Plan. At the time of building permit application each Owner shall furnish the Town building inspector and the Town engineer with a proposed final grading plan of the lot for their approval. Developer and/or the Town and/or their agents, employees or independent contractors shall have the right to enter upon any lot, at any time, for the purpose of inspection, maintenance and correction of any drainage condition (whether or not Owner complied with the Master Grading Plan), and the Owner is responsible for cost of the same. Each Owner, at the time of construction of the Building, shall also be responsible for grading its lot so as to direct drainage toward the street or other established drainageway and to prevent an increase in drainage onto neighboring property. This shall be accomplished by creating swales along common lot lines wherever practical. Drainage ways shall be kept free of any obstructions. No plantings other than grass shall be permitted within 3 feet of side or rear lot lines without Approval. Each Owner must consult with the adjacent lot Owner to agree upon compatible grading of their common lot lines. Due to the varying terrain and drainage conditions on each lot following construction, neither Developer nor the Town shall be responsible for establishing lot line grades. The services of a professional engineer may be required to design a proper grading plan for any lot, the cost of which shall be paid by the lot Owner(s). Final grading of the lot shall be completed within two months after the date that an occupancy permit has been issued for the Building (subject to delays caused by adverse weather conditions).

3.4. Electric transformers, cable TV and telephone equipment boxes have been placed by Developer to serve each lot. Any subsequent relocation, either horizontally or vertically, or modification of these equipment boxes shall require written authorization from the appropriate utility company or service provider and Approval. The lot Owner shall pay all costs of such relocation or modification.

3.5. Each Owner shall be responsible for installing and maintaining erosion control measures from the commencement of grading until such time as a lawn or other plantings sufficient to prevent erosion has been established on the Owner's lot. These measures include, but are not limited to: installation of silt fence, hay/straw bales, and ditch checks; street cleaning following precipitation events or tracking of mud on streets by any vehicle leaving the lot; and sodding or seeding and mulching lawn areas. Steep slopes may require installation of straw mat, jute mat or other materials designed to stabilize steep and highly erodable areas. Any areas where erosion control measures have been compromised by weather, construction activities or any other event, shall be repaired within 7 days of damage. After every rainfall exceeding ½ inch and at least once per week, erosion control measures must be inspected by the Owner or the Owner's contractor, and any necessary maintenance or repairs made. Failure to comply with these requirements may result in sanctions against the Owner by the Town, the Wisconsin Department of Commerce, and/or the Wisconsin Department of Natural Resources. All erosion control measures shall be installed and maintained according to the then current standards and specifications set forth in Wisconsin Department of Natural Resources Conservation Practice Standard and local ordinances.

3.6. All construction-related activity shall be confined to the Owner's lot unless the adjoining Owners have given permission to use their respective lots or outlots. In the event that landscaping on adjacent lots or outlots

is disturbed during construction or grading, all disturbed areas shall be immediately restored with vegetation of like kind. In the event that eroded material is deposited onto a street or neighboring property, the Owner of the lot from which the material came shall be responsible for removing the material and restoring the street or neighboring property to its original condition.

3.7. Each Owner shall be responsible to Developer and the Town for the costs of repairing and replacing any street pavement or curb and gutter (including restoration of topsoil and lawn abutting the curb and gutter) which have been damaged during the course of constructing the Building and/or Permitted Improvements on the Owner's lot. In the event that the Town requires Developer to make such repairs or replacements at Developer's expense, the Owner shall be required to reimburse Developer for the cost of the repairs and replacements to the extent that such costs exceed the amount of the curb and gutter damage bond of Owner, if any, held by Developer or the Town. Reimbursements not paid when due shall bear interest at the rate of twelve percent (12%) per annum from the date due until paid, shall constitute a continuing lien on such Owner's lot until paid in full, and shall also be the personal obligation of any current or subsequent Owner of the lot. Developer may record a document with the Register of Deeds in Waukesha County, Wisconsin, giving notice of the lien for any such unpaid reimbursements and, upon payment or satisfaction of the amount due, Developer shall record a document canceling or releasing any such lien. The failure to file any such notice shall not impair the validity of the lien. The affected Owner shall pay or reimburse Developer for all recording and attorney fees relating to any such documents. The lien may be enforced and foreclosed by the Developer in the same manner, and subject to the same requirements, as a foreclosure of mortgages on real property pursuant to the laws of the State of Wisconsin. Such remedy, however, shall not preclude Developer from pursuing all other legal remedies.

