

DECLARATION OF RESTRICTIVE  
COVENANTS  
FOR  
THE ESTATES AT  
WARNER CREEK

a Subdivision Located in the Town of  
Grand Chute,  
Outagamie County, Wisconsin,

consisting of the Replat of Outlot 1,  
The Crossings at Warner Creek, and  
part of Lot 3 of Certified Survey  
Map #4338, as Document #1470151, being part of  
the Southwest 1/4 of the Southwest 1/4 of  
Section 9; part of the Southeast 1/4 of the  
Southeast 1/4 of Section 8, Town 21 North,  
Range 17 East, Town of Grand Chute,  
Outagamie County, Wisconsin.

Casaloma Properties, Inc. ("CPI"), the owner of Lots 1 through 29 and Outlots 1 through 4 in The Estates at Warner Creek, a subdivision located in the Town of Grand Chute, Outagamie County, Wisconsin, makes the following declaration as to limitations, restrictions, and uses to which the lots in The Estates at Warner Creek (the "Subdivision") may be put. These declarations shall constitute covenants to run with the land, as provided by law, and shall be binding on all parties and persons claiming under them, for the benefit of, and limitations on, all future owners and persons claiming under them.

**PART I. RESTRICTIONS ON USE, STRUCTURES AND SITE DEVELOPMENT FOR  
LOTS 1 THROUGH 29**

1. **Purpose.** These covenants are set forth to ensure the use of the property within the Subdivision for residential purposes only, to prevent nuisances, to prevent the impairment of the attractiveness of the property, and to assure each lot owner the full benefit and enjoyment of their lot and home, with no greater restriction on the free and undisturbed use thereof than is necessary to ensure the same advantages to all of the other lot and home owners.

2. **Land Use and Building Type.** No lot, whether alone or in combination with one or more other lots in this Subdivision, shall be used except for single-family residential purposes and restricted as follows:

OUTAGAMIE COUNTY  
RECEIVED FOR RECORD

MAR 29 2004

AT 12:05 O'CLOCK ~~A.M.~~ P.M.  
JANICE FLENZ  
REGISTER OF DEEDS

pd  
133.00

Return to:  
Atty Steven P. Krause  
15 Park Place  
Appleton, WI 54914-8250

- a. All dwellings shall have not less than a two-car garage attached thereto.
- b. All of the dwelling and garage which fronts on any street shall be finished with a "natural exterior" consisting of, but not limited to, brick, stone, stucco, wood, or cement board.
- c. All dwellings shall have a roof pitch of not less than 6/12.
- d. One single-story storage shed shall be allowed per lot. Plans and specifications for such storage shed shall be submitted to CPI for written approval prior to commencement of construction. Any shed shall be located to the rear of the dwelling on said lot, shall have a maximum storage area not to exceed 144 square feet, and shall be constructed in a style and of materials that are similar to those used in the construction of the dwelling located on said lot.
- e. No mailboxes shall be used other than those provided by CPI.

3. **Architectural Control.** As long as CPI owns any lot in the Subdivision, no dwelling or other house or structure or fence may be erected on any lot in this Subdivision until the plans and specifications have been submitted to and approved by CPI. All plans and specifications shall be delivered to:

Casaloma Properties, Inc.  
4089 Crane Drive  
Appleton, WI 54913

If CPI fails to approve or disapprove such plans and/or specifications within 30 days after they have been received, said plans and specifications shall be deemed to have been approved.

4. **Setback Lines.** Setback lines shall conform to local zoning regulations and the recorded Plat of the Subdivision.

5. **Minimum Floor Area and Design.** All structures to be erected in the Subdivision shall be of pleasing external design and shall conform with all established setback lines, and any dwelling which fails to conform to the specified minimum areas shall not be permitted on any lot. The square footage of the main structure, exclusive of open porches, breezeways and garages shall be not less than:

One story above grade	2200 sq. ft.
Story and a half above grade	2500 sq. ft.
Two story above grade	3000 sq. ft.
Total finished area for split level	3000 sq. ft.

6. **Basement.** All homes shall have either basements or standard four-foot footing walls.

7. **Grade.** No structure or lawn shall be permitted until proper grades for each have been set, in accordance with the approved drainage plan for the Subdivision prepared by the land surveying firm of Martenson and Eisele, Inc., of Neenah, Wisconsin, the cost of which setting shall be borne by the lot owner.

