

DECLARATION OF COVENANTS AND RESTRICTIONS

Document Number

RECORDED ON

WHEREAS, the City of Whitewater, Wisconsin, a municipal corporation, is, or will be at the time of recording of these Declarations, the owner of the following described real estate (initially comprising the "Bluff Road Commercial District"), lying northerly of, and abutting upon, relocated Bluff Road, also sometimes referred to as Bluff Street (hereinafter referred to as "Bluff Road"), to-wit:

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CONNIE J. WOOLEYER REGISTER OF DEEDS WALWORTH COUNTY, WI

The Following described real estate located in the NE 1/4 and NW 1/4 of the SE 1/4 Sec. 3, T4N, R15E, in the City of Whitewater, Walworth County, Wisconsin, to-wit:

RETURN TO:

Lots 1, 2 and 3 of Certified Survey Map No. 3236 recorded in the Office of the Register of Deeds for Walworth County, Wisconsin on June 30, 2000 in Volume 18 of Certified Surveys of Walworth County at Pages 71 and 72 as Document No. 446556.

SIMON LAW OFFICE 304 West Main Street Whitewater, WI 53190 25.00

/A 323600001, /A 323600002 & /A 323600003 (Parcel Identification Number)

and

WHEREAS, the lands initially comprising the Bluff Road Commercial District are being, and in the event additional lands as may be added by the City to said District in the future will be, planned and developed in conjunction with the Whitewater Business Park, however, due to the differing nature of the planned use and development of the Bluff Road Commercial District, the City of Whitewater does not deem it to be appropriate to extend the Whitewater Business Park Covenants to the Bluff Road Commercial District, but rather, deems it to be more appropriate to establish and impose separate covenants and restrictions on the Bluff Road Commercial District (and such additional lands as may be added by the City to said District in the future) as hereinafter set forth; and

WHEREAS, the City of Whitewater desires to subject the lands lying within the Bluff Road Commercial District to the conditions, restrictions, covenants and reservations contained herein for the benefit of the property and to assure the public and future owner of Lots in the Bluff Road Commercial District of the orderly and compatible development of said lands, and to protect the value and attractiveness of said lands, the development of said lands and improvements thereto, and the use thereof; and

WHEREAS, the City of Whitewater reserves the right to, but shall not be obligated to, add to the Bluff Road Commercial District, and subject to the covenants and restrictions established under this Declaration, at such times and at such stages as the City of Whitewater, in its sole discretion shall determine, such additional lands as may now be owned or hereafter acquired by the City of Whitewater located in the Northeast 1/4 of the Southeast 1/4 of Section 3, T4N, R15E, City of Whitewater, Walworth County, Wisconsin lying northerly of Relocated Bluff Road and southerly of the 66 foot wide railroad right-of-way running through said quarter quarter section and lying easterly of Certified Survey Map No. 3236. In the event the City so elects to add any such additional lands to the Bluff Road Commercial District and subject the same to these Covenants, the City of Whitewater shall exercise its rights under this provision by executing and recording with the Register of Deeds for Walworth County, Wisconsin, amended or supplemental declarations of covenants and restrictions with respect to such additional lands, specifically declaring that such additional lands are subject to, and entitled to the benefits under, these Declarations, as the same may from time to time be amended. Under no circumstances, however, this provision bind the City of Whitewater, its successors and/or assigns, to make any additions to the Bluff Road Commercial District or to subject any additional lands to these Covenants and Restrictions, such decision to make any such additions and subject any such additional lands to these Covenants being within the complete discretion of the City of Whitewater.

NOW, THEREFORE, the City of Whitewater, as the owner of the above described lands initially comprising the Bluff Road Commercial District, hereby declares that the above described lands initially comprising the Bluff Road Commercial District, and any additional lands hereafter added to said District and subjected to these Covenants by the City of Whitewater as herein provided, shall be held, sold, conveyed, transferred, used and improved subject to, and in compliance with, the conditions, restrictions, covenants and reservations hereinafter set forth, which conditions, restrictions, covenants and reservations are hereby imposed upon said lands and shall be deemed and construed to be covenants running with the land, and shall be binding upon the present and all future owners and occupants of said lands and their heirs, successors and assigns. For purposes of these covenants and restrictions, each building Lot or parcel, as from time to time established and approved by the City of Whitewater, from time to time lying within the Bluff Road Commercial District and subjected to these Covenants (including any additional lands so added to said District and subjected to these Covenants as herein provided, shall constitute a "Lot", including any subsequently-approved divisions or re-divisions of said lands.

