

Document No

RESTRICTIVE COVENANTS



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**CATHY WILLIQUETTE LINDSAY
BROWN COUNTY RECORDER**

GREEN BAY, WI

RECORDED ON

12/02/2011 11:15 AM

REC FEE: 30.00

EXEMPT #

PAGES: 7

EVANS TITLE

THIS SPACE RESERVED FOR RECORDING DATA

NAME AND RETURN ADDRESS

James M. Kalny

Davis & Kuelthau, S.C.

318, South Washington Street, Suite 300

Green Bay, WI 54301

Village Administrator

Village of Hobart, WI

2990 South Pine Tree Road

Hobart, WI 54155

lots 1 through 114; and

Outlots 1 through 4,

Plat of *Tailwind Crossing*, a Planned Unit
Development, Village of Hobart, Brown
County, Wisconsin.

HB-2775 through HB-2892

(Parcel Identification Numbers)

Legal Description:

lots 1 through 114; and Outlots 1 through 4, Plat of *Tailwind Crossing*, a Planned Unit Development, Village of Hobart, Brown County, Wisconsin.

RESTRICTIVE COVENANTS

The undersigned, being the owner of the real estate legally described on the attached Exhibit A (the "Subject Real Estate") hereby subject said real estate to the covenants contained herein. Each part of the Subject Real Estate shall be held, sold and conveyed only subject to the following covenants, conditions and restrictions, which shall constitute covenants running with land, and shall be binding upon all parties acquiring or holding any right, title or interest in the Subject Real Estate (or any part thereof), their heirs, personal representatives, successors or assigns, and the covenants contained herein shall inure to the benefit of each owner thereof.

1. **Restriction on Transfer.** Without the express written consent of the Village of Hobart, no owner of any interest in the Subject Real Estate (or any part thereof) shall transfer any interest in the Subject Real Estate, to any individual, entity (whether corporation, limited liability company, limited partnership, limited liability partnership, general partnership or otherwise), organization, or sovereign nation, or during the period of ownership take any other action, the result of which would: (1) remove or eliminate the Subject Real Estate (or any part thereof) from the tax rolls of the Village of Hobart; (2) diminish or eliminate the payment of real estate taxes levied or assessed against the Subject Real Estate (or any part thereof), and/or (3) remove the Subject Real Estate (or any part thereof) from the jurisdiction of the Village of Hobart, including but not limited to, zoning authority and controls. This restriction shall apply to the transfer of an interest in an entity that is an owner of the Subject Real Estate if, as a result of the transfer, any of items (1) – (3) above would occur. Notwithstanding the foregoing, nothing contained in this Restrictive Covenant, including without limitation this paragraph, shall be deemed or construed to: (i) prevent, limit or restrict any owner or holder of any interest in the Subject Real Estate (or any part thereof) from contesting, protesting, appealing or otherwise challenging (through whatever lawful means are necessary or advisable) the amount of any real property tax levied or assessed by any "taxation district" or "taxing jurisdiction" (as the foregoing terms are defined in and by Wis. Stats. Section 74.01(6) – (7) and/or successor statutes thereto and/or regulations promulgated thereunder) including without limitation the State of Wisconsin, Brown County, the Village of Hobart, municipal or school district, township or other jurisdiction assessing "general property taxes" (as defined by Wis. Stats. Section 74.01(1) or successor statutes and/or regulations promulgated thereunder) levied or assessed against the Subject Real Estate (or any part thereof) and/or "special assessments", "special charges", "special tax" (as the foregoing terms are defined in and by Wis. Stats. Section 74.01(1) – (5) and/or successor statutes thereto and/or regulations promulgated thereunder) and/or other municipal or governmental charges levied or assessed against the Subject Real Estate; (ii) effect a waiver, abrogation, release or relinquishment of any constitutional rights granted to or held by real property owners under the constitution or laws of the United States and/or the State of Wisconsin, including without limitation pursuant to Chapters 74 and 75, Wis. Stats.; or (iii) except as expressly covenanted and agreed herein, to cause the Subject Real Estate to be taxed or otherwise treated by the Village of Hobart in

any manner differently from any other parcel of real estate located within the Village of Hobart's lawful taxing jurisdiction, zoning authority and/or jurisdiction of the Village of Hobart.