8. **Drainage.** No lot owner shall block, dam or otherwise obstruct the flow of surface water drainage so as to cause such water to backup onto the lot of another property owner or so as to restrict the use or enjoyment of any other lot by any other lot owner. Each lot owner, as a part of the post-home construction finishing/grading/landscaping process is responsible to bring their lot into compliance with the approved Subdivision drainage plan.

9. **Vacant Lot Maintenance.** The lot owner is required to perform all necessary maintenance/upkeep of the lot and right-of-way areas. No trash, waste, brush, weeds or long grass is permitted.

10. **Construction Site.** No building material shall be placed on any lot more than thirty (30) days prior to the date construction is to begin. At all times during construction, the site shall be maintained, to CPI's reasonable satisfaction, in a neat and orderly manner. All trash and waste shall be kept in sanitary containers. Outdoor burning of construction debris is prohibited. Builders and/or lot owners shall maintain a dumpster on each construction site and shall be responsible to ensure such dumpster is emptied as often as necessary to ensure debris does not extend over the top edge allowing it to be blown out and onto surrounding properties.

11. **Fill.** CPI reserves the right to direct the disposition of any fill, including excess excavation fill which is to be removed from any lot, at the lot owner's expense. However, such disposition as directed by CPI shall be within a one-mile radius of the lot from which it is being removed. If CPI does not require specific disposition of any excess fill, the lot owner shall be responsible to locate a site for such disposition and pay all costs associated therewith.

12. **Completion of Home.** Construction of all residential buildings shall be completed prior to occupancy and within twelve (12) months of the start of construction. Lawns shall be completed within one (1) year of occupancy.

13. **Driveways.** All dwellings shall, within one (1) year of completion of permanent street paving, install a paved driveway of stable and permanent construction at least sixteen (16) feet in width and extending from the edge of the finished roadway surface to the vehicular entrance of the garage.

14. **Utility Services.** All utility services including, but not limited to, electrical, phone, gas, and cable must be underground to and from buildings.

15. **Used Buildings.** No used buildings shall be moved onto any lot.

16. **Accessory Structures.** No accessory structure, including but not limited to storage sheds, swimming pools, swing sets, dog runs, etc. shall be permitted forward of

the rear line of the residential structure. All accessory structures must have prior approval of CPI. Substantial accessory structures, such as storage sheds, shall match the roof slope and exterior finish of the residential structure.

17. **Temporary Structures, Outbuildings or Trailers.** No structures of a temporary nature, such as trailers, mobile homes, campers, tents, shacks, barns or similar structures shall be permitted on any lot either temporarily or permanently. No structure other than a completed residence shall be occupied.

18. **Personal Property Storage.** Outside storage of recreational vehicles, snowmobiles, boats, trailers, minibikes, fishing shanties, etc., shall not be allowed.

19. **Signs and Antennae.** No sign or antenna including outside earth stations (satellite dishes) shall be displayed or exposed to the public view except as follows: One sign of not more than six (6) square feet in area advertising the property for sale, or by a builder to advertise the property during the construction and sales period, except that CPI, as developer, may utilize signs of any size for advertising properties in said Subdivision for sale.

20. **Unlicensed Vehicles and Salvage Materials.** No unlicensed vehicles or junk yards or storage areas for cars or other salvage materials of any nature shall be permitted on any lot or combination of lots within the Subdivision.

21. **Commercial Businesses.** Except as may be permitted by local zoning regulations and as authorized in writing by CPI, no commercial business shall be allowed to be conducted at any time from any lot or combination of lots within the Subdivision.

22. **Trash.** All trash and waste shall be kept in sanitary containers. No sanitary container is to be put in front of any dwelling sooner than the day before regularly scheduled pick-up.

23. **Nuisances.** No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become an unreasonable annoyance or nuisance to other lot owners or occupants of dwellings in the Subdivision.

24. **Zoning, Health, and Other Laws and Regulations.** All zoning, health and other laws, ordinances and regulations promulgated by any governmental unit having jurisdiction over the Subdivision and which pertain to said Subdivision shall be strictly observed and complied with.

25. **Berm/Fence.** In the event CPI constructs a berm and/or fence in the Subdivision along selected lots, neither current nor subsequent owners of these lots shall alter such berm or the plantings on it, or any fence that may be erected upon it, or elsewhere in the Subdivision.