ARTICLE I
REGULATION OF OPERATIONS AND USES

1. Permitted Uses. Only those uses permitted by right or by conditional use approved by the City of Whitewater under City of Whitewater Zoning Ordinance classification and District B-3 Highway Commercial & Light Industrial District, as the City of Whitewater Zoning Ordinance is from time to time amended (and in the event said district no longer continues to exist under said Ordinances, then under such similar zoning ordinance, district and classification as may from time to time be specified by the City of Whitewater) shall be allowed on any Lot in the Bluff Road Commercial District, all of which uses shall be subject to first obtaining the appropriate approvals from the City of Whitewater pursuant to said Ordinances.

2. Prohibited Uses. Notwithstanding the provisions of paragraph 1 of this Article I set forth above, the following uses shall be prohibited within the Bluff Road Commercial District:

- 2.1. Junkyards or salvage yards, recycling facilities, waste transfer stations, and similar uses;
- 2.2. Commercial petroleum storage yards;
- 2.3. Truck terminals;
- 2.4. Drive-through commercial establishments;
- 2.5. Transmission towers or antennas;
- 2.6. Gasoline stations;
- 2.7. Car washes;
- 2.8. Uses consisting primarily of outdoor material storage yards;
- 2.9. Mini-warehouses;
- 2.10. Residential uses other than those secondary to a primary commercial use on the site;
- 2.11. Community-based residential facilities;
- 2.12. Motor freight transportation;
- 2.13. Taverns and liquor stores;
- 2.14. Any use which would create a nuisance such as excessive noise, odor, glare, heat, radiation, vibration, dust, or liquid discharge; and
- 2.15. Any use substantially adversely affecting the health, safety or welfare of persons on the subject property or adjacent properties.

ARTICLE II

1. Approval of Plans Required. No building or improvement may be erected, placed or altered on any Lot in the Bluff Road Commercial District until the plans and use for such building or improvement have been approved by the City of Whitewater Plan and Architectural Review Board. Such plans shall at a minimum include the following information:

- 1.1. A description of the proposed use(s) to be located on the Lot;
- 1.2. A site development plan drawn to scale and showing the location and dimensions of all proposed structures, parking areas, driving lanes, sidewalks, vehicle access, outdoor storage areas, loading areas, outdoor mechanical equipment, freestanding signs, and similar improvements;
- 1.3. Building elevations and exterior architectural drawings and specifications, including enough detail to show the building style, architectural details, exterior materials and colors;
- 1.4. A grading and drainage plan;
- 1.5. A utility plan showing the location and size of all proposed utilities and easements;
- 1.6. A landscaping plan indicating the location and type of any significant existing vegetation on the site, along with the size, type and location of planned vegetative and non-vegetative landscaping;
- 1.7. A lighting plan indicating the type, location and wattage of any freestanding or building mounted exterior lighting fixtures; and
- 1.8. A signage plan showing the location, size, appearance, composition and lighting (if any) of any signs proposed for installation on the site.

2. Additional Information. The City of Whitewater Plan and Architectural Review Board may, in addition to the foregoing information set forth in paragraph 1 of this Article II, require the submission of such additional detail, plans and/or specifications as it may deem necessary or appropriate to adequately evaluate any proposed building, improvement or alteration thereof.

3. Basis for Approval. Approval shall be based, among other considerations, upon conformance of the submitted plans with then-applicable City of Whitewater ordinances, conformity with the East Whitewater Neighborhood Development Plan (as from time to time amended, and any subsequently adopted plan superseding the East Whitewater Neighborhood Development Plan), conformity and harmony of the proposed design with neighboring structures, and conformity with the development standards set forth in this Declaration of Covenants and Restrictions.