IV. IMPROVEMENTS/OWNER MAINTENANCE

4.1. No buildings, outbuildings or other structures will be permitted on the Property except the Building, and except the following exclusive list of permitted improvements ("Permitted Improvements"), which are subject to the **Requirements and Guidelines** and require Approval:

4.1.1. Fences of a decorative style. Chain link fences, privacy fences or fences which enclose an entire yard will not be allowed.

4.1.2. Deck structures constructed of wood or metal. Developer may, in its sole discretion, approve the use of artificial wood products on decks.

4.1.3. Gazebos.

4.1.4. Pool houses, not to exceed 200 square feet in area.

4.1.5. In-ground swimming pools. Above-ground swimming pools are not permitted, except for seasonal pools. All swimming pool related pump, heater, filter and other equipment must be concealed in an enclosure located next to the Building to minimize the noise and visibility to neighboring properties. A different location for such pool equipment (with proper screening)

may be allowed in special circumstances with Approval. "Seasonal Pool" means a swimming/wading pool which is stored indoors during the months of October through May, does not exceed 5 feet in diameter or 20 square feet in water surface area and is not more than 18 inches high.

4.1.6. Retaining walls constructed of natural stone.

4.1.7. Berms.

4.1.8. The enclosed portion of any children's outdoor playground equipment and play structures. Playground equipment and play structures without enclosures do not require Approval.

4.1.9. Dog kennels. Dog kennels shall be located immediately behind the Building, shall be no larger than 200 square feet in area with any fences screened from view by adequate landscaping. Doghouses may only be made of the siding materials permitted for Buildings in paragraph 2.3, above.

4.1.10. The guest house building existing on lot 22 as of the date of this Declaration. Nothing in this Declaration shall be construed as prohibiting the Owner of lot 22 from maintaining a guest house on said lot. The guest house may only be used for occasional occupancy by guests of the Owner of lot 22 and shall not be leased or rented to others. No further division of lot 22 is permitted.

4.2. There shall be no outside parking or storage of boats, trailers, buses, commercial trucks, recreational vehicles or other vehicles or items deemed to be unsightly by either Developer or the Association.

4.3. The design and location of each mailbox/newspaper box shall be uniform throughout BRIGHTWATER and installed in the location designated by the postmaster.

4.4. Satellite dish antennas may not exceed 6 square feet in surface area. No antenna or satellite dish shall be mounted or installed on any roof. Any antenna or satellite dish should, if possible without interfering with reception, be placed and screened so as to minimize its visibility from roadways and neighboring lots.

4.5. Each Owner shall perform such periodic maintenance of the Owner's lot, including the adjoining public right-of-way area up to the edge of the road pavement, as may be necessary to keep the lot neat and clean in appearance, including, without limitation, the mowing of grass and removal of weeds and debris. This requirement applies to vacant lots as well as to lots where Buildings have been constructed.

V. COMMON AREA

5.1. The term "Common Area" shall include the following areas, plus any additional areas that may be added in accordance with Section 9.5, below.

5.1.1. Outlots 1,2,3,4,5 and 6, of BRIGHTWATER (herein, "Outlots"), including without limitation any swimming pool and any clubhouse located therein.

5.1.2. All landscaped courts and boulevards contained within the dedicated streets in BRIGHTWATER. Any portion of the Common Area within a public street right-of-way may only be improved with the consent of the Town and other appropriate public authorities. Consent to any such improvement shall not be considered or construed as an assumption of liability or responsibility for maintenance, or a release of the Association and/or the Owners of the duty to maintain such improvements.

5.1.3. The grass area up to the edge of the road, curb or pavement and any fencing and landscaping contained within the public rights-of-way of Delafield Road and the internal streets of BRIGHTWATER where the streets abut the Outlots.

5.2. No improvements shall be allowed on the Common Area except the following: landscaping; signs installed by the Association, Town or other public entity; entrance monuments; walking trails, a swimming pool and associated building and children's play structures for common use; storm-water management facilities; and sewer; water, gas, electric, telephone and other utility lines and facilities. Except in connection with the foregoing, the following shall be prohibited in or on the Common Area:

5.2.1. The temporary or permanent construction or placing of storage areas, signs, billboards or other structures or materials. Notwithstanding the foregoing, Developer and its duly authorized agents may erect and maintain a marketing sign or signs within the Common Area until such time as Developer is no longer an Owner of any lots in BRIGHTWATER.

