

APPROVAL <i>Slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE 09/19/17
REPORTS & RECOMMENDATIONS	RESOLUTION CONDITIONALLY APPROVING A PRELIMINARY PLAT FOR OAKWOOD AT RYAN CREEK SUBDIVISION (AT APPROXIMATELY 10100 SOUTH 76TH STREET) (NEUMANN DEVELOPMENTS, INC., APPLICANT)	ITEM NUMBER <i>G.5.</i>

At its September 7, 2017 meeting the Plan Commission recommended approval of the following motion:

Commissioner Hogan moved and Commissioner Haley seconded a motion to recommend approval of a Resolution conditionally approving a Preliminary Plat for Oakwood at Ryan Creek subdivision (at approximately 10100 South 76th Street) with a change to Condition No. 6 to insert after the letter "A" the word "paved", adding a condition stating that the Council contemplates only one sided sidewalks in cul-de-sacs, and DNR concurrence of the use of a preliminary Ordinary High Water Mark determination based upon the stream bank. On voice vote, all voted 'aye'. Motion carried (4-0-1).

The draft resolution is attached, which has been revised per the Plan Commission motion above. A tracked change version of the original draft resolution is also attached for review.

COUNCIL ACTION REQUESTED

A motion to approve Resolution 2017-_____, conditionally approving a preliminary plat for Oakwood at Ryan Creek Subdivision (at approximately 10100 South 76th Street) (Neumann Developments, Inc., Applicant).



0 S 76th Street and W. Oakwood Ave.
TKN: 934 9992 010



Planning Department
(414) 425-4024

0 375 750 1,500 Feet



2017 Aerial Photo

This map shows the approximate relative location of property boundaries but was not prepared by a professional land surveyor. This map is provided for informational purposes only and may not be sufficient or appropriate for legal, engineering, or surveying purposes.



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**CITY OF FRANKLIN****REPORT TO THE PLAN COMMISSION**

Meeting of September 7, 2017

Preliminary Plat

RECOMMENDATION: City Development Staff recommends approval of the Preliminary Plat Application for the development of 63 single-family residential lots, subject to the conditions as noted in the attached draft resolution.

Project Name:	Oakwood at Ryan Creek Preliminary Plat
Project Location:	0 S. 76 th Street (Taxkey: 934-9992-010)
Property Owner:	Schweitzer Family Partnership
Applicant:	Neumann Developments, Inc.
Agent:	Cory O'Donnell, Project Manager, Neumann Developments, Inc.
Current Zoning:	R-5 Suburban Single-Family Residence District
2025 Comprehensive Plan:	Residential and Areas of Natural Resource Features, except for Outlot 5, which is designated as Business Park
Use of Surrounding Properties:	Single-family residential to the north (primarily zoned R-8 Multiple-Family Residence District), agricultural land to the south and west and single-family residential and Milwaukee County parkland to the east
Applicant's Action Requested:	Approval of the Preliminary Plat for future single-family residential development

INTRODUCTION:

Please note:

- Staff recommendations are underlined, in italics and are included in the draft ordinance.
- Staff suggestions are only underlined and are not included in the draft resolution.

On July 31, 2017, the applicant submitted an application for a Preliminary Plat for a property located at the northwest corner of South 76th Street and West Oakwood Road. The preliminary plat proposes to subdivide the existing 43.63-acre parcel into 63 R-5 single-family residential lots and 5 outlots. The 5 outlots consist of protected natural resource features, storm water management facilities and a 97,054 square foot portion of property (Outlot 5) to be retained by the developer for future commercial development. Outlot 5 is located in the southeast corner of the property, adjacent to the intersection of S. 76th Street and W. Oakwood Road.

The City recently approved a Rezoning Application to rezone the subject property from R-2 Estate Single-Family Residence District to R-5 Suburban Single-Family Residence District, excluding Outlot 5 of the proposed plat, which remains zoned R-2. A Comprehensive Master

Plan Amendment Application was also approved to amend the Future Land Use Map use designation from Business Park to Residential, but again excluding Outlot 5, which retained its Business Park use designation.

PROJECT DESCRIPTION/ANALYSIS:

The subject property is currently vacant and actively farmed, except for the northeastern portion, which encompasses a portion of Ryan Creek and its associated floodlands, wetlands, and shorelands. Single-family residential homes are located to the north, east, and south of the subject property, and agricultural lands are also located to the east, west, and south.

Public sewer and water service are currently not provided to this area, however, the applicant proposes to extend public water service from the north (most likely from 80th Street and Ryan Road), and proposes to connect to the Ryan Creek Interceptor Sewer which is located on the northwestern corner of the subject property south of Ryan Creek.

As noted, the proposed Oakwood at Ryan Creek subdivision development includes 63 single-family residential lots and 5 outlots. The plat also consists of several new public roadways (with one connection to S. 76th Street and one connection to W. Oakwood Road), and includes three cul-de-sacs and two through streets. All cul-de-sacs will be designed to include an island and a group mailbox per City design guidelines.

The lots range in size from 13,004 square feet to 24,211 square feet, all exceeding the R-5 District minimum lot size of 13,000 square feet. According to the applicant, the average lot size is 14,851 square feet. All lots abut and have sufficient width along a public right-of-way.

The project narrative states that a trail system and a tot lot or passive park will be provided as amenities for the subdivision development. The applicant more recently clarified that trails will not be included as sidewalks are provided on both sides of the streets throughout the development. Map 7.1 of the City's Comprehensive Outdoor Recreation Plan (CORP) includes a planned trail just north of the subject development. The planned trail extends from S. 76th Street westward to the existing trail along S. 116th Street. A trail extending through Outlot 1 is a reasonable location for this trail, particularly as the properties to the north are developed with existing single-family dwellings. As such, staff recommends that a trail be installed within Outlot 1 extending from South 76th Street or South Creekview Court to the west property line with connections to South Woodside Court and South Ryan Creek Court.

In regard to the tot lot or passive park, the applicant has not provided any details. Staff suggests that a tot lot be provided and, as part of the submittal for Final Plat, the applicant shall include details as to the location, equipment and any other amenities to be provided within the tot lot. Outlot 4 may be an appropriate location for this amenity.

Stormwater Management:

Two stormwater ponds are proposed within Outlot 1, along the northern portion of the property. A third storm water area is located within Outlot 3. A preliminary stormwater management plan and calculations were submitted to the Engineering Department for review. The plan is currently

under review and will require final Engineering Department approval as part of the review of the Final Plat Application. Pursuant to the City of Franklin Unified Development Ordinance and Design Standards and Construction Specifications, associated easements will be required, for review by the City Engineer and approval by the Common Council, prior to recording of the Final Plat. In addition, a stormwater maintenance agreement will also be required.

Public Sewer and Water:

The Ryan Creek Interceptor Sewer is located adjacent to the property and a portion is located within the northwest corner of the site. The applicant anticipates extending sewer from the Ryan Creek Interceptor Sewer per discussions with the Engineering Department. Water service will be extended south from S. 80th Street to the north. This extension is in conjunction with the Park Circle condominium development to the north, also proposed by Neumann Developments, Inc. Detailed review of the sewer and water extensions by the Engineering Department will be required as part of the Final Plat Application review. Pursuant to the City of Franklin Design Standards and Construction Specifications, associated easements will be required, for review by the City Engineer and approval by the Common Council, prior to recording of the Final Plat.

It is important to note that pursuant to Sections 15-2.0303 and 15-8.0101 of the UDO, a Subdivision Development Agreement and associated letter of credit (to ensure the proper furnishing, construction, and installation of required improvements), must be prepared by the applicant for review by the City Engineer and the City Attorney and approval by the Common Council, prior to recording of the Final Plat.

Natural Resource Protection Plan:

A Natural Resource Protection Plan (NRPP) has been completed for the subject development by Dave Meyer of Wetland & Waterway Consulting, LLC and Ecological Services of Milwaukee, Inc., dated August 25, 2017. According to the NRPP, the site contains floodplain, wetlands and associated wetland buffers and setbacks, mature woodlands (primarily located within wetland areas), a stream (Ryan Creek) and the adjacent 75-foot shore buffer. Note that all wetlands onsite are shoreland wetlands.

The wetlands were delineated by Dave Meyer of Wetland and Waterway Consulting on April 22, 2017 and May 5, 2017. A full and complete wetland delineation report is on file with the Department of City Development. The cover letter of that report is attached. Dave Meyer is a Wisconsin Department of Natural Resources (WDNR) assured delineator; therefore, Department of City Development staff did not require separate review by a City consultant.

It is important to note that the applicant has identified two different floodplain delineations on the subdivision plat, although only one (the 2008 Federal Emergency Management Agency (FEMA) floodplain), was adopted by the City as its official floodplain mapping. In this regard, it can be noted that the 2008 FEMA floodplain mapping in this area only identifies an approximate floodplain/flood hazard area (based upon 1980's data), and does not identify a floodway boundary nor establishes a Base Flood Elevation. However, the 1997 Southeastern Wisconsin Regional Planning Commission (SEWRPC) floodplain mapping does identify both a floodway boundary and a Base Flood Elevation. SEWRPC staff has indicated that they are working on new floodplain mapping for Milwaukee County, and indications are that the size of the new floodplains will generally be larger than the sizes depicted by the FEMA mapping, and in this

particular instance, will likely be similar to the size of the floodplain depicted in the 1997 SEWRPC mapping. Therefore, the applicant has shown the larger 1997 SEWRPC floodplain on the subdivision plat for informational purposes, and has sized Outlot 1 to encompass this larger floodplain. As the 1997 SEWRPC floodplain mapping has not been adopted by the City, the applicant has not included that delineation in the Natural Resource Protection Plan. Staff notes that they concur with this approach.

Furthermore, as the Ryan Creek floodplain is zoned FW Floodway District, and as South Creekview Court is proposed to be located within that floodplain, any filling and development within that area must be in compliance with Sections 15-3.0319, 15-3.0604, and Part 13 of the Unified Development Ordinance. In particular, pursuant to Section 15-3.0604B., roadways are a special use within the Floodway District. In addition, it can be noted that it has been long-standing practice of the City to require compensatory flood storage for any filling of the 100-year floodplain, which is typically addressed during the natural resource mitigation process set forth in Section 15-4.0103 of the UDO.

In total, 8.26-acres of the site consist of protected natural resource features. Staff recommends that the applicant submit a written conservation easement document as part of the Final Plat Application for Common Council review and approval and recording with the Milwaukee County Register of Deeds at the time of recording the Final Plat. The applicant has indicated that 50-foot wetland setbacks will be included within the conservation easement, except for areas that will be graded for storm water ponds and the disturbance area for S. Creekview Court. Staff suggests that 50-foot wetland setbacks within storm water areas be included in the conservation easement with a note that allows continued access and maintenance as may be necessary for storm water management purposes.

It can be noted that a Shore Buffer is present on the subject site, associated with Ryan Creek. However, pursuant to Section 15-4.0102E. of the UDO, shore buffers are to be measured from the ordinary high water mark of all navigable waters. Therefore, staff recommends that the applicant shall obtain an Ordinary High Water Mark determination from the Wisconsin Department of Natural Resources, and that information be incorporated into the Natural Resource Protection Plan prior to recording the Final Plat.

Signage:

Signage is not being proposed at this time. Staff recommends that any proposed subdivision monument sign(s) be subject to review and approval by the Plan Commission and issuance of a Sign Permit from the Inspection Department.

PUBLIC STREETS, SIDEWALKS, AND TRAILS PRACTICABLE ALTERNATIVES ANALYSIS:

The applicant is proposing wetland, wetland buffer, wetland setback and floodplain impacts for the construction of South Creekview Court. Specifically, the applicant is requesting approval to fill 1,413 square feet of wetland, 10,258 square feet of wetland buffer and setback and 30,833 square feet of floodplain. Note that the floodplain area includes the wetland, wetland buffer and wetland setback as these resources overlap.

The applicant has provided an exhibit illustrating these impacts as well as a completed Question and Answer form as recommended by staff. These impacts may be allowed by the Common Council per Ordinance No. 2016-2224, which states that all public streets, sidewalks and trails construction may not be subject to the natural resource features protection standards pending review and approval by the Common Council of a practicable alternatives analysis.

The applicant has noted that a mitigation plan will be submitted to compensate for these impacts. Details have not yet been provided; therefore, staff recommends that a mitigation plan be submitted for review and approval as part of the Final Plat Application.

COMPREHENSIVE MASTER PLAN CONSISTENCY

- *Consistent with, as defined by Wisconsin State Statute, means “furthers or does not contradict the objectives, goals, and policies contained in the comprehensive plan.”*

The subject property is designated as Residential on the City’s 2025 Future Land Use Map (which was recently amended, along with the zoning, to reflect the proposed subdivision development). As such, this Future Land Use Map designation is consistent with the existing zoning and the applicant’s proposed single-family residential development.

STAFF RECOMMENDATION:

City Development Staff recommends approval of the Preliminary Plat Application for the development of 63 single-family residential lots, subject to the conditions as noted in the attached draft resolution.

RESOLUTION NO. 2017-_____

A RESOLUTION CONDITIONALLY APPROVING A PRELIMINARY
PLAT FOR OAKWOOD AT RYAN CREEK SUBDIVISION
(AT APPROXIMATELY 10100 SOUTH 76TH STREET)
(NEUMANN DEVELOPMENTS, INC., APPLICANT)

WHEREAS, the City of Franklin, Wisconsin, having received an application for approval of a preliminary plat for Oakwood at Ryan Creek Subdivision, such plat being a part of the Northeast 1/4 and Southeast 1/4 of the Southeast 1/4 of Section 28, Township 5 North, Range 21 East, City Franklin, Milwaukee County, Wisconsin, more specifically, of the property located at approximately 10100 South 76th Street [The Preliminary Plat includes a 63 lot single-family residential subdivision (average lot size being approximately 14,800 square feet), which also includes a 97,054 square foot outlot to be reserved for potential future commercial uses (proposed subdivision plat is located at the northwest corner of South 76th Street and West Oakwood Road), bearing Tax Key No. 934-9992-010, Neumann Developments, Inc., applicant; said preliminary plat having been reviewed by the City Plan Commission and the Plan Commission having recommended approval thereof at its meeting on September 7, 2017, pursuant to certain conditions; and

WHEREAS, the Common Council having reviewed such application and Plan Commission recommendation and the Common Council having determined that such proposed preliminary plat is appropriate for approval pursuant to law upon certain conditions.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the Preliminary Plat of Oakwood at Ryan Creek Subdivision, as submitted by Neumann Developments, Inc., as described above, be and the same is hereby approved, subject to the following conditions:

1. That any and all objections made and corrections required by the City of Franklin, by Milwaukee County, and by any and all reviewing agencies, shall be satisfied and made by the applicant.
2. That all land development and building construction permitted or resulting under this Resolution shall be subject to impact fees imposed pursuant to §92-9. of the Municipal Code or development fees imposed pursuant to §15-5.0110 of the Unified Development Ordinance, both such provisions being applicable to the development and building permitted or resulting hereunder as it occurs from time to time, as such Code and Ordinance provisions may be amended from time to time.
3. Schweitzer Family Partnership, successors and assigns and any developer of the

NEUMANN DEVELOPMENTS, INC. – PRELIMINARY PLAT
RESOLUTION NO. 2017-_____

Page 2

Oakwood at Ryan Creek 63 lot single-family residential subdivision development shall pay to the City of Franklin the amount of all development compliance, inspection and review fees incurred by the City of Franklin, including fees of consults to the City of Franklin, for the Oakwood at Ryan Creek 63 lot single-family residential subdivision development, within 30 days of invoice for same. Any violation of this provision shall be a violation of the Unified Development Ordinance, and subject to §15-9.0502 thereof and §1-19. of the Municipal Code, the general penalties and remedies provisions, as amended from time to time.

4. The approval granted hereunder is conditional upon Neumann Developments, Inc. and the Oakwood at Ryan Creek 63 lot single-family residential subdivision development project for the property located at approximately 10100 South 76th Street: (i) being in compliance with all applicable governmental laws, statutes, rules, codes, orders and ordinances; and (ii) obtaining all other governmental approvals, permits, licenses and the like, required for and applicable to the project to be developed and as presented for this approval.
5. The Oakwood at Ryan Creek 63 lot single-family residential subdivision development project shall be developed in substantial compliance with the terms and provisions of this Resolution.
6. A paved trail shall be installed within Outlot 1 extending from South 76th Street or South Creekview Court to the west property line with connections to South Woodside Court and South Ryan Creek Court.
7. A written conservation easement document shall be submitted as part of the Final Plat Application for Common Council review and approval and recording with the Milwaukee County Register of Deeds at the time of recording the Final Plat.
8. An Ordinary High Water Mark determination shall be obtained from the Wisconsin Department of Natural Resources, and that information be incorporated into the Natural Resource Protection Plan prior to recording the Final Plat. Alternatively, the applicant may receive approval from the Wisconsin Department of Natural Resources to utilize a preliminary determination based upon the stream bank.
9. Any proposed subdivision monument sign(s) shall be subject to review and approval by the Plan Commission and issuance of a Sign Permit from the Inspection Department.
10. A mitigation plan shall be submitted for review and approval as part of the Final Plat Application

NEUMANN DEVELOPMENTS, INC. – PRELIMINARY PLAT

RESOLUTION NO. 2017-_____

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11. As recommended by the Plan Commission, the Common Council may consider allowance of sidewalks along one side of cul-de-sacs only with the installation of a paved trail along the northern portion of the property within Outlot 1.

12. [other conditions, etc.]

Introduced at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2017.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2017.

APPROVED:

Stephen R. Olson, Mayor

ATTEST:

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

A RESOLUTION CONDITIONALLY APPROVING A PRELIMINARY
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3. Schweitzer Family Partnership, successors and assigns and any developer of the
NEUMANN DEVELOPMENTS, INC. – PRELIMINARY PLAT
RESOLUTION NO. 2017-_____
Page 2

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~~10.11.~~ As recommended by the Plan Commission, the Common Council may consider allowance of sidewalks along one side of cul-de-sacs only with the installation of a paved trail along the northern portion of the property within Outlot 1.

~~11.12.~~ [other conditions, etc.]

Introduced at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2017.

NEUMANN DEVELOPMENTS, INC. – PRELIMINARY PLAT

RESOLUTION NO. 2017-_____

Page 3

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2017.

APPROVED:

Stephen R. Olson, Mayor

ATTEST:

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

OAKWOOD AT RYAN CREEK
PRELIMINARY PLAT

SHEET
C-1
OF
C-1

REVISIONS

NO.	DATE	DESCRIPTION
1	10/1/2011	ISSUED FOR PERMIT

PROJECT INFORMATION

OWNER: Pinnacle Engineering Group, Inc.
PROJECT: OAKWOOD AT RYAN CREEK
CITY: FRANKLIN, WISCONSIN

PRELIMINARY PLAT

OAKWOOD AT RYAN CREEK
CITY OF FRANKLIN, WISCONSIN

PINNACLE ENGINEERING GROUP, INC.
10000 WISCONSIN AVENUE, SUITE 200
FRANKLIN, WISCONSIN 53120
TEL: 262.581.1234
WWW.PINNACLE-ENG.COM

PLATTEN SUBMITTER USE

PLATTEN SUBMITTER: Pinnacle Engineering Group, Inc.
DATE: 10/1/2011
PROJECT: OAKWOOD AT RYAN CREEK
CITY: FRANKLIN, WISCONSIN

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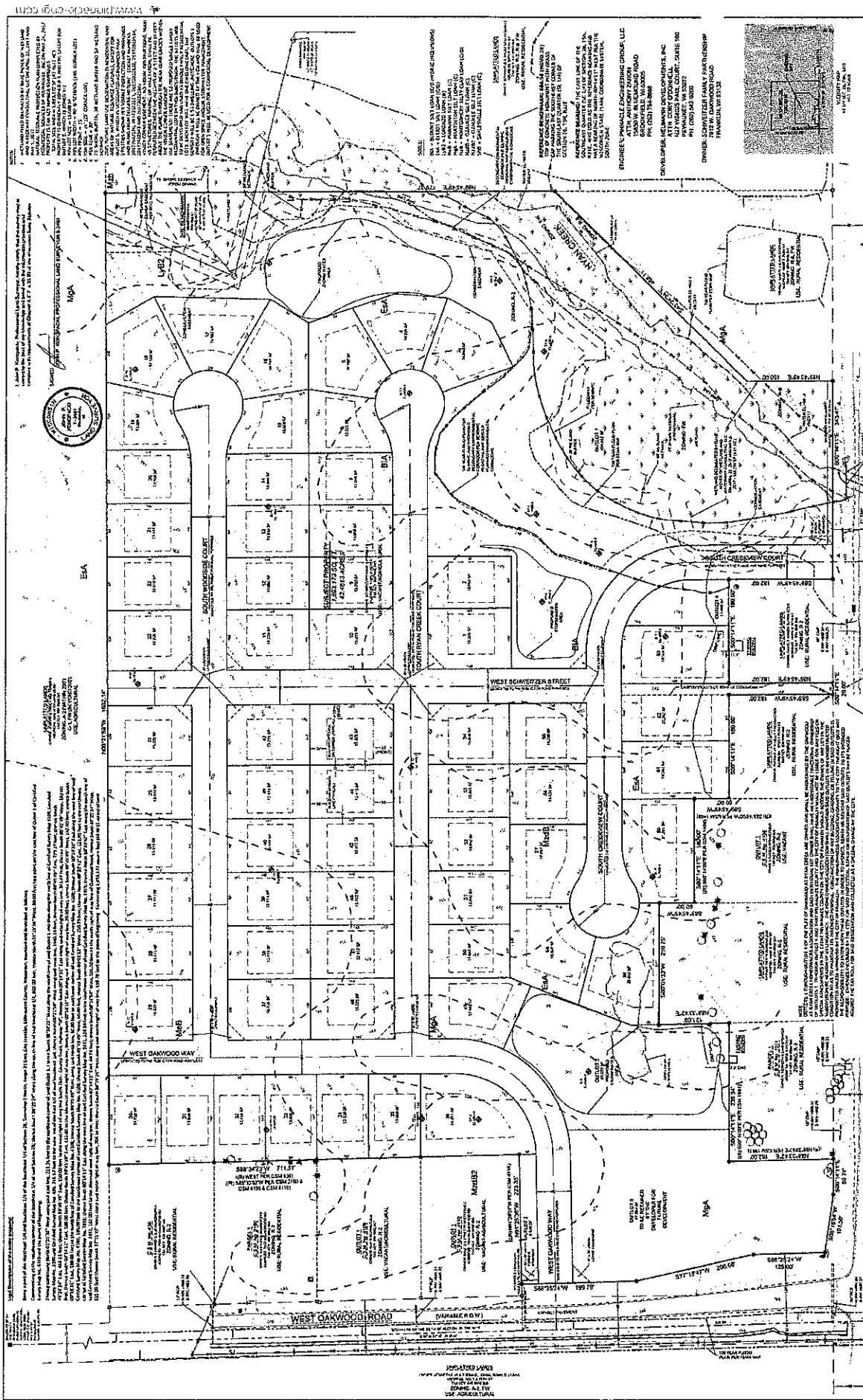
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PLATTEN SUBMITTER: Pinnacle Engineering Group, Inc.
DATE: 10/1/2011
PROJECT: OAKWOOD AT RYAN CREEK
CITY: FRANKLIN, WISCONSIN



NOTES:

1. The plat is subject to the provisions of the Wisconsin Uniform Plat Act, Chapter 89.01, Wis. Stats.
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LEGEND:

- 1. 10' UTILITY EASEMENT
- 2. 20' UTILITY EASEMENT
- 3. 10' SIDEYARD EASEMENT
- 4. 10' FRONTYARD EASEMENT
- 5. 10' REAR YARD EASEMENT
- 6. 10' CORNER EASEMENT
- 7. 10' INTERIOR EASEMENT
- 8. 10' EXTERIOR EASEMENT
- 9. 10' ADJACENT EASEMENT
- 10. 10' OPPOSITE EASEMENT

1.0 INTRODUCTION

On behalf of Neumann Companies, Inc., Wetland & Waterway Consulting, LLC and Ecological Services of Milwaukee, Inc. (ESM, Inc.) are pleased to provide this Natural Resources Protection Plan (NRPP) Report for a proposed residential development project. This report updates the NRPP submitted previously on May 24, 2017, and identifies resource impacts based on the most recent site development plan and resource information.