4. Completion of Work. Construction and installation of all improvements must be completed within one year of commencement unless otherwise approved by the Plan and Architectural Review Board.

ARTICLE III
DEVELOPMENT STANDARDS

The development of all Lots shall conform to minimum standards regarding the design and construction of structures, parking and landscaping, and site layout, as set forth in this Article and succeeding Articles of these covenants. The intent of these standards is to ensure a high-quality environment which is safe, orderly, compatible,

aesthetically pleasing, and environmentally sound, and to protect the value of properties located within the Bluff Road Commercial District.

1. Required Setbacks. Setbacks for structures and other improvements will conform to the minimum standards in the following table, unless further restricted by the requirements of the City of Whitewater B-3 Highway Commercial and Light Industrial Zoning District, as from time to time amended:

Type of Improvement	Front Yard	Side Yard*	Rear Yard
Buildings or other structures (other than: signs--see Article V regarding signs; & other than fencing & refuse screening--see subparagraphs 17 & 13 below)	30'	15'	15'
Parking areas & driving lanes, except lanes for ingress/egress	15'	10'	5'
Outdoor storage areas, exterior mechanical equipment, refuse storage & disposal areas, etc.	Not Permitted	Not Permitted	10'

(*The side yard of any corner Lot which fronts on a public street must comply with the setback requirements for front yards.)

The Plan and Architectural Review Board of the City of Whitewater shall have the right to disapprove setbacks which it, in its discretion, deems to be excessive. To the extent practicable, setbacks should be generally uniform from Lot to Lot.

2. Lot Coverage. The total floor area of all buildings on a Lot may not exceed fifty percent (50%) of the gross Lot area. The total area of all improvements on a Lot, inclusive of all structures, storage areas, parking lots, driving lanes, walkways, and all other impervious surfaces, may not exceed eighty percent (80%) of the gross Lot area.

3. Compliance with Applicable Codes. Any development within the Bluff Road Commercial District shall comply with all from time to time applicable City of Whitewater Ordinances and State of Wisconsin laws and administrative codes.

4. Building Design. Any buildings or improvements constructed in the Bluff Road Commercial District shall present an aesthetically pleasing appearance. At a minimum, the facade(s) of any building facing a public right-of-way shall be faced with brick, brick veneer, decorative block, stone, glass, wood or a similar grade of material in keeping with the character of nearby structures. Metal siding will not be permitted on any street yard building facade or on any portion of any side building facade visible from Bluff Road. The Plan and Architectural Review Board of the City of Whitewater shall further have the right to restrict and/or prohibit the use of metal siding on any building visible from Moraine View Parkway on buildings located on corner Lots fronting on both Bluff Road and Moraine View Parkway. Building colors should be subdued and harmonious with surrounding buildings. The use of staggered facades, articulated entryways, canopies, awnings, trellises, bays, doors, windows, and variations in roof lines to create a more visually appealing design is encouraged.

5. Corporate Trademark Colors. Corporate trademark colors should be subdued in tone. Where "brand" or "trademark" colors are employed in the building design, the colors should be subdued in tone, subtle in composition and incorporated directly into the choice of facing materials. The Plan and Architectural Review Board may limit the use of trademark colors to no more than twenty five percent (25%) of the building facade.

6. Off-Street Parking. Any development within the Bluff Road Commercial District must provide adequate off-street parking to accommodate the use intended for the site. Every effort should be made to minimize the placement of parking areas in the area between the street and the facade of the building closest to such street. Where parking is located between any street and building facade, no more than one row of parking and one service drive shall be permitted. Furthermore, such a parking area and drive shall be required to be edged by curb or an integral curb and sidewalk, and a minimum ten (10) foot wide landscaped buffer strip will be created between the right-of-way and the parking area. This buffer strip must include a continuous berm and/or vegetative screen maintained at height of at least three (3) feet, extending the length of the parking area. Parking of vehicles other than passenger vehicles shall be prohibited within any parking area or on any drive located within a street yard.