26. **Trees.** No trees planted or transplanted within the Subdivision by CPI shall be moved, trimmed, cut down or otherwise disturbed without the prior written consent of CPI so long as CPI still owns any lot in the Subdivision. It shall be the responsibility of

each lot owner to remove and replace any dead or diseased tree on his or her lot within one season after such tree dies or becomes diseased. The lot owner is also responsible for replacement of any trees damaged by owner or owner's contractor during the construction of a home on the owner's lot.

27. Animals. No animals, except as normal household pets, shall be kept, bred, or raised on any lot in this Subdivision.

28. Storage Tanks. No above ground or underground storage tanks shall be permitted upon any lot.

29. Hunting/ Firearms. No hunting or discharging of any firearm shall be allowed within the Subdivision.

30. Subdivision of Lots. No lot may be subdivided into a smaller lot. Nothing, however, shall prohibit three lots from being subdivided into two lots in conformity with any applicable Certified Survey Map requirements. If three lots are divided into two lots by a Certified Survey Map, each such resulting lot shall be considered as one lot for purposes of compliance with these covenants.

31. Warner Creek Property Owners' Association, Inc.

a. Each lot owner shall be a member of the Warner Creek Property Owners' Association, Inc., a Wisconsin nonstock, nonprofit, membership corporation (the "Association"). Each lot shall be entitled to one (1) vote on any matters submitted to a vote of the members of the Association.

b. Other members of the Association currently include each lot owner of two (2) additional contiguous subdivisions located to the east of the Subdivision, namely, The Crossings at Warner Creek (36 lots) and The Meadows at Warner Creek (42 lots). Membership in the Association is also intended to include every lot owner of any other immediately adjacent or contiguous future subdivision(s) which owners may have common rights of usage and enjoyment of the outlots which may be owned, maintained, improved, policed and/or preserved by the Association.

c. The Association is intended to become the owner of Outlot 2 of The Meadows at Warner Creek. The Association is also intended to become the owner of Outlots 1, 2, 3, and 4 of the Subdivision. All of the members of the Association shall have common rights of usage and enjoyment of such referenced outlots.

d. Pursuant to the provisions of Section 779.70, Wis. Stats., the Association, among other things, does have the power to prepare and annually submit to its membership a budget of the expenditures which it proposes to make for the ensuing year and to assess against all of the lots, and to collect from each lot owner an assessment to pay the costs of maintaining the necessary

organization of the Association and the costs of maintaining those properties in which the lot owners have common rights of usage and enjoyment.

32. **Enforcement.** If any lot owner or person in possession of any lot or dwelling on any lot within the Subdivision shall violate or attempt to violate any of these covenants, it shall be lawful for any other person owning any lot or owning or occupying any dwelling on any lot in the Subdivision to prosecute and/or commence proceedings at law or in equity against the person violating or attempting to violate any such covenant, either to prevent such person from doing so or to recover damages for such violation or to restrain the violation. In the event that it becomes necessary to commence litigation or retain an attorney to enforce these covenants, the party violating these covenants shall pay for all expenses, including actual attorneys fees and court costs incurred by CPI and/or any owner(s) of a lot(s) who brings any action to enforce these covenants.

33. **Term.** These covenants and restrictions herein contained shall be in effect for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall automatically be extended for successive periods of ten (10) years, unless an instrument terminating or reducing this term shall be executed and recorded in accordance with the requirements and procedures set forth herein.

34. **Amendment.** These covenants may be amended, waived, or removed by the execution and recordation in the office of the Register of Deeds for Outagamie County, Wisconsin, of an instrument executed by owners of not less than two-thirds (2/3) of the lots within the Subdivision, provided that so long as CPI is the owner of any lot or property affected by these covenants, or amendment thereto, no such amendment, waiver or removal will be effective without CPI's prior written consent, in recordable form.

35. **Miscellaneous Provision.** All future transfers of any lots shall be made subject to the conditions, covenants, obligations and restrictions contained herein. It is understood that the acceptance of a deed by any purchaser is to be considered as an agreement to observe and abide by such covenants, conditions, obligations and restrictions for the protection and benefit of all owners of lots in the Subdivision.

