

DECLARATION

The Declaration establishes and describes the Condominium,
the units and the common areas.

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DANELL HEIGHTS CONDOMINIUM DECLARATION

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DANELL HEIGHTS CONDOMINIUM
DECLARATION OF CONDOMINIUM

Michael J. Hurlinger
REGISTER OF DEEDS

Danell Heights Partnership, a Wisconsin partnership (the "Declarant"), does hereby declare that the real estate described below is subject to the Wisconsin Condominium Ownership Act. The said real estate and all the improvements now or subsequently placed thereon and all appurtenant rights shall be known and described as DANELL HEIGHTS CONDOMINIUM (the "Condominium"). The address of the Condominium shall be W135 N8009 Eagle Court, Menomonee Falls, Wisconsin 53051

1. Description of Land. The land which is the subject of this Declaration and upon which the buildings and improvements are and will be located (the "Property") is in Waukesha County, Wisconsin, and is more particularly described on Exhibit A, attached hereto. A survey of the Property, showing the boundaries of the Condominium, is contained in the Danell Heights Condominium Plat (the "Condominium Plat").

2. Description of Buildings. Six buildings containing a total of 12 units are in the process of construction or have been constructed upon the land with locations as shown on the Condominium Plat filed for record in the office of the Register of Deeds for Waukesha County, Wisconsin and incorporated herein by reference. The condominium dwelling units in each building are called "units." The buildings containing units are designated numerically as shown on the Condominium Plat.

Each building contains or will contain two units. The principal materials of which the buildings are or will be constructed are concrete block foundation and basement, wood frame, wood floors, wood and/or stone exterior and cedar shake roof. The buildings and units will be connected to a municipal sewer and water system.

3. Description of Units.

(a) Units are identified by building and number as indicated on the Condominium Plat. Each unit and the approximate area, location, number of rooms, appurtenant limited common elements and immediate common area to which it has access are shown on the survey and set of floor plans included in the Condominium Plat. Working drawings and general specifications for the project are on file at the office of Declarant's Architect, Shepherd Legan Aldrian Architects, 11600 West North Avenue, Wauwatosa, Wisconsin.

(b) The boundaries of each unit shall consist of that part of each building as follows:

(i) The vertical or parametrical boundaries of the unit shall be [a] exterior - the plane of the exterior of the outside walls (including the garage door, all other doors and windows) of the building bounding a unit and the vertical plane or planes of the exterior of all portions of the building extending through the roof (e.g., chimneys, dormers, vents) extended to an intersection with the upper and lower boundaries; and [b] interior wall - the center line of the wall separating the two units in each building extended to an intersection with the upper and lower boundaries; and

(ii) The upper boundary of the unit shall be the plane or planes of the exterior of the roof and the horizontal plane or planes of any portions of the building extending through the roof (e.g., chimneys, dormers, vents) and the lower boundary shall be the undersurface of the basement floor or garage floor, as applicable.

(c) Each unit shall contain two or more bedrooms, at least two baths, kitchen, attached two-car garage and a full basement. The units will vary in size from approximately 1,200 square feet to approximately 1,500 square feet.

(d) Any utility lines and plumbing equipment located outside of units, and any utility lines and plumbing equipment contained inside the boundaries of a particular unit but which service a different unit, are common elements and shall be repaired and maintained by and at the expense of Danell Heights Condominium Association, Inc. (the "Association"), except as otherwise provided in this Declaration or the By-Laws of the Association. The furnace and water heater for each unit are part of the respective unit serviced by said items and shall be repaired and maintained by and at the expense of the unit owner of said unit.

(e) If any portion of the common or limited common elements shall encroach upon any unit, or if any unit shall encroach upon any other unit or upon any portion of the common or limited common elements as a result of the duly authorized construction, reconstruction or repair of a building, or as a result of settling or shifting of a building, a valid easement for the encroachment and for its maintenance shall exist so long as the building stands. The existing

physical boundaries of a unit or common elements constructed or reconstructed in substantial conformity with the Condominium Plat shall be conclusively presumed to be its boundaries, regardless of the settling or shifting of the building and regardless of minor variations between the physical boundaries described in this Declaration or shown on the Condominium Plat and the existing physical boundaries of any such unit or common element.

