

**DECLARATION OF RESTRICTIONS AND COVENANTS
FOR NATHAN'S
CREEK**

KNOW ALL PERSONS BY THESE PRESENTS; that Nathan's Creek, LLC is a Wisconsin limited liability company duly organized and existing under and by virtue of the laws of the State of Wisconsin, located at Fremont, Wisconsin (hereinafter referred to as "Declarant" or "Developer"). Declarant is the owner of Lots 1-33, inclusive, in Nathan's Creek, being a subdivision with the legal description attached hereto as Exhibit "A", in the Town of Caledonia, Waupaca County, Wisconsin, herein referred to as "Nathan's Creek", and hereby makes the following declaration as to the general plan for the use, occupancy and enjoyment of Nathan's Creek, and hereby specifics that such declaration shall constitute covenants to run with the land, and shall be binding on all parties and all persons claiming under them, and for the benefit of and limitations on all future owners and persons claiming under them, and binding on Nathan's Creek.

1. General Purpose. The purpose of these covenants is to promote the harmonious development and use of Nathan's Creek for attractive residential purposes only, to prevent nuisances, to prevent the impairment of the attractiveness of the property, to require the use of quality materials and workmanship, and to maintain the desired atmosphere and appearance of the community, and thereby to secure to each Nathan's Creek owner (hereinafter referred to as "owner(s)") the full benefit and enjoyment of their property, with no greater restriction on the free and undisturbed use thereof than is necessary to ensure the same advantages to the other site owners.

2. Land Use and Building Type. No lot shall be used except for single family residential purposes with no more than one residence placed, erected or constructed on any lot. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single family dwelling not to exceed 2 1/4 stories in height and an attached garage for two (2) or three (3) cars. Another separate building will be allowed on Lots 1, 2, 4, 5, 9, 10, 11, 12, 15, 16, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 33 in Nathan's Creek in the event the design and finish are compatible with that of the home/residence located on said Lots and the size, location and design of the buildings are in compliance with these restrictions and covenants. No mobile homes, modular home or manufactured home may be brought onto the property for use as a personal residence.

Minimum floor plan size:

One-story	1700 sq. ft. min
One and one-half story	1900 sq. ft. with at least 1200 sq. ft. on 1 st floor
Two story	2100 sq. ft. with at least 1200 sq. ft. on 1 st floor

(Note: above footage exclusive of porches and garages.)

Roof: Pitch of 6/12 or greater.

Basements: All homes shall have basements.

Well: One well will be drilled on each lot. No Well Agreements will be allowed.

Septic System: A sewage system will be constructed on each and every lot in accordance with the requirements of the State of Wisconsin and installed to serve each dwelling.

Setback: Minimum lot setback to comply with the Town of Caledonia and Waupaca County ordinances but shall not be less than fifty feet (50') from the closest point of the closest structure to the road.

Outbuilding: Building size shall be no larger than 800 sq. ft. with side wall height not exceeding ten feet (10') and located no closer than twenty feet (20') from property line. Only one outbuilding shall be allowed and only on "designated" lots. Any outbuilding must be located in the rear of the house. Back of lot is described as lot line furthest from street or municipal roads. Any outbuilding shall be a single story structure and match the home with roof pitch, exterior finish and color.

3. Division of Lots. No originally platted lot shall be subdivided. It shall be permissible to combine three (3) lots and subdivide them into two (2) lots, both of which are larger than any of the original three (3) lots.

4. Structures, Outbuildings or Trailers. Except as may be authorized by developer, no structures of a temporary nature, nor trailers, tents, shacks, barns or similar structures shall be permitted on any lot either temporarily or permanently. No structure other than a completed residence may be occupied.

Recreational vehicles, motor homes, tractors, snowmobiles, ATV's, boats, trailers, minibikes, fishing shanties, etc. must be stored inside buildings.

No used buildings shall be moved onto any lot.

No exterior accessory structures, including, but not limited to, swing sets, hot tubs, kennels, and similar structures, except basketball hoops and poles, shall be permitted forward of the rear line of the home.

5. Vehicle Operation. No operation of motorized recreational vehicles in subdivision (ATV's, snowmobiles, dirt bikes, etc.) other than for property maintenance.

