

515328

DUNN COUNTY, WI
REGISTER OF DEEDS
JAMES K. MROUTT

RECORDED ON
08/23/2004 10:20AM

REC FEE: 29.00
TRANS FEE:
FEE EXEMPT #:

PAGES: 10

pd
29.00

Return ROBERT W EVERETT
1826 W 7th St
to: Red wing MN
55066

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

This Declaration of Covenants, Conditions, and Restrictions is made by Robert W. Everett and Wendy L. Everett, husband and wife (Declarant):

RECITALS

- A. Declarant is the owner of the Property described in Exhibit A attached hereto located in Dunn County, Wisconsin, which consists of 22 single family residential lots.
- B. Declarant desires to subject the Property to the covenants, conditions and restrictions contained herein for the purpose of preserving the value, structural quality and architectural and esthetic character of the Property.
- C. Declarant desires that the covenants, conditions and restrictions contained herein shall constitute covenants that run with the Property and that the Property shall be owned, used, occupied and conveyed subject to the covenants, conditions and restrictions set forth herein, all of which shall be binding upon all Persons now or hereafter owning or acquiring any right, title, interest or lien in the Property, and their heirs, representatives, successors and assigns.

SECTION ONE DEFINITIONS

1.1 "Building and Design Committee" or "Committee" shall be Robert W. Everett and Wendy L. Everett, or the persons designated in accordance with Section Two of this Declaration.

1.2 "Declarant" shall mean Robert W. Everett and Wendy L. Everett, husband and wife.

1.3 "Declaration" means this Declaration of Covenants, Conditions and Restrictions.

1.4 "Improvements" means any buildings, structures, or other improvements as defined in Section 2.3 of this Declaration.

1.5 "Lot" shall mean a lot designated in the Plat of EverCrest or Certified Survey Maps Numbered 2836 or 2884 described in Exhibit A attached hereto.

1.6 "Occupant" shall mean any Person, other than the Owner, in possession of or residing in a Lot.

1.7 "Outbuilding" shall mean a building or structure not directly attached to the dwelling which it serves, including detached garages, sheds or other structures.

1.8 "Owner" shall mean a Person who owns a Lot, but excluding land contract vendors, mortgagees and other secured parties. The term "Owner" includes, without limitation, land contract vendees and the holders of a life estate.

1.9 "Person" shall mean a natural individual, corporation, limited liability company, partnership, limited liability partnership, trustee or other legal entity capable of holding title to real estate.

1.10 "Property" shall mean the property described in Exhibit A attached hereto.

SECTION TWO BUILDING AND DESIGN COMMITTEE

2.1 The Building and Design Committee shall be responsible for reviewing the plans for all proposed Improvements as defined in Section 2.3, including all new construction, additions, or modifications. The Committee shall be responsible to ascertain that the plans and subsequent construction meet the minimum building requirements set forth in this Declaration. The primary purpose of the Committee shall be to assist Owners in achieving compliance with the building restrictions.

2.2 The Building and Design Committee shall initially consist of Robert W. Everett and Wendy L. Everett. Said persons shall have the right to designate additional or successor members of the Committee. If the said persons are deceased or no longer own a Lot and there is no designee, then the majority of the Owners shall have the right to elect a Committee consisting of no less than two (2) nor more than five (5) members to be elected annually.

2.3 Except as expressly permitted by this Section 2.3, no modifications, improvements, repairs or replacements of any type, temporary or permanent, structural, aesthetic or otherwise, including but not limited to, any structure, building, addition, deck, patio, fence, wall, enclosure, awning, window, exterior door, antenna or other type of sending or receiving apparatus, sign, flag, display, decoration, color change, shrubbery, material topographical or landscaping change (collectively referred to as the "Improvements"), shall be made, or caused or allowed to be made, by any Owner or Occupant, or their invitees, in any part of the Property without the prior written authorization of the Committee.

2.3.1 The Committee shall have authority to establish reasonable forms and procedures for applying for authorization for Improvements, and reasonable requirements for Improvements, and shall be the sole judge of whether the criteria

are satisfied, subject to any restrictions imposed by any applicable governmental laws, codes, ordinances or regulations.

2.3.2 The purpose of the requirements established by the Committee shall be (i) to preserve the architectural style, the quality and the value of the Property, and (ii) to protect the Owners from undue liability arising out of the Improvements or any construction activity in connection therewith.

2.4 No Improvements for which plans are to be submitted to the Committee pursuant to Paragraph 2.3, immediately above, shall commence until the plans and specifications showing the nature, kind, shape, height, color, materials, and location of the same shall have been submitted to and approved in writing by the Committee. In the event the Committee fails to approve or disapprove the design and location plan within thirty (30) days after the plans and specifications have been submitted to it, approval will not be required and full compliance with this section of the Declaration will be deemed to have occurred.