5.2.2. Commercial or industrial activity, including passage across or upon the Common Area.

5.2.3. Filling, grading, excavating, mining or drilling, removal of top soil, sand, gravel, rock, minerals or other materials, or any building of roads.

5.2.4. Removal, destruction or cutting of trees or plants, unless conducted for proper maintenance and management by the Association.

5.2.5. Dumping of trash, garbage or other unsightly or hazardous material.

5.2.6. Hunting or trapping.

5.2.7. Operating of any type of motorized vehicle, except as may be necessary in conjunction with landscape maintenance by the Association.

5.3. Each lot shall have an appurtenant undivided fractional interest in the Outlots (including Outlots added in future stages), the numerator of which shall be one and the denominator of which shall be the total number of lots subject to this Declaration (including added future stages). All deeds and any other conveyances of any lot in BRIGHTWATER shall be deemed to include such undivided interest in the Outlots, whether or not so specifically stated in any such deed or other conveyance.

5.4 . STORMWATER MANAGEMENT.

5.4.1. The Association shall maintain the stormwater management measures installed in the Common Area in accordance with the Stormwater Management Practices Maintenance Agreement by and between Developer and Town and recorded in the office of the Register of Deeds for Waukesha County, Wisconsin. (the "Maintenance Agreement ").

5.4.2. The Association, on an annual basis, shall provide maintenance of each stormwater management measure, including but not limited to, removal of debris, maintenance of vegetative areas, maintenance of structural stormwater management measures, aeration equipment and sediment removal.

5.4.3. The Town is authorized to access the Common Area to conduct inspections of stormwater practices as necessary to ascertain that the practices are being maintained and operated in accordance with the Maintenance Agreement.

5.4.4. Upon notification of the Association by the Town of maintenance problems that require correction, the specified corrective actions shall be taken within a reasonable timeframe as directed by the Town. The Association annually shall designate a person who will be responsible for the inspection and maintenance of the stormwater management measures and shall provide the Town's Director of Public Works with that person's contact information, as well as the contact information of each member of the Association's board of directors.

5.4.5. The Town is authorized to perform corrective actions identified as necessary by the inspection if the Association does not make the required corrections in the timeframe specified by the Town. The costs and expenses shall be levied against the lots as Special Charges for current services, pursuant to 66.0627, Wisconsin Statues, or as Special Assessments pursuant to 66.0701, et. seq. Wisconsin Statutes. The Town shall collect Special Charges and Special Assessments, including delinquent amounts, as provided in the statutes.

5.4.6. The storm water retention basins that have been constructed in BRIGHTWATER are required by the Town to assist in the removal of sediment from, and detention of, storm water. The storm water retention basins shall not be used for swimming or as recreational facilities. Anyone entering or using the storm water retention basins for such prohibited uses does so at their own risk. By virtue of becoming an Owner of a lot in BRIGHTWATER, each Owner agrees for itself and on behalf of its respective successors, assigns, heirs and personal representatives to waive, to the fullest extent permitted by law, any and all claims for liability against Developer and the Association and their respective agents, contractors, employees, officers and directors, and to indemnify, defend and hold Developer and the Association and their respective agents, contractors, employees, officers and directors harmless from and against any and all liabilities, claims, demands, costs and expenses of every kind and nature (including attorney fees) resulting from injury or damage to person or property sustained in

or about or resulting from the use or existence of the storm water retention basins by such Owner or such Owner's family, guests or invitees.

VI. OWNERS ASSOCIATION

6.1. Developer has created, or will create, a non-stock, nonprofit Wisconsin corporation known as the "Brightwater Homeowners Association, Inc." (herein, the "Association") for the purpose of managing, maintaining and controlling the Common Area and performing such actions as are authorized by this Declaration. The Association shall operate in accordance with its Articles of Incorporation and Bylaws.

6.2. Membership and Voting.

6.2.1. Each Owner shall automatically be a member of the Association and shall be entitled to one membership unit and one vote for each lot owned. Ownership of a lot shall be the sole qualification for membership.

6.2.2. Association membership and voting rights shall be appurtenant to each lot and shall not be assigned, conveyed or transferred in any way except to the transferee upon transfer of the ownership interest of the lot. Any attempt to make a prohibited transfer or retention of membership rights shall be null and void.