4. Description of Common Elements. The common elements shall include all of the Condominium except its units and shall include, but not be limited to, the following: land, driveways and sidewalks. The common elements shall be operated, repaired and maintained by and at the expense of the Association, except as otherwise provided in this Declaration or the By-Laws of the Association.

5. Description of Limited Common Elements. The following common elements are permanently assigned to and limited to the use of units as follows (the "limited common elements"):

(a) The driveway servicing each unit (extending from the unit garage door to the road) as shown on the Condominium Plat;

(b) The land area surrounding each unit as shown on the Condominium Plat (the "yard"); and

(c) All walks, lighting fixtures, trees, shrubs and any other plants, fixtures or structures located within each unit's yard.

To assist adjoining unit owners in locating the lines between their respective yards, iron pipes have been or will be driven into the ground at each end of such lines. These pipes shall not be removed or disturbed except with the prior approval of the Association. No yard boundary lines shall be modified except with the written consent of the adjoining unit owners. Any boundary line modification must be evidenced by an amendment to the Condominium Plat which shall be recorded with the Register of Deeds for Waukesha County. The form of any such amendment must be approved by the Association, and all costs thereof shall be borne by the party or parties initiating the amendment.

6. Declarant's Right to Modify Units. Declarant hereby reserves the right to increase and/or modify or alter the size, location and floor plans of a unit and the yard

surrounding such unit during the construction of such unit. In the event Declarant exercises its rights with respect to any unit, Declarant shall file an amendment to the Condominium Plat with the Register of Deeds of Waukesha County showing the exact location, size and floor plans of the modified unit and modified yard. As each unit is constructed, any portion of the common elements surrounding a unit which becomes occupied by a unit shall become a part of such unit.

7. Percentage Interests, Voting and Assessments.

(a) The undivided percentage interest in the common elements (including limited common elements) appertaining to each unit shall be 8.333%.

(b) There shall be one vote appertaining to each unit.

(c) All funds for the payment of common expenses and for the creation of reserves for the payment of future common expenses shall be obtained by equal assessments against the owner of each unit (except assessments for insurance premiums, which may be assessed against each unit based upon the actual cost of premiums for such unit); provided, however, that a unit owner's assessment shall be reduced in the event that such owner elects to provide for his own maintenance of the exterior of his unit and the limited common elements appurtenant to his unit, as more fully set forth in the Association By-Laws. Declarant shall pay monthly assessments to the Association for each completed unit owned by Declarant on the same basis as any other unit owner. For purposes of Declarant's obligations for assessments, a "completed" unit shall be unit for which the Village of Menomonee Falls has issued an occupancy permit. Until such time as a unit is completed, Declarant, and not the Association, shall be responsible for all insurance premiums and maintenance costs for such unit.

8. Residential Use. All units are intended for and shall be restricted to use for residential purposes only.

9. Service of Process. The resident agent for the Condominium shall be the Declarant. Service of process shall be made upon the Declarant c/o Donald S. Arenson, 14555 Appleton Avenue, Menomonee Falls, WI 53051 as to matters provided in the Wisconsin Condominium Ownership Act until all

units have been sold, conveyed and paid for or until the first meeting of the unit owners, at which time the Association may designate a successor by vote of a simple majority of a quorum present at any meeting (members or Board of Directors) of the Association.

10. Damage or Destruction. In the event the Condominium is destroyed or damaged in an amount in excess of 20% of the replacement cost of the entire Condominium, and insurance proceeds, if any, constitute less than 80% of the cost of completing repair or reconstruction, action by the Association by vote of 75% or more of all unit owners taken within 90 days after such damage or destruction shall be necessary to determine not to repair or reconstruct the Condominium as more fully described in section 3, Article V of the By-Laws. Damage or destruction to a lesser extent, and damage or destruction to a greater extent but for which insurance proceeds are equal to or greater than 80% of the cost of completing repair or reconstruction, shall be repaired and reconstructed pursuant to arrangement by the Board of Directors of the Association as provided in said section of the By-Laws.