The proposed project is located on an approximate 43.46-acre property at 10100 South 76th Street in the City of Franklin, Milwaukee County, Wisconsin, herein after referred to as the “study area”. A portion of this property (3.25 acres) is intended to be excluded from the proposed development lands and will be utilized or sold for other purposes.

The study area is located in the NE ¼ and Southeast ¼ of Section 28, Township 5 North, Range 21 East, in the City of Franklin (Appendix A, Figure 1), and is bordered by South 76th Street on the east, a residential property to the south, an agricultural area to the west and Ryan Creek to the north.

1.1 Statement of Qualifications

Dave Meyer of Wetland & Waterway Consulting, LLC is an independent environmental consultant providing wetland delineations, environmental permitting services, site assessments, and planning advice. He obtained a master’s degree in Natural Resources Management from Southern Illinois University-Carbondale in 1977. Mr. Meyer has held technical and administrative positions in wetland and water resources specialties with the Wisconsin Department of Natural Resources and the U.S. Army Corps of Engineers. He has satisfactorily completed the Reg IV Wetland Delineation training offered by the U.S. Army Corps of Engineers, the Advanced Wetland Delineation training conducted by the University of Wisconsin-LaCrosse in 2002 and 2007, the USACOE/WIDNR 1987 Wetland Delineation Manual Midwest Region Supplement Training in 2009, the USACOE/WIDNR 1987 Wetland Delineation Manual Northcentral/Northeast Region Supplement Training in 2010, the Basic Hydric Soil ID training conducted by the University of Wisconsin-LaCrosse in 2011, the Wetland Training Institute’s Advanced Hydrology for Jurisdictional Determinations in 2016, and the SEWRPC Environmental Corridor Delineation Workshops in 2004 and 2015. Mr. Meyer is recognized by the Wisconsin Department of Natural Resources as an Assured Delineator.

ESM, Inc. provides ecological services including wetland assessments and delineations, wetland restoration and mitigation planning, long-term compliance monitoring, native plant community planting plans and specifications, NEPA documentation, environmental permitting and agency coordination services. The firm’s owner has 27 years of experience and extensive professional training in plant ecology, wetland ecology, botany, and native plant community restoration.

2.0 METHODS

2.1 Analysis of Existing Conditions

Prior to conducting fieldwork, ESM reviewed documents and mapping for the site, including the following:

- United States Geological Survey Topographic Map
- Wisconsin Department of Natural Resources Surface Water Data Viewer
 - Wisconsin Wetland Inventory Map
 - Hydric Soils
 - Aerial Photography (2008, 2010, 2013 and 2015)

This information, in addition to other maps and documents, was also referenced for the Wetland Delineation Report compiled by Wetland and Waterway Consulting, LLC (Appendix B).

2.2 Field Investigations

ESM, Inc. performed a field investigation of the site on April 8, 2017. The purpose of the investigation was to identify natural resources within the study area, including steep slopes, woodlands, lakes, ponds, streams, floodlands, wetlands and buffers. As part of the investigation, ESM, Inc. identified and surveyed the locations of trees with a diameter at breast height (dbh) of at least eight inches located in woodlands within twenty-five feet of proposed improvements. In addition, the outline (drip line) of other woodlands was located. Surveying of the tree locations and drip lines was performed using a Trimble GeoXh with hurricane antenna, corrected to sub-decimeter accuracy. These features are graphically represented on the NRPP map (Appendix A, Figure 2).

Wetland investigations were performed by Wetland & Waterway Consulting, LLC, in April 2017 and are documented in Appendix B. Wetland boundaries mapped as part of this investigation were incorporated and graphically represented on the NRPP map.

2.3 GIS Analysis

GIS ArcMap software was used to map the natural resource features of the site shown on the NRPP map (Figure 1), combined with survey data (topography, buffers, setbacks and wetlands) provided by Pinnacle Engineering, Inc. of Brookfield, Wisconsin. GIS was used to determine the areas of all identified natural resources, buffers and setbacks.

3.0 RESULTS

The study area consists primarily of agricultural land and is bordered by Ryan Creek on the northern boundary. Wooded wetlands lie in and adjacent to the floodplain of Ryan Creek. Various resources, buffers and setbacks are found in the area along Ryan Creek. Many of these areas overlap. Where this occurs, the most restrictive resource protection was utilized as shown on Figure 2.

One wooded area not associated with Ryan Creek is located in the southern portion of the study area. All natural resources identified as part of this investigation are described in more detail below.

3.1 Existing Natural Resources

3.1.1 Steep Slopes

The City of Franklin's Unified Development Ordinance (UDO) defines three categories of steep slopes (10-20%; 20-30% and greater than 30%), all requiring at least a ten foot drop and a minimum area of 5,000 square feet.

There are no steep slopes, as defined by the UDO, within the study area.

3.1.2 Woodlands

The UDO defines a young woodland as an area or stand of trees whose total combined canopy covers an area of at least 0.50 acres, with at least 50% of the trees having a minimum diameter at breast height (dbh) of 3 inches.

A mature woodland is defined as an area or stand of trees whose total combined canopy covers an area of at least one acre and at least 50% of the trees have a dbh of 10 inches; or any grove of 8 or more trees with a minimum dbh of 12 inches whose combined canopies cover at least 50% of the area encompassed by the grove.

Each healthy tree, 8 inches or greater in dbh was identified, measured and located using a GPS unit with sub-decimeter accuracy. Woodland boundaries and the woodland drip lines were also located and mapped using recent aerial photography. Woodland boundaries, tree locations, and a list of the trees identified and their dbh is provided on the NRPP figure in Appendix A.

Woodlands Identified

The wooded wetland on the northern property boundary is described in Section 3.8 and in the wetland delineation report developed by Wetland & Waterway Consulting, LLC. In addition to the wooded wetland area, the drip line for a wooded area on an abutting residential property was located along the eastern boundary of the study area, as shown on Figure 2. One other wooded area lies in the southern portion of the study area. While this wooded area contains trees greater than 8 inches in diameter, it does not meet the acreage requirement of 0.5 acres to meet the designation of “young woodland” or the 1.0 acreage requirement for “mature woodland.” Trees identified in this area consist primarily of box elder (*Acer negundo*) and northern red oak (*Quercus rubra*), as shown on the Natural Resource Protection Plan (Appendix A, Figure 2).

3.1.3 Lakes and Ponds

Lakes are defined by the UDO as any body of water 2.0 acres or greater in size, measured at its maximum condition, whereas ponds are defined as bodies of water less than 2.0 acres measured at their maximum condition.

There are no lakes or ponds, as defined by the UDO, within the study area.

3.1.4 Streams

The UDO defines a stream as a course of running water, either perennial or intermittent, flowing in a channel.

There is one stream, Ryan Creek, located parallel to the northern boundary of the study area. Ryan Creek is a navigable waterway, which covers an area of approximately 0.29 acres within the study area.

3.1.5 Shore Buffers

A shore buffer is defined by the UDO as the undisturbed land area and vegetation within seventy-five feet landward of the ordinary high water mark (OHWM) of all navigable waters and parallel to that OHWM.

There is one shore buffer, as defined by the UDO, within the study area. The shore buffer is located adjacent to Ryan Creek, along the northern boundary of the study area and covers an area of approximately 2.26 acres.

3.1.6 Floodplains / Floodways

A floodplain fringe is defined by the UDO as floodlands outside of a floodway that are subject to inundation by the 100-year recurrence interval flood. The floodway is the portion of the 100-year flood that will safely convey the regulatory flood discharge with stage increases usually not exceeding 0.01 foot.

There is one floodplain area, as defined by the UDO, within the study area. The floodplain is associated with Ryan Creek, along the northern boundary of the study area, covering an area of 6.63 acres.

3.1.7 Wetlands

Wetlands are defined by the UDO as any area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions.

Wetlands were delineated by Wetland and Waterway Consulting, LLC. A report, documenting the wetland investigation and describing the results of that study, is included as Appendix B. A wetland complex associated with Ryan Creek and tributary ditches, consisting of floodplain forest, shrub carr and wet meadow vegetation was identified in the study, covering approximately 3.52 acres. Dominant species in the wetland complex include green ash (*Fraxinus pennsylvanica*), box elder (*Acer negundo*) and black willow (*Salix nigra*) in the canopy; honeysuckle (*Lonicera* spp.) in the shrub layer; and reed canary grass (*Phalaris arundinacea*) in the herbaceous layer.

3.1.8 Shoreland Wetland

Shoreland wetland is defined by the UDO as a wetland that is located within a shoreland area (lands lying within one thousand feet of a lake, pond, or flowage or three hundred feet from a river or stream, or to the landward side of floodplain areas).

All 3.52 acres of wetlands described in Section 3.1.7, above, are shoreland wetlands.

3.1.9 Wetland Buffers

Wetland buffers are defined by the UDO as undisturbed land within thirty feet landward of the delineated boundary of any wetland and parallel to the delineated wetland boundary.

The wetland buffers associated with the delineated wetlands within the study area total 60,069.24 square feet (1.379 acres) and are shown on the NRPP map (Figure 2).

3.1.10 Wetland Setbacks

The UDO defines wetland setbacks as all landward areas defined by the minimum required horizontal setback distance of fifty feet from a delineated wetland boundary. The wetland setbacks associated with wetlands delineated in the study area extend for 41,512.7 square feet (0.953 acres) beyond the wetland buffers. The total area covered by wetland setbacks that overlaps and includes wetland buffers is 2.33 acres. Wetland setbacks are shown on Figure 2.

3.2 Calculation of Natural Resource Protection Land

Worksheets supporting the calculation of natural resource protection land are included in Appendix C. The base site area was determined to be 40.21 acres. A total of 8.26 acres of resource protection land, consisting of streams, shore buffer, floodplains, wetland buffers, wetland setbacks and wetlands were identified within the site. As a result, the net buildable area is 31.95 acres. Based on this area, the maximum net density yield is 159.75 dwelling units (D.U.s), the maximum gross density yield is 168.8 D.U.s, and the maximum permitted D.U.s of the site is 159.75.

4.0 NATURAL RESOURCE DISTURBANCES AND PRESERVATION

The City of Franklin's Unified Development Ordinance describes the mitigation requirements associated with the proposed site developments. The site intensity calculation tables are included in Appendix A and the proposed site development plan is shown on Figure 3. Based on the site development plan, the project would affect a total of 30,833 square feet (0.71 acres) of floodplain. Within this floodplain area, 1,413 square feet (0.03 acres) of wetlands and 10,258 square feet (0.24 acres) of wetland buffer and setback are present. These natural resource impacts are associated with construction of an access road leading from South 76th Street onto the site. The proposed impacts are depicted on Figure 4. Neumann Companies, Inc. is currently developing a mitigation plan to compensate for these resource impacts.

The remainder of all identified natural resource features of the site shall be protected in perpetuity under a permanent Natural Resource Conservation Easement.

5.0. CLOSING

We appreciate the opportunity to work with you on this project. If you have any comments or questions regarding this report, please contact me at 262-719-4286.

Sincerely,



Dave Meyer, Owner
Wetland & Waterway Consulting, LLC



Rose M. Chmielewski, President
Ecological Services of Milwaukee, Inc.

FIGURE 2:

NATURAL RESOURCE PROTECTION PLAN Schweitzer Property

Being a part of the Northeast 1/4 and Southeast 1/4 of the Southeast 1/4 of Section 28, Township 5 North, Range 21 East, City of Franklin, Milwaukee County, Wisconsin

NATURAL RESOURCE	FEATURE	PROTECTION STANDARD	AREA IN RESERVE PROTECTION LAND (ACRES)	AREA OF RESERVE PROTECTION LAND (ACRES)
Steep Slopes				
	10-19%	0.6	0	0
	20-30%	0.75	0	0
	30-7%	0.85	0	0
Woodlands and Forests				
	Mature	0.7	0	0
	Young	0.5	0	0
Lakes and Ponds				
	1	0	0	0
Streams				
	1	0.79	0.29	0.29
Shore Buffer				
	1	2.26	0*	0*
Floodplains / Floodlands				
	1	5.02	0.905*	0.905*
Wetland Buffers / Setbacks				
	1	2.33	2.33	2.33
Wetlands / Shoreland Wetlands				
	1	3.52	3.52	3.52
TOTAL RESERVE PROTECTION LAND				
(Total Land in Reserve Protection Feature to be Protected)				6.45

*Area partially or entirely accounted for in wetland and/or wetland buffers / setbacks

MAP NUMBER	SCIENTIFIC NAME	COMMON NAME	DBH (in)
Trees with 8 inch or greater DBH			
3	<i>Acer negundo</i>	Box elder	11.0
4	<i>Acer negundo</i>	Box elder	21.5
5	<i>Acer negundo</i>	Box elder	9.1
7	<i>Acer negundo</i>	Box elder	15.1
8	<i>Acer negundo</i>	Box elder	22.6
10	<i>Acer negundo</i>	Box elder	15.7
18	<i>Acer negundo</i>	Box elder	9.8
19	<i>Acer negundo</i>	Box elder	12.0
20	<i>Quercus rubra</i>	Northern red oak	10.2
21	<i>Acer negundo</i>	Box elder	11.3
23	<i>Acer negundo</i>	Box elder	9.2
24	<i>Crataegus mollis</i>	Hawthorne	32.7
26	<i>Acer negundo</i>	Box elder	13.2
28	<i>Acer negundo</i>	Box elder	11.8
Trees with less than 8 inch DBH			
1	<i>Acer negundo</i>	Box elder	7.5
2	<i>Acer negundo</i>	Box elder	5.1
6	<i>Acer negundo</i>	Box elder	6.7
9	<i>Acer negundo</i>	Box elder	5.5
11	<i>Quercus rubra</i>	Northern red oak	4.9
12	<i>Quercus rubra</i>	Northern red oak	3.9
13	<i>Quercus rubra</i>	Northern red oak	5.5
14	<i>Quercus rubra</i>	Northern red oak	5.1
15	<i>Quercus rubra</i>	Northern red oak	4.3
16	<i>Quercus rubra</i>	Northern red oak	7.5
17	<i>Acer negundo</i>	Box elder	7.5
22	<i>Prunus serotina</i>	Black cherry	7.3
25	<i>Crataegus mollis</i>	Hawthorne	7.9
27	<i>Acer negundo</i>	Box elder	7.1
29	<i>Acer negundo</i>	Box elder	5.9
30	<i>Acer rubrum</i>	Red maple	4.3



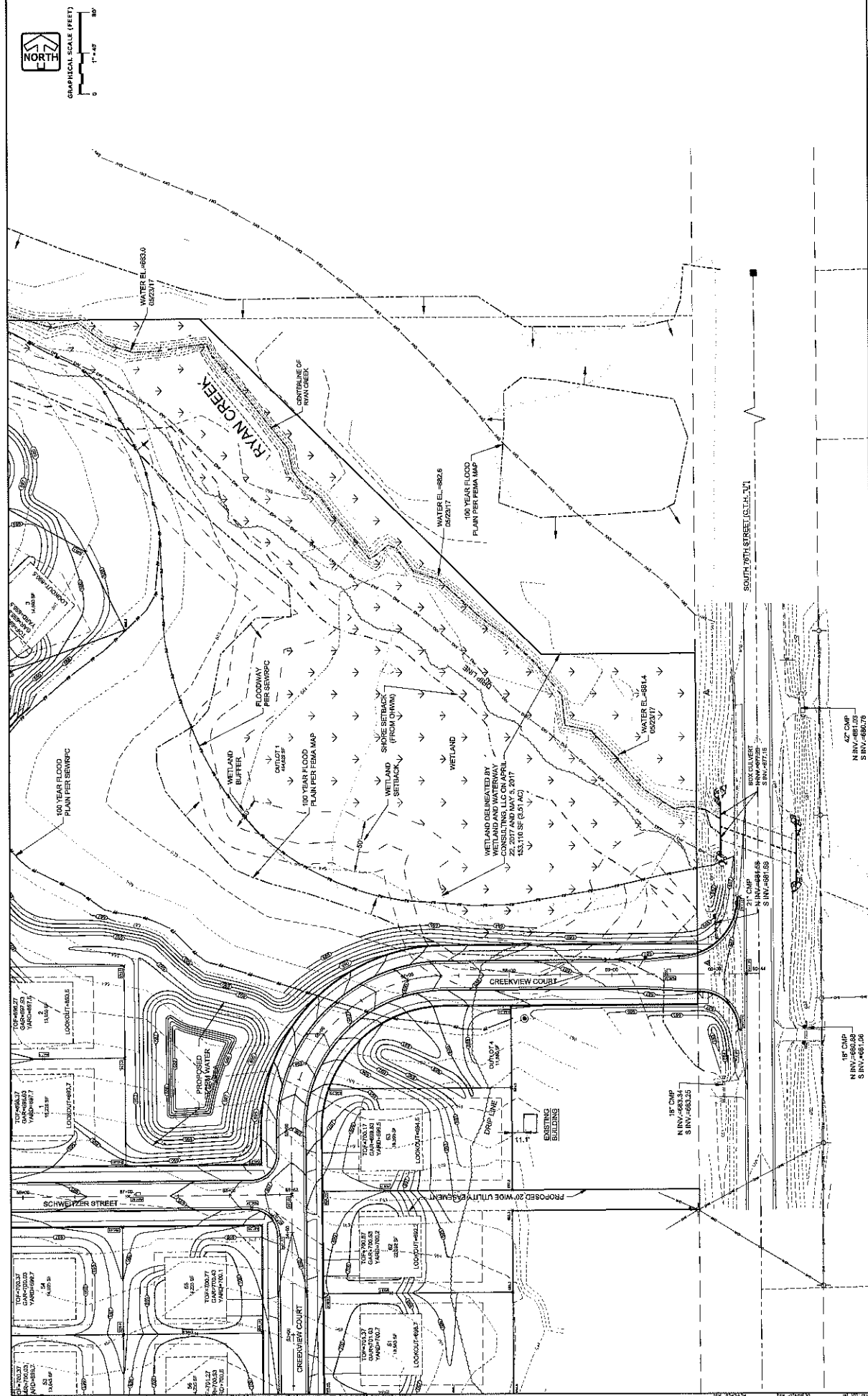
- Tree
- Property Boundary
- Contour 1'
- Contour 5'
- Ryan Creek
- 75' Shore Buffer
- Drip Line
- Wooded area
- FEMA Flood Zone A
- Wetland
- Wetland Buffer - 30 feet
- Wetland Setback - 50 feet