6.2.3. Membership and voting rights shall not be divided between or among multiple Owners of single lot. The membership in the Association appurtenant to a lot shall be owned jointly and severally by all Owners of any interest in each lot, regardless of the form of tenancy, estate, or interest. The Owners of a lot shall decide between or among themselves how they will exercise their collective right and shall designate one of the Owners to act on their behalf. In the event the Owners of a lot are unable to agree on the exercise of their collective vote by the time a vote is taken, the Owners will be precluded from casting a vote.

6.3. The Association shall have the following duties:

6.3.1. To provide for the maintenance of the Common Area and all improvements located in the Common Area, including the storm water management measures and drainage facilities.

6.3.2. To provide for the maintenance, repair and replacement of the street signs in BRIGHTWATER.

6.3.3. To enforce the provisions of this Declaration.

6.3.4. To establish rules and regulations (the "**Rules and Regulations**") governing (i) the use and enjoyment of the Common Area, and (ii) the enforcement of the provisions of this Declaration. **Owners should obtain a copy of the Rules and Regulations from the Association.**

6.3.5. To discharge the rights of Developer assigned to the Association as provided in this Declaration.

6.4. In addition to those powers bestowed upon the Association in its Articles of Incorporation and Bylaws and by Chapter 181of the Wisconsin Statutes, the Association shall have the following powers:

6.4.1. To take such action as may be necessary to enforce the **Rules and Regulations**.

6.4.2. To enter into contracts with and/or to employ agents, attorneys or others for purposes of discharging its duties hereunder.

6.4.3. To grant utility and drainage easements in accordance with the provisions of Section 9.3, below.

6.4.4. To levy and collect assessments in accordance with the provisions of Section 6.5, below.

6.4.5. To take any other actions as may be necessary or incidental to performance of all duties of the Association specified in this Declaration.

6.5. The Association shall levy and collect assessments in accordance with the following:

6.5.1. The Owner of each lot shall be subject to a regular (and special, if required) charge or assessment equal to its pro rata share of the costs incurred or anticipated to be incurred by the Association in performing its duties hereunder. The pro rata share of an Owner of a lot shall be a fraction, the numerator of which shall be one and the denominator of which shall be the total number of lots subject to this Declaration (including lots added by future stages) at the time of the assessment. Said costs shall include, but not be limited to: taxes; insurance; repair, replacement, and additions to the improvements made to the Common Area; equipment; materials; labor and the management and supervision thereof; the establishment of reasonable reserves for capital expenditures; and all costs for the Association reasonably incurred in conducting its affairs and exercising its powers and duties pursuant to this Declaration. Waukesha County shall not be liable for any fees or special assessments in the event that it should become the Owner of any lots in the subdivision by reason of tax delinquency.

6.5.2. Regular assessments shall be approved at the duly convened annual meeting of the Association. Special assessments shall be approved at any duly convened meeting of the Association.

6.5.3. Written notice of an assessment shall be delivered to an Owner either personally or by regular mail addressed to the last known address of an Owner.

6.5.4. Assessments shall become due and payable 30 days after the mailing or personal delivery of the notice.

6.5.5. Assessments not paid when due shall be subject to a late-payment penalty of fifty dollars ($50.00) and shall bear interest at the rate of eighteen percent (18%) per annum from the date due until paid. Unpaid assessments and the penalties and interest thereon shall constitute a continuing lien on the lot against which it was assessed until they have been paid in full. The assessments, penalties and interest thereon shall also be the continuing personal obligation of any

current or subsequent Owner of the lot against which the assessment was made. The lien may be enforced and foreclosed by the Association or any other person specified in the Bylaws of the Association, in the same manner, and subject to the same requirements, as a foreclosure of mortgages on real property pursuant to the laws of the State of Wisconsin. Such remedy, however, shall not preclude the Association from pursuing other legal remedies.

6.5.6. The Association may record a document with the Register of Deeds in Waukesha County, Wisconsin, giving notice of a lien for any such unpaid assessment and, upon payment or satisfaction of the amount due, record a document canceling or releasing any such lien. The failure to file any such notice shall not impair the validity of the lien. The affected Owner shall pay directly or reimburse the Association for all recording and attorney fees relating to any such document.