2.5 Without limiting the generality of the factors to be considered by the Building and Design Committee, the following restrictions shall apply:

2.5.1 All driveways and parking bays shall be constructed of concrete, concrete aggregate, or asphalt unless written approval for the use of some other material is given by the Committee. Crushed rock driveways shall not be allowed after the road adjacent to a Lot has been paved.

2.5.2 Heat pumps, propane tanks, solar devices, chimney flues, hot tub pumps, swimming pool pumps and filtration systems, television antennas and similarly exposed mechanical equipment shall be aesthetically concealed from view on all sides and shall be shielded in such a manner as to minimize noise and safety concerns.

2.5.3 Siding shall be of wood, brick, stucco, vinyl siding or combinations of those materials. However, at least twenty-five percent (25%) of the area of the front exterior of the dwelling house on a Lot shall be brick, stone or a man-made facsimile of brick or stone acceptable to the Committee.

2.6 In spite of the above provisions, the Committee shall have no affirmative obligation to be certain that all elements of the design comply with the restrictions contained in this Declaration, and no member of the Committee shall have any liability, responsibility, or obligation, whatever, for any decision or lack of a decision, in the carrying out of duties as a member of the Committee. The Committee and its members shall have only an advisory function, and the sole responsibility for compliance with all of the terms of this declaration shall rest with the Owner. Each Owner agrees to save, defend, and hold harmless the Committee and each of its members on account of any activities of the Committee relating to the Owner's Property or buildings to be constructed on his or her Property.

SECTION THREE BUILDING RESTRICTIONS

3.1 The Property shall be owned, conveyed, encumbered, leased, used and occupied subject to this Declaration, as amended from time to time. All covenants,

restrictions and obligations set forth in this Declaration are in furtherance of a plan for the Property, and shall run with the Property and be a burden and benefit to all Owners and Occupants and to any other Person acquiring or owning an interest in the Property, their heirs, personal representatives, successors and assigns. All Owners and Occupants, and all secured parties, by their acceptance or assertion of an interest in the Property, or by their occupancy of a Lot, covenant and agree that the occupancy, use, operation, alienation and conveyance of the Property shall be subject to the following restrictions.

3.2 No Lot may be subdivided or partitioned without the prior written approval of a majority of all Owners and Declarant as long as Declarant owns a Lot.

3.3 The Lots shall be used by Owners and Occupants and their guests exclusively for private, single family residential purposes, and not for transient, hotel, commercial, business or other non-residential purposes, except as permitted by Section 3.4. The number of occupants per Lot may be restricted in accordance with any applicable municipal ordinances and standards acceptable under the Fair Housing Amendments Act of 1988.

3.4 No business, trade, occupation or profession of any kind, whether carried on for profit or otherwise, shall be conducted, maintained or permitted in any Lot except:

3.4.1 An Owner or Occupant residing in a Lot may maintain a home occupation in such Lot and handle matters relating to such home occupation by telecommunications or correspondence therefrom; provided, that such uses (i) are incidental to the residential use; (ii) do not involve physical alteration of the dwelling or Outbuildings visible from the exterior; (iii) are in compliance with all governmental laws, ordinances and regulations; and (iv) do not involve any observable business activity such as signs, advertising displays, or regular deliveries, pedestrian traffic or vehicular traffic to and from the Lot by customers or employees.

3.4.2 Declarant may maintain offices, sales facilities and other business facilities on the Property in connection with the sale of Lots to prospective Buyers.

3.5 Leasing of Lots shall be allowed, subject to reasonable regulation by the Committee, and subject to the following conditions: (i) no Lot shall be leased for transient or hotel purposes, (ii) no Lot may be subleased, (iii) a Lot may be leased in its entirety (not by room), (iv) all leases shall be in writing, (v) copies of all leases shall be furnished to the Committee prior to the commencement of the term of the lease, (vi) no lease shall be for a period of less than twelve months, and (vii) all leases shall provide that they are subject to this Declaration, and the rules and regulations promulgated by the Committee and any amendments thereto, and that any failure of the lessee to comply with the terms of such documents shall be a default under the lease. The Committee may impose such reasonable rules and regulations as may be necessary to implement procedures for the leasing of Lots, consistent with this Section, including but not limited to a requirement for screening of lessees for credit and prior rental history.

3.6 Garages shall be used only for parking of vehicles owned or leased by Owners and Occupants and their guests, and such other incidental uses as may be authorized in writing by the Committee. Except as authorized in writing by the Committee, parking stalls shall not be converted to other uses or used for storage or other purposes which would

prevent the parking of a full size automobile in the stall. The use of stalls, driveways and parking areas on the Property, and the types of vehicles and personal property permitted thereon, shall be subject to regulation by the Committee, including without limitation the right of the Committee to tow illegally parked vehicles or to remove unauthorized personal property.