6. Completion Date. All homes shall be completed within one year after commencement of building and shall not be occupied prior to being completed. All landscaping is to be completed within twenty-four (24) months of the first visible commencement of exterior construction.

7. Mailboxes. Developer will provide each lot owner with a mailbox when a building permit is issued. Any replacement mailboxes must be similar to the original mailbox in size, color and design and will be placed at the expense of the lot owner.

8. Burning. There shall be no refuse, grass or leaf burning on developable lots. Recreational fires (fire pits, outside fire places, etc.) will be allowed unless persistent use creates a nuisance for neighboring lots within the development. Outside fires during dry and windy conditions will not be allowed.

9. Antennas. Satellite dishes with a maximum diameter of twenty-four inches (24") not visible from the street will be permitted on each lot in the subdivision. All other antennas must be contained within the home and not be mounted on the roof. No antenna towers may be constructed.

10. Outside Lights. No yard lights except for decorative front or sidelights.

11. Signs. No signs of any kind shall be displayed to the public view on any lot except an address sign of not more than one square foot and one sign of not more than six square feet advertising the property during the construction and sales period, except that Developer may use signs of any size and quantity for advertising properties for sale in the subdivision.

12. 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 so as to restrict the use or enjoyment of any other lot by any other lot owner. Each lot owner as part of the post home construction finish grading/landscaping is responsible for bringing their lot into specific compliance with the approved subdivision drainage plan. Lot owners shall be responsible for their culverts, including the expense thereof.

13. Fill and Wetland.

A. Developer reserves the right to direct the disposition of any excess excavation material, which is to be removed from any lot, at the owner's expense. However, such disposition if directed by Developer shall be within the subdivision. If developer does not require specific disposition of any excess fill, the lot owner shall be responsible for locating a site for such disposition.

B. Any activities in or near delineated wetlands would require the Department of Natural Resources review. These activities include such things as dredging and filling. Furthermore, all construction, landscaping and any other activity (hereinafter defined as "activity") shall not take place unless said activity is at least twenty feet (20') away from said wetlands and the activity complies with all local, state, and federal rules and laws.

14. Driveways. All owners of dwellings shall, within one year of completion of dwelling, install a hard surface driveway of stable and permanent construction extending from the garage to the lot line. Until such time that the street is permanently paved the owner will be required to maintain a temporary asphalt apron.

15. Tree Removal. Trees greater than eight inches (8") in diameter shall not be removed from any lot unless damaged, dead, diseased or of undesirable variety (i.e. box elder, cottonwood, etc.) unless prior approval is received from Developer or the Architectural Control Committee, pursuant to Paragraph 24 hereinafter.

16. Lot & Site Maintenance. The owner of any developable lot is required to perform all necessary maintenance and lot upkeep. No trash, waste, brush or weeds shall be permitted. During building construction the site shall be maintained in a neat and orderly manner at the conclusion of each day. Construction debris shall be contained at all times in some manner as to prevent such material from blowing onto neighboring properties and/or roads.

17. Pets, Livestock and Poultry. No animals, livestock, poultry, reptiles or fowls of any kind shall be raised, bred or kept on any lot in the subdivision. Household animals may be kept as pets provided that no single residence may have more than two (2) dogs and two (2) cats. Pets shall not be allowed to roam either freely or on a leash on other owners' properties. Pet noises shall be curtailed to avoid unreasonable annoyance to neighboring property owners.

18. 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 or neighboring properties.

19. Firearms. No discharging of any firearms on any lots within the subdivision. Waupaca County, Town of Caledonia and other applicable rules or laws shall have jurisdiction over this covenant.

20. Outside Parking and Storage. All unlicensed vehicles must be parked inside a garage or legal outbuilding. No salvage area for any materials shall be permitted on any parcel or parcels. No buses, semi-tractors, semi-trailers or semi-cabs may be parked overnight or parked in the subdivision. No overnight or extended day parking (12 hours or more) on streets other than during periods of construction of homes, buildings or roads will be permitted.