Source: Milwaukee County Imagery, 2015



PROPERTY OWNER:
SCHWITZER FAMILY/PTNRSH
ADDRESS: 10205 S. 76TH STREET
TAX KEY: 934-9952-010

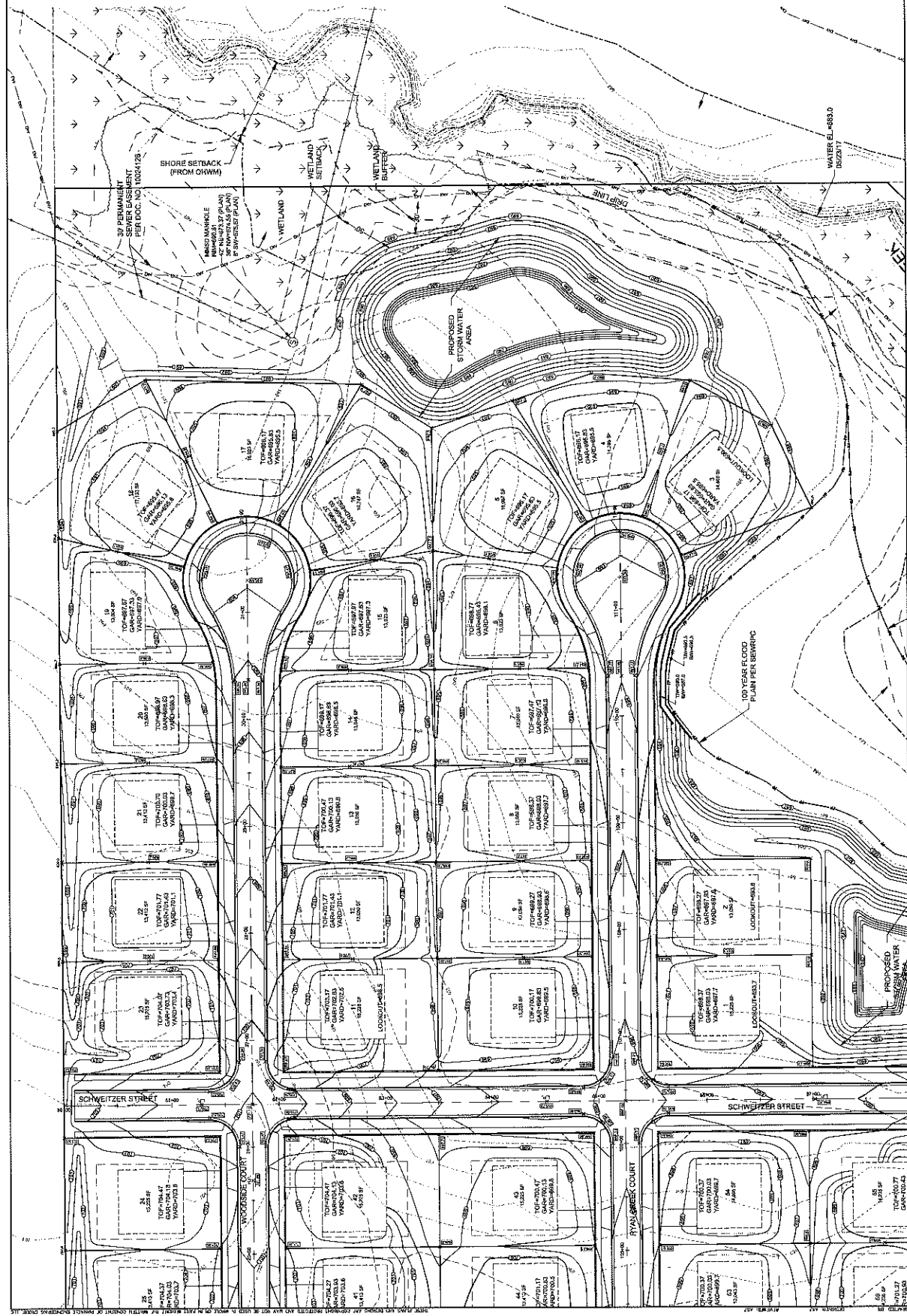
WETLAND DELINEATION
Completed May 12, 2017
by Wetland & Waterway Consulting, LLC (Dave Meyer)
SURVEY
Completed by Pinnacle Engineering Group
NRPPT.mxd



SHEET	REVISIONS		PRELIMINARY GRADING PLAN	OAKWOOD AT RYAN CREEK CITY OF FRANKLIN, MILWAUKEE CO.	PLAN DESIGN DELIVER	PINNACLE ENGINEERING GROUP REGISTERED PROFESSIONAL ENGINEERS
	NO.	DESCRIPTION				
C-1						
C-12						



GRAPHICAL SCALE (FEET)
1" = 40'



REVISIONS	

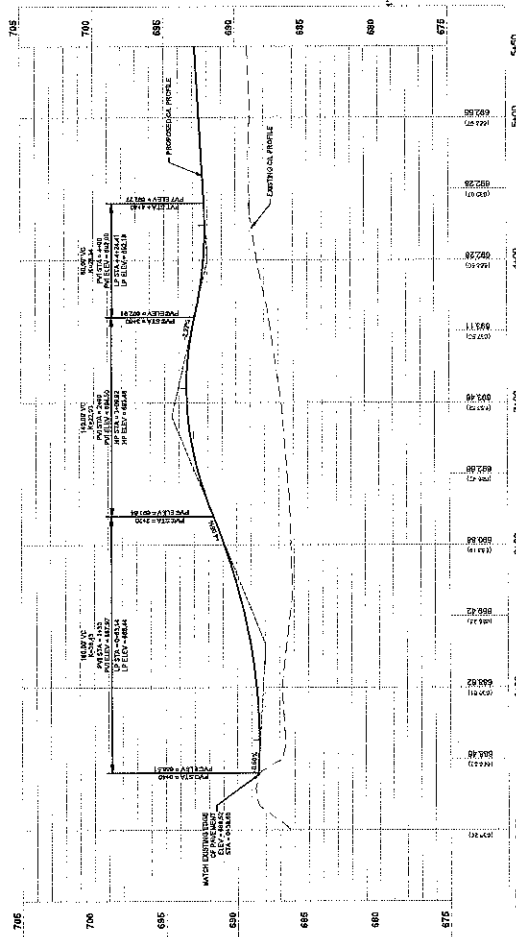
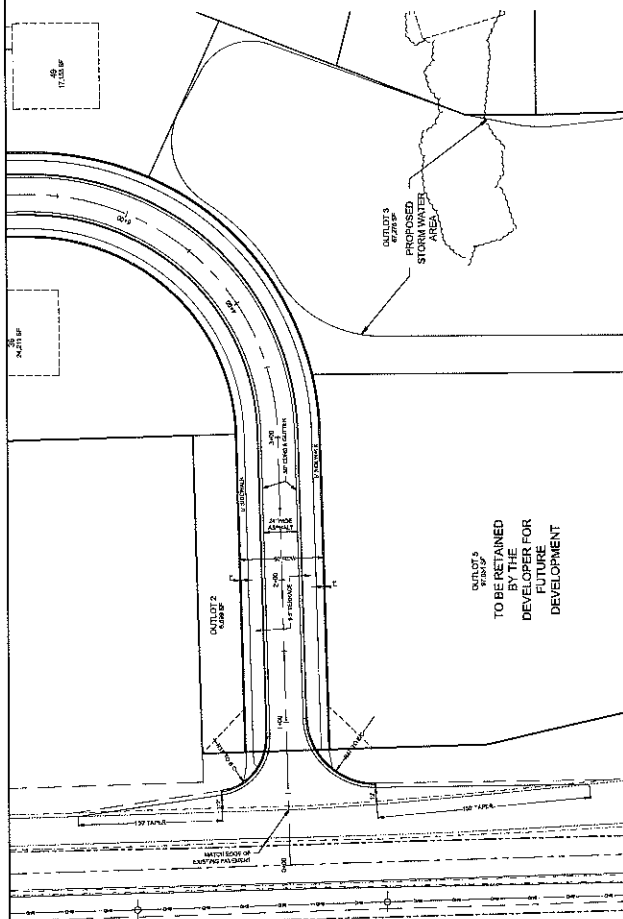
PRELIMINARY GRADING
PLAN

OAKWOOD AT RYAN CREEK
CITY OF FRANKLIN, MILWAUKEE CO.

PLAN DESIGN DELIVER
Pinnacle Engineering Group
10000 W. WISCONSIN AVE.
SUITE 100
MILWAUKEE, WI 53224
(414) 441-1100
www.pinnacle-engr.com

SHEET
C-2
C-12





NOTE: The leading acid rate of this enterprise has been found in numerous reports of industry. The Engineering Surveyors' Association of America has ranked our firm as the leader of all firms in the industry.

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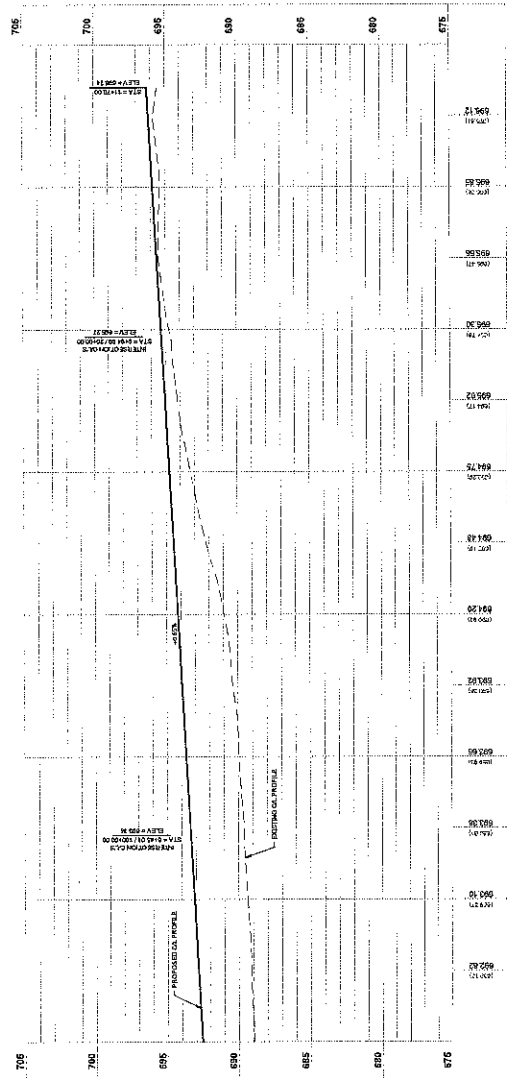
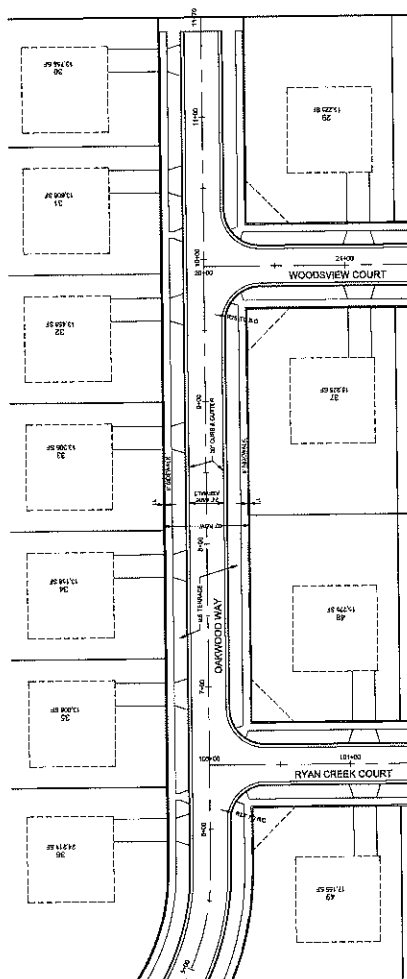
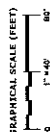
**OAKWOOD WAY PLAN &
PROFILE**

OAKWOOD AT RYAN CREEK
CITY OF FRANKLIN, MILWAUKEE CO.

PLAN | DESIGN | DELIVER

PINNACLE ENGINEERING GROUP

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NOTES: THE DESIGNER AND USER OF THIS PLAN SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

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OAKWOOD WAY PLAN & PROFILE

OAKWOOD AT RYAN CREEK
CITY OF FRANKLIN, MILWAUKEE CO.

PLAN | DESIGN | DELIVER

PINNACLE ENGINEERING GROUP

ENGINEERING | ARCHITECTURE | LANDSCAPE ARCHITECTURE

1200 WEST WISCONSIN AVENUE, SUITE 200, MILWAUKEE, WI 53233

TEL: 414.224.1100 FAX: 414.224.1101

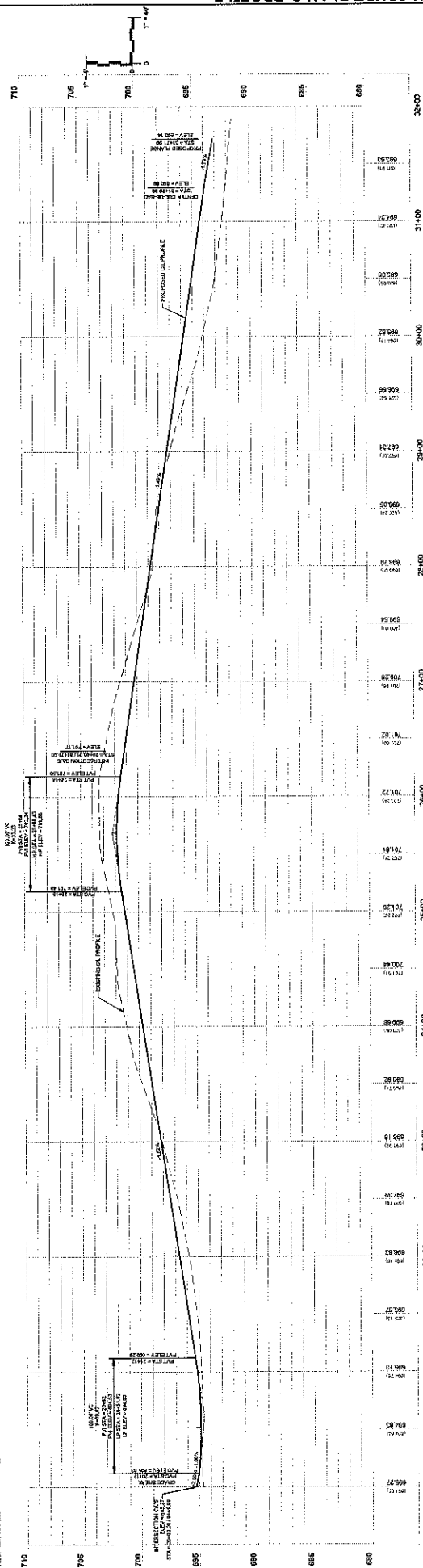
WWW.PINNACLE-ENG.COM



OAKWOOD AT RYAN CREEK
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REVISIONS

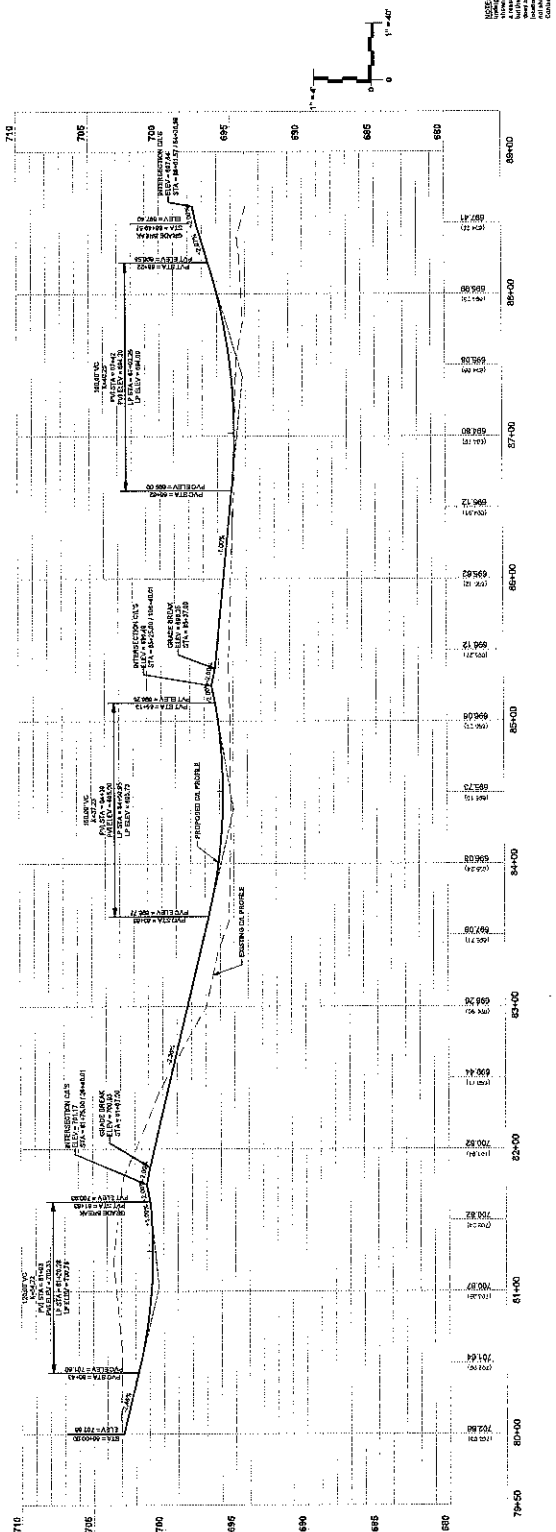
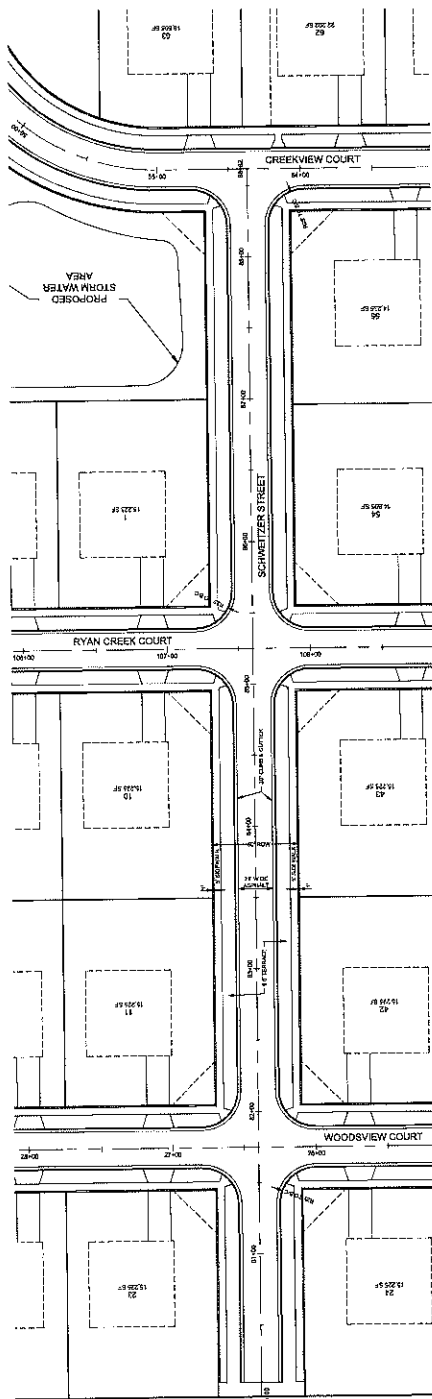
WOODSVIEW COURT PLAN
& PROFILE

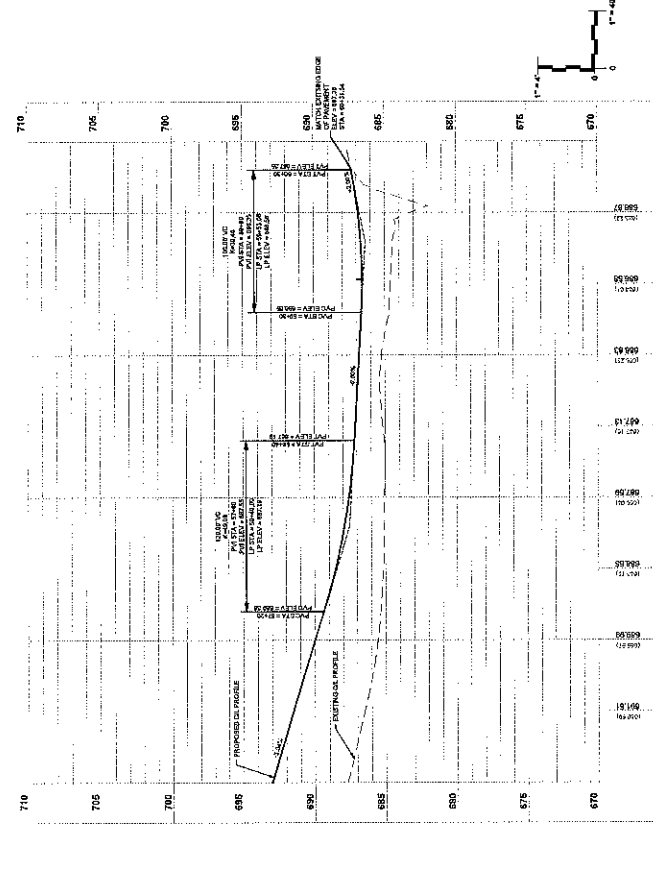
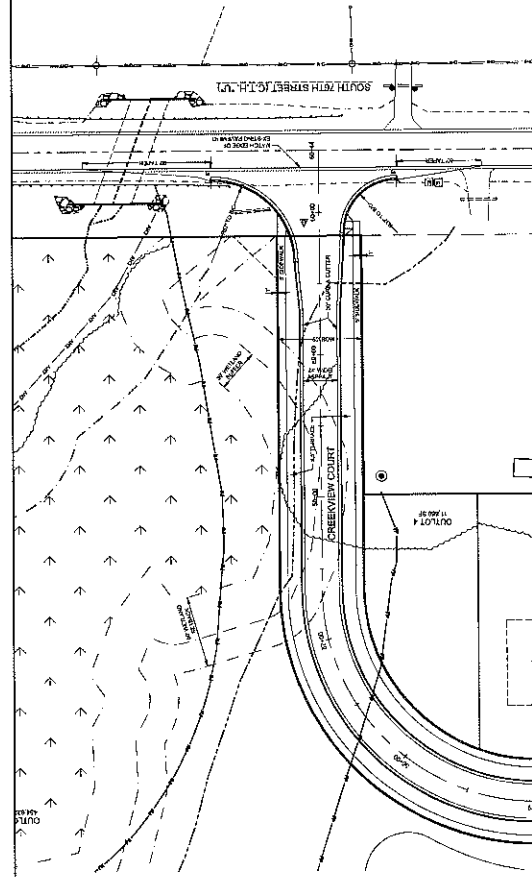
OAKWOOD AT RYAN CREEK
CITY OF FRANKLIN, MILWAUKEE CO.

PLAN | DESIGN | DELIVER

PINNACLE ENGINEERING GROUP

1 00 CENTS 201 Z1902 00 AM1 CASH SET 5 50 2 00 STORM & PAVING PPDMS





NOTE: The Engineer and the client agree that the Engineer shall not be responsible for the accuracy of the information provided by the client. The Engineer shall not be responsible for the accuracy of the information provided by the client. The Engineer shall not be responsible for the accuracy of the information provided by the client.

DATE: 08/08/2017
DRAWN BY: J. J. J.
CHECKED BY: J. J. J.
APPROVED BY: J. J. J.