6.5.7. Upon application by any Owner, any officer of the Association may, without calling a meeting of the Association, provide to such Owner a statement certifying (1) that the signer is a duly elected or appointed officer of the Association and (2) as to the existence of any unpaid assessments or other amounts due to the Association with respect to the requesting Owner's lot. Such statement shall be binding upon the Association and shall be conclusive evidence to any party relying thereon of the payment of any and all outstanding assessments or other amounts due to the Association for such lot.

6.6. The Association shall not have the power to make improvements to the Common Area in addition to those then in existence from time to time (herein referred to as "Additional Improvements") without Approval if Developer is an Owner (unless Developer has assigned Approval authority to the Association). If Developer is no longer an Owner, the Association shall not have the power to make Additional Improvements having a cost in excess of Ten Thousand dollars ($10,000.00) without the consent of the Owners of at least sixty-two percent (62%) of the lots subject to this Declaration or any Supplemental Declarations.

6.7. Within 14 days following each annual meeting of the Association, the Association shall provide to Developer a list of the Association officers, directors and committee members.

6.8. Directors and officers of the Association shall not be personally liable for any action taken by them in good faith in discharging their duties hereunder, even if such action involved a mistaken judgment or negligence by the directors, officers, agents or employees of the Association. The Association shall indemnify and hold the directors and officers harmless from and against any and all costs or expenses, including reasonable attorney's fees, in connection with any suit or other action relating to the performance of their duties.

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

6.10. If the Association shall fail to discharge its duties under this Section VI within 60 days of written demand by the Town, the Town may discharge the duties on behalf of the Association. The costs of the Town incurred in connection therewith shall be charged to the Owners of the lots affected by such actions of the Town by

adding to each Owner's real estate tax statement a charge equal to such Owner's share of such costs, as determined by the Town.

6.11. The Association may not and shall not be dissolved.

VII. VIOLATION

Any Owner violating the restrictions contained in this Declaration shall be personally liable for and shall reimburse Developer and the Association for all costs and expenses, including attorneys' fees, incurred by Developer or the Association in enforcing this Declaration. The foregoing shall be in addition to any other rights or remedies that may be available to Developer and the Association.

VIII. AGENT

Siepmann Realty Corporation is the duly authorized agent of Developer as of the date of this Declaration and may act in that capacity until such time as a notice is recorded in the office of the Register of Deeds for Waukesha County, Wisconsin by Developer, its successors or assigns, which terminates the authority of said agent.

IX. MISCELLANEOUS

9.1. **Amendment of Declaration**. Any of the provisions of this Declaration may be annulled, waived, changed, modified or amended at any time by written document setting forth such annulment, waiver, change, modification or amendment, executed by the Owners of at least sixty-two percent (62%) of the lots subject to this Declaration or any Supplemental Declarations; provided, however, that any such action must also be approved in writing by (i) the Town; (ii) Waukesha County; and (iii) Developer so long as it shall be an Owner, including as an owner any lands which may potentially become a future stage of BRIGHTWATER as provided in Section 9.5 , below. This Declaration and all amendments shall be executed as required by law so as to entitle it to be recorded, and shall be effective upon recording in the office of the Register of Deeds for Waukesha County, Wisconsin.

9.2. **Variances**. Developer, and no other unless Developer shall assign its rights hereunder to the Association by written instrument recorded with the Register of Deeds of Waukesha County, Wisconsin, shall have the right and authority to permit variances from the application of the Declaration, if such modification or variance is consistent and compatible with the overall scheme of development of BRIGHTWATER, provided that no such modification shall be in violation of applicable laws or ordinances, or have the effect of revoking an Approval previously granted in writing hereunder. Notwithstanding the foregoing, any such modifications or variances shall be at the sole and absolute discretion, aesthetic interpretation and business judgment of Developer (or the Association after assignment), and this paragraph and any modifications or variances granted hereunder shall not in any way be interpreted (i) as thereafter preventing or excusing strict compliance with the Declaration, or (ii) as entitling any other person to such modification or variance.