21. Easements. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat for Nathan's Creek or as recorded separately with the Waupaca County Register of Deeds. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

22. Reservation of Right to Grant Easements. Declarant hereby reserves the right to grant and convey easements to the Town, County and/or to any public or private utility company, upon, over, through or across those portions of any lot within Nathan's Creek within ten (10) feet of any lot line for the purposes of allowing the Town, County or utility company to furnish gas, electric, water, sewer, cable television or other utility service to any lots in Nathan's Creek, or adjacent property owned by Declarant, or through any portions of Nathan's Creek for purposes of facilitating drainage of storm or surface water within or through Nathan's Creek. Declarant may grant and record such easements upon Declarant's signature and without any additional consent or approval of any lot owner, until such time as Declarant has conveyed legal title to all lots platted or to be platted in Nathan's Creek, and any future stages added to Nathan's Creek.

23. Erosion Control Measures. Each property owner in Nathan's Creek shall, from the time construction on their lot has commenced, be responsible for installing and maintaining erosion control measures until such time as a lawn or other planting sufficient to prevent erosion has been established on the property. These measures include, but are not limited to: installation of silt fence, hay/straw bales, ditch checks; street cleaning following precipitation events or tracking of mud on streets by any vehicle leaving the property; and sodding or seeding and mulching lawn areas. Steep slopes may require installation of straw mat, jute mat or other materials designed to stabilize steep and highly erodable areas. Any areas where erosion control measures have been compromised by weather, construction or any other event shall be repaired within seven (7) days of damage. Erosion control measures must be inspected and any necessary maintenance or repairs made after every rainfall exceeding one-half (1/2) inch and at least once per week. Failure to comply with these requirements may result in sanctions against the property owner by the Town, County and/or the Wisconsin Department of Industry, Labor and Human Relations or the Wisconsin Department of Natural Resources. All erosion control measures shall be installed and maintained according to the standards and specifications as required by local, Town, County or State laws.

24. Architectural Control. No residence may be erected on any lot in Nathan's Creek until the plans and specifications have been submitted to and approved by Declarant. All building plans and the exterior design of each building to be constructed, added to or modified and all yard grades and stakeout surveys must be approved by Declarant, in writing, prior to application for a Town building permit. Declarant's approval shall be based upon the building and use restrictions contained in these covenants for Nathan's Creek. A copy of these covenants shall be obtained and reviewed by owner prior to submitting plans to Declarant for approval. Declarant may withhold exterior design approval if the design is too similar in appearance to others in close proximity. All plans and specifications shall be delivered to:

NATHAN'S CREEK, LLC
Architectural Control Committee
N970 Tamarack Way
Fremont, WI 54940

Basic site features such as fences and special structures including but not limited to decks, gazebos, pool houses, swimming pools, tennis or sport courts, retaining walls (which shall only be constructed of natural stone, wood timbers or certain artificial stone products if

specifically approved in writing by Declarant), berms more than three feet in height and other temporary or permanent structures or elements contributing significantly to the total environmental effect of Nathan's Creek are subject to the prior written approval of Declarant. No special structures shall be permitted forward of the rear line of the residence without the prior approval of the Declarant. In-ground swimming pools may be permitted, subject to approval of the Declarant provided they meet all applicable town, county or other municipal/governmental approving authorities' ordinances and specifications. All swimming pool related equipment including but not limited to pool pump, heater and filter equipment must be concealed in an enclosure located next to the home or attached garage to minimize the noise and visibility to adjoining properties. A different location may be allowed if approved in writing by Declarant. Children's outdoor playground equipment and play structures shall be allowed provided that any part of such equipment or structure that is an enclosure must be approved in writing by Declarant prior to installation. Outdoor dog kennels and dog runs are not allowed.

In addition to the requirements of these restrictions and covenants for Nathan's Creek, all construction shall comply with applicable zoning and building code requirements. It is not intended that the Declarant have full knowledge of or expertise in matters of zoning and building codes and Declarant shall have no liability or responsibility in the event it approves plans which fail to comply with applicable zoning or building codes, and/or which fail to properly handle storm water drainage. Such responsibility shall be the sole responsibility of each individual property owner.