REVISIONS

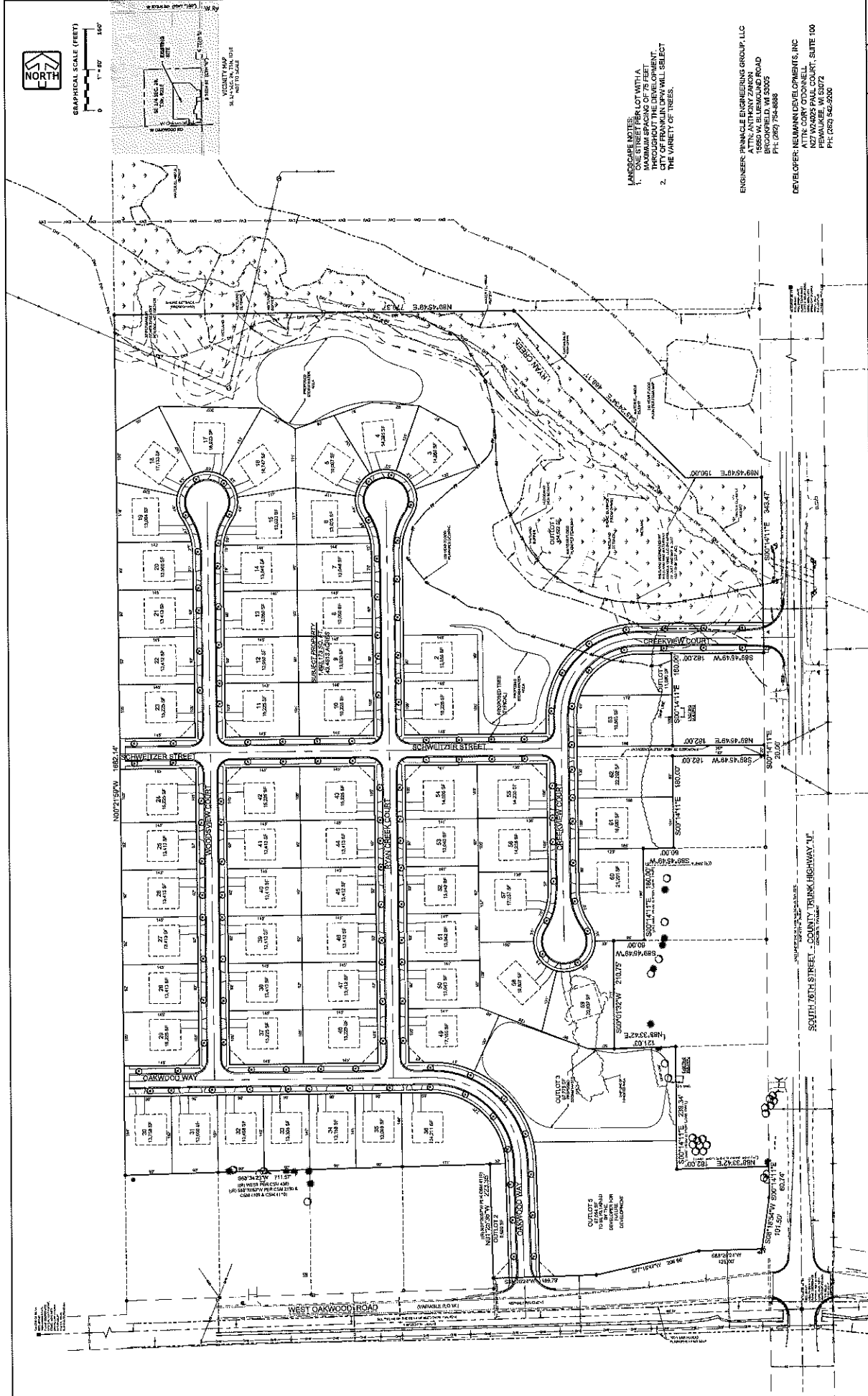
CREEKVIEW COURT PLAN & PROFILE

OAKWOOD AT RYAN CREEK
CITY OF FRANKLIN, MILWAUKEE CO.

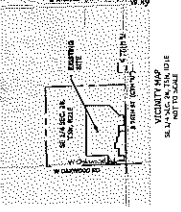
PLAN DESIGN & DELIVER

PINNACLE ENGINEERING GROUP
10000 WISCONSIN AVENUE
MILWAUKEE, WI 53226
TEL: 414.224.1100
WWW.PINNACLE-ENGR.COM

DATE: 08/08/2017
DRAWN BY: J. J. J.
CHECKED BY: J. J. J.
APPROVED BY: J. J. J.



GRAPHICAL SCALE (FEET)
0 50 100
1" = 50'



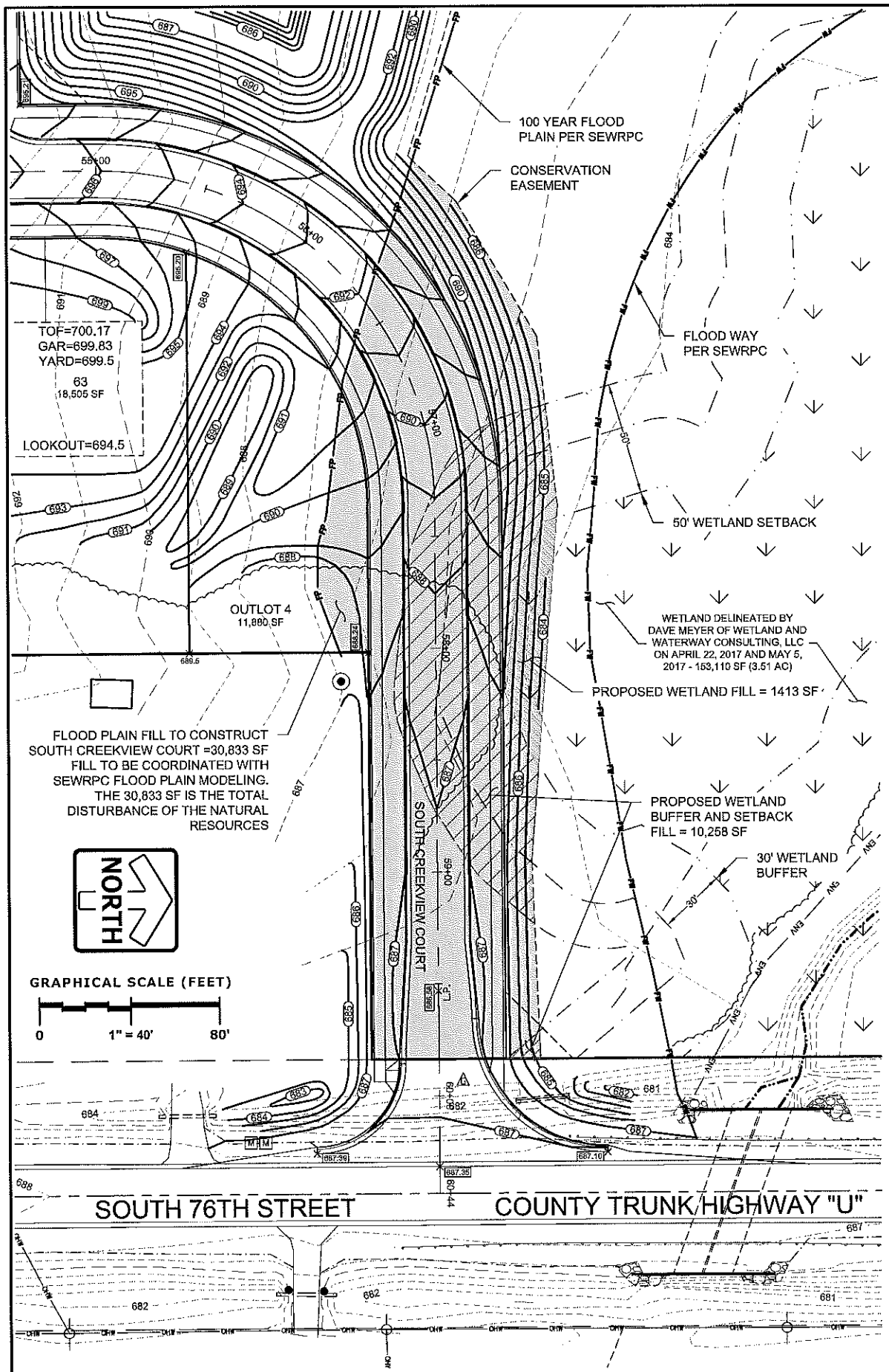
- LANDSCAPE NOTES:
1. ONE STREET FRONT LOT WITH A MAXIMUM SPACING OF 75 FEET.
 2. THE CITY OF FRANKLIN DPW WILL SELECT THE VARIETY OF TREES.

ENGINEER: PINNACLE ENGINEERING GROUP, LLC
ATTN: ANTHONY ZANON
107 WOODS PAIL COURT, SUITE 100
MILWAUKEE, WI 53072
PH: (262) 754-8888

DEVELOPER: NEWMAN DEVELOPMENTS, INC.
107 WOODS PAIL COURT, SUITE 100
MILWAUKEE, WI 53072
PH: (262) 542-0000

SHEET		REVISIONS		PRELIMINARY LANDSCAPE PLAN		OAKWOOD AT RYAN CREEK CITY OF FRANKLIN, MILWAUKEE CO.		PINNACLE ENGINEERING GROUP	
C-12	C-12								
DATE: 01/11/2017		BY: ANTHONY ZANON		CHECKED: ANTHONY ZANON		APPROVED: ANTHONY ZANON		SCALE: 1" = 50'	
PROJECT: OAKWOOD AT RYAN CREEK		SHEET: C-12		TOTAL SHEETS: 12		DRAWN BY: ANTHONY ZANON		DATE: 01/11/2017	

OAKWOOD AT RYAN CREEK
ACCESS NATURAL RESOURCE EXHIBIT



ACCESS / NATURAL RESOURCE EXHIBIT

08/25/17

PINNACLE ENGINEERING GROUP

15850 W. BLUEMOUND ROAD | SUITE 210 | BROOKFIELD, WI 53005

WWW.PINNACLE-ENGR.COM

PLAN | DESIGN | DELIVER

PEG JOB# 902.00

OAKWOOD AT RYAN CREEK
CITY DEVELOPMENT STAFF REVIEW COMMENT FEEDBACK

City of Franklin

Department of City Development

Date: August 17, 2017

To: Cory O'Donnell, Neumann Developments, Inc.

From: City Development Staff

RE: Oakwood at Ryan Creek Preliminary Plat – Staff Comments

Please be advised that City Staff has reviewed the above application. Department comments are as follows for the Preliminary Plat Application date stamped by the City of Franklin on July 31, 2017:

Department of City Development

1. Please provide the following information on the Preliminary Plat per Section 15-7.0501 of the Unified Development Ordinance (UDO):
 - **F. Names and Addresses.** Names and addresses of the owner, Subdivider, and land surveyor preparing the plat. - - Please include the current property owner name and address. *Added the owners name and address.*
 - **H. Use Statement.** A statement of the proposed use of the lots stating the use type of buildings and/or uses proposed to occupy the lots, number of proposed lots, and number of dwelling units per lot, and proposed density. *Added note 8 on the plat.*
 - **K. Setbacks, Shore Buffers, Wetland Buffers, Wetland Setbacks, and Building Lines.** All required setbacks, shore buffers, wetland buffers, wetland setbacks, and building lines shall be graphically indicated and dimensioned on the Preliminary Plat. - - Please revise Note No. 4 to include the 75-foot Shore Buffer, 30-foot Wetland Buffer and 50-foot Wetland setback. *Added the distance to the identifiers; added the text to note 4f.*
2. Please provide the following per Section 15-7.0502 of the UDO:
 - **C. Existing and Proposed Contours.** Existing and proposed contours within the exterior boundaries of the Preliminary Plat and extending to the centerline of adjacent public streets. - - Please include the proposed contours on the Preliminary Plat. *The preliminary grading plans were submitted with the initial preliminary plat submittal. They contain detailed proposed contours at a 40 scale. Adding the proposed contours to the preliminary plat makes the preliminary plat difficult to read so they have not been added.*
 - **V. Location of Proposed Deed Restrictions, Landscape Easements, and/or Conservation Easements.** The location of any proposed deed restrictions, landscape easements, and/or conservation easements shall be graphically indicated and clearly delineated and dimensioned on the face of the Preliminary Plat. The location and extent of conservation easements should be directly related to the "Natural Resource Protection Plan." - - Please identify the Conservation Easement Boundary on the Preliminary Plat. *There are no deed restriction or landscape easements at this time. The conservancy easement has been added to the plat.*
 - **Z. Project Summary.** A written project summary including fiscal impact upon the City of Franklin, operational information, building schedule, and estimate of project

value and including all site improvement costs. - - Please include this information in the project narrative. Staff also recommends that the project narrative be revised to include an assessment of the current market conditions and demand for single-family housing in Franklin. A detailed project summary has been created and attached.

3. Please revise Note No. 1 and the notes on the Preliminary Plat and NRPP map to include the individual's name that completed the wetland delineations in addition to the company name. *Added Dave Meyer to the identifiers and to note 1 on the plat.*
4. Please revise Note No. 4 on the Preliminary Plat to state that the property is zoned R-5 and FW, except for Outlot 5, which is zoned R-2. *Revised accordingly.*
5. Please revise Note No. 5 on the Preliminary Plat to state that the 2025 Future Land Use map use designation is Residential and Areas of Natural Resource Features, except for Outlot 5, which is designated as Business Park. *Revised accordingly.*
6. The proposed streets should include a direction (i.e. "West" Schweitzer Street). Please revise the plat accordingly. *Added the directions accordingly.*
7. Attached is the City's conservation easement template. The conservation easement will be required as part of the submittal of the Final Plat for Common Council review and approval and recording with the Milwaukee County Register of Deeds. *Attached is a draft conservation easement.*
8. Please be aware that staff recommends that the conservation easement include the 50-foot wetland setback in addition to the protected natural resources included in Table 15-4.0100 of the Unified Development Ordinance. *The 50' wetland setback has been included in the conservation easement except for the area that is being graded for storm water management ponds and for the Creekside Court access to S. 76th St.*
9. Please submit a complete set of Site Intensity and Capacity Worksheets that include the base site area calculation page and natural resource calculations in addition to the residential development page. See attached. *Attached is a copy of the base site area calculation page and natural resource calculations.*
10. Is any signage proposed for the subdivision development? Staff recommends details regarding the location and materials be provided to be reviewed and approved as part of the Preliminary Plat process. *Not at this time.*
11. Staff recommends submitting draft Homeowners Association documents for the proposed subdivision development. *A draft of the Declaration of Protective Covenants are attached.*
12. Attached are the City's cul-de-sac design standards for your review. Please revise the plans accordingly. *Will incorporate the cul-de-sac design into the construction plans. No change for the preliminary plat. The islands will be part of the public right-of-way.*
13. In regard to the natural resource features impact resulting from the public road, an alternative analysis must be provided as part of the Preliminary Plat submittal. A question and answer form is attached, which may be utilized to assist in providing this analysis. *See the attached completed question and answer form.*
14. Where is the tot lot/passive park and trails located? Does the trail impact any protected natural resource features. If the trail is public and does impact natural resource features, those impacts may be part of the same request as the impacts resulting from Creekview Court. The proposed tot lot park is to be located in Outlot 4 and does not impact any protected natural resource feature. *With the inclusion of sidewalk for the community no public trails will be implemented.*

15. In addition, the trail should be labeled as public on the plat and a public access easement may be required. *No trail will be implemented.*
16. Please provide staff a copy of any supporting documentation related to the NRPP, such as wetland delineation reports. Staff also recommends that cover letter be provided related specifically to the NRPP and its findings. *A copy of the NRPP and reports are attached along with a cover letter / executive summary.*
17. What is the status of the floodplain determination? This can also be discussed in the NRPP cover letter. *Neumann Developments and Pinnacle Engineering Group met with Laura Herrick and Ron Printz from SEWRPC and they indicated that SEWRPC is in the process of updating the floodplain for Ryan Creek and the Oakwood tributary. They are currently working on the hydrology and modeling. Their work will not be completed until late in 2018. At that time, the City and DNR will review the documents and if acceptable it is forwarded to FEMA. The approval process and to get to official FEMA mapping could take a few years. They recommended designing the subdivision using the best available data which is the 1997 study that SEWRPC completed along with the current FEMA maps. These floodplain lines are shown on the preliminary plat. The developer will keep in contact with SEWRPC as the subdivision plans are being developed.*
18. Please provide a map and details related to the proposed impacts to natural resource features for the proposed Creekview Court. This must include the area (square feet) of impacts. *See the attached Access/Natural Resource Exhibit.*
19. It appears that Creekview Court will impact wetland buffers and setbacks as well as the floodplain. Please revise the site calculations on the NRPP map to reflect those disturbances. Will the wetland be impacted as the road is close to the wetland edge? *Revised site calculations are included on the NRPP map and 1,413 SF of wetland will be disturbed for the Creekview Court road.*
20. Staff recommends submittal of a mitigation plan to compensate for the impacts to the wetland, wetland buffer, wetland setback and floodplain from the public road. Staff would further recommend that the mitigation plan include enhancements to the existing wetlands and wetland buffers onsite. Enhancements, for example, may include invasive species removal and/or planting native vegetation within the existing wetlands and wetland buffers. *Included with the executive summary of the NRPP is a brief statement about the mitigation plan to compensate for the impacts to the wetland, wetland buffer, wetland setback and floodplain from the public road.*
21. Staff recommends identifying the Southeastern Wisconsin Regional Planning Commission environmental corridors on the Preliminary Plat. *The plat was revised to include the secondary environmental corridor (SEC) from the SEWRPC GIS along with the proposed SEC from the SEWRPC GIS. The proposed SEC follows the current SEWRPC floodplain in this area.*

Engineering Department

Engineering Department comments will be forwarded as soon as they are received. *Comment only, no change.*

Police Department

The Franklin Police Department has reviewed the application for 10100 South 76th Street. The Police Department has no issues with this request. *Comment only, no change.*

Fire Department

Fire Department comments have not yet been received. Any comments will be forwarded once received. *Comment only, no change.*

Milwaukee County

Milwaukee County comments will be forwarded as soon as they are received. *Comment only, no change.*

OAKWOOD AT RYAN CREEK

ORDINANCE 2016-2224 QUESTION AND ANSWER RESPONSE

Ordinance 2016-2224 Question and Answer Form

Ordinance to Amend the Unified Development Ordinance Text to Add a Footnote to Table 15-4.0100 to Provide that All Public (Federal, State, County, and City Owned) Streets, Sidewalks and Trails Construction Shall Conditionally Not Be Subject to the Natural Resource Features Protection Standards Following the Review and Approval of an Application Therefore by the Common Council.

A. Questions to be answered by the applicant. Items on the application to be provided in writing by the applicant shall include the following:

1. Indication of the section(s) of the UDO that are not being met.
15-4.0101 Natural Resource Protection Standards. Table 15-4.0100, Residential, Natural Resource Feature: Floodplains/Floodways, Wetlands & Shoreland Wetlands, and Wetland Buffers. Each having a 100% protection standard.
2. Statement regarding the exemption requested, giving distances and dimensions where appropriate.
The exemption requested is for the noted natural resource protection standards in 1. above in regard to the connection of South Creekview Court to S. 76th Street (CTH U) within the proposed Oakwood at Ryan Creek subdivision. The proposed public road will be connected to S. 76th Street (CTH U) to provide a second point of access to the development. In order to make a connection, natural features (floodplain, wetland setback and buffers, and wetland) will be impacted because they exist across the entire frontage of S. 76th Street (CTH U) where an access would be allowed. The proposed road was positioned as far south as possible away from Ryan Creek to limit the impacts. The natural resource area to be disturbed will be 30,833 square feet. The natural features which will be disturbed are currently located within a farm field.
3. Statement of the reason(s) for the request.
The request is being made so that the proposed subdivision has two access points. One access point will be onto West Oakwood Road. The second access point will be to S. 76th Street (CTH U). Two access points to the proposed subdivision are required for emergency vehicle access due to the number of lots and length of road in this subdivision and future development to the west. Two access points also allow for a better road pattern and for the full development of the property.
4. Statement of the reasons why the particular request is appropriate for an exemption under Ordinance 2016-2224, together with any proposed conditions or safeguards, and the reasons why the proposed exemption is in harmony with the general purpose and intent of the Ordinance. In addition, the statement shall address any exceptional, extraordinary, or unusual circumstances or conditions applying to the lot or parcel, structure, use, or intended use that do not apply generally to other properties or uses in the same district, including a practicable alternative analysis as follows:
This request is appropriate in that it allows for public road access to a property within the City of Franklin. It allows for better emergency access, improved road patterns, and future road extensions to other properties within the City. The work will only be completed if the proposed

subdivision is approved for construction. During construction, proper erosion control and construction techniques will be used to limit the impact of the work. The property is 43 acres in size and zoned for 13,000 square foot lots. With multiple access points, 63 lots would be developed. Working through the City Site Intensity and Capacity Worksheet, the site has the potential for 168 lots. Not having a second access point will limit the size of the development to approximately 18 lots so it does not make the development of the 43 acres feasible. This property is unique because Ryan Creek is located along the north property line and natural features existing across the entire frontage of S. 76th Street (CTH U) within the area where an access would be allowed. In the cases where the size of the property and future development on adjacent properties lends itself to multiple access points, exceptions to the natural resource protection standards are justified to provide for better traffic patterns, development and emergency access. If a second access point was available without natural resource impacts, it would be designed accordingly

a. Background and Purpose of the Project.

- i. Describe the project and its purpose in detail. Include any pertinent construction plans.**

The project is a proposed 63 lot single family residential development at the northwest corner of West Oakwood Road and S. 76th Street (CTH U). The property will also include a commercial site at the road intersection. The purpose is to provide single family residential lots in this portion of the City of Franklin. The preliminary plat and preliminary grading plans for the project have been submitted along with this request.

- ii. State whether the project is an expansion of an existing work or new construction.**

The project is new construction of a residential subdivision.