11. Further Matters.

(a) All present and future owners of units, tenants of such owners and any other occupants of units, employees of owners, or any other persons that in any manner use or come upon the Condominium or any part thereof shall be subject to and shall comply with the provisions of this Declaration, the Articles of Incorporation of the Association (the "Articles"), and the By-Laws and rules and regulations of the Association, as these instruments may be amended from time to time. The acceptance of a deed or conveyance, or the entering into of a lease, or the entering into occupancy of any unit shall constitute an acceptance by such owner, tenant or occupant of the provisions of such instruments, as they may be amended from time to time. The provisions contained in such instruments shall be covenants running with the land and shall bind any person having at any time any interest or estate in such unit, as though such provisions were recited and fully stipulated in each deed, conveyance or lease thereof. The enforcement may be by such judicial proceedings as the Board of Directors of the Association may deem appropriate as well as by the provisions of the Wisconsin Condominium Ownership Act.

(b) The Declarant hereby reserves the right for a period of ten years from this date to cause one or more of the units it owns to be maintained as a model unit, and to

maintain a sales office in the Condominium, and to display such models and the common elements of the Condominium for purposes of selling units in the Condominium or in other projects of the Declarant.

(c) Rules and regulations (in addition to the By-Laws) concerning the use of the units and the common and limited common elements, including provisions limiting the keeping of pets, may be promulgated and amended by the Board of Directors of the Association. Copies of such rules and regulations shall be furnished by the Board of Directors of the Association to each unit owner prior to their effective date.

(d) The Declarant hereby reserves for the Association acting by and in the discretion of its Board of Directors, the right to grant to the Village of Menomonee Falls, Wisconsin, the County of Waukesha, Wisconsin, or public or semipublic utility companies, easements and rights-of-way for the erection, construction and maintenance of all poles, wires, pipes and conduits for the transmission of electricity, gas, water, telephone and for other purposes, for sewers, storm water drains, gas mains, water pipes and mains, and similar service, and for performing any public or quasi-public utility function that the Board of Directors may deem fit and proper for the improvement and benefit of the Condominium. Such easements and rights-of-way shall be confined, so far as possible, in underground pipes or other conduits, with the necessary rights of ingress and egress and with the rights to do whatever may be necessary to carry out the purposes for which the easement is created.

(e) The Declarant hereby further reserves for itself and its successors and assigns, for a period of ten years following the date of recording of this Declaration, access to and the right to connect to any of the above-described underground pipes or other conduits for the improvement and benefit of additional phases of the Condominium as described in section 13(b) of this Declaration.

(f) The Declarant hereby further reserves for itself and its successors and assigns, for a period of ten years following the date of recording of this Declaration, a right of access over, across and through the Property for purposes of transporting construction materials, for making underground or aboveground utility connections and/or for any other reasonable use related to the construction of buildings and units in additional phases of the Condominium as described

in section 13(b) of this Declaration. Any exercise of this right shall not constitute a nuisance.

(g) All terms used in this Declaration shall have the same meaning as used or defined in the Wisconsin Condominium Ownership Act, Ch. 703, Wis. Stats. 1981-82, unless the context of this Declaration requires or specifically provides otherwise.

12. Additional Rights of Lenders.

(a) As to the holder of any mortgage or land contract vendor or insurer or guarantor of any mortgage (the "Lender") of a unit which has notified the Association in writing delivered or mailed by certified mail to the place for service of process stated in section 9 of this Declaration that it desires to receive notice of the following matters:

(i) The Board of Directors shall give the Lender written notice by mail of the call of any meeting of the membership or the Board of Directors of the Association to be held for the purpose of considering any proposed amendment to this Declaration, the Articles or the By-Laws;

(ii) The Board of Directors shall give the Lender by mail a copy of the notice of default which is given to any unit owner on any failure to comply with or violation of any of the provisions of this Declaration, the Articles, the By-Laws and rules and regulations promulgated thereunder, and any amendments thereto, simultaneously with the giving of required notice to any unit owner which shall be not later than within 30 days of such failure;

(iii) The Board of Directors shall notify the Lender of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(iv) The Board of Directors shall notify the Lender of physical damage to structure, fixtures or equipment of a unit in an amount exceeding \$10,000 when such damage is known to the Board of Directors and shall notify all Lenders if common elements of the Condominium are damaged in an amount exceeding \$20,000. The Board shall also notify the Lender in writing of any condemnation proceedings concerning the Condominium; and