36. **Invalidity of any Covenants.** Should any one of these covenants for any reason be declared invalid, such declaration shall not affect the validity of the remaining covenants, which remaining covenants shall remain in full force and effect as if these covenants had been executed with the invalid portion thereof eliminated.

## PART II. RESTRICTIONS ON USE AND DEVELOPMENT FOR OUTLOTS 1 THROUGH 4.

1. **Purpose.** Outlots 1, 2, 3, and 4 shall be permanently retained in a scenic, natural and open condition for conservation and recreational purposes subject to and consistent with their designation as "wetlands" and subject to and consistent with "wetland regulations".

2. **Permitted Uses and Structures.** Subject to and consistent with “wetland regulations”, a nature or hiking trail and/or nature observation decks may be constructed on Outlots 1, 2, 3, and 4.

3. **Prohibited Uses and Structures.** The following uses and structures are prohibited on Outlots 1 through 4: filling, grading and excavating except in connection with a permitted use and structure; deposition and extraction of materials except in connection with a permitted use and structure; motorized vehicles or motorized bikes of any kind or nature except for periodic maintenance; the cultivation of agricultural crops, fruits or vegetables; the dumping of ashes, waste, compost or garbage; and the storage of vehicles or equipment of any kind.

4. **Maintenance Easement.** There shall be an affirmative duty to maintain, protect and manage Outlots 1 through 4 consistent with the purpose, permitted uses and structures, and prohibited uses and structures enumerated above. The Town of Grand Chute shall have the unqualified right to enter upon such Outlots for inspection and, if necessary, maintenance in the event of nonperformance.

### **PART III. PROPERTY OWNERS’ ASSOCIATION AND ASSESSMENTS**

#### **A. CREATION AND ORGANIZATION**

1. **Creation.** The Owner (CPI) has created The Warner Creek Property Owners’ Association, Inc. (the “Association”) as a nonprofit and nonstock corporation. The Owner shall convey fee simple title of Outlots 1 through 4, unencumbered by any lien, to the Association. The Association may adopt Bylaws amplifying upon, but not inconsistent with, the provisions of this Part III.

2. **Purpose of Association.** The purposes of the Association shall include the following:

a. To own, maintain, improve, police, preserve, protect and use Outlots 1 through 4 (and other specific outlots in immediately adjacent or contiguous subdivisions in which members of the Association shall have common rights of usage and enjoyment) consistent with Part II of this Declaration.

b. To aid and cooperate with the members of the Association and property owners in the Subdivision in the enforcement of the restrictions in this Declaration.

c. To arrange social and recreational functions for its members.

d. To do things necessary to promote the general welfare of the lot owners of the Subdivision.

e. Those additional purposes set forth in paragraph 31 of Part I.

3. **Mandatory Membership.** The Association shall have only one class of members. Every beneficial owner (fee simple ownership as distinguished from a security holder) of Lots 1 through 29 of the Subdivision shall be a member of the Association along with each lot owner in The Crossings at Warner Creek and The Meadows at Warner Creek and any other immediately adjacent or contiguous future subdivision(s) which owners may have common rights of usage and enjoyment of the outlots which may be owned, maintained, and improved, policed and/or preserved by the Association. Membership shall terminate at the time of the member ceasing to be the beneficial owner of a lot.

4. **Voting Rights.** Each member in good standing shall be entitled to vote on each matter submitted for a vote to the members. A member shall have one vote for each lot owned. Where two or more owners own a lot, only one vote for such lot shall be allowed and the joint owners shall designate and register with the Secretary of the Association, the name of the owner entitled to cast such single vote.

5. **Assignment of Rights.** An owner who is a member of the Association may assign his or her membership rights to any tenant residing on the lot. Such assignment shall be effected by filing with the secretary of the Association a written notice of assignment signed by the beneficial owner.

6. **Annual Meeting.** An annual meeting of the members shall be held in January of each year. The time and place shall be fixed by the Board of Directors.

7. **Regular and Special Meetings.** In addition to the annual meeting, regular and special meetings may be held at a time and place to be determined by the Board of Directors.

8. **Notice of Meetings.** Written notice stating the date, time and place of any meeting of members shall be delivered personally or by mail to each member not less than 10 days nor more than 60 days before the date of such meeting.

9. **Quorum.** The members holding a majority of the votes that may be cast at any meeting shall constitute a quorum at any meeting.