- iii. State why the project must be located in or adjacent to the stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback to achieve its purpose.**

The proposed South Creekview Court connection to S. 76th Street (CTH U) will cross floodplain, wetland, wetland setback, and wetland buffers as it is the only frontage the property has to S. 76th Street (CTH U), at the appropriate distance from Oakwood Road. The natural features exist across the entire frontage of S. 76th Street (CTH U). Two access points to the proposed subdivision are required for emergency vehicle access due to the number of lots and length of road in this subdivision and future development to the west.

- iv. Identify any aspects of the proposed project that improves traffic safety, traffic efficiency and/or connectivity.**

Two access points to the subdivision will improve safety, efficiency, connectivity and emergency access within the 43-acre development and for future development to the west.

Two access points allow for a road pattern that provides full development of the property and two stubs for future road extensions to the west.

b. Possible Alternatives.

- i. State all of the possible ways the project may proceed without affecting the stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback as proposed.

The project may proceed without affecting the natural features but at a much lesser scope. The only access to the development would come from West Oakwood Road and would have to be a cul-de-sac. Per Section 15-5.0103A1., the maximum cul-de-sac length is 800 feet. With one access point, the road could only extend 800 feet into the property. The property is approximately 1,900 long so less than half of the property could be accessed by the cul-de-sac. There is also development potential for the land to the west of the subject property and an 800' long cul-de-sac would not reach the west property line for a future road extension.

- ii. State how the project may be redesigned for the site without affecting the stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback.

The project may be redesigned with one 800' cul-de-sac off of West Oakwood Road with lots fronting the cul-de-sac.

- iii. State how the project may be made smaller while still meeting the project's needs.

The project may be redesigned with one 800' cul-de-sac off of West Oakwood Road with lots fronting the cul-de-sac. The City requirement is for a minimum lot width of 90 feet so with a cul-de-sac of 800', there would be approximately 18 lots.

- iv. State what geographic areas were searched for alternative sites.

The developer is currently designing Park Circle which is approximately 1350 feet north of the subject property on the west side of S. 76th Street. That development meets the natural resource protection standards. The opportunity to develop the subject property while also developing Park Circle made this an attractive site. No other sites were searched.

- v. State whether there are other, non-stream, or other non-navigable water, non-shore buffer, non-wetland, non-wetland buffer, and/or non-wetland setback sites available for development in the area.

None that we are aware of.

- vi. State what will occur if the project does not proceed.

The property will remain vacant and there will be less new home construction and potential new residents in the City.

c. Comparison of Alternatives.

- i. State the specific costs of each of the possible alternatives set forth under sub. b., above as compared to the original proposal and consider and document the cost of the resource loss to the community.
The redesign of the project with an 800' cul de sac does not fiscally allow the project to be constructed. The density would not allow the viability of the project. The resource loss to the community would be the unavailability of 63 new single family residential lots.
 - ii. State any logistical reasons limiting any of the possible alternatives set forth under sub. b., above.
There are no logistical reasons.
 - iii. State any technological reasons limiting any of the possible alternatives set forth under sub. b., above.
There are no technological reasons.
 - iv. State any other reasons limiting any of the possible alternatives set forth under sub. b., above.
The reduced scope proposal does not make development of the property feasible based on the cost of the land and improvements versus the number of lots that could be developed.
- d. Choice of Project Plan. State why the project should proceed instead of any of the possible alternatives listed under sub. b., above, which would avoid stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback impacts.
The proposed plan as designed will create 63 lots on 43 acres of land, well within the density calculated using the Site Intensity and Capacity Worksheet. The proposed plan will allow for full development of the property and provide the potential for future road extensions to the west. This will bring needed single family residential lots to the City.
- e. Stream or Other Navigable Water, Shore Buffer, Wetland, Wetland Buffer, and Wetland Setback Description. Describe in detail the stream or other navigable water shore buffer, wetland, wetland buffer, and/or wetland setback at the site which will be affected, including the topography, plants, wildlife, hydrology, soils and any other salient information pertaining to the stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback.
The floodplain, wetland setback and buffer, and wetlands that would be impacted are part of a farm field that has exposed soil and no vegetation other than the crops being farmed. The topography is relatively flat and it drains from south to north toward Ryan Creek. The soils are silt loams, hydrologic group C with hydric inclusions.
- f. Stream or Other Navigable Water, Shore Buffer, Wetland, Wetland Buffer, and Wetland Setback Impacts. Describe in detail any impacts to the above functional values of the stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback:

- i. Diversity of flora including State and/or Federal designated threatened and/or endangered species.
The impacted area is a farm field that does not have vegetation. We are unaware of any threatened or endangered species. The proposed development will include the construction of the road but also the restoration of the exposed farm field with grass and either prairie or native plantings.
- ii. Storm and flood water storage.
The impacted area is within the current floodplain. The proposed development will be required to meet the City storm water management requirements which will reduce the peak flows leaving the site and will provide storm water storage. The impacted area does not include the floodway of Ryan Creek.
- iii. Hydrologic functions.
Developing a farm field to a public road and grass areas including storm water management facilities will decrease the runoff from the project site.
- iv. Water quality protection including filtration and storage of sediments, nutrients or toxic substances.
Water quality protection will increase when developing a farm field into the public road and vegetated area. A farm field does not provide filtration or storage. The vegetated area will provide filtration and a buffer to the wetland and Ryan Creek.
- v. Shoreline protection against erosion.
The impacted area is outside of the shoreline of Ryan Creek however, developing a farm field to a vegetated area will significantly decrease the erosion potential leading to Ryan Creek.
- vi. Habitat for aquatic organisms.
The impacted area is outside of Ryan Creek and the shore of Ryan Creek. The wetland area is within a farm field so it was not a good habitat for aquatic organisms. The proposed road and vegetated area will be a slight improvement but aquatic organisms are expected to be closer to the creek.
- vii. Habitat for wildlife.
The farm field does not provide a good habitat for wildlife. The paved road will also not provide a good habitat but the vegetated open space will be a big improvement.
- viii. Human use functional value.
The existing farm field provides functional value in providing area to grow crops. The proposed public road will provide functional value for transportation needs.

ix. Groundwater recharge/discharge protection.
Groundwater recharge and discharge protection will be improved by converting the farm field to a vegetated area allowing for improved infiltration potential and better filtration of sediment prior to reaching Ryan Creek. The development will include storm water management facilities which will direct runoff to a protected discharge location.

x. Aesthetic appeal, recreation, education, and science value.
The work area will be converted from farm field to public road with sidewalks. The preserved natural areas will be converted from farm field to vegetated areas improving the appeal of the area and science value with a potential increase in habitat for wildlife. The sidewalks provide recreation.

xi. Specify any State or Federal designated threatened or endangered species or species of special concern.
None that we are aware of.

xii. Existence within a Shoreland.
The shoreland will not be impacted by the public road work.

xiii. Existence within a Primary or Secondary Environmental Corridor or within an Isolated Natural Area, as those areas are defined and currently mapped by the Southeastern Wisconsin Regional Planning Commission from time to time.
The work will not be located within the existing Secondary Environmental Corridor that is located on site (per SEWRPC mapping). SEWRPC mapping also lists proposed secondary environmental corridor which follows the floodplain area SEWRPC modeled in 1997. The area of impact (30,833 square feet) is floodplain and this impact will be coordinated with SEWRPC as they complete the floodplain modeling that they are currently working on. The floodplain area will be restored from farm field to prairie plantings or native grasses to provide a buffer to Ryan Creek.

g. Water Quality Protection. Describe how the project protects the public interest in the waters of the State of Wisconsin.
Although the project will fill a small portion of wetland (1,413 square feet), the development of the property will protect the public interest in the waters of the State. The existing site is an exposed farm field which has a much larger sediment runoff when comparing it to a developed subdivision with proper storm water management features as this development will have.

5. Date of any previous application or request for an exemption or Special Exception and the disposition of that previous application or request (if any).
Not applicable.

D. Copies of all necessary governmental agency permits for the project or a written statement as to the status of any application for each such permit. *(Please attach accordingly)*

This submittal is part of the preliminary plat submittal. Upon the design of the construction plans, permit applications will be submitted to the Wisconsin DNR and US Army Corps of Engineers for a wetland fill permit, grading on the banks of a navigable waterway, storm water pond within 500 feet of a navigable waterway and grading in excess of one acre of land. Erosion control permit application through the City of Franklin.

Staff recommends providing statements to the following findings that will be considered by the Common Council in determining whether to grant or deny an exemption per Ordinance No. 2016-2224.

- a. That the condition(s) giving rise to the request for an exemption were not self-imposed by the applicant (this subsection a. does not apply to an application to improve or enhance a natural resource feature):

The natural features currently exist across the entire frontage of S. 76th Street (CTH U).

- b. Compliance with the stream, shore buffer, navigable water-related, wetland, wetland buffer, and wetland setback requirement will:

- i. be unreasonably burdensome to the applicants and that there are no reasonable practicable alternatives:

The property is 43 acres in size and zoned for 13,000 square foot lots. Working through the City Site Intensity and Capacity Worksheet, the site has the potential for 168 lots. Not having a second access point will limit the development to approximately 18 lots so it does not make the development of the 43 acres feasible; or

- ii. unreasonably and negatively impact upon the applicants' use of the property and that there are no reasonable practicable alternatives:

- c. The Special Exception, including any conditions imposed under this Section will:

- i. be consistent with the existing character of the neighborhood:

There are single family residential homes along S. 76th Street (CTH U) and this development will create more single family residential lots in this area making it consistent with the neighborhood; and

- ii. not effectively undermine the ability to apply or enforce the requirement with respect to other properties:

In the cases where the size of the property and future development on adjacent properties lends itself to multiple access points, exceptions to the natural resource protection standards are justified to provide for better traffic patterns, development and emergency access. If a second access point was available without natural resource impacts, it would be designed accordingly. The City would require that the access not impact the natural features which would be consistent with other projects; and

- iii. be in harmony with the general purpose and intent of the provisions of this Ordinance proscribing the requirement:

The development meets the general purpose and intent of the Ordinance as the natural features will be preserved other than for the public road connection; and

- iv. preserve or enhance the functional values of the stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback in co-existence with the development (*this finding only applying to an application to improve or enhance a natural resource feature*):

The floodplain in the area outside of the wetland will be enhanced by the planting of prairie or native plantings creating an improved buffer between the subdivision and Ryan Creek.

- d. In making its determinations, the Common Council shall consider factors such as:

- i. Characteristics of the real property, including, but not limited to, relative placement of improvements thereon with respect to property boundaries or otherwise applicable setbacks:

The subject property is 1900' north/south by 1260' east/west and is an existing farm field other than the northern most secondary environmental corridor area which isn't farmed. Access will be provided from the east and south. Roads will be stubbed to the west for future development of adjacent properties. The access from S. 76th Street (CTH U) will be as far south along the S. 76th Street (CTH U) frontage as possible to be as far away from Ryan Creek as possible. This puts the proposed road right-of-way along an adjacent property. This road location does not create a nonconforming setback on the adjacent property. The adjacent property owner could reconfigure their driveway to access off the new public road instead of the busier S. 76th Street (CTH U).

- ii. Any exceptional, extraordinary, or unusual circumstances or conditions applying to the lot or parcel, structure, use, or intended use that do not apply generally to other properties or uses in the same district:

The property abuts West Oakwood Road on the south and S. 76th Street (CTH U) on the east. Due to the size of the property, an access point to each abutting road makes for good access, road patterns and overall planning. There have been five lots carved out along the east side of the property along S. 76th Street (CTH U) which reduces the amount of frontage remaining for the subject property. There are required separation distances from other public road connection points to S. 76th Street (CTH U) so the only available connection point along S. 76th Street (CTH U) is along the northern most frontage near Ryan Creek. The unusual circumstance is that there are natural features across the entire S. 76th Street (CTH U) frontage so to make a road connection, some natural features will be impacted. The proposed location was set to minimize the impacts. Typically, on a property this large, there is more frontage available to design multiple access points.

- iii. Existing and future uses of property; useful life of improvements at issue; disability of an occupant:

The existing use of the area is farmland. The future use would be a public road and preserved natural features within a conservation

easement. The useful life of the road is unlimited with proper maintenance of the pavement. There are no occupants in this area, it is only a public road.

iv. Aesthetics:

The public road will be one of two access points into the subdivision and the only access point from S. 76th Street (CTH U). As you enter the subdivision on this road, the area north of the road will provide a conservation feel because it will be permanent open space leading to Ryan Creek. It will provide a rural feel in the City of Franklin.

v. Degree of noncompliance with the requirement allowed by the exemption:

There are 6.5 acres of natural features within the development site. 0.7 acres (10%) will be disturbed as part of the public road construction. Table 15-4.0100 indicates 100% protection standard for the natural features.

vi. Proximity to and character of surrounding property:

The property to the south and east of the proposed road are single family residential with houses and maintained lawns. The area to the north is floodplain, wetland, and Ryan Creek.

vii. Zoning of the area in which property is located and neighboring area:

The zoning of the subject property is R-5 and FW and the commercial site is R-2. The zoning on the adjacent lots in this area is R-2, R-8, P-1, FW and FC.

viii. Any negative affect upon adjoining property:

The properties located due south and east of the proposed road will have increased traffic near their driveways.

ix. Natural features of the property:

The property contains secondary environmental corridor, streams, shore buffers, floodplains/floodways, wetlands&shoreland wetlands, and wetland buffers/setbacks.

x. Environmental impacts:

Negative impacts include a small area of wetland being filled (1,413 square feet) and construction activities occurring near Ryan Creek. Positive impact is an existing farm field will be restored and vegetation will be planted to cover the exposed soil and help filter sediment and runoff from entering Ryan Creek.

OAKWOOD AT RYAN CREEK
SITE INTENSITY CALCULATIONS

TABLE 15-3.0502: Schweitzer Site

**WORKSHEET FOR THE CALCULATION OF BASE SITE AREA
FOR BOTH RESIDENTIAL AND NONRESIDENTIAL DEVELOPMENT**

STEP 1:	Indicate the total gross site area (in acres) as determined by an actual on-site boundary survey of the property.	43.46 acres
STEP 2:	Subtract (-) land which constitutes any existing dedicated public street rights-of-way, land located within the ultimate road rights-of-way of existing roads, the rights-of-way of major utilities, and any dedicated public park and/or school site area.	- 0.00 acres
STEP 3:	Subtract (-) land which, as a part of a previously approved development or land division, was reserved for open space.	- 0.00 acres
STEP 4:	In the case of " <i>Site Intensity and Capacity Calculations</i> " for a proposed residential use, subtract (-) the land proposed for nonresidential uses; or In the case of " <i>Site Intensity and Capacity Calculations</i> " for a proposed nonresidential use, subtract (-) the land proposed for residential uses.	- 3.25 acres - acres
STEP 5:	Equals "Base Site Area"	= 40.21 acres

Table 15-3.0503

WORKSHEET FOR THE CALCULATION OF RESOURCE PROTECTION LAND

Natural Resource Feature	Protection Standard Based Upon Zoning District Type (circle applicable standard from Table 15-4.0100 for the type of zoning district in which the parcel is located)			Acres of Land in Resource Feature	
	Agricultural District	Residential District	Non- Residential District		
Steep Slopes:					
10-19%	0.00	0.60	0.40	X 0.00 =	0.00
20-30%	0.65	0.75	0.70	X 0.00 =	0.00
+ 30%	0.90	0.85	0.80	X 0.00 =	0.00
Woodlands & Forests:					
Mature	0.70	0.70	0.70	X 0.00 =	0.00
Young	0.50	0.50	0.50	X 0.00 =	0.00
Lakes & Ponds	1	1	1	X 0.00 = 0.00	0.00
Streams	1	1	1	X 0.29 = 0.29	0.29
Shore Buffer	1	1	1	X 2.26 = 2.26	0.00 *
Floodplains	1	1	1	X 6.63 = 6.63	2.12 *
Wetland Buffers	1	1	1	X 2.33 = 2.33	2.33
Wetlands & Shoreland Wetlands	1	1	1	X 3.52 = 3.52	3.52
TOTAL RESOURCE PROTECTION LAND (Total of Acres of Land in Resource Feature to be Protected)					8.26

* AREA OVERLAPS WITH WETLAND AND/OR WETLAND BUFFERS/SETBACKS

Note: In conducting the calculations in Table 15-3.0503, if two or more natural resource features are present on the same area of land, only the most restrictive resource protection standard shall be used. For example, if floodplain and young woodlands occupy the same space on a parcel of land, the resource protection standard would be 1.0 which represents the higher of the two standards.

SECTION 15-3.0504**CALCULATION OF SITE INTENSITY AND CAPACITY
FOR RESIDENTIAL USES**

In order to determine the maximum number of dwelling units which may be permitted on a parcel of land zoned in a residential zoning district, the site intensity and capacity calculations set forth in Table 15-3.0504 shall be performed.

Table 15-3.0504

**WORKSHEET FOR THE CALCULATION OF SITE INTENSITY AND
CAPACITY FOR RESIDENTIAL DEVELOPMENT**

STEP 1:	CALCULATE MINIMAL REQUIRED ON-SITE OPEN SPACE Take <i>Base Site Area</i> (from Step 5 in Table 15-3.0502): <u>40.21</u> Multiply by Minimum <i>Open Space Ratio (OSR)</i> (see specific residential zoning district OSR standard): X <u>0.00</u> Equals MINIMUM REQUIRED ON-SITE OPEN SPACE = <u>0.00</u> acres	
STEP 2:	CALCULATE NET BUILDABLE SITE AREA: Take <i>Base Site Area</i> (from Step 5 in Table 15-3.0502): <u>40.21</u> Subtract <i>Total Resource Protection Land</i> from Table 15-3.0503) or <i>Minimum Required On-Site Open Space</i> (from Step 1 above), whichever is greater: <u>- 8.26</u> Equals NET BUILDABLE SITE AREA = <u>31.95</u> acres	
STEP 3:	CALCULATE MAXIMUM NET DENSITY YIELD OF SITE: Take <i>Net Buildable Site Area</i> (from Step 2 above): <u>31.95</u> Multiply by Maximum <i>Net Density (ND)</i> (see specific residential zoning district ND standard): X <u>5.00</u> Equals MAXIMUM NET DENSITY YIELD OF SITE = <u>159.75</u> D.U.s	
STEP 4:	CALCULATE MAXIMUM GROSS DENSITY YIELD OF SITE: Take <i>Base Site Area</i> (from Step 5 of Table 15-3.0502): <u>40.21</u> Multiply by Maximum <i>Gross Density (GD)</i> (see specific residential zoning district GD standard): X <u>5.00</u> Equals MAXIMUM GROSS DENSITY YIELD OF SITE = <u>168.8</u> D.U.s	
STEP 5:	DETERMINE MAXIMUM PERMITTED D.U.s OF SITE: Take the <i>lowest</i> of Maximum Net Density Yield of Site (from Step 3 above) or Maximum Gross Density Yield of Site (from Step 4 above): <u>159.75</u> D.U.s	

OAKWOOD AT RYAN CREEK
NRPP EXECUTIVE SUMMARY / MITIGATION PLAN

EXECUTIVE SUMMARY
OAKWOOD AT RYAN CREEK NATURAL RESOURCES PROTECTION PLAN

Wetland & Waterway Consulting, LLC and Ecological Services of Milwaukee, Inc. developed a Natural Resource Protection Plan (NRPP) for the "Schweitzer" property in the City of Franklin, Wisconsin on behalf of Neumann Companies, Inc., which is proposing to construct a residential development on the site. This document includes information related to the existing natural resources, their setbacks and buffers, and the impacts to those resources based on the proposed development plan.

The base site area was determined to be 40.21 acres. A total of 8.26 acres of resource protection land, consisting of streams, shore buffer, floodplains, wetland buffers, wetland setbacks and wetlands were identified within the site. As a result, the net buildable area is 31.95 acres. Based on this area, the maximum net density yield is 159.75 dwelling units (D.U.s), the maximum gross density yield is 168.8 D.U.s, and the maximum permitted D.U.s of the site is 159.75.

Based on the site development plan, the project would affect a total of 30,833 square feet (0.71 acres) of floodplain. Within this area, 1,413 square feet (0.03 acres) of wetlands and 10,258 square feet (0.24 acres) of wetland buffer and setback are present. These natural resource impacts are associated with construction of an access road leading from South 76th Street onto the site. Neumann Companies, Inc. is currently developing a mitigation plan to compensate for natural resource impacts.

Mitigation Plan

Plant and seed the farmed portion of the existing floodplain and then to do some grading to expand it to account for what Natural Resource Protection Areas that have been impacted. This would probably need to be done in an area in which there is room for a buffer and setback. Primarily in the area west of South Ryan Creek Court. A detailed mitigation plan is currently being developed and will be presented to the City for review and approval once completed.

OAKWOOD AT RYAN CREEK
MARKET SUMMARY



Oakwood at Ryan Creek

Neumann Developments is eager to provide details regarding its latest potential subdivision in the City of Franklin, located at the corner of S. 76th St and Oakwood Ave. Neumann Developments has been creating single-family residential subdivisions in South-Eastern and South-Central Wisconsin since the year 2000. Neumann Developments, Inc. has had the proud distinction to have their communities selected for the Metropolitan Builders Association Parade of Homes in seven of the past nine years!

Project Summary for Oakwood at Ryan Creek:

- 63 single family lots
- Average Lot size 14,851 SF
- Density 1.53 lots/acre
- Total Area 43.60 Acres
- Current Zoning is R-5 and FW

The proposed development would utilize an access point at both Oakwood Ave. and S. 76th St. including over a 3 Acre outlot at the corner of S. 76th and Oakwood Ave for potential commercial purposes.

The average lot size is 14,851 square feet with a density of 1.53 lots/acre. All lots and stormwater management facilities are located in upland. A proposed 20' wide utility easement is provided for municipal access for future main extensions along S. 76th Street.

Landscape buffer-yards are incorporated into the design based on natural resource areas. A natural resources protection plan has been completed in spring and has been incorporated into the design. Common area amenities include a proposed trail system along Ryan Creek and a passive park and/or tot lot for this community.