9.3. **Reservation of Right to Grant Easements**. Developer reserves the right to grant and convey easements to the Town and/or to any public or private utility company or service provider, upon, over, through or across those portions of any lot within 10 feet of any lot line and upon, over, through or across any portion of the Common Area for purposes of allowing the Town, utility company or service provider to furnish gas, electric, water,

sewer, cable television or other utility service to any lot or the Common Area. Developer reserves the right to grant and create easements through any portions of BRIGHTWATER (including added future stages) for purposes of facilitating drainage of storm or surface water within or through BRIGHTWATER (and any added future stages). Developer may grant such easements without the consent or approval of any lot Owner, so long as Developer or a successor developer to Developer owns any lots in BRIGHTWATER (or any added future stages). After that time, or at such time as Developer shall assign such power to the Association, the Association shall have the power to grant easements upon, over, through or across any portion of the Common Area reserved to Developer hereunder.

9.4. **Assignment to Association**. Developer may assign to the Association the right to grant Approval pursuant to this Declaration.

9.5. **Future Stages of Development of BRIGHTWATER**. Developer, its successors and assigns shall have the right to bring or to allow others to bring within this Declaration future stages of the development of BRIGHTWATER, provided such future stages are or become adjacent to the real estate which is or becomes subject to this Declaration or any Supplemental Declaration. The future stages authorized under this Section shall be added by recording a Supplemental Declaration of Restrictions relating to each future stage (the "Supplemental Declaration"). A Supplemental Declaration will extend the provisions of this Declaration to such future stages, indicate any provisions which differ from the provisions of this Declaration or any prior Supplemental Declaration, and indicate the modification to this Declaration or any prior Supplemental Declaration resulting from such addition. Except with respect to increasing the number of Owners and adding to the Common Area, any such Supplemental Declarations shall not revoke, modify or add to the covenants established by this Declaration or any prior Supplemental Declaration.

9.6. **Lake Use Restrictions. The Town has adopted an ordinance regulating the use and operation of motor boats on Upper Genesee Lake. A copy of the ordinance in effect as of the date of this Declaration is attached to this Declaration as Exhibit A.**

9.7. **Conditional Use Permit.** Development of BRIGHTWATER and the lots therein are subject to a Conditional Use Permit granted by the Waukesha County Department of Parks and Land Use. The terms and conditions of the Conditional Use Permit are attached to this Declaration as Exhibit B.

9.8. **Severability**. The invalidity or unenforceability of any term, provision or condition of this Declaration for any reason shall not affect the validity or enforceability of any other term, provision, or condition hereof, all of which shall remain in full force and effect for the term of this Declaration.

9.9. **Duration of Restrictions**. These restrictions and covenants and any amendments thereto shall be in force for a term of thirty 30 years from the date this Declaration is recorded. Any Supplemental Declarations, whenever executed, shall have a term which coincides with the term of this Declaration and shall expire upon the expiration of this Declaration. Upon the expiration of such initial 30 year term or any extended term as provided herein, this Declaration, as amended, and any Supplemental Declarations shall be automatically extended for successive terms of 10 years each, unless prior to the end of the then-current term a notice of termination is executed

by the Owners of at least sixty-two percent (62%) of all lots subject to this Declaration or any Supplemental Declaration and is recorded in the office of the Register of Deeds of Waukesha County, Wisconsin. These restrictions shall be deemed to be covenants running with the land and shall bind the Owners and their heirs, successors and assigns and be enforceable by any Owner, and by the Town, to the extent permitted by Sections 5.4.5 and 6.10, above.

IN WITNESS WHEREOF, the undersigned have executed this Declaration of Restrictions and Covenants this ____ day of _____, 200____.

_____
James B. Kenehan

_____
Barbara A. Kenehan

STATE OF WISCONSIN)
) SS
WAUKESHA COUNTY)

Personally came before me this ___ day of _____, 200_____, the above-named James B. Kenehan and Barbara A. Kenehan, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

_____
Notary Public, Waukesha County, State of Wisconsin
My Commission: _____

CONSENT OF MORTGAGEE

First Bank Financial Centre as mortgagee of any present or future mortgage on the lands subject to the foregoing Declaration of Restrictions and Covenants, hereby consents to and agrees that its mortgages shall be subject to the foregoing Declaration of Restrictions and Covenants.

BY: _____

(Title)

BY: _____

(Title)

STATE OF WISCONSIN)
) SS
COUNTY OF _____)

Personally came before me this _____ day of _____, 200___, the above-named _____ and _____ to me known to be the _____ and _____ respectively of First Bank Financial Centre and to me known to be the persons who executed the foregoing instrument and acknowledged the same.

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

Revised 11/20/08