3.7 The Committee shall have the exclusive authority to prohibit, or to allow and regulate, by rules and regulations, the keeping of animals on the Property. This authority may be exercised so as to permit or prohibit different types of animals, but animals which are permitted shall be limited to common domestic house pets such as dogs, cats, fish, birds and the like. The word "animal" shall be interpreted in its broadest sense and shall include all living creatures except humans. Notwithstanding the foregoing, (i) no animal may be bred, or kept or maintained for business or commercial purposes, anywhere on the Property and (ii) nothing in this Declaration or any rule or regulation shall prohibit the keeping of a qualified service dog or similarly qualified animal by a person who is handicapped within the meaning of the Fair Housing Amendments Act of 1988 or comparable state law.

3.8 All Owners and Occupants and their guests shall have a right of quiet enjoyment in their respective Lots. The Property shall be occupied and used in such a manner as will not cause a nuisance, nor unduly restrict, interfere with or impede the use and quiet enjoyment of the Property by other Owners and Occupants and their guests. No Owner or Occupant shall (i) cause or permit any physical changes to their Lot that could cause damage to, jeopardize or impair the weather-tight soundness or safety of a building, structure or other improvement located on the Property, or (ii) interfere with any easement.

3.9 No use shall be made of the Property which would violate any then existing municipal codes or ordinances, or state or federal laws, nor shall any act or use be permitted which could cause waste to the Property, cause a material increase in insurance rates on the Property, or otherwise cause any unusual liability, health or safety risk, or expense, for the Committee or any Owner or Occupant.

3.10 No building, except a single family residential dwelling together with garage for not less than two automobiles and/or such other Outbuildings as may be permitted by local land use or ordinances, shall be permitted. No detached garages or other Outbuildings shall be constructed in front of the residential dwelling on the Lot. Each Lot shall be used for no more than one family. "Family" shall include parents, children and immediate blood relatives. No multiple family dwellings (such as duplexes, triplexes or four-plexes) will be allowed on the Property.

3.11 Any residential dwelling constructed on a Lot shall have a minimum main floor area of the main structure, exclusive of one-story open porches and garages, of not less than 1,400 square feet for a one-story dwelling. In the case of a multiple-story or split-level dwelling, the lower or ground floor living level shall be not less than 1,000 square feet and the total finished square footage area of the second and/or split level, when added to the minimum 1,000 square feet main floor requirement, shall be not less than 1,400 square feet.

3.12 No trailer, tent, shack, garage, barn, or other Outbuildings shall at any time be used as a residence, temporarily or permanently, on any Lot.

3.13 Any construction commenced on any residential dwelling as provided in this Declaration shall be substantially completed, including, but not limited to, all painting, within eighteen (18) months from the date the construction is commenced.

3.14 No sign of any kind shall be displayed to public view on any Lot, except for a sign, limited to one, advertising the property for sale.

3.15 All Lot Owners shall provide and maintain proper facilities to control storm water run-off onto adjacent Properties and to insure that sediments do not enter the natural drainage system.

3.16 All buildings and Improvements shall be constructed in compliance with the pertinent zoning and building codes of Dunn County, Wisconsin, and any and all other governmental entities that have jurisdiction of the Property at the time of undertaking the buildings and Improvements. No dwelling house, garage, Outbuildings, or other accessory building or part of it (exclusive of fences and similar structures) shall be placed nearer to the front lot line or nearer to the side lot line or to the rear lot line than the minimum building setback lines, if any, imposed by any such governmental entity having control, or the following minimum requirements, whichever is more restrictive. Notwithstanding the foregoing provisions, no buildings, Outbuildings or Improvements shall be constructed closer than 42 feet from a town road, 50 feet from a county road or 30 feet from a platted street, 10 feet from the side Lot lines or 25 feet from the rear Lot lines.

3.17 The height and location of any residence, garage, or Outbuilding shall be designed and located so as to assist in the preservation of the views of others.

3.18 To the extent allowed by applicable utilities, lines or wires for telephone, power, cable television, or otherwise shall be placed underground and no such wires shall be shown on the exterior of any building unless the same shall be underground or in a conduit attached to a building.

3.19 No pole shed or similar type Outbuilding shall be constructed on any Lot. No detached garage or Outbuilding shall be constructed except after review and approval of the Committee and shall be designed and constructed so as to be compatible with the color, exterior décor and materials of the residential dwelling on the Lot.

3.20 The maximum size of Outbuildings shall be 1200 square feet subject to the requirements of applicable laws or ordinances or the restrictions contained herein, whichever is more restrictive. All Outbuildings shall not exceed one story in height and shall be placed on the Lot in such a fashion as to be obscured from view to the greatest extent possible. No Outbuilding shall be constructed of metal or vinyl exterior siding materials unless the Committee determines that such construction materials are compatible with other buildings and Improvements in the Property.