7. Access. No vehicular access will be permitted from or onto Moraine View Parkway between Bluff Road on the South and the Railroad track on the North, or within fifty (50) feet of the Moraine View Parkway right-of-way along Bluff Road. Also, shared access across adjacent Lots is strongly encouraged. More than one (1) street access point per lot will generally not be permitted.

8. Pedestrian Accommodation. Any development within the Bluff Road Commercial District must provide a five (5) foot wide concrete sidewalk along all street frontages, located one (1) foot within the road right-of-way or at such other location as approved by the Plan and Architectural Review Board. Pedestrian traffic should be accommodated on the Lot through the provision of pedestrian walkways from the street sidewalk and from parking areas to primary building entrances.

9. Loading Areas. On-street loading, off-loading and maneuvering of trucks loading and off-loading is prohibited. No loading area, loading dock, truck door, garage door, or other vehicle entrance may be located in any street yard. To the extent possible, loading areas should be located within the rear yard of the development. All loading areas must be screened from public view from Bluff Road

through site location, building placement, architectural design, fencing, landscaping, or other means acceptable to the Plan and Architectural Review Board. In addition to the foregoing, as to those Lots constituting corner Lots fronting on both Bluff Road and Moraine View Parkway, the Plan and Architectural Review Board may require additional screening with regard to loading areas within public view from Moraine View Parkway.

10. Outdoor Storage. Outdoor storage of material and equipment is permitted within the rear yard only, and only when incidental to activities regularly conducted on the premises. Outdoor storage of materials must be planned, designed, located and used so as to avoid impeding the drainage of stormwater, as from time to time provided for in the City of Whitewater's Regional Stormwater Plan for the area. Outdoor storage areas must be adequately screened from Bluff Road through a combination of fencing, earth berms and/or vegetative landscaping providing at least a seventy-five percent (75%) screen from the ground to a minimum of six feet. Where vegetation is employed as a screen, plants must reach the desired height and width within two (2) years of planting. All outdoor storage areas shall be surfaced with asphalt, concrete, or other suitable material as approved by the Plan and Architectural Review Board.

11. Outdoor Vending Machines. Machines for the vending of products shall not be permitted on the exterior of any structure on any Lot within the Bluff Road Commercial District.

12. Exterior Mechanical Equipment. Every effort should be made to contain mechanical equipment within structures on the site. Where required, exterior mechanical equipment must be completely screened from public view and shall not be located in the area between a street and the facade of the building closest to that street. Roof-mounted mechanical equipment should not be visible from Bluff Road or from Moraine View Parkway.

13. Refuse Storage and Disposal. Facilities for storage and disposal of refuse shall be located within the rear yard of any development, shall be adequately sized to accommodate the refuse generated on the site and shall be designed and located so as to avoid impeding the drainage of stormwater as from time to time provided for in the City of Whitewater's Regional Stormwater Plan for the area. Refuse facilities must be completely screened to a height of six (6) feet with a combination of building elements, fencing and/or vegetation.

14. Utilities. All electrical, telecommunications and other utility services shall be buried underground.

15. Antennas and Satellite Dishes. Antennas, satellite dishes, or other transmission devices shall not be visible from Bluff Road or Moraine View Parkway. The location and screening of such devices is subject to approval by the Plan and Architectural Review Board.

16. Lighting. Excessive levels of lighting should be avoided, and all lighting shall be designed so as to minimize spill-over onto adjacent properties. No lighting elements should be visible from off-site. Whenever possible, shielded indirect or "wall washing" lighting should be used to illuminate signs. Pole lighting should be of minimal height and employ full cut-off luminaries with flat lenses.

17. Fences. Fences must be made of wood, brick, masonry, or other permanent materials as approved by the Plan and Architectural Review Board, and may not extend beyond the setback line from any street or beyond any structure into any street yard. All fencing must be designed and located so as to avoid impeding the drainage of stormwater as from time to time provided for in the City of Whitewater's Regional Stormwater Plan for the area.

18. Drainage. Site grading shall be adequately designed to appropriately channel storm drainage in accordance with the City of Whitewater's regional storm water plan for the area.