2. Notice of Transfer.

- (a) Notice and Consent to Transfer. Prior to any transfer of any interest in the Subject Real Estate (or any part thereof) the party proposing to transfer an interest shall comply with the following. The transferor shall provide advance written notice of the intended transfer, executed by both the transferor and the intended transferee of such interest, to the Village of Hobart. The notice shall contain: (1) a complete and accurate description of the interest to be transferred and the relevant part(s) of the Subject Real Estate affected; (2) the correct legal name and current business address of the transferee; and (3) a legally enforceable consent agreement from the transferor and transferee acknowledging knowledge of these Restrictive Covenants and, further agreeing that the Subject Real Estate shall be subject to the terms and conditions hereof following the transfer and that transferee will take no action in violation of these Restrictive Covenants. The notice of transfer shall be delivered to the Village of Hobart not later than fifteen (15) calendar days prior to any transfer of any interest in the Subject Real Estate or any portion thereof. The Village of Hobart shall have fifteen (15) days from the date of the notice of transfer to object to the transfer as being in violation of the terms of these Restrictive Covenants by forwarding written notice thereof to the transferor. In the event of such an objection, the transferor shall be prohibited from transferring the interest alleged to be transferred until such time as a court of competent jurisdiction determines that the proposed transfer does not violate the terms of these Restrictive Covenants.
- (b) Failure to Act. If the Village of Hobart fails to timely object to the transfer within fifteen (15) calendar days, the transfer may occur; provided, however, that the Village of Hobart's failure to object shall not operate, in any manner, as a waiver of any of the restrictions set forth herein or the consent to violate any of the terms hereof.
- (c) Basis for Objection. Village of Hobart shall not unreasonably withhold or delay its consent to any transfer of any interest subject to these Restrictive Covenants, and the sole and exclusive basis for any objection made pursuant to the foregoing process shall be that the transfer would cause a violation of these Restrictive Covenants.
- (d) Inapplicability. Notwithstanding anything in these Restrictive Covenants to the contrary, the foregoing provisions are not intended to affect, and shall not apply to: (i) any transferor's grant of utility, ingress/egress, access, maintenance, signage, drainage, conservation or other easements or similar interests of any type or nature in the Subject Real Estate (or parts thereof) for the benefit of third parties which are immaterial to the fee ownership of the Subject Real Estate; (ii) any transferor's grant to a third party or parties of any real estate security agreement, mortgage(s), deed in trust, Uniform Commercial Code (UCC) fixture or other filing or other similar security devices or instrument evidencing a collateral interest in the Subject Real Estate (or any part thereof) to be held by any bank, credit union, savings and loan or saving bank, and/or other

lenders in consideration of past, present and/or future indebtedness by any transferor, unless, and not until, there is a foreclosure or execution on such real estate security instrument which results in the transfer of title to the Subject Real Estate (or any part thereof); or (iii) any other grant of a material interest in the Subject Real Estate (or part thereof) which does not substantially alter the fee simple or other equitable ownership in the Subject Real Estate and does not result in the violating the restrictions contained in paragraph 1 above.

3. **Waiver of Certain Restrictions.** Notwithstanding anything in these Restrictive Covenants to the contrary, the restrictions set forth in paragraph 1, hereof, as restrictions (1) and (2) which pertain to tax assessments against the Subject Real Estate (or any part thereof), shall be deemed to have been waived by the Village as to any owner and proposed transferee of the Subject Real Estate (or any part thereof), provided that the proposed transferee enters into a written and legally enforceable agreement, that the proposed transferee will make payments to the Village of Hobart in lieu of real estate taxes, which payments shall equal the tax assessments which would otherwise be due the Village of Hobart, Brown County, Pulaski School District and Vocational/Technical School (or any other beneficiary of real estate taxes) for the Subject Real Estate (or portion) owned or proposed to be transferred, and which shall be due at the time real estate tax payments are due from the real estate tax assessed parcels of the Village of Hobart and that the obligation to make said payment shall be in full force and effect for so long as the proposed transferee holds title to the Subject Real Estate (or any portion thereof). The proposed transferee must further confirm and agree, in writing to the Village of Hobart, that in the event that any such payment in lieu of real estate taxes is not made when due, the proposed transferee consents to the imposition of a lien on the Subject Real Estate (or portion) in favor of the Village, in the amount of the unpaid amount. With respect to restriction (3) contained in paragraph 1, the Village will agree to waive this restriction upon receipt of a legally enforceable consent agreement whereby the owner or proposed transferee agrees to be bound by the jurisdiction of the Village of Hobart, including, but not limited to, zoning authority and controls.