3.21 No fences shall be constructed except after review and approval by the Committee, and all fences shall be designed and constructed so as to be compatible with the residential dwelling on the Lot and the neighborhood. All fences shall be designed and constructed so as to not constitute a nuisance or offensive effect on other persons residing

within the Property. Chain-link fences shall not be allowed except for animal containment purposes, with proper screening from neighbors and public view. All fences shall be subject to the following height restrictions:

3.21.1 No more than 42 inches high along the front Lot line or side Lot lines from the front of the Lot to the rear of the residential dwelling on the Lot; and

3.21.2 No more than 72 inches high along the rear Lot line or the side Lot lines from the rear of the residential dwelling on the Lot to the rear of the Lot.

3.22 No trash, garbage, ashes, or other refuse, junk, vehicles in disrepair, machinery, underbrush, or other unsightly growths or objects shall be maintained or allowed on any Lot. All fences and buildings shall be kept in a state of repair. All residences, garages, and Outbuildings shall be painted or stained, from time to time, so as to maintain a reasonable state of repair.

3.23 Each Owner and Occupant shall exercise as much care as is possible to retain natural vegetation, trees, shrubs, and other similar growth. The design of all structures shall attempt to save such trees, except to the extent that they may become dangerous or hazardous or impede proper drainage of the Lot. Each Owner, within sixty (60) days of the completion of a residence, shall landscape all yards fronting a street, provided, however, that a right to extend the time period for completion of the landscaping may be sought, in writing, and obtained at the sole discretion of the Committee in the case of extenuating circumstances.

3.24 All mailboxes and mailbox holders shall be of a standard design accepted by the Committee and adhering to the applicable specifications of the U.S. Postal Service. All mailboxes shall be located as directed by the U.S. Postal Service. Each Owner shall be responsible for the maintenance and replacement of his or her mailbox so as to keep it in a state of repair at all times.

3.25 No building which incorporates or utilizes an active solar heating system unit or units for purposes of heating a structure or water or for any other purposes shall be erected, altered, placed or permitted to remain on any Lot unless the plans and specifications have been approved by the Committee. No building commonly described as "earth shelter" or incorporating earth bermed construction techniques shall be erected, altered, placed or permitted to remain on any Lot unless approved by the Committee.

SECTION FOUR MISCELLANEOUS AND GENERAL PROVISIONS

4.1 These Declarations are to run with the Property and shall be binding on all Owners and persons claiming under them perpetually unless an instrument signed by the Declarant if Declarant is then an Owner of a Lot and by the then Owners of seventy-five percent (75%) or more of the Lots in said Property has been recorded, agreeing to change said Declarations in whole or in part, or to terminate the effect of these Declarations completely. These Declarations may be amended with the consent in writing of the Declarant if Declarant is then an Owner of a Lot and by the then Owners of seventy-five (75%) or more of the Lots in the Property. The Covenants, Conditions and Restrictions contained herein constitute covenants that run with the Property and the Property shall be owned, used, occupied and conveyed

CONSENT TO DECLARATION

The undersigned (the "Mortgagee") is a mortgagee of certain real property described in the Declaration of Covenants, Conditions and Restrictions (the "Declaration") attached hereto by virtue of that certain Mortgage dated June 13, 2003 and recorded June 19, 2003 in Volume 1216 Records, page 797, as Document No. 498764 in the office of the Dunn County Register of Deeds. Mortgagee hereby consents to the Declaration; provided that by consenting to the Declaration, the Mortgagee does not in any manner constitute itself or obligate itself as a Declarant as defined in the Declaration nor does such consent and joinder modify or amend the terms and conditions of the mortgage and related loan documents; and provided further that the mortgage shall be and remain as a lien on property described therein, prior to any Assessment liens or other liens imposed under the Declaration, until released or satisfied.

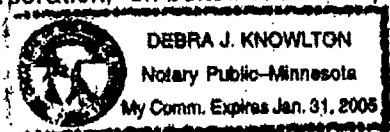
IN WITNESS WHEREOF, the Mortgagee has caused this Consent to be executed on the 5th day of Aug, 2004.

WHITE ROCK BANK

By: *Lynette Smaroid*
 Its: Vice-President

STATE OF MINNESOTA)
) ss.
 COUNTY OF GOODHUE)

The foregoing instrument was acknowledged before me this 5th day of Aug, 2004, by *Lynette Smaroid*, the *Vice President* of White Rock Bank, a Minnesota corporation, on behalf of said corporation.



Debra J. Knowlton
 Notary Public

THIS INSTRUMENT WAS DRAFTED BY:
 Watson & Speight, P.A.
 411 West Third St.
 Red Wing, MN 55066
 651/388-8805