ARTICLE IV LANDSCAPING

1. Minimum Landscaped Area. A minimum of twenty percent (20%) of the gross area of any Lot must be vegetatively-landscaped. This landscaping should present a high-quality image from any street side. To achieve this objective, greenspace should be located within the street yards to the extent possible, and canopy trees, evergreens, shrubs, decorative plantings, etc. should be concentrated on the street side(s) of the Lot.

2. Street Trees. A minimum of one (1) street tree must be provided within the right-of-way for each thirty-five (35) feet of street frontage. This spacing may be increased where the location of driveways, underground utilities or other conditions prevents planting every thirty-five (35) feet. The size and species of these street trees shall be acceptable by the Plan and Architectural Review Board.

3. Setback Area. Trees must be planted within the setback area of any street yard to the extent that at twenty (20) years from the time of planting, tree canopies or covers will provide a minimum of twenty percent (20%) coverage. The extent of canopy shall be based upon published reference texts.

4. Vegetation Type. The choice of vegetation proposed in the landscaping plan should favor a variety of species native to the region, selected and sited to produce a hardy and drought-resistant landscape area.

5. Vegetation Size. Screening plant materials and evergreen and ornamental trees shall be a minimum of four (4) feet in height at time of planting. Canopy and

street trees shall have a minimum two and one-half (2.5) inch caliper at time of planting.

6. Ground Cover Required. All Lot areas not paved or built upon shall be graded and sodded, seeded, or planted with a suitable ground cover.

SECTION V SIGNS AND BILLBOARDS

1. Approval Required. All signs must be approved by the Plan and Architectural Review Board prior to installation.

2. On-Premises Business Signage. Signage directing attention to a business, commodity, product or service shall be limited to those identifying the business, commodity, product or service conducted, offered or produced on the Lot.

3. Monument Sign. Each Lot may be permitted one (1) monument sign, which sign may either be a business sign identifying the business, commodity, product or service conducted, offered or produced on that Lot, or in the event multiple businesses are conducted on such Lot (a "Multi-tenant Property"), such monument sign may be a Group Sign. For purposes of this Section V, a "Group Sign" means a sign displaying the collective name of a group of businesses conducted on a Lot such as the title of a building or center, or its tenants, or both. Any permitted monument sign shall be a maximum of five (5) feet in height from base to top of sign, and otherwise consistent with these Covenants and the City of Whitewater's Ordinances regarding size, design and location.

4. Building Mounted Signs. Not more than one (1) building-mounted wall sign shall be permitted for each business located on a Lot. If no monument sign exists or is erected on a Lot, the Plan and Architectural Review Board of the City of Whitewater may, to the extent consistent with the City Ordinances regarding signs, allow the installation of: one (1) additional building-mounted wall sign identifying the business, commodity, product or service conducted, offered or produced on that Lot; or in the event the Lot is a Multi-tenant Property, one (1) building-mounted Group Sign. The total surface area of all wall-mounted signs, including any additional wall-mounted sign permitted in lieu of a monument sign, shall not exceed an area equal to ten percent (10%) of the first floor surface area of the front wall of the building located on a Lot and no one (1) business sign may exceed thirty-two (32) square feet in area, and no one (1) group sign may exceed fifty (50) square feet in area. For purposes of this provision, the building's front wall shall mean the wall facing the streetyard of the Lot, and in the event the Lot is a corner Lot having two (2) streetyards, the building's wall constituting the front wall shall be designated at the time of construction of such building and shall not thereafter be changed without the specific approval of the Plan and Architectural Review Board of the City of Whitewater. All building-mounted wall signs must be mounted flush with the building and otherwise consistent with the City Ordinances regarding size, location, design, lighting and number of signs.

5. Prohibited Signs. Projecting building-mounted signs, pole signs, animated or motion signs, flashing signs, and roof-mounted signs are prohibited.

6. Sign Illumination. Illuminated signs may be permitted. Indirect lighting will be preferred over internal lighting.

7. Color and Materials. Materials used in sign construction should be complementary in style and quality to facing materials used on the building. Colors should be subdued.