For as long as Declarant/Developer owns any lots in the property described in Exhibit "A", Declarant/Developer shall make all architectural control decisions, pursuant to this Paragraph 24. Thereafter, all architectural control decisions shall be made by Nathan's Creek Homeowners' Association, Inc.

25. Amendment. These restrictions and covenants may be amended, waived, or removed by the execution and recordation in the Office of the Register of Deeds for Waupaca County, Wisconsin, of an instrument executed by not less than two-thirds (2/3) of the lot owners, provided that so long as the Declarant 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 Declarant's prior written consent, in recordable form. Each lot is entitled to one vote. Further, so long as Declarant shall own any property in Nathan's Creek, Declarant, by itself alone, shall be entitled to amend, waive, remove or grant special exceptions to said covenants in Declarant's sole discretion without liability to any property owner for doing so.

26. Enforcement. If any lot owner or person(s) in possession of any lot or dwelling on any lot within Nathan's Creek shall violate or attempt to violate any of these covenants, it shall be lawful for Declarant or any other person(s) owning any lot or owning or occupying any dwelling on any lot in Nathan's Creek to prosecute and/or commence proceedings at law or in equity against the person(s) violating or attempting to violate any such covenant, either to prevent such person(s) from doing so or to recover damages for such violation or to restrain the violation. Any owner violating the covenants contained herein shall be personally liable for all costs and expenses, including attorneys' fees, incurred by Declarant or another as a result of enforcing the restrictions and covenants contained herein.

27. Homeworkers' Association. Each Owner of a lot in Nathan's Creek shall by these Covenants automatically become a member in the non-profit corporation known as Nathan's Creek Homeworkers' Association, Inc. Such membership under Chapter 181 Wisconsin Statutes shall continue until ownership is terminated by transfer of ownership by deed to a new Owner. Upon any new Owner acquiring property in this subdivision, such new Owner shall automatically become a member of the Association until subsequent ownership transfer.

The Association is incorporated as a non-profit corporation under Chapter 181 Wisconsin Statutes. The Articles and By-Laws of the Association state that the Association has two purposes as follows:

- A. To assess, collect and pay pro-rated costs for maintenance of storm water management facilities located in Nathan's Creek, including the maintenance of Outlot 1 of Nathan's Creek.
- B. To serve as the replacement architectural control entity at the time that the Developer no longer owns any lots in Nathan's Creek.
- C. Any other lawful purpose consistent with the Corporation being a Non-stock Corporation and a Non-profit Corporation.
- D. The purposes stated in the Articles of Incorporation and By-laws.

Internal operations of the Association are controlled by Articles and By-Laws. The By-Laws provide that for so long as the Developer owns any lots in the subdivision the Developer shall control appointment of a three-person Board of Directors. When the Developer no longer owns any lots in the subdivision then the members of the Association shall nominate and elect a three-member Board, each member of which shall be an owner of property in the subdivision. As long as the Developer owns any lots in Nathan's Creek the Developer will maintain possession of the Articles and By-Laws after which these will be transferred to the custody of the Board of Directors elected by the members of the Association.

Any unpaid assessments imposed by the Association shall constitute a mortgage lien under Chapter 846 Wisconsin Statutes against the lot or lots to which the unpaid assessments apply enforceable by foreclosure and sale, in addition to any other remedy available for collection by the Association in law or equity, and the owners failing to pay assessments when due shall further be liable to the Association for all costs of collection including reasonable attorneys fees.

28. A. Restrictions on Use Development for Outlot 1.

- 1. Purpose. This paragraph has been created for the purpose to assure Outlot 1 shall be permanently retained as a scenic, natural and open condition for conservation purposes subject to and consistent with drainage functions for

the benefit of the owners of Lots 1 through 33. The restrictions and requirements herein supercede and take priority over any other conflicting or inconsistent private covenants applicable to this property, if any.