## B. BOARD OF DIRECTORS

1. **General Powers.** The affairs of the Association shall be managed by the Board of Directors subject to any instructions of the members or subject to the approval of the members as may be expressed by a vote of the members. The Board shall consist of not less than three members of the Association. The Board shall assume management of the Association at the first annual meeting after three-quarters of the lots have been sold by the Owner or within five years of the date of recording of this Declaration, whichever is earlier. Prior to such time, the Owner shall manage the affairs of the Association.

2. **Terms and Offices.** The Board of Directors shall be elected by the members at the annual meeting for a term of one year. The Board of Directors shall elect officers

consisting of president, vice-president, secretary and treasurer. The president shall preside at all meetings. The secretary shall keep the minutes of all meetings of the Association and the Board of Directors. The treasurer shall receive and deposit all Association funds.

3. **Vacancies**. Vacancies because of death, resignation, disqualification or otherwise may be filled by appointment of the Board until the next annual meeting.

#### C. FEES AND ASSESSMENTS

##### 1. **Determination of Annual and Special Assessments**.

a. The corporation shall establish an annual budget in advance for each calendar year of all corporation expenses for such year which may be required for the proper operation and management of the corporation and for the ownership, maintenance, improvement, policing and/or preservation of real estate in which the corporation's members shall have common rights of usage and enjoyment. The annual budget shall be in a minimum amount equal to 125% of the total of the net real estate property tax bills (excluding special assessments) for Outlots 1 through 4 of the Subdivision (and any other outlots owned by the corporation) for the immediately preceding year plus the total of any noticed (but unpaid) municipal special assessments upon such Outlots. Review and discussion and approval of such annual budget shall be an agenda item at each annual members' meeting of the corporation. Copies of such budget shall be delivered to each member along with the notice of annual meeting, if not before.

b. Special assessments, other than those described in subparagraph (a) above, may be made by the corporation pursuant to section 779.70, Wis. Stats.

2. **Allocation of Assessments**. Unless otherwise provided under section 779.70, Wis. Stats., all assessments levied shall be equal in amount against each lot. Assessments shall be due and payable at any time after thirty (30) days from the date of the levy as determined by the board of directors.

3. **Collection of and Interest Upon Unpaid Assessment**. Any assessment, or installment thereof, not paid when due shall bear interest, at the rate of twelve percent (12%) per annum from the date when due until paid. Each lot owner shall be personally liable to pay any assessment including interest thereon and costs of collection which shall include reasonable attorneys' fees. The Association may bring an action against the lot owner for the collection of any unpaid assessment.

4. **Assessments Constitute Liens**. All assessments, until paid, together with interest thereon and actual costs of collection, constitute a lien on the lots on which they are assessed, if a claim for lien is filed within six (6) months from the the date of the levy in conformity with the provisions of section 779.70, Wis. Stats.

5. **Enforcement of Lien**. Enforcement of such lien by the corporation shall be in conformity with the provisions of section 779.70, Wis. Stats.

6. **Assignment of Fees and Assessments**. In the event any member whose fees and assessments are paid in full, shall, during the year in which such fees and assessments are paid, terminate his or her membership by sale of his or her lot, he or she shall be entitled to assign to the buyer the benefit of the paid fees and assessment.

#### PART IV. GENERAL PROVISIONS

1. **Relation to Public Regulations**. Where the provisions in this Declaration impose greater restrictions than any statute, ordinance or rule, the provisions of this Declaration shall prevail. Where the provisions of any statute, ordinance or rule impose greater restrictions than this Declaration, the provisions of the statute, ordinance or rule shall prevail.

2. **Severability**. Invalidation of any one of the provisions of this Declaration by judgement or order of a court of competent jurisdiction shall not affect any other provision which shall remain in full force and effect.

3. **Enforcement**. These restrictions shall run with the land and be binding upon the Owner, its successors and assigns. All future transfers of any lots shall be made subject to the restrictions, obligations and conditions set forth in this Declaration. It is understood that the acceptance of a deed for any lot by any purchaser is to be considered as an agreement to abide by the restrictions, obligations and conditions of this Declaration. The Association or any lot owner may enforce the provisions of this Declaration by proceedings in law or equity against any person violating or attempting to violate the provisions of this Declaration, either to restrain violation or to recover damages, or both. The Town of Grand Chute and Outagamie County may enforce the provisions of Part II, Part III, and Part IV of this Declaration.