ARTICLE VI MAINTENANCE STANDARDS

1. General Provisions. Each Lot and all improvements thereon shall at all times be kept in a safe, clean and wholesome condition.

2. Repairs and Alterations. Any and all repairs, alterations and additions shall be of at least equal quality to the original.

3. Rubbish and Waste Materials. No rubbish shall be burned on the premises. All waste materials shall be located within the refuse storage and disposal facilities constructed in accordance with the site development plan. Storage of waste materials shall not exceed thirty (30) days on any Lot.

4. Landscaping. All vegetative and non-vegetative landscaping shall be maintained in a healthy and well-kept condition.

ARTICLE VII RESALE OF LOTS AND/OR PORTIONS OF LOTS

In the event any owner, other than the City of Whitewater and/or the Community Development Authority of the City of Whitewater, of any Lot subject to these Covenants elects to sell any portion of the undeveloped land which is not then being used in connection with the business or industry of such owner, the same shall first be offered for sale, in writing, to the City of Whitewater at the price per acre paid for such land when such land was initially purchased from the City of Whitewater (or in the event such land was purchased from the Community Development Authority of the City of Whitewater following the purchase thereof by the Community Development Authority of the City of Whitewater from the City of Whitewater, then at the price per acre paid for such land when such land was purchased from the Community Development Authority of the City of Whitewater), together with the costs of any special assessments paid from the date of purchase of said land from the City of Whitewater (or if first sold by the City of Whitewater to the Community Development Authority of the City of Whitewater, then from the date of purchase of said land from the Community Development Authority of the

City of Whitewater) to the date of closing of the resale to the City of Whitewater, if the City of Whitewater so elects to re-purchase such undeveloped land or portion thereof. The City of Whitewater shall have ninety (90) days from the date of receipt of such offer to accept or reject the same, unless an extension of the time is mutually agreed upon and set forth in writing. Acceptance or rejection of any such offer shall be approved by the Common Council of the City of Whitewater following a review and recommendation with respect thereto by the Plan and Architectural Review Board of the City of Whitewater. In the event the City of Whitewater accepts such offer, the owner ("Seller") shall convey title to said land to the City of Whitewater, or the City of Whitewater's designee, by warranty deed, free and clear of all liens and encumbrances, except these covenants, conditions and restrictions, recorded easements for public utilities approved by the City of Whitewater, rights of the public in roadways as laid out, dedicated or used, deferred unpaid assessments for public improvements, if any, and real estate taxes for the then-current year; Seller shall be responsible for prorated real estate taxes for the year of sale through the date of sale; Seller shall provide, at Seller's expense, a title insurance policy insuring the City of Whitewater or its designee as the owner upon repurchase for the full amount of the repurchase price. In the event the City of Whitewater rejects any such offer and said owner proceeds with the sale of any portion of the undeveloped land to a third party, said conveyance shall be subject to the continuing provisions of this Article, and said third-party purchaser, if it, in the future, elects to sell any portion of the undeveloped land which is not then being used by it in connection with its business or industry, shall be required to again first offer said then-undeveloped portion of land for sale in writing to the City of Whitewater at the price per acre paid for such land by the initial purchaser from the City of Whitewater (or in the event said land was initially first purchased from the City of Whitewater by the Community Development Authority of the City of Whitewater, then at the price per acre paid for such land by the purchaser from the Community Development Authority of the City of Whitewater), together with the cost of any special assessments paid by owners of said lands from the date of such original sale by the City of Whitewater (or the Community Development Authority of the City of Whitewater, as the case may be) to the date of repurchase, all on the same terms and conditions as set forth above, it being the intent that the City of Whitewater shall have and retain a continuing right to repurchase undeveloped lands under this Article. Any proposed re-division or further division of any Lot and any sales of portions of parcels or Lots resulting in change or adjustment of lot lines must be approved by the Plan and Architectural Review Board of the City of Whitewater.