Oakwood at Ryan Creek will be a deed restricted community with an incorporated home owners association. The responsibilities of the home owners association include management of the stormwater management facilities and commonly owned land. The deed restrictions will reflect the minimum home size, construction materials, and other pertinent details regarding the community standards. The minimum home size floor areas are anticipated to be 1,700 square feet for a ranch/one story home and 2,100 square feet for a two-story homes. Natural building materials and stone accent requirements will be included.

Oakwood at Ryan Creek is within the existing sanitary sewer and water service areas. Sanitary is to the North West corner of the property and Water would need to be brought from the North along S 76th St. or 80th St. Storm water management will be located in the southwest corner and northeast corner of the parcel.



Market Analysis

Projected Value Analysis

63 Single Family Homes x \$350,000 = \$22,050,000

Projected Absorption Rate = 20 Units per year

We anticipate the absorption rate of the development to generate 1.67 units to sell per month or approximately 20 units per year.

Projected School Impact = Less than $0.6 * 63 \text{ units} = 37.8 (38) \text{ students}$

There are several factors present in most parts of the country that tend to reduce education expenses per housing unit. The first is the average number of school-aged children present in the units. According to the American Housing Survey, there is, on average, only a little over one school-aged child for every two households in the U.S. The number is about 0.6 per household for single-family and under 0.4 per household for multifamily. So education costs per housing unit are lower than costs per pupil, simply because there is less than one pupil per household.

Projected Tax Revenue \$350,000/1000 ($350 * 24.09$) = \$8,432 per unit

- Average annual local govt. operating expense per housing unit in the Milwaukee Metropolitan Area (2010) \$5551 per unit **National Association of Home Builders and SEWRPC*

Projected Population Impact 3.13 residents per home ($63 * 3.14$) = 198 residents *2015 American Community Survey, 1-Year Estimates, US Census Bureau

Financial Plan for Project Implementation

Neumann Developments will make and install the public improvements reasonably necessary and will provide security to ensure that we will make those improvements within a reasonable time. Neumann Developments will post a Letter of Credit, at the commencement of the project in an amount not to exceed 120 percent of the estimated total cost to complete the required public improvements. This Letter of Credit will provide security for no more than 14 months after the date of public improvements for which the security is provided are substantially completed and upon substantial completion of the public improvements (binder coat installation on roads).

Building Schedule

It is anticipated that completion of the project will be begin in spring 2018 with building permit availability in fall 2018.

Market Conditions

NEUMANN DEVELOPMENTS, INC. * N27 W24025 PAUL CT. SUITE 100 * PEWAUKEE, WI 53072
262-542-9200 * FAX: 262-349-9324 * NEUMANNDEVELOPMENTSINC.COM



A current market assessment of The City of Franklin available vacant single family residential lots indicated a scarcity of available inventory. A total of five lots serviced by municipal sewer and water were sold on the open market between August 2016 and August 2017. Currently only five lots are listed for sale in the City of Franklin with municipal services.

We have found that demand for inventory in Franklin has been very high and artificially constrained due to lack of inventory. Building activity in neighboring communities including Muskego has been very strong. We have had numerous inquiries about availability inventory in Franklin since the inception of this proposed project.

OAKWOOD AT RYAN CREEK
DECLARATION OF PROTECTIVE COVENANT DRAFT

**DECLARATION OF
PROTECTIVE COVENANTS
OF OAKWOOD AT RYAN
CREEK**

THIS DECLARATION OF PROTECTIVE COVENANTS OF _____ (the "**Declaration**") is made and entered this _____ day of _____, 20__, by Oakwood at Ryan Creek, LLC, a Wisconsin limited liability company ("**Declarant**").

RECITALS

WHEREAS, Declarant owns the real estate located in the Franklin, Waukesha County, Wisconsin, as more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "**Property**").

WHEREAS, upon approval and recording of the plat for the Subdivision (as hereinafter defined), the Subdivision will be a platted subdivision consisting of Sixty-Three (63) single-family lots and Four (4) outlots, as more particularly described on Exhibit A and as depicted on Exhibit B, as they are attached hereto and incorporated herein.

WHEREAS, at the time of this Declaration, the Declarant desires to subject the Subdivision, to the covenants, conditions, restrictions, reservations and easements hereinafter set forth, for the benefit of the Subdivision as a whole, and for the benefit of each Lot Owner (as hereinafter defined).

DECLARATION

NOW, THEREFORE, Declarant, as fee owner of the Property, hereby declares that the Subdivision and all portions thereof shall be used, held, leased, transferred, sold, and conveyed subject to the covenants, conditions, restrictions, reservations and easements hereinafter set forth, which shall inure to the benefit of and shall pass with each Lot (as hereinafter defined) as covenants running with the land and shall apply to and bind all successors in interest, users and owners.

The general purpose of this Declaration is to: (1) promote the harmonious development of the Subdivision into a high quality residential community while protecting the natural beauty and quality of the environment; (2) help ensure that the Subdivision will become and remain an attractive community; (3) guard against the erection of poorly designed or poorly proportioned structures; (4) require harmonious use of building materials; (5) promote the highest and best residential development of the Subdivision; (6) require the erection of attractive homes in

Name and Return Address:

Oakwood at Ryan Creek, LLC
c/o Neumann Developments
N27 W24025 Paul Court, Suite 100
Pewaukee, WI 53072
ATTN: _____

Tax Key No(s):

appropriate locations on building sites; (7) be in compliance with Municipal (as hereinafter defined) codes and ordinances; and (8) provide for the expansion of the Subdivision consistent with this Declaration.

ARTICLE 1. DEFINITIONS

Capitalized terms not otherwise defined in this Declaration shall have the assigned definitions:

1.1 “*Association*” shall mean _____ Homeowners Association, Inc., the members of which shall be all Owners (as hereinafter defined) of Lots (as hereinafter defined) in the Subdivision.

1.2 “*ACC*” shall mean the Architectural Control Board as established by the Declarant.

1.3 “*Amenity Area*” shall mean that area as more particularly described in Article 7. The area shall be a Common Area and any improvements which may be constructed in the Amenity Area shall be Common Improvements.

1.4 “*Association Insurance*” shall mean all policies of insurance as may be maintained by the Association under this Declaration.

1.5 “*Board*” or “*Board of Directors*” shall mean the governing body of the Association, elected according to the Bylaws.

1.6 “*Building*” shall mean any freestanding structure located in the Subdivision. A “*dwelling*” or a “*home*” is a Building intended for occupancy in accordance with Article 6.

1.7 “*Bylaws*” shall mean the Bylaws of the Association as adopted by the Board.

1.8 “*Common Areas*” shall mean the easements, Outlots [other than the Expansion Area], Amenity Area, and those areas identified on that certain Plat of Subdivision as recorded in the Register’s Office.

1.9 “*Common Improvements*” shall mean all personal property, fixtures, structures, improvements, signs, Storm Water Facilities, landscaping, utilities, Buildings or other improvements made by the Developer or the Association in the Common Areas, cul-de-sac islands and medians.

1.10 “*County*” shall mean the County of Waukesha, Wisconsin.

1.11 “*Declarant*” shall mean Oakwood at Ryan Creek, LLC and its successors and assigns pursuant to Section 15 of this Declaration.

1.12 “*Declaration*” shall mean this Declaration as the same may be amended from time to time.

1.13 “**Developer**” shall mean Oakwood at Ryan Creek, LLC.

1.14 “**Director**” shall mean a member of the Board.

1.15 “**Documents**” shall mean the Articles of Incorporation of the Association, the Bylaws, the Rules, and this Declaration, as they may be amended from time to time.

1.16 “**Easement**” shall mean an area on a Lot or in the Subdivision to which has been granted the right of use to an Owner, the Association or a third party for a limited purpose and shall be identified as shown on the Plat. An Owner shall not build, plant or create any obstruction on, over, under or through an Easement, except as consistent with the express, written grant of said Easement rights.

1.17 “**Lot**” shall mean a platted lot intended for construction of a home as shown on the Plat. The reference to a Lot by a number shall mean that particular Lot as shown on the Plat. The term “Lot” will also include any platted lot intended for construction of a home as shown on any amendment to the Plat or additional plat of any Outlot, which lots are included in any amendment expanding the jurisdiction of this Declaration under Article 11.

1.18 “**Mortgage**” shall mean a recorded first lien mortgage against a Lot or the vendor’s interest under a recorded first lien land contract relating to a Lot.

1.19 “**Mortgagee**” shall mean the holder of a Mortgage.

1.20 “**Municipality**” or “**Municipal**” shall mean the City of Franklin, Wisconsin.

1.21 “**Natural Materials**” shall mean any building material that is naturally forming or generally composed of natural materials. Examples shall include, but not be limited to masonry, stone, cement board, or LP SmartSide Siding or other as determined by the ACC. Materials specifically excluded in this definition include, but are not limited to, vinyl, aluminum, fabricated wood panel wall sheathing or other materials as determined by the ACC.

1.22 “**Occupant**” shall mean the Owner and any other person residing in a Building.

1.23 “**Owner**” shall mean each fee simple owner or land contract vendee of a Lot. The Declarant is an Owner with respect to Lots to which it holds title.

1.24 “**Outlot**” or “**Outlots**” shall mean an outlet as shown on the Plat, and any subsequent plats. The reference to an Outlot by a number shall mean that particular Outlot as shown on such Plat.

1.25 “**Pet**” shall mean a domestic cat, a domestic dog, service animal and emotional support animal, a single caged bird or common small tank fish.

1.26 “**Plat**”, “**Plat of Subdivision**”, or “**Final Plat**” shall mean the Plat of _____ dated _____, 20____, as recorded with the Register’s Office as Document No. _____ and attached hereto as Exhibit B.

1.27 "**Register's Office**" shall mean the office of the Register of Deeds for County in which the project is located.

1.28 "**Rules**" shall mean rules established by the Association governing the administration of the Common Areas and Common Improvements.

1.29 "**Storm Water Facilities**" shall mean the private storm water basins installed in Outlots ____ and _____ together with the easements as shown on the Final Plat.

1.30 "**Storm Water Management Agreement**" shall mean that certain Storm Water Management Practice Maintenance Agreement executed by Declarant and recorded with the Register on _____, 20____ as Document No. _____.

1.31 "**Storm Water Permit**" shall mean the permit as issued by the Municipality, as shall be assigned to the Association, for the maintenance and upkeep of the Storm Water Facilities.

1.32 "**Subdivision**" shall mean all of the Lots and Outlots, as more particularly described on Exhibit A and as depicted on the Plat attached hereto as Exhibit B.

ARTICLE 2. ARCHITECTURAL CONTROL

2.1 Architectural Controls; Restrictions on Development.

2.1.1 Architectural Control Committee. So long as Declarant has title to any Lot subject to this Declaration, including the Expansion Area, the ACC shall consist of three (3) members appointed in writing by Declarant. The Declarant appointed members are not required to be Lot Owners in the Subdivision. All members of the ACC shall serve at the pleasure of the Declarant. The Declarant shall surrender the selection of the members of the ACC upon the earlier of: (a) thirty (30) days from Declarant's conveyance of the final Lot, including any Lots which may be platted within the Expansion Area as provided in this Declaration, to an Owner who has been granted an occupancy permit and intends to reside on the Lot; (b) ten (10) years from the date of this Declaration; or (c) Declarant's election to waive its rights to control the ACC. Upon Declarant's surrender of the ACC as provided above, the members of the ACC shall be elected by the Board, provided, however, that if selected by the Board, a representative of Declarant may serve on the ACC. Notwithstanding the election of the new members of the ACC, the approval of Drawings for the initial construction of a home on a Lot shall not be effective without the express prior consent of the Declarant; approval of Drawings for other matters will not require Declarant's approval. For the avoidance of doubt, for purposes of this Section a "bulk" or multi-Lot conveyance to a party who is not intending to occupy the property conveyed shall not be considered a conveyance for purposes of (a) above.

2.1.2 No Development Without Prior Approval. Not less than ten (10) days prior to each time any of the following is proposed to occur:

(a) commencement of construction of any Building or other improvements or alteration on any Lot; or

(b) the reconstruction of any Building or other improvements on any portion or portions of such property following a casualty loss thereto; or

(c) the demolition of any Building or other improvements on any portion or portions of such property; or

(d) the initial painting, or subsequent decoration or alteration of the exterior of any Building or other improvement on such property; or

(e) the installation of items such as, but not limited to, solar panels, wind-driven energy devices, awnings, enclosure, hot tub, deck, swimming pool, mailboxes, fences, berms or other features on any such property;

the Owner(s) of such property shall submit to the ACC for consideration as described below three (3) copies of written information, which shall include a survey of such property prepared by a licensed surveyor or the equivalent, as approved by the ACC for the particular submission, ("**Drawings**") showing:

(1) the location, size, elevations and type of Building(s) and other improvements, including, but not limited to, homes, garages and fences or other matters proposed to be erected or reconstructed on such property,

(2) detailed plans and specifications for construction or reconstruction, including building material, type and color, and plans to screen the demolition, construction or reconstruction from view,

(3) the proposed landscaping, including any fences or walls, and

(4) the proposed location and specifications for utilities servicing such improvements.

The Drawings shall be submitted in 11x17 format and reflect the proposals in (1) through (4) above, which are appropriate to be shown on the survey. Any of the actions described in clauses (a) through (e) above may be taken (subject to Section 2.1.3 below) on or after the date on which the ACC approves or does not object or is deemed to have done so as provided in Section 2.1.3 below, unless such time periods are waived by the ACC in its sole discretion where the ACC believes that such earlier commencement is consistent with the purposes of this Declaration. No action described in paragraphs (a) through (e) above shall take place without the approval by the ACC of the Drawings for such action, except if the action is the repair or replacement of previously approved exterior features with features that are identical or if the action is the repainting of an exterior surface with paint of the same color.

The Municipality may also require permits prior to proceeding with the development activities for the items listed above.

2.1.3 Standards and Procedural Matters of Consideration. The ACC shall not unreasonably refuse to consider submitted Drawings provided that any fees imposed for review have been paid. In considering any Drawings, the ACC shall consider, among other factors, whether all of the improvements and the lighting, exterior finishes (such as materials, decorations, and paint color), landscaping, the placement and protection of trees and such other matters proposed in such Drawings comply with the terms of this Declaration and the Municipality's ordinances and otherwise are, in the ACC's sole opinion, in keeping with and do not detract from the harmony of the external design of, or depreciate any portion of the Property, whether then undeveloped, developed or in the process of development, even if the Drawings otherwise do not breach any other standard set forth in this Declaration. The ACC may approve Drawings (absolutely or conditionally), may object to Drawings (absolutely or conditionally), or may state that it has no objection to Drawings (absolutely or conditionally). Approval must be express and in writing. The failure of the ACC to approve, object to, or acquiesce conditionally as provided above within thirty (30) business days after submittal of the complete Drawings and payment of any review fees shall be deemed to be the ACC's acceptance of the Drawings as submitted. If the ACC objects to Drawings in whole or in part for any reason, the submitting Owner shall thereafter resubmit Drawings to the ACC with such revisions as are required. Each time an Owner so submits the Drawings, the ACC shall have the right to approve, acquiesce conditionally or object to the Drawings as described above in the time periods as measured from the last submittal. Following the ACC's approval of the Drawings, the improvements described therein shall be developed strictly in accordance with the approved Drawings and requirements. If the approved improvements are not completed within one (1) year of their initial approval, then such approval shall be deemed withdrawn and the same or different Drawings required to be submitted or resubmitted, as the case may be; provided that the ACC may, in its discretion, extend such period by up to an additional six (6) months if it reasonably determines that delay has been primarily caused by factors outside of the control of the Owner; and provided further that the initial driveway need not be completed until the time period specified.

2.1.4 Prior Approval for Changes. If after the completion of the improvements to an affected Lot, the Owner thereof desires to construct any additional improvements or to substantially alter the then existing improvements or the grade of the affected Lot, the Owner shall comply with the provisions of Section 2.1.2 above. A proposed alteration will be deemed substantial if it affects the grade of the affected Lot or the location or exterior appearance of the approved improvements.

2.1.5 Procedures and Budget. The ACC may set its own operating procedures consistent with this Declaration and any limitations hereafter imposed by the Board. The costs of operating the ACC shall be assessed by the Association as common expenses, except as permitted below. The ACC may, but need not, require the payment of a review fee in connection with the submittal of any Drawings pursuant to a written policy. The ACC may engage consultants (e.g., architects, engineers or attorneys) either on a general or on a case-by-case basis, and the costs thereof may be charged to the applicant. The members of the ACC shall not draw any compensation for serving thereon, but may be reimbursed for expenses incurred in performing their duties. All funds relating to the ACC shall be handled by the treasurer of the Association.

2.1.6 Separate Municipal Approval. Matters which require approval of the ACC may also require the approval of the Municipality. Obtaining approval from the ACC and from the Municipality is the sole responsibility of the Owner desiring approval. Approval of Drawings by the ACC shall not be deemed approval by the Municipality, and approval by the Municipality shall not be deemed approval by the ACC. ACC interpretations of Municipal ordinances are not binding on the Municipality.

2.1.7 Uniformity Standards. Certain standards of architectural control are set forth below. The ACC may adopt additional written standards of uniformity, setback, grading, landscaping, basements, roofing, or exterior, whether generally or for certain types of improvements. The ACC may enforce any standard even if it has, expressly or by acquiescence, permitted previous deviations from such standard.

2.1.8 Indemnification. Each member or former member of the ACC, together with the personal representatives and heirs of each such person, shall be indemnified, defended, and held harmless by the Association from and against any and all claims, actions, suits, proceedings (including criminal proceedings), losses, costs, damages and expenses, including, without limitation, reasonable attorneys' fees and costs, asserted against, incurred by, imposed in connection with, related to, or resulting from service as a member of the ACC, except as to matters resulting in a final determination of negligence or willful misconduct on the part of such member. In the event of settlement of such proceeding, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Association is advised by counsel that the person to be indemnified has not been guilty of negligence or willful misconduct in the performance of such person as a member in the matter involved. This right of indemnification shall be in addition to all other rights and defenses. All liability, loss, damage, cost and expense incurred or suffered by the Association in connection with this indemnification shall be a common expense. Nothing in this subsection shall be deemed an indemnification of such person with respect to such person's status as an Owner, Occupant or otherwise.

2.2 Antennas. No antenna, aerial, satellite dish or cable for television or radio reception which is greater than 30" in diameter shall be erected or installed on or in any roof or any other portion of a Building, on any Lot, or on the unimproved portions of such properties, except as erected or installed by Declarant, the Association, or any individual Owner with written approval of the ACC, and, in each case, in compliance with Municipal ordinances.

2.3 Minimum / Maximum Home Size Requirements. Only one single-family home not to exceed two stories in height may be constructed on each Lot. The following types of homes on Lots shall have the following minimum sizes:

HOME TYPE:	MINIMUM SIZE:
One story	1,700 square feet
More than one story	2,100 square feet

For purposes hereof, "more than one story" includes homes referred to as one and a half story, two-story, split level or bi-level. The type of home and the number of square feet shall be

determined on a uniform basis by the ACC and shall not include basement, attic, garage, porch or patio areas in the computation.

2.4 Garages / Driveway / Curbing & Roadways.

2.4.1 Garages. Each residence shall have a garage for not less than two cars attached to the residence containing a minimum of 440 square feet. All garage doors facing the street shall be decorative garage doors (raised panels shall not be considered decorative) with either glass inserts or have architectural design such as carriage style or similar.

2.4.2 Driveways. All drives shall be asphalt or concrete or some other hard surface as approved by the ACC and shall be installed no later than twelve (12) months from occupancy. No permanent gravel drive will be permitted.

2.4.3 Curbing & Roadways. Lot Owner shall be responsible for repairing and/or replacing any curbing damaged during construction of the home. Damaged curbing shall be removed and replaced per municipal requirements as part of the driveway installation if allowed by the Municipality. The Declarant is responsible for placing the surface course of asphalt on the public roadways; the Lot Owner is hereby notified that it may occur after the structure is built on the Lot. Prior to installing the surface course of paving, the Municipality will inspect the roadways and curbing, if the Declarant is notified by the Municipality that curbing needs replacement, the owner of the Lot shall be responsible for costs associated with the replacement of the damaged curbing.

2.5 Certain Exterior Features. With respect to the construction of a Building on a Lot or other improvement to a Lot:

2.5.1 Exterior Siding. Natural Materials shall be used for the exterior siding of the Buildings; provided, however, that fascia and soffit may be aluminum. At a minimum, 100 square feet of the front elevation shall include an accent material such as stone or brick. Window and door wraps shall be at least four inch (4") nominal in width and used on all locations except on windows with shutters. All corners shall be six inch (6") trim boards. Side elevations of homes shall require a minimum of two (2) architectural elements for each ranch elevation and three (3) architectural elements for each two-story elevation. Architectural elements shall include any window, door, closed shutter (false window), fypon, horizontal trim, or break in elevation or foundation.

The ACC shall be acting reasonably if it disapproves the Drawings, or any portion thereof, for a home because such home would be similar in appearance to other homes in close proximity, as determined by the ACC.

2.5.2 Roof. A residence shall have a roof made of dimensional shingles, or better, with a minimum pitch ratio of 6:12, 8:12 for front facing gables, or such other pitch as is specifically approved by the ACC. "3-tab" shingles shall not be allowed.

2.5.3 Fences. All fences are subject to review and approval by the ACC and are subject to applicable Municipal ordinances, governmental easements and building codes. Fences shall not exceed forty-eight inches (48") in height, shall be constructed of ornamental/decorative

metal (wrought iron or aluminum) which is black in color. Stone or masonry columns may be used at corners and in lieu of posts. Fences shall not extend past side-yard setbacks. Chain-link, natural wood, stockade fences, white vinyl fencing and other fencing materials are not allowed. Subject to ACC approval, fencing may be permitted in the front yard in limited quantities subject to the other provisions of this Declaration. Fences shall be installed no closer than twenty-four inches (24") from any property line unless the Lot Owners mutually agree, in writing, to install a single fence along the property line. In such case, a variance request should be submitted to the Association and ACC. Fences shall not be located on a public easement area, drainage area, right of way, or the Common Areas.