4. **Duration of Restrictions.** The covenants, conditions, and restrictions contained in this instrument are to run with the land and shall be binding on all parties and all persons claiming under them, unless and until an instrument terminating the covenants set forth herein, or any portion thereof, is executed by the owners of record title and Village of Hobart and filed with the Register of Deeds for Brown County, Wisconsin.

5. **Reformation of Covenants.** If any provision or clause of these Restrictive Covenants is held to be invalid or inoperative by a court of competent jurisdiction, then such clause or provision shall be severed herefrom without affecting any other provision or clause of this Agreement, the balance of which shall remain in full force and effect; provided, however, that if such provision or clause may be modified for it to be valid as a matter of law, then the provision or clause shall be deemed to be modified so as to be enforceable to the maximum extent permitted by law.

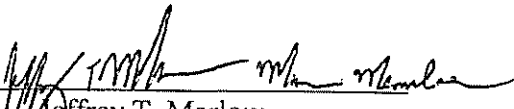
6. **Amendment of Covenants.** These Restrictive Covenants may be amended by the Village without the consent of any owner, lien holder or other party having an interest in the Subject Real

Estate if an issue arises with respect to the invalidity or enforceability of any clause or provision and said amendment is required to render said provision or clause valid and enforceable to the maximum extent permitted by law. Any other amendment shall require the consent of the Village and the record owner(s) holding title to at least 75% of the total assessed value of the Subject Real Estate.

7. Miscellaneous.

- (a) Expenses. In the event that any legal action is filed arising out of, or relating to these Restrictive Covenants and the Village of Hobart is a party to said action, in the event that the Village of Hobart is a prevailing party, all non-prevailing parties, jointly and severally, shall be liable to the Village of Hobart for all costs and expenses incurred by the Village of Hobart in defending or prosecuting such action, including reasonable attorney fees.
- (b) Notices. All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered to be given and received in all respects when personally delivered or sent by prepaid telex, cable or telecopy or sent to reputable overnight courier service or three (3) days after deposit in the United States Mail, certified mail, postage prepaid, return receipt requested.
- (c) Binding Effect. These restrictive covenants shall be binding upon the Subject Real Estate as a covenant running with land and shall bind all present and future owners of any interest in the Subject Real Estate or any portion thereof.
- (d) Paragraph Headings. The headings in this document are for purposes of convenience and ease of reference only and shall not be construed to limit or otherwise affect the meaning of any part of this agreement.
- (e) Applicable Law. Any and all actions or proceedings seeking to enforce any provision of, or based upon any right arising out of, these Restrictive Covenants shall be brought against a party in the circuit court of Brown County, State of Wisconsin (sitting in Green Bay, Wisconsin) and each of the parties to any such action consents to exclusive jurisdiction of such court(s) (and the appropriate appellate courts therefrom) in any such account or proceeding and waives any objection to venue laid therein. **By acceptance of a deed transferring title ownership of any portion of the Subject Real Estate, the title owner hereby waives any defense to an action filed with respect to these Restrictive Covenants by the Village based on sovereign immunity.**

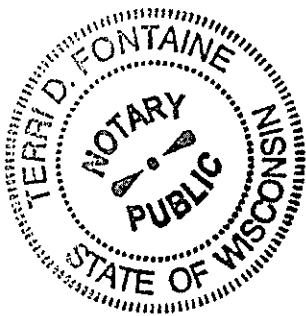
[signature on following page]

By: 
Jeffrey T. Marlow

Its: Managing Member

STATE OF WISCONSIN)
) SS
COUNTY OF BROWN)

Personally came before me this 29th day of Nov, 20 11, the above signed owners of the Subject Real Estate, namely Jeffrey T. Marlow, Property Owner and Managing Member of Tailwind Crossing, LLC, to me known to be the person who executed the foregoing instrument.



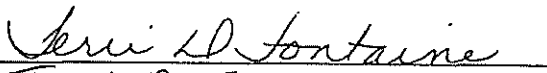

Terri D. Fontaine
Notary Public, Brown County, WI
My Commission Expires: 08/09/15

Exhibit A

Lots 1 through 114; and Outlots 1 through 4, Plat of *Tailwind Crossing*, a Planned Unit Development, Village of Hobart, Brown County, Wisconsin.

HB-2775 through HB-2892