ARTICLE VIII RECAPTURE AND RESALE OF LAND

1. If any owner, other than the City of Whitewater or the Community Development of the City of Whitewater, of any Lot does not commence construction of a building or buildings thereon within one (1) year after the date of purchase of said Lot by said owner, the City of Whitewater shall have the option to repurchase said Lot as provided for in this Article. Exercise of the option shall be effected by a resolution adopted by the Common Council of the City of Whitewater. So long as said owner has not commenced construction of a building or buildings on said Lot, said option shall be exercisable by the City of Whitewater upon delivery in writing of a notice to said owner at any time after the expiration of said one (1) year period, or such longer period as may be agreed to in writing between said owner and the City of Whitewater Common Council. If said option to purchase is exercised, closing shall take place within sixty (60) days following the exercise of said option on such date as shall be designated by the City of Whitewater specified in the notice of exercise, or on such later date as may be agreed to in writing between said owner and the City of Whitewater Common Council. In the event the City of Whitewater exercises its option to purchase contained in this Article, the repurchase price to be paid by the City of Whitewater (or its designee) shall be computed at the price per acre paid for such land by the initial purchaser of said land at the time of purchase thereof from the City of Whitewater (or in the event said land was initially sold by the City of Whitewater to the Community Development Authority of the City of Whitewater and subsequently resold by the Community Development Authority of the City of Whitewater, then at the price per acre paid for such land by the initial purchaser of said land from the Community Development Authority of the City of Whitewater), plus any special assessments paid by the owners of such land from the date of purchase of such land from the City of Whitewater (or the Community Development Authority of the City of Whitewater, as the case may be) to the date of closing of the re-purchase by the City of Whitewater or its designee under this Article. In the event the City of Whitewater exercises its option to re-purchase hereunder, conveyance of said lands shall be by warranty deed from said owner ("Seller") to the City of Whitewater or its designee, free and clear of all liens and encumbrances, except these covenants, conditions and restrictions, recorded easements for public utilities approved by the City of Whitewater, rights of the public in roadways as laid out, dedicated or used, deferred unpaid assessments for public improvements, if any, and real estate taxes for the then-current year; Seller shall be responsible for prorated real estate taxes for the year of sale through the date of sale; Seller shall provide, at Seller's expense, a title insurance policy insuring the City of Whitewater or its designee as the owner upon repurchase for the full amount of the repurchase price.

2. Nothing contained in this Article shall be deemed to give the City of Whitewater a right of first refusal or option to purchase under this Article with regard to lands which have been improved by a construction of a building or buildings thereon, it being intended that the option provisions provided for in this Article shall apply only to vacant parcels and that the owner of any Lot which has been improved by the construction of a building or buildings thereon shall have the right to sell all of such property as one parcel, together with the improvements thereon.

**ARTICLE IX
DURATION OF COVENANTS**

The covenants, restrictions and provisions of this Declaration shall be deemed and considered to be covenants running with the land and shall be binding upon all parties and persons having an interest in the land affected hereby for a period of ten (10) years from the date this Declaration is recorded, after which time, this Declaration shall automatically be extended for successive periods of ten (10) years each, unless an instrument signed by the then owners of the Lots or parcels subject to these covenants and restrictions holding two-thirds (2/3) of the vote (as hereinafter defined) and approved by the Common Council of the City of Whitewater (after review and recommendation by the Plan and Architectural Review Board of the City of Whitewater) has been recorded agreeing to terminate these covenants, restrictions and provisions, and in the event of an amendment of these covenants, restrictions or provisions in accordance with the provisions of Article XI below, the same shall continue in force as so amended, in a like manner for the balance of that then-current term, and shall in the same way be automatically be extended for successive like terms. In determining voting rights hereunder, one (1) vote shall be counted for each Lot, and if there is more than one (1) owner of any such Lot, the vote allocated to such Lot shall be divided between said owners according to their percentage of ownership interests of record. Any Lot owned by the City of Whitewater and/or the Community Development Authority of the City of Whitewater shall be included in such voting, with one (1) vote for each such separate Lot so owned. Those votes of the City of Whitewater with respect to Lots owned by the City of Whitewater shall be exercisable and cast by the action of the Common Council of the City of Whitewater.