2.5.4 Grading. No soil shall be removed from any Lot nor may excess soil stored on any Lot (except for prompt use for backfilling, finish grading or landscaping) unless in either case contemplated by the approved Drawings. Even if so approved, the final grades (sometimes called a "finish grade" or "master grade") of a Lot must conform to grading plans approved by the Municipality. The ACC shall be acting reasonably if it requires that, on Lots with significant grades as determined by the ACC, portions of basement walls be exposed to allow for a more natural transition between homes. Any such exposed basement or foundation walls shall be covered with suitable material consistent with the overall architecture of the home.

2.5.5 Pools. Only in-ground pools may be installed on a Lot (above-ground pools are not allowed) and only with approval of the ACC, which approval shall not be construed as a review of conformance to the Municipal or other regulatory bodies' requirements. Pools shall be completely enclosed by a wall or fence of a minimum of four foot (4') elevation, with a self-closing or self-latching gate or door (at the top of such gate or door) with at least four feet (4') clearance between the fence and the pool. Owner is responsible to insure conformance to applicable Municipal and State of Wisconsin codes and ordinances to insure conformance to size, setbacks and any other requirements.

2.5.6 Mailboxes & Lamppost:

(a) Mailboxes. The term "**mailbox**" shall mean the post and mailbox combination. The ACC shall select a standard mailbox for the Subdivision. The Declarant will provide each Lot owner a layout for placement of the mailboxes in the Subdivision in locations as determined by the U.S. Postal Service (the "**USPS**"). If any mailbox is damaged, destroyed, stolen, or any other adverse effected, the Owner shall be solely responsible to repair the defect in a timely manner and at the Owner's expense. Each Owner is responsible to conform to USPS installation requirement. The ACC shall re-select the mailbox if the selected item is determined to no longer be available.

(b) Lamppost. The term "**lamppost**" shall mean the post and lantern combination including lamps and other devices. The ACC shall select a standard lamppost for the Subdivision. The lamppost shall be purchased and installed by Owner, or Owner's contractor, and shall be operational before occupancy. The lamppost must be located in the front yard, generally ten feet (10') from the edge of the driveway and no more than fifteen feet (15') from the front of the house or sidewalk, on the front door side of the driveway. Each lamppost shall be fitted with a photocell that automatically energizes the lamps at dusk and de-energized the lamps at dawn. Owner shall maintain

the lamppost in operational condition and shall not tamper with such lantern controls. The ACC shall re-select the lamppost if the selected item is determined to no longer be available.

(c) Installation; Maintenance. Each Owner shall maintain its mailbox and lamppost in good condition and working order. If an Owner does not install or maintain the mailbox or lamppost, the Association may install, repair, replace, or maintain the same as deemed necessary by the Association and charge Owner for such amount plus a fee for services rendered as determined by Association. Without limiting the authority of the Association, the costs of enforcing the covenants in this subsection may be assessed to an offending Owner or other method as set forth in Article 4.

(d) Installation by Declarant. If Declarant, in its discretion, installs any mailbox or mailbox post, or performs or pays for any other matter required herein on behalf of any Owner, it shall not be deemed a waiver of any of the requirements herein as to any other Lot or Owner and shall not obligate Declarant to perform the same action on any other Lot, for any other Owner, or on any subsequent occasion.

2.5.7 Utilities. All utilities servicing the Lot shall be installed underground.

2.5.8 Alternative Energy. No solar collectors, wind turbines, or other exterior energy producing devices shall be erected or installed unless approved by the ACC.

2.5.9 Dog Kennels. Dog kennels shall not be allowed on any Lot even one would otherwise be permitted by Municipal ordinance or code.

2.5.10 Play Equipment. If an Owner chooses to install a play set of any size, whether temporary or permanent, said playground equipment must be approved in advance by the ACC and conform to Municipal codes and ordinances. Play equipment shall be located a minimum of ten feet (10') away from any property lines.

2.5.11 Outbuildings. Storage sheds or outbuildings of any size, temporary or permanent, shall not be permitted under any circumstance.

2.6 Grading and Landscaping.

2.6.1 Master Grading Plan. Declarant has established a master surface drainage plan consistent with the master grading plan on file with the Municipality (the "**Master Grading Plan**") designating the manner in which each Lot shall drain in relation to all other Lots. Compliance of all grading and construction work to the Master Grading Plan is important to the effective drainage of all Lots and affects the value of all Lots. Within sixty (60) days after substantial completion of a dwelling on any Lot, the Owner shall grade the Lot to conform to the Master Grading Plan. Each Owner will take such action as is reasonably necessary to maintain the grading and landscaping of the Owner's Lot in accordance with the Master Grading Plan, and shall refrain from taking actions which would cause the grading or landscaping to not conform to the Master Grading Plan without Municipal and ACC approval. Declarant and the Association shall each have the right to enter upon any Lot at any time for the purpose of inspection, maintenance, correction of any drainage condition, and the Owner shall be responsible for the

cost thereof. Despite Declarant's efforts to prepare a Master Grading Plan which will achieve the effective and efficient drainage of storm water from and within the Subdivision, Declarant does not warrant or represent that the Master Grading Plan will achieve any particular effect. Building envelopes are shown on the Plat. Any deviations to the Master Grading Plan shall require review and approval by the Municipal Engineer prior to the issuance of the building permit.

2.6.2 Landscaping.

(a) Plantings. Each Lot with a home in the Subdivision must plant and maintain a minimum of two (2) – 2.5" caliper trees and one (1) – 2" caliper ornamental tree located in the front yard. Additionally, there must be a minimum of twelve (12) foundation plantings and mulched bed along the front foundation wall.

(b) Vegetative Cover. Each individual Lot Owner shall be responsible for installing and maintaining vegetative cover (a lawn or landscaping) on all exposed soil on their Lot to prevent erosion of the soil into unwanted locations. This vegetative cover must be installed within sixty (60) days of obtaining occupancy of the home or, in the case of winter occupancy as outlined in item (e) below. Note that other materials are allowable around the foundation and paved surfaces including, but not limited to gravel, mulch, brick or any other material that will reduce erosion and permanently stabilize the disturbed areas of soil. If the Owner of any Lot, after reasonable written notice from the Association, fails or refuses to install vegetative cover as described herein, or maintain it as required above, the Association, through its duly authorized agents or employees, shall have the right to enter upon said Lot at reasonable hours to perform said landscaping and/or maintenance. The costs of the materials and labor to perform such landscaping and/or maintenance shall be assessed against said Lot in accordance with Municipal codes or ordinances, or the Wisconsin State Statutes. This restriction for vegetative cover does not apply during the winter months when growing conditions will not allow the establishment of vegetation cover. In such an event the Owner shall be required to establish vegetative cover within sixty (60) days of proper growing conditions. The growing season for this area is anticipated to be from mid-April to mid-October.

2.6.3 Irrigation. Irrigation systems for lawns and planting beds, if installed, shall utilize irrigation controllers and components that conform to the Environmental Protection Agency's "WaterSense" criteria. If such criteria are no longer available, the ACC may substitute a different standard. Controllers shall be TORO Evolution Series equipped with a precision soil sensor and rain sensor, as minimum components. Controllers and equipment shall be installed, programmed and maintained according to manufacturer's recommendations. If the model of controller specified above is, in the opinion of the ACC, no longer readily available or available at reasonable cost, the ACC may choose a different controller from time to time as the standard. The ACC may also permit use of other products from other manufacturers, with similar features, as "or equal" products.

2.6.4 Easements. Plantings in the public and private easements may not be permitted by terms of the easement and should be avoided. Plantings within easements will be

at-risk for removal by the Municipality and may be subject to damage or removal for maintenance and/or repair operations.

2.7 Municipal Codes and Ordinances. All items in this Article 2 shall be subject to Municipal codes and ordinances, as may be modified from time to time.

ARTICLE 3. ASSOCIATION OF OWNERS

3.1 Administration. Declarant shall establish the Association, which shall be incorporated as a Wisconsin nonstock corporation, and shall adopt Bylaws for its governance and administration of the Common Areas and Common Improvements. The Board may, but need not, from time to time adopt and amend Rules that are binding on all Owners and Occupants. The Board shall administer and enforce the Common Areas, the provisions of this Declaration and the Bylaws, the Rules, and all other uses of and restrictions on the Property such as easements. Until the establishment of the Association, all powers of the Association shall be exercised by Declarant.

3.2 Membership and Voting. Effective as of the date of purchase or creation of a Lot, each Owner shall be a member of the Association. In the Association, the Owner(s) of each Lot shall be entitled to one vote for each Lot owned. If one or more Lots change their status to some other form of ownership, the votes appurtenant to each original Lot shall not be changed. No member shall be permitted to vote if such member is more than thirty (30) days delinquent in the payment of any amount due to the Association under Article 4 of this Declaration.

3.3 Control of Association. Declarant shall have the right to appoint and remove Directors of the Association and to exercise any and all powers and responsibilities assigned to the Association, the Board, or its officers, by the Articles of Incorporation, Bylaws, this Declaration or the Wisconsin Nonstock Corporation Law (as amended from time to time), which rights shall expire upon the earlier of: (a) thirty (30) days from Declarant's conveyance of the final, including any Lots which may be platted within the Expansion Area as provided in this Declaration, Owner who has been granted an occupancy permit and intends to reside on the Lot; (b) fifteen (15) years from the date of this Declaration; or (c) Declarant's election to waive its rights to control the Association. Upon Declarant's surrender of its rights to control the Association as provided above, the Directors shall be elected by the majority vote of the Owners within the Subdivision. For the avoidance of doubt, for purposes of this Section a "bulk" or multi-Lot conveyance to a party who is not intending to occupy the property conveyed shall not be considered a conveyance for purposes of (a) above.

3.4 Management. The Association may employ a professional management agent or company to assist in carrying out its duties regarding the Common Areas, the Common Improvements, and this Declaration, with such experience and qualifications and on such terms and conditions as are acceptable to the Board. Any such agreement must be terminable by the Board, without cause, upon 90-day notice without payment of any penalty.

ARTICLE 4. ASSESSMENTS

4.1 Budget and Assessments.

4.1.1 Deposit. In addition to the Lot purchase price, each Owner will deposit Two Hundred Fifty Dollars (\$250.00) with the Association as an initial assessment. The deposit must be made at the time of closing of the initial purchase of the Lot by an Owner intending to occupy a home on such Lot.

4.1.2 Assessments. The Association shall have the power to levy an annual assessment against each Lot for the purpose of defraying, in whole or in part, the costs incurred by the Association, including costs to operate the Amenity Area improvements and to fund capital accounts. Such annual assessment shall be levied by the Association as of March 1st of each year, and a statement for such amount shall be mailed to the owner of each Lot as of such date and shall be payable on or before March 31st of each year. The Association may from time to time permit the payment of the annual assessment on a monthly or other basis, but the entire assessment remains due.

4.1.3 Budget. The Association shall annually adopt a budget of common expenses and levy assessments on the Lots based on such budget as provided above, allocating such assessments equally to each Lot, subject to the limitations herein. The budget shall include amounts representing assessments that are bad debts, and a reserve for contingencies and replacements for the Amenity Area as provided in Section 7, and may include a replacement reserve for any other purpose determined by the Board in its reasonable discretion, which in each case shall constitute part of the general assessments. Until a new budget is adopted, the prior year's budget shall remain in effect.

4.1.4 Collection. The Association may delegate to a third party manager or collection agent the authority to collect any assessments.

4.1.5 Special Assessments; Fines. The Association may also levy: (a) special assessments on all Lots for any purpose for which a general assessment or special assessment may be levied; or (b) fines on particular Owners for the purpose of collecting any amounts due the Association or enforcing compliance by such Owners with any provision of this Declaration, the Bylaws or any Rules. The Board may adopt a Rule to impose uniform charges for services which the Association provides related to transfer of Lots, review of proposals under Article 2, and the like. The Board may adopt an initial budget showing the anticipated amounts necessary to cover common expenses.

4.2 Installments; Late Payments. General assessments shall be levied on an annual basis, but shall be due and payable on March 31st, or as determined by the Board from time to time and as set forth herein. Special assessments shall be due and payable at such time and in such manner as the Board may determine. If an assessment is not paid when due then such assessment shall become delinquent and shall accrue interest at the rate of twelve percent (12%) per annum until the assessment is paid in full. Any assessment or installment of an assessment not paid within ten (10) days of its due date may also be subject to a late charge and/or interest as set forth in the Bylaws and/or in the Rules.

4.3 Enforcement; Liens. All general and special assessments which are not paid when due shall constitute a lien on the Lot; and shall be collectible and enforceable by the Association by suit against the Lot Owner, by foreclosure of the lien, and/or in any other manner

or method provided under this Declaration or laws of the State of Wisconsin. The lien granted hereunder shall also cover and include all interest accruing on delinquent assessments, plus costs, expenses and attorneys' fees for collection. The Association shall have the exclusive right and power to collect or enforce collection of all general and special assessments and shall further have the exclusive right to bring any and all actions and proceedings for the collection thereof and/or the enforcement of liens arising therefrom. The Association may bring an action at law against any Lot Owner personally to collect such assessments and/or to foreclose the lien for such assessments against the Lot (in the same manner and method as an action to foreclose a real estate mortgage). The Association may purchase a property upon foreclosure of its lien. Under Section 3.2 an Owner delinquent in payments may in some cases not be permitted to vote on matters before the membership of the Association.

4.4 Association Statements. Within five (5) business days of written request from an Owner or a Mortgagee, the Association shall provide a letter stating the existence and amount of outstanding general or special assessments against the Owner's property, if any. Notwithstanding anything to the contrary in the preceding sentence, all property conveyed by Declarant shall be deemed conveyed free from outstanding general, special or working capital assessments and no such letter shall be required or given as to such property.

4.5 Common Expenses and Surpluses. Common expenses and surpluses shall be allocated in the same manner as general assessments are allocated. All common surpluses for each fiscal year shall be retained for common expenses for the next succeeding fiscal year.

ARTICLE 5. MAINTENANCE AND ALTERATIONS

5.1 Owner Responsibility. Each Owner or Occupant shall reimburse the Association for the cost of the Association's repair or replacement of any portion of the Common Areas or Common Improvements (including the Amenity Area, if any) damaged through the fault or negligence of such Owner/Occupant or such Owner's/Occupant's family, guests, invitees or tenants. Each Owner shall, at the Owner's cost, even if no home has been constructed by such Owner, maintain the yard, including the cutting of grass and snow removal from driveways and, if any, sidewalks, in an orderly and neat manner and shall maintain all structures on the Lot in good repair and condition.

5.2 Association Responsibility. The Association shall maintain in good condition and repair, including snow removal, replace and operate all of the Common Areas and Common Improvements, including easements, landscaping, trees and plantings in the Common Areas and trimming of such landscaping. The Association may, in its discretion, install additional Common Improvements in the Common Areas. Each Owner shall be responsible for its share of the cost for such activities. The Association shall release and indemnify the Municipality for any maintenance responsibilities with respect to same.

5.3 Municipal Responsibility. The Municipality shall have no responsibility for maintenance or alteration under this Article 5. If the Association fails to maintain the Common Area as set forth herein, the Municipality, after proper notice to the Association, may cause such maintenance to be accomplished and may invoice the Association for the cost thereof. If such invoice is not paid in accordance with the period of time customary for the Municipality, the

costs may be apportioned among the Owners of all Lots in the subdivision and placed on the next tax bill of each Lot.

5.4 Alterations and Maintenance. Landscaping, berms, grading, drainage pathways, Common Improvements or other improvements in the Amenity Area or Common Areas may not be removed or substantially altered without written approval by the Association, Municipal engineer and the Municipal plan commission, as may be required. Maintenance and minor alterations of these improvements are allowed, such as the removal/repair of damage structures, pruning of trees, replacement of ground cover, and repair or replacement of the fencing and other structures. Owners are encouraged to remove trash and debris and should report any unauthorized use within the Common Areas or Common Improvements to the Association. Declarant and or the Municipality are able to provide a copy of the plans for the Common Area upon request by the Association.

ARTICLE 6. RESTRICTIONS ON USE AND OCCUPANCY

6.1 Permitted Uses.

6.1.1 Single-Family Residential. Each Lot shall be occupied and used only for single family residential purposes, except as provided in Section 6.1.2. The term “*residential purposes*” includes only those activities necessary for or normally associated with the use and enjoyment of a home site as a place of residence and limited recreation. No garage or other mobile or accessory structure shall be used for temporary or permanent living or sleeping for family or guests without prior approval of the ACC.

6.1.2 Home Business. A home may be used for a home-business if it obtains the prior written approval of the ACC. A home-business shall only be approved if the home-business has no (zero) employees other than immediate family members, and the home-business has no outside client, vendor or customer sales occurring at the home. No trade or business shall be carried on anywhere in the Subdivision, except for (1) the incidental use of a Lot for personal business conducted by mail and telecommunications which does not burden the use of the Subdivision by frequent visits by business service providers or customers, subject to any Rules relating to such burdens, or (2) the sale of Lots, subject to the other provisions hereof and any Rules related thereto, or (3) the establishment of offices by Declarant or its agents for sales of Lots or by the Association for conducting its affairs.

6.1.3 Amenity Area. The Amenity Area shall be used for the purpose of miscellaneous recreational amenities (which may include, without limitation, a playground, sport court, fire pit, and paved pathways) as decided by the Association, in its sole discretion.

6.2 Pets. Subject to Municipal Ordinances, and applicable federal or state statutes, rules, regulations, or orders to the extent they supersede the restrictions of this Declaration, no animals, livestock or poultry shall be raised, bred or kept on any Lot, except that Pets shall be permitted providing they are not raised, bred and/or kept for commercial purposes and service animals and emotional support animals shall be permitted to the extent permitted by applicable municipal ordinances and applicable federal or state statutes, rules, regulations, or orders to the

extent they supersede the restrictions of this Declaration. An Owner or Occupant may keep no more than three (3) Pets per Lot on the conditions that:

(a) the Pet is not permitted on any of the Common Areas while unattended or unleashed; and

(b) the Pet is licensed by the Municipality or appropriate licensing authority, if required under applicable ordinances; and

(c) no reptiles or un-caged birds shall be permitted; and

(d) the Pet must immediately and permanently be removed from the Property if, in the sole judgment of the Board or Municipality, the Pet is or becomes offensive, a nuisance or harmful in any way to the Property or any Owner or Occupant, or otherwise violates the terms of this Section or any Rules adopted relating to Pets; and

(e) the Pet is subject to such Rules as the Association may adopt from time to time on the subject; and

(f) Possession of Pets is a privilege which may be revoked and shall not be considered a property right.

6.3 Vehicles. No outdoor parking of vehicles shall be permitted on the Lots for more than twenty-four (24) consecutive hours, without the express prior consent of the Board. No person shall occupy, park or otherwise use a vehicle so as to block access to a Lot. Storage or parking of trailers, campers, camping trucks, boats or other marine craft, horse or boat trailers, motorcycles, mopeds, motorized bicycles, vehicles licensed as recreational vehicles or commercial vehicles, snowmobiles, all-terrain vehicles, inoperative or unlicensed vehicles or the like shall not be permitted on a Lot, except (i) in a garage, (ii) in the case of recreational vehicles, commercial vehicles, campers, trailers, and boats, outside of a garage for no longer than one twenty-four (24) hours in a one week period; or (iii) outside parking on a case-by-case basis as approved by the ACC.

6.4 Waste. Accumulations of waste, litter, excess or unused building materials or trash other than in appropriate receptacles is prohibited. Garbage containers stored outside during initial construction or remodeling shall be situated only in locations designated by the Association. Lots shall be kept free of debris during construction of improvements thereon by maintenance of a dumpster on-site. The refuse and garbage receptacles for each occupied home shall be stored in the home or garage, except for a period of twelve (12) hours prior to and following the scheduled garbage pickup. All incinerators and other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

6.5 Temporary Structures. No structure, trailer, shack or barn, temporary or otherwise, shall be placed or maintained on any portion of a Lot or Common Area without written approval of the ACC, except for construction trailers maintained by Declarant and its successors and assigns, or the Association.

6.6 Quiet Enjoyment. Each Owner shall have the right to use its property in accordance with this Declaration and applicable law, free from unreasonable interference from any other Owner, Occupant and other invitee. No person shall cause or permit the Common Areas to be used so as to deny any Owner or Occupant the full use of the Common Areas except as permitted by the Association under Article 3 or in accordance with rules established by the Association with respect to the Amenity Area.

6.7 Noxious Activity. No use or practice shall be allowed in the Subdivision or the Common Areas which is immoral, improper or offensive in the opinion of the Board or which is in violation of the Documents. By way of example and not limitation, offensive activity shall include excessive amplification of musical instruments and/or audio or audio visual equipment.

6.8 Patios and Balconies. Patios, decks and balconies of Buildings on Lots shall be kept in good condition and maintained in a quality similar to that of any Building on the Lot.

6.9 Signs. No Owner or Occupant may erect, post or display posters, Signs or advertising material on the Common Areas or at locations within a Building which are visible from the public streets or Common Areas without the prior written consent of the Board, except (a) Declarant may do so without such approval, and (b) an Owner may erect or post a temporary sign of customary and reasonable dimension relating to the sale of a Lot. The Board may at its discretion, in particular circumstances or in general, delegate its right to consent under this Section to the ACC described in Article 2. Where Board consent is sought and obtained, the permitted Signs will be erected and maintained in accordance with all ordinances, rules, regulations and conditions applicable thereto. "Signs" as used herein shall be construed and interpreted in the broadest possible sense, and shall include any placard, posters or other such devices as may be affixed to the interior of any exterior windows so as to be visible from the exterior of the Building. All Signs placed within easements or the public right-of-ways shall also require Municipal approval and/or permits.

6.10 Compliance with Laws; Environmental Matters. Each Owner and Occupant shall comply with all applicable governmental or Association statutes, ordinances, regulations or rules, including but not limited to, Municipal ordinances. Such applicable laws include, but are not limited to those relating to the storage, transport and release to, from, on or in such Lot of any substance or compound governed by any one or more State of Wisconsin Statutes; Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"); Toxic Substances Control Act ("TOCSA"); Resource Conservation and Recovery Act ("RCRA"); Municipal ordinances; and similar laws relating to the storage, transport or release of substances, compounds or recyclable materials, all as in effect from time to time.

