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**MAGNOLIA PLACE SUBDIVISION**

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF THE PLAT OF MAGNOLIA  
PLACE SUBDIVISION IN THE VILLAGE OF  
MERTON, WISCONSIN.**

4761826

REGISTER OF DEEDS  
WAUKESHA COUNTY, WI  
RECORDED ON

April 10, 2024 01:11 PM  
James R Behrend  
Register of Deeds

21 PGS  
TOTAL FEE:\$30.00  
TRANS FEE:\$0.00

Book Page -



Drafted by and Return Address:

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MV 0385997004 and MV 0262998004

Parcel Identification Numbers  
(PIN)

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "**Declaration**") is made by HORWATH DEVELOPMENT LLC, a Wisconsin limited liability company (the "**Declarant**") as of January 30, 2024.

**RECITALS:**

A. Declarant is the owner of fee simple title in and to that certain real property situated in Waukesha County, Wisconsin, known as the Magnolia Place Subdivision, as shown on the plat (the "**Plat**") of subdivision recorded in the office of the Register of Deeds of Waukesha County, Wisconsin, recorded on April 10<sup>th</sup>, 2024, as Document No. 4761825, and which is referred to in this Declaration as the "**Subdivision**" or "**Development**".

B. The Subdivision consists of Twenty-Two (22) residential lots numbered 1 through 22 inclusively as shown on the Plat. It is the intention and desire of Declarant that the Subdivision be further developed into a first class, protected community of homes, and it is the present purpose of Declarant in executing this Declaration to subject the Subdivision to the restrictions, conditions, and covenants set forth below, each and all of which are for the benefit of each current and

subsequent owner of any parcel in the Subdivision.

## DECLARATION

NOW, THEREFORE, in consideration of the recitals set forth above, Declarant declares and agrees that each lot in the Subdivision shall be held, sold, and conveyed subject to the following restrictions and conditions, which shall be construed as covenants running with the land, binding on all parties having any right, title, or interest in the Subdivision or any part of the Subdivision and on their heirs, successors, and assigns and shall inure to the benefit of each Member (defined below):

### **ARTICLE 1 STATEMENT OF PURPOSE**

1.1 General Purpose. The general purpose of this Declaration is to help assure that the Subdivision remains, and is further developed into, an attractive community; to preserve and maintain the natural beauty of the Subdivision; to ensure the most appropriate development and improvement of each Lot; to promote the erection of well-designed and proportioned structures; to obtain harmonious improvements and use of materials; and to insure the highest and best use of the Subdivision.

### **ARTICLE 2 DEFINITIONS**

2.1 *Architectural Control Committee (ACC)* means and refers to a committee formed to maintain the quality and architectural harmony of improvements to the Development.

2.2 *Architectural Guidelines* mean and refer to the guidelines and rules established and supplemented from time to time by the Architectural Control Committee.

2.3 *Articles or Articles of Incorporation* mean and refer to the Articles of Incorporation of the Association which will have been filed with the Wisconsin Department of Financial Institutions to create the Association.

2.4 *Assessments or Assessment* mean and refer to annual, special and default assessments levied to meet the estimated cash requirements of the Association.

2.5 *Association* means and refers to the Magnolia Place Subdivision Homeowners Association, Inc., a Wisconsin non-stock corporation, its successors and assigns.

2.6 *Board of Directors* means and refers to the Board of Directors of the Association, which is the governing body of the Association.

2.7 *By-Laws* refer to the bylaws of Magnolia Place Subdivision Homeowners Association, Inc.

2.8 **Common Area** means any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now and hereafter owned by the Association for the common use and enjoyment of the Owners, including without limitation and if applicable, a pond, park, playground and equipment, green space, walking path, benches, or green space.

2.9 **Declarant** means and refers to Horwath Development LLC, a Wisconsin limited liability company, and its successors and assigns.

2.10 **Improvements** mean and refer to all buildings and structures, parking areas, fences, walls, hedges, plantings, pools, driveways, ponds, recreational facilities, signs, changes in any exterior shape, excavation and all other site work including without limitation grading, road construction, utility improvement, removal of trees or plantings, and any new exterior construction or exterior improvement which may be included in the foregoing. "Improvements" does not include turf, shrub or tree repair or replacement of a magnitude which does not change exterior colors or exterior appearance. "Improvements" does include both original improvements and all later changes and improvements.

2.11 **Lot** means and refers to any plot of land within the Magnolia Place Subdivision whether or not improvements are constructed thereon, which constitutes or will constitute a single family dwelling. The ownership of each Lot shall include all the rights, title, and interest of an Owner, which shall include without limitation, membership in the Association.

2.12 **Magnolia Place Subdivision** means and refers to the community created by this Declaration, consisting of the property and of all improvements located on the property.

2.13 **Magnolia Place Documents** mean and refer to the basic documents creating and governing the Subdivision, including but not limited to this Declaration, the Articles of Incorporation, Bylaws of the Association, the Architectural Guidelines and any process, procedures, rules, regulations or policies adopted under such documents by the Association or the Architectural Control Committee.

2.14 **Member** means and refers to any person or entity holding membership in the Association.

2.15 **Mortgage** means and refers to any mortgage, deed to secure debt, deed of trust, and any and all similar instruments used for the purpose of encumbering real property in this Development as security for the payment or satisfaction of an obligation.