**ARTICLE X
ENFORCEMENT**

Any dispute involving these covenants shall be decided by the Plan and Architectural Review Board of the City of Whitewater. The enforcement of the restrictions and covenants contained in this Declaration shall be by proceedings at law or in equity against any person(s) or entity(ies) violating, or attempting to violate, any covenant or restriction, either to restrain violation or to recover damages, with such election at the option of the enforcing parties. Such proceedings may be commenced by any owner or owners of Lots subject to these restrictions and covenants and/or by the City of Whitewater.

**ARTICLE XI
AMENDMENT OF DECLARATION OF RESTRICTIONS AND COVENANTS**

Except as hereinafter provided, the within restrictions and covenants may be amended by a written instrument executed by the then current owners of Lots subject to these restrictions holding a majority of votes as determined under the provisions of Article IX hereof and executed on behalf of the City of Whitewater as authorized by motion or other resolution duly adopted by a majority of the Common Council of the City of Whitewater after having considered the recommendations of the Plan and Architectural Review Board of the City of Whitewater.

**ARTICLE XII
VARIANCES**

Where, in the judgment of the Plan and Architectural Review Board of the City of Whitewater, it would be inappropriate to apply literally the provisions of these restrictions and covenants because of unusual circumstances, or because exceptional practical difficulty or undue burden would result, the Plan and Architectural Review Board of the City of Whitewater may waive or modify any requirements set forth in these covenants other than the requirements and provisions related to termination and/or amendment, subject, however, to the following:

1. Not less than ten (10) days prior to the date of consideration of such waiver or modification or variance by the Plan and Architectural Review Board, written notice specifying the proposed waiver, modification or variance and the time, date and place when the Plan and Architectural Review Board will consider the same shall be mailed to the then current owners of all of the Lots then subject to these covenants and restrictions who would be entitled to vote under the terms of Article IX above, utilizing for such mailing purposes the most recent addresses for such owners contained in the assessment rolls of the City of Whitewater.

2. In the event written objections to such proposed modification, waiver or variance executed by a majority of the owners who would be entitled to vote under the terms of Article IX are delivered to the City Clerk of the City of Whitewater prior to the time and date of the meeting at which the Plan and Architectural Review Board is to consider such waiver, modification or variance, such waiver, modification or variance may not be approved or granted by the Plan and Architectural Review Board.

**ARTICLE XIII
SEVERABILITY**

Invalidation of any of the covenants or restrictions herein set forth, or hereafter existing by way of amendment or modification as herein provided, by judgment or court order, shall in no way affect any of the other provisions hereof, which shall remain in full force and effect, nor shall any such judgment or court order render inapplicable the provisions of these covenants and restrictions to persons or circumstances other than those held invalid by such judgment or court order.

IN WITNESS WHEREOF, the City of Whitewater has caused these presents to be signed by its City Manager and counter-signed by its City Clerk at Whitewater, Wisconsin, and its corporate seal to be hereunto affixed this 16th day of July, 2003.

THE CITY OF WHITEWATER, WISCONSIN

By *Gary W. Boden* (SEAL)
Gary W. Boden, City Manager

[Affix City Seal]

Attest:

Michele R. Smith (SEAL)
Michele R. Smith, City Clerk

ACKNOWLEDGMENT

STATE OF WISCONSIN)

) SS

COUNTY OF WALWORTH)

Personally came before me this 16th day of July, 2003, the above named Gary W. Boden, City Manager of, and Michele R. Smith, City Clerk of, the City of Whitewater, Wisconsin, to me known to be the City Manager and City Clerk of the City of Whitewater, Wisconsin, and to me known to be the persons who executed the foregoing instrument and acknowledge that they executed the same on behalf of the City of Whitewater as the duly-authorized act and deed of the City of Whitewater.

Deborah M. Hilgen
Deborah M. Hilgen, Notary Public
Walworth County, Wisconsin
My commission expires: 3/6/05

INSTRUMENT DRAFTED BY:
Mitchell J. Simon, Attorney at Law
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304 W. Main St., Whitewater, WI 53190
(262) 473-6940
City - Covenants Revised 6-03- Bluff Road Commercial District