6.11 Obstructions. Unless installed by the Declarant or the Association, no playground equipment, bicycle racks or other equipment or material may be placed on the Common Areas.

6.12 No Further Divisions. No Lot may be further subdivided without the approval of the Municipality, the Association and/or the ACC.

ARTICLE 7. SPECIAL FEATURES

7.1 Storm Water Facilities. The Storm Water Facilities shall be fractionally owned by the Lot Owners and managed by the Association. The Association shall have the ability to impose assessments for the inspection, maintenance, and repair of the Storm Water Facilities. The Common Areas include storm sewer and surface water drainage systems. The Storm Water Facilities are located in commonly owned outlots as shown on the Final Plat and are Common Areas maintained by the Association in accordance with the Storm Water Agreement and shall be used solely for drainage and storm water purposes and not for recreational purposes. The Association has no duty to ensure the safety of persons using the drainage areas, or to warn of dangers concerning them. Neither the Declarant nor the Association is responsible for the safety of any drainage area for use by humans or Pets, and neither represents nor warrants that any drainage area is safe for any such use.

7.2 Easements. As provided on the Plat, there are easements located on various Lots for storm water utilities, overland storm water flow, underground utilities, and other items. These easements allow access by the Municipality, Association, ACC or other entity to maintain, repair and access the Lots as may be required from time to time.

7.3 Parade of Homes. Declarant discloses that Declarant may arrange for the Subdivision to be included in the Metropolitan Builders Association (the "**MBA**") Parade of Homes or similarly titled event in which members of the public are invited to inspect a number of Lots improved with homes constructed by one or more contractors. Such events may result in temporary periods of significant construction activity, traffic slowdowns and large crowds, and may continue for a period of several weeks. A Lot Owner is deemed to acknowledge the possibility of said event and is deemed to have waived any objection to the issuance of any Municipal permits required for such event. Declarant is not, however, required to include the Subdivision in any such event, and may base its decision on the Declarant's individual needs, if any. While the Parade of Homes is in progress, all construction activities must stop by 2:00 p.m. on weekdays and 10:00 a.m. on weekends and Labor Day. All debris must be properly disposed of and the streets in front of the Lots must be swept clean of mud and stones. Homes which are not included for inspection as a part of the Parade of Homes must be vacated by the Owners during the hours that the Parade of Homes is open to the public. Unbuilt Lots may be used for Parade of Homes parking as determined by Declarant. No home or Lot shall display any Signs indicating the builders, subcontractors, or any property for sale during the duration of the Parade of Homes, except those Signs allowed in accordance with the MBA's rules and regulations. If a Lot Owner fails to participate in the Parade of Homes after agreeing to do so, the Lot Owner shall reimburse the Declarant for any discounts, including but not limited to, Lot price reductions, mailboxes, lanterns, and other fees paid by the Declarant for the Parade of Homes Lot Owner or builder, that the Lot Owner received by being a participant to the Parade of Homes.

7.4 Amenity Area. The Declarant or, after the period of Declarant control has ended, the Association, may, in its sole discretion, construct various recreational amenities (which may include, without limitation, a playground, sport court, fire pit, and paved pathways) on those improvements on the Amenity Area. Each Owner shall have the right to use the Amenity Area as with any other Common Area, subject to the Rules. Nothing herein is a representation or

warranty that any particular amenity will ever be installed or constructed, or as to the quality of any amenity which is installed or constructed. In addition to the Amenity Area, the Declarant or Association (under the conditions above) may install amenities and Common Improvements in any other Common Area.

7.4.1 Rules and Regulations. The Association shall, through its Board of Directors, establish all rules and regulations regarding the use of the Amenity Area, including without limitation rules related to hours of use and permitted and prohibited activities and conduct.

7.4.2 Maintenance, Repair, and Replacement. Subject to other applicable provisions of this Declaration, the Association shall maintain, repair and replace the Amenity Area to the extent determined necessary or advisable by the Association and as required by law.

7.4.3 Insurance. The Association shall insure the Amenity Area against direct loss or damage occasioned by fire, extended coverage perils and other hazards in amounts and with insurers reasonably chosen by the Association. Such insurance shall be issued in an amount without co-insurance at least equal to the full value any Building(s) and other improvements erected thereon. The Association shall also maintain general public liability insurance and such other insurance with coverages, in amounts and with insurers that the Association reasonably requires from time to time.

7.4.4 Annual Budget. The Association shall include in its annual budget an estimate of the total amount necessary to pay the costs for the following calendar year of operating, maintaining, repairing and replacing the Amenity Area. Expenses shall include without limitation all costs of employees, payroll taxes, materials, parking costs, insurance, services, management fees, supplies, maintenance, repair, landscaping, fuel and power, together with a reasonable amount considered by the Board to be necessary for a reserve for contingencies and replacements.

7.4.5 Reserves. The Association, by its Board, shall establish, fund, and maintain a reasonable reserve for contingencies and replacements for the Amenity Area. The Association shall first charge against such reserve all extraordinary expenditures for the Amenity Area not originally included in the annual estimate which may become necessary during the year. If the annual budget proves inadequate for any reason (other than as a result of the failure by one or more unit owners in the Association to pay their assessments), the Board may, at any time, levy a further assessment, which shall be assessed in the same proportion as other general assessments.

ARTICLE 8. INSURANCE

8.1 Association Insurance. The Association shall obtain and maintain comprehensive general public liability insurance for occurrences on the Common Areas and with respect to Common Improvements not in the Common Areas, all-risk casualty insurance coverage on all Common Improvements, and such other policies and/or coverage as the Board deems necessary or advisable, such as fidelity insurance for Association officers handling funds of the Association.

8.2 Coverage of Association Insurance. The casualty insurance coverage shall be in an amount equal to the maximum insurable replacement value, with an "agreed amount" and a "replacement cost" endorsement, without deduction or allowance for depreciation. This coverage amount shall be annually reviewed and shall insure against loss or damage by fire and other hazards as commonly covered by a standard extended coverage endorsement and such other hazards as customarily covered with respect to buildings similar in construction, location and use. Commercial general liability coverage shall be in such amounts as the Board determines annually, but not less than \$1,000,000 per occurrence.

8.3 Proceeds. Association Insurance proceeds for casualty loss shall be for the benefit of the Association in order to finance construction of damaged Common Areas or Common Improvements. Liability coverage and other insurance proceeds shall be applied as the Association directs.

8.4 Cost. All premiums for Association Insurance and other insurance obtained by the Association shall be a general assessment.

8.5 Waiver. The Association and, by acceptance of a conveyance to a Lot or the use thereof, or any portion thereof or interest therein, each Owner or Occupant acting both for themselves and for their respective insurers, waive any claim it or they may have against the other for any loss insured under any policy obtained by either to the extent of insurance proceeds actually received, however the loss is caused, including such losses as may be due to the negligence of the other party, its agents or employees. All policies of insurance shall contain a provision that they are not invalidated by the foregoing waiver, but such waiver shall cease to be effective if the existence thereof precludes the Association from obtaining any policy of insurance at a reasonable and customary rate.

8.6 Acts Affecting Insurance. No Owner or Occupant shall commit or permit any violation of covenants or agreements contained in any of the Association Insurance, or do or permit anything to be done, or keep or permit anything to be kept, or permit any condition to exist, which might (a) result in termination of any such policies, (b) adversely affect the right of recovery thereunder, (c) result in reputable insurance companies refusing to provide such insurance, or (d) result in an increase in the insurance rate or premium over the premium which would have been charged in the absence of such violation or condition, unless, in the case of such increase, the Owner or Occupant responsible for such increase shall pay the same. If the rate of premium payable with respect to the Association Insurance shall be increased by reason of (1) the size, design or composition of a Building, or (2) anything done or kept in a property subject to this Declaration, or (3) the failure of an Owner or Occupant to comply with Association Insurance requirements, or (4) the failure of any such Owner or Occupant to comply with this Declaration or the Bylaws, then the particular Owner or Occupant shall reimburse the Association for the resulting additional premiums. The Association reimbursement right is without prejudice to any other Association remedy, and may be enforced by special assessment against the particular property involved.

8.7 Exclusions from Coverage. Association Insurance coverage shall exclude (a) coverage on any home or personal property located within or pertaining to the exclusive use of an Owner except to the extent included as a standard coverage in the policy of Association

Insurance; and (b) liability coverage on an Owner or Occupant, its guests, invitee, employees or tenants, arising out of any occurrences within a Lot and/or relating in any way to an Owner's or Occupant's personal property. It is the sole responsibility of each Owner or Occupant to obtain such insurance coverage as are excluded from Association Insurance.

ARTICLE 9. AMENDMENT OF DECLARATION

9.1 General. Except as otherwise provided herein, this Declaration may be amended only by the written consent of at least sixty-seven percent (67%) of the total votes of the Association then entitled to vote. Regardless of the manner of adoption, no amendment shall adversely affect a special right or easement reserved to Declarant under this Declaration, or the rights of Mortgagees under Article 10, without the express written consent of Declarant or Mortgagee, as applicable. Notwithstanding the foregoing, Declarant reserves the right to unilaterally amend the Declaration until one (1) year after one hundred percent (100%) of the then existing Lots (inclusive of any Lots added to the Expansion Area by Declarant in its discretion or vacant land in the Expansion Area that is not developed) have been sold to an Owner intending to reside thereon and occupancy permits have been granted for each Lot. During such period, Declarant may also enter into other agreements on behalf of Association or Lot Owners for purposes of easements and/or other items necessary for the orderly operation and maintenance of the Subdivision and/or Association, provided however, that any amendments to the restrictions where the Municipality is involved may require the approval by the Municipality.

9.2 Procedures. Except with respect to an amendment by Declarant, amendments to this Declaration shall be prepared and executed by the president of the Association and shall become effective when recorded in the office of the Register of Deeds. No action to challenge the validity of an amendment shall be commenced more than one (1) year after the amendment is recorded.

ARTICLE 10. RIGHTS OF MORTGAGE HOLDERS

10.1 Notice. Any Mortgage holder, insurer or guarantor of a Mortgage encumbering a Lot that submits a written request to the Association, identifying the name and address of such holder, insurer or guarantor and the Lot involved, will be entitled to timely written notice of:

(a) Any thirty (30) day delinquency in the payment of assessments owed by the Owner of the Lot on which it holds a Mortgage or any breach of the provisions of any of the Documents which is not cured by such Owner within thirty (30) days of such Owner's receipt of notice of such breach;

(b) A lapse, cancellation or material modification of any Association Insurance; and

(c) Any proposed action that requires the consent of a Mortgage holder.

10.2 Mortgagee Acquisition of Lot. A Mortgagee acquiring title to a Lot pursuant to remedies provided in its Mortgage, or by a deed in lieu of foreclosure following an Owner's default under the Mortgage, shall not be liable for such Lot's unpaid assessments under this

Declaration accruing prior to the Mortgagee's acquisition of title to such Lot (except to the extent unpaid assessments are included in subsequent budgets generally), but shall ensure that any such prior delinquent assessments are paid upon transfer of the Lot to a third party.

ARTICLE 11. RIGHTS OF DECLARANT

11.1 Reserved Rights. Prior to the sale of all Lots by Declarant and occupancy permits granted for all Lots, Declarant:

(a) may use the Common Areas or Amenity Area, and any unsold Lots in any manner as may facilitate the sale of Lots including, but not limited to, maintaining a sales and/or rental offices, model homes and signs and/or showing the Lots. Declarant may from time to time also delegate such rights (on a non-exclusive basis and subject to such conditions as Declarant may impose) to persons desiring to construct Buildings on particular Lots as model homes. In delegating such rights to other persons, Declarant's delegates shall not have the right, without Declarant's express written consent, to locate a general sales office operation in any such model home, although use of a model home to facilitate sales of Lots or sales of Buildings on Lots may be permitted for a period not to exceed forty-eight (48) months from the date of issuance of the certificate of occupancy therefor; provided, however, that once a model home is used as a home for an Occupant, it may not thereafter be used as a "model home".

(b) shall have the right to (1) grant easements upon, over, through and across the Lots (limited to the ten (10) feet area adjacent to each Lot line), which rights shall expire one (1) year after conveyance of a Lot by Declarant, and the Common Areas as may be required in Declarant's opinion for furnishing any kind of utility services, and maintenance and replacement thereof, or for drainage, grading, or public purposes including, but not limited to, cable television or master antenna service, if any, which easements may be granted to itself or its nominee and as may be necessary for excavation and construction of any Buildings and (2) grant easements upon, over, through or across the Common Areas for ingress and egress and maintenance and replacement thereof, to and from, and within, the Property and other real property adjacent to it.

(c) shall have the right to veto any proposed amendment to this Declaration for any reason or no reason, in which case it shall not be deemed approved or effective.

For purposes of this Section, a "bulk" or multi-Lot conveyance to a party who is not intending to occupy the property conveyed shall not be considered a "sale" for purposes of this Section.

11.2 Addition to or Subtraction from the Subdivision. Declarant reserves the right, at any time during the term of this Declaration and in its sole discretion, from time to time to subject portions of the Expansion Area to this Declaration in accordance with this Section. Each time Declarant subjects a portion of the Expansion Area to this Declaration it is known as an "Expansion".

11.2.1 Procedure for Expansion. Declarant shall add portions of the Expansion Area by recording with the Register of Deeds one or more amendments to this Declaration setting forth the legal description of the Expansion Area so affected. An amendment creating an Expansion need be executed only by the Declarant and does not require consent from or notice to any other person.

11.2.2 Contents of Expansion Amendment. An Expansion amendment will (a) state the legal description of the land being subjected to this Declaration; (b) set forth such other limitations on such future Lots as Declarant may desire not inconsistent with this Declaration; and (c) set forth such other information as is reasonable to facilitate the Expansion and the integration of the Expansion Area into the Association. All other provisions of the Declaration shall apply to the Lots or Outlots included in any Expansion.

11.2.3 Procedure for Subtraction of Land. For so long as the Declarant is in control of the Association, the Declarant may also, in its sole discretion, by recorded document, remove the Expansion Land or any Lots not yet sold, from the effect of this Declaration and thereby reduce the extent of the Subdivision, without the consent of the Lot Owners within the Subdivision.

11.2.4 Modification of Budget and Assessments. Upon each such Expansion or subtraction, the Association will amend the annual Budget and annual assessments as appropriate to account for the effects of any Expansion or subtraction. Any assessments prior to the addition or subtraction of the area affected by the Expansion or subtraction will be pro-rated and adjusted by the Association accordingly. Each Owner in the Expansion Area shall have the same rights and obligations as if such Owner was an Owner under the initial Declaration. All Owners acknowledge that the proportionate share of expenses and the corresponding assessments will be revised to reflect the presence of additional Lots. Each Owner also acknowledges that assessments could increase or decrease based on the facts and circumstances in effect at the time of such addition or subtraction.

11.2.5 Other Lands. Declarant also reserves the right, at any time, and from time to time, during the term of this Declaration and in its sole discretion, to subject additional real estate outside the Subdivision to this Declaration by recording a document imposing on such real estate the provisions of this Declaration (as amended from time to time). The additional real estate shall be located in the Municipality and shall be adjacent to the Subdivision (ignoring streets, railroads and navigable waters which may separate the additional real estate from the Subdivision). The additional real estate will be subject to the provisions of this Article 11 as though it were a part of the original Expansion Area.

11.2.6 Effective Date of Expansion. The Subdivision shall be deemed expanded when an amendment to this Declaration, executed by Declarant, is recorded with the Register's Office.

11.2.7 Effect of Expansion on Common Areas. To the extent that Owners have a tenancy in common interest in Common Areas prior to an Expansion, the interests of such Owners will be deemed adjusted, upon the recording of an Expansion amendment and without more, to equally allocate ownership among all Owners, both pre-existing and new. The interest

of any Mortgagee in Common Areas by virtue of this tenancy in common interest, shall attach, by operation of law, to the new percentage interests in the Common Areas appurtenant to the Lot on which it has its lien.

11.2.8 Reserved Easements. Declarant reserves easements over the Common Areas for the benefit of all portions of the Subdivision not yet included in this Declaration, for the purposes of vehicular and pedestrian access; installation, repair, maintenance and replacement of utilities to serve the Expansion areas; marshaling of construction materials and personnel for improvements made to the Expansion area; and the use of Common Improvements and Common Areas for recreational purposes consistent with those uses granted to Owners.

ARTICLE 12. REMEDIES

12.1 General Remedies. If any Owner or Occupant fails to comply with this Declaration, the Bylaws, or the Rules, such Owner or Occupant shall be liable for damages, subject to injunctive relief (including an order requiring the removal at the Owner's expense of Buildings constructed without ACC approval), subject to any other remedy provided by the Bylaws or at law, or all of the above, as a result of such noncompliance. The Association or, in a proper case, an aggrieved Owner, may bring an action because of such noncompliance.

12.2 Owner or Occupant Violation; Association Right to Cure. In addition to any other remedies provided herein, if any Owner or Occupant fails to comply with this Declaration, the Bylaws, or the Rules, which failure continues for a period of fifteen (15) days following written notice from the Association, the Association shall have the right, but not the obligation, to perform or cause to be performed such maintenance, replacement, restoration or commence litigation, arbitration or other proceeding or other action as the Association deems necessary or appropriate, in its sole discretion. Expenses incurred therefor by the Association shall be assessed against the Owner or Occupant and shall be subject to all rights and remedies reserved under this Declaration with respect to collection, expense, late payment penalties or interest, filing of a lien and/or foreclosure as reserved at Article 4 of this Declaration. Once the Association has taken such an action, it shall not be obligated to take any other or further action with respect to the same, similar or subsequent failure by the same or a different Owner or Occupant.

ARTICLE 13. EASEMENTS

13.1 Right of Entry. A right of entry to each Lot or Common Area is reserved to the Association to service utility installations located on, in or under such Lot or Common Area provided request for entry is made in advance and such entry is limited in scope so as to extend only as is reasonably necessary to service such utility installations. In case of emergency, entry by the Association onto any such Lot or Common Area may be made immediately, whether the Owner or Occupant of such Lot or Common Area is or is not present and without liability of the Association or its agents if such entry is necessary for the safety or welfare of persons or property. Any damage or loss caused as a result of such emergency entry shall be the sole expense of the Owner or Occupant if, in the reasonable judgment of those authorizing the entry, such entry was for emergency purposes.

13.2 Common Area Easements. The Association may grant easements over and through the Common Areas for such purposes as the Board deems reasonable for the benefit of the Owners.

ARTICLE 14. TERMINATION

14.1 Termination. This Declaration shall be in effect for a period of twenty-five (25) years and automatically renewed for successive periods of ten (10) years each, unless terminated at the end of the original or any extended term by: (i) Declarant (if during the period of Declarant control of the Association), or (ii) the written consent of the owners of not less than ninety percent (90%) of the aggregate then existing Lots provided that no vote shall effect an amendment to or termination of any provision hereof conferring on or reserving a special right or easement to Declarant without the express written consent of Declarant, as appropriate. Voluntary termination of this Declaration must be express and shall be effective upon recording a written instrument to such effect in the office of the Register of Deeds. If the Owners decide to terminate the Association, a maintenance and operation plan for the Common Areas and Storm Water Facilities, if any, may need to be presented and approved by the Municipality prior to such termination.

ARTICLE 15. CONSTRUCTION AND EFFECT

15.1 Number and Gender. Whenever used herein, unless the context shall otherwise provide, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

15.2 Including. Whenever used herein, the term "including" preceding a list of one or more items shall indicate that the list contains examples of a general principle and is not intended as an exhaustive listing.

15.3 Captions. The captions and article and section headings in this Declaration are intended for convenience and reference only and in no way define or limit the scope or intent of the various provisions hereof.

15.4 Severability. If any portion of this Declaration or its application to any person or circumstance is held to be invalid or unenforceable, the remainder of this Declaration, or the application of such provision, or any part thereof, to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby. The remainder of this Declaration shall be valid, and enforced, to the fullest extent permitted by law.

15.5 Remedies. All remedies herein are cumulative.

15.6 Waivers. Whenever a waiver, consent or approval is required or permitted herein, it must be express and in writing; no waiver, consent or approval shall be implied. A waiver, consent or approval to any one matter shall not be deemed a waiver, consent or approval to any subsequent matter whether similar or not.

15.7 Assignment of Declarant's Rights. Declarant may from time to time assign any or all of the rights and benefits conferred on or reserved herein for Declarant in its status as such (as

opposed to those rights or benefits conferred on or reserved for all Owners or groups thereof), by an instrument in writing specifically identifying the rights and benefits so assigned which is recorded in the Register's Office.

15.8 Other Regulation. Nothing herein shall preclude or restrict Declarant recording other covenants, conditions or restrictions which further regulate portions of the Subdivision which Declarant owns at the time of recordation.

15.9 Conflict. In the event any covenant or provision of this Declaration is in conflict with any ordinance, code or law of the Municipality or other governmental authority having jurisdiction, the governing authority shall control and supersede that provision of the Declaration. All remaining covenants and provisions of this Declaration shall remain in full force and effect

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this Declaration has been duly executed as of the date first above written.

DECLARANT:

_____, LLC,
a Wisconsin limited liability company

By: Neumann Developments, Inc., sole Member

By: _____
Steve DeCleene, President

STATE OF WISCONSIN)
) ss.
COUNTY OF WAUKESHA)

Personally came before me this ____ day of _____, 20__, the above named Steve DeCleene, President of Neumann Developments, Inc. sole member of _____, LLC, by its authority, and to me known to be the person who executed the foregoing instrument and acknowledged the same.

[SEAL]

Name: _____
Notary Public, State of Wisconsin
My commission: _____

This instrument was drafted by:

(name) _____
Neumann Developments
N27 W24025 Paul Court, Suite 100
Pewaukee, WI 53072

EXHIBIT A

OAKWOOD AT RYAN CREEK

Legal Description

1. The Subdivision consists of all Lots and Outlots in the Plat of Oakwood at Ryan Creek, Franklin, and Milwaukee County, Wisconsin.
2. Oakwood at Ryan Creek consists of the following portions of the Subdivision:
Lots 1-63 and Outlots 1-4.

EXHIBIT B

Plat

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