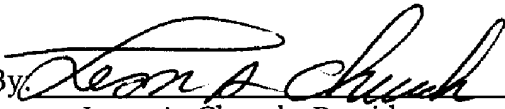
4. **Collection of Unpaid Taxes/Special Assessments Upon Outlots**. Each lot and corresponding lot owner(s) who are members of the Association are liable to the Town of Grand Chute as guarantors of their respective portion of all responsibilities of the Association pertaining to all outlots owned by the Association, including, but not limited to, real estate taxes, special assessments, repairs, maintenance, weed control, and restoration of required storm water detention and/or retention facilities. If the Association fails to make payments for any of the foregoing matters when required, the Town is hereby granted consent to impose special assessments or charges for such foregoing matters to each privately owned lot and the corresponding lot owner(s) who are members of the Association at the rate of a fraction, the numerator of which shall be one (1) and the denominator of which shall be the total number of all lots whose corresponding lot owners are members in the Association, and to place such unpaid special assessments, taxes, or charges on the real estate tax bill for each lot as a lien of each respective lot until paid pursuant to Section 66.0627 of the Wisconsin Statutes. All notice and hearing requirements for assessments or charges made under this provision and under Section 66.0703 of the Wisconsin Statutes are hereby expressly waived. For example, and by way of clarification with respect to the provisions of this paragraph, the current proportionate allocation per lot would be one/one hundred-seventh (1/107th)

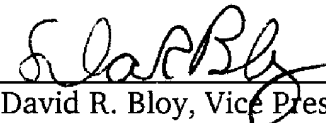
(see subparagraph 31 b of Part I.) Such proportion may be further reduced dependent upon additional membership in the Association related to other immediately adjacent or contiguous future subdivisions which CPI may develop. Furthermore, in the event that real estate taxes or special assessments are not paid, or maintenance of the outlot is not undertaken, each lot and corresponding lot owner(s) who are members of the Association consent to be jointly and severally liable to the Town of Grand Chute for all delinquent costs, expenses, payments, interest and penalties, and further consent that the Town of Grand Chute may bring an action to collect all sums due or owing for delinquent real estate taxes, special assessments, and/or maintenance expenses plus all costs of enforcement including reasonable attorney's fees. The lot owners further grant consent to the Town of Grand Chute to pay such sums collected to the appropriate taxing or assessing governmental authorities to prevent the affected outlot from being subject to a tax sale. The Town of Grand Chute is not obligated to collect proportionately from any one or more lot owners who are members of the Association. Each lot owner and the Association hereby grants to the Town of Grand Chute an irrevocable power of attorney to pay taxes, special assessments, and maintenance expenses on behalf of the Association with proceeds collected pursuant to this enforcement clause.

5. **Modification.** Part I of this Declaration can be amended, waived or terminated in whole or part at any time by execution of a written instrument in recordable form by the owners of at least two-thirds of Lots 1 through 29. Any amendment, modification, or full or partial termination of Part II, Part III, or Part IV of this Declaration shall also require the written approval of the Town Board of the Town of Grand Chute and also of the County plat approval authority.

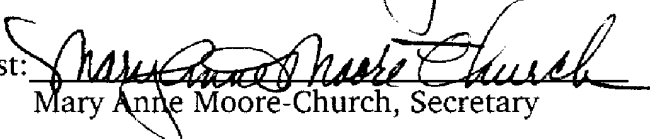
IN WITNESS WHEREOF, Casaloma Properties, Inc. has executed this Declaration as of the 29<sup>th</sup> day of March, 2004.

CASALOMA PROPERTIES, INC.

By:   
Leon A. Church, President

By:   
David R. Bloy, Vice President

By:   
Christine A. Bloy, Treasurer

Attest:   
Mary Anne Moore-Church, Secretary

Signatures of Leon A. Church, David R. Bloy, Christine A. Bloy and Mary Anne Moore-Church authenticated this 23<sup>rd</sup> day of March, 2004.

*Steven P. Krause*

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Steven P. Krause  
Member: State Bar of Wisconsin.

This document drafted by:  
Attorney Steven P. Krause  
KRAUSE & METZ  
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