2. Permitted Uses and Structures. The following uses are permitted on Outlot 1; drainage ways and drainage detention or retention areas and natural areas provided such uses are consistent with and do not interfere with drainage functions.
3. Prohibited Uses and Structures. The following uses and structures are prohibited on Outlot 1: filling, grading and excavating except in connection with drainage; deposition and extraction of material except in connection with a drainage; motorized vehicle, machines, or motorized all terrain vehicles 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, materials or equipment of any kind.
4. Maintenance Easement. There shall be an affirmative duty to maintain, protect and manage Outlot 1 consistent with the purpose, permitted uses and prohibited uses and structures enumerated above. The Town of Caledonia shall have the unqualified right to enter upon such Outlot for inspection and, if necessary, maintenance in the event of non-performance. Town maintenance costs shall be equally assessed among the owners of Lots 1 through 33.

B. Creation and Organization.

1. Creation. The Owner (Nathan's Creek, LLC) has created Nathan's Creek Homeowners' Association, Inc. (the "Association") as a nonprofit and nonstock corporation. The Owner shall convey fee simple title of Outlot 1, unencumbered by any lien, to the Association. The Association shall adopt By-laws amplifying upon, but not inconsistent with, the provision of this subsection B:

2. Purpose of Association.

- a. To assess, collect and pay pro-rated costs for maintenance of storm water management facilities located in Nathan's Creek, including the maintenance of Outlot 1 of Nathan's Creek.
- b. To serve as the replacement architectural control entity at the time that the Developer no longer owns any lots in Nathan's Creek.
- c. Any other lawful purpose consistent with the Corporation being a Non-stock Corporation and a Non-profit Corporation.
- d. The purposes stated in the Articles of Incorporation and By-laws.

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 33 shall be a member. Membership shall terminate on such member's ceasing to be the beneficial owner of a lot.

4. Miscellaneous. The internal operations of the Association are controlled by the Articles and By-laws, including, but not limited to, voting rights, annual meeting, and special meetings.

C. Board of Directors.

1. General Powers. The affairs of the Association shall be managed by the Board of Directors. The By-laws provide that for so long as Nathan's Creek, LLC owns any lots as described in Exhibit "A" attached hereto, Nathan's Creek, LLC shall control appointment of a three (3) person Board of Directors. When Nathan's Creek, LLC no longer owns any lots in the real property described in Exhibit "A", then the Members of the Association shall nominate and elect, at a minimum, a three (3) member board, each member of which shall be an owner of a lot in the property described in Exhibit "A". As long as the Developer owns any lots in Nathan's Creek, the Developer will maintain possession of the Articles and By-laws after which these will be transferred to the custody of the Board of Directors elected by the members of the Association.

2. Terms, Offices and Vacancies. The internal operations, powers, authority and other related matters for the Board of Directors shall be controlled by the Articles and By-laws.

D. 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 the estimated expenses of the Corporation. 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 with six (6) months from 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.

E. General Provisions.

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

2. Severability. Invalidation of any one of the provisions of this Document by judgment 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 Document. 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 Document. The Association or any lot owner may enforce the provisions of this Document by proceedings in law or equity against any person violating or attempting to violate the provisions of this

Document, either to restrain violation or to recover damages, or both. The Town of Caledonia may enforce the provisions of section A of this Document.

4. Modification. Any amendment or modification of Part A, B, C, D, or E of this Document shall require the written approval of any Town or County plat approval authority, if any, to the extent required by law.

29. Agricultural Use. Developer may use any developer owned contiguous vacant lots greater than four (4) acres in area (size) for agricultural purposes, not including the raising of animals, subject to any local, county or state laws. Any crops or grasses planted will generally not exceed four feet (4') in height and will be harvested or cut annually.

30. Road, Phone and Electrical Costs. The Developer shall be responsible for the construction of the roads and all costs associated with the initial road construction (including final paving) and obtaining phone and electrical utility services to the lot lines of the various lots of the property described in Exhibit "A". The cost of the extension of the phone and electrical utility services to building and hook-up will be the responsibility of the purchaser/lot owner.

31. Protective Covenants.

1. Enforceability. All terms and conditions in this Declaration shall constitute permanent protective covenants running with the land which shall be binding and enforceable on all present and future owners of property in the Nathan's Creek, which is legally described on Exhibit "A" attached hereto and incorporated herein by reference.

2. Binding. This document shall be binding on all present and future owners of any one or more lots legally described on Exhibit "A" attached hereto and the respective heirs, successors, and assigns as long as they are beneficial owners.