2.16 **Mortgagee** means and refers to a holder of a mortgage.

2.17 **Owner or Owners** mean and refer to the record owner, whether one or more persons, of the fee simple title to a Lot located within the Development, and entitled to one vote per Lot as a member of the Magnolia Place Subdivision Homeowners Association, Inc., but excluding those having such interest merely as security for the performance of an obligation.

2.18 **Plat** means and refers to any plat (or as-built survey) depicting the Property filed in the office of the Register of Deeds for Waukesha County, Wisconsin, as such Plat may be amended from time to time.

2.19 **Property** means and refers to the real property set forth in Exhibit A subject to this Declaration.

2.20 **Voting Member or Voting Members** mean and refer to the Members in good standing with the Association entitled to vote.

### **ARTICLE 3 THE ASSOCIATION**

3.1 **Dedication of Common Area.** Declarant may convey to the Association certain parts of the property as Common Area, as shown on the Plat, intended for common use by the owners in Magnolia Place Subdivision. Such designated areas shall, upon conveyance, be dedicated to the common use and enjoyment of owners, and their families, guests, tenants, and invitees.

3.2 **Responsibility for Common Area.** Subject to the rights of the Owners set forth in this Declaration, the Association is responsible for the management and control of the Common Area and all improvements in the Common Area (including related equipment), and shall keep it in good, clean, and attractive condition and repair consistent with the requirements of a first class residential community, pursuant to the terms and conditions of this Declaration.

3.3 **Membership.** Every Owner, by virtue of being an Owner and for as long as they are an Owner, is a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. No Owner, whether one or more persons, have more than one membership per Lot owned, but all of the persons owning each Lot are entitled to rights of membership and of use and enjoyment appurtenant to such ownership. The combination of two or more original Lots will be considered a single Lot for membership and assessment purposes. The Articles of Incorporation and Bylaws of the Association may set forth additional classifications of membership, which Members may or may not be Owners.

3.4 **Classes of Membership and Voting Rights.** Each Member, holding Class A membership, is entitled to one vote for each Lot, according to the plat, regardless of whether more than one person holds an interest in a Lot. If a Lot is owned by more than one person, then all owners must consent to vote in the same manner. Any tenant of a Lot that is leased is not authorized to cast a vote. Only the record title holder of a Lot may vote on matters related to the Association.

3.5 **Compliance with the Document.** Each Owner shall abide by and benefit from the Magnolia Place Documents. A copy of the Association Rules in effect will be distributed to each Member of the Association, and any change in the Association Rules will be distributed to each Member within a reasonable time following the effective date of any change.

3.6 **Rules and Regulations.** The Association from time to time and subject to the provisions of the Magnolia Place Documents, may adopt, amend and repeal rules and regulations,

to be known as "Association Rules," governing the use of open space, schedule of fines for infractions of the Association rules, and setting such rules.

**3.7 Ownership of Personal and Real Property for Common Use.** The Association, through action of its Board of Directors, may acquire, hold and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, may accept any real or personal property, leasehold or other property interest within the Magnolia Place Subdivision conveyed to the Association by Declarant.

**3.8 Assistance to Architectural Control Committee.** The Association shall in all respects cooperate with and assist the ACC in the complete attainment of the ACC's functions, and the enforcement of its architectural guidelines, rules, regulations and decisions.

**3.9 Implied Rights and Obligations.** The Association may exercise any other right or privilege given to it expressly by the Magnolia Place Documents, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association under this Declaration or reasonably necessary to effectuate any such right or privilege. The Association shall perform all of the duties and obligations imposed upon it expressly by the Magnolia Place Documents, together with every other duty or obligation reasonably to be implied from the express provisions of the Magnolia Place Documents where reasonably necessary to satisfy any such duty of obligation.

#### **ARTICLE 4 ARCHITECTURAL CONTROL COMMITTEE**

**4.1** Magnolia Place Subdivision is designed as a private residential community with architectural controls. To ensure that the property is further developed harmoniously and that consistency is maintained throughout the Development, an Architectural Control Committee shall formulate, review, and control a comprehensive landscape plan, signs, parking and site improvements including structures of all types as set forth in the Architectural Guidelines and Rules.

**4.2** During the Class B membership term, the initial Architectural Control Committee (the "ACC") consists solely of Declarant. Upon termination of the Class B membership: (a) Declarant shall relinquish the power of the ACC to the Association, and (b) the Board of Directors shall appoint three Members to the ACC. The new Member ACC may promulgate guidelines as may be necessary to implement the architectural review process not inconsistent with established practice. If a member of the ACC fails or is unable to act in their ACC capacity, then a vacancy for such a position is deemed to have been created. The vacancy created must be filled temporarily or permanently, as necessary, by the remaining members of the ACC. Any expenses incurred by the ACC, both during the Class B membership and after its termination, must be paid for by the Association.

**4.3** The Architectural Control Committee shall:

(a) regulate the external design, appearance, and location of the Lots and any improvements thereof.



(b) adopt architectural guidelines and programs consistent with covenants and restrictions.

(c) inspect for compliance with these guidelines.

(d) adopt procedures for the exercise of its duties.

(e) maintain complete and accurate records of all actions taken.

4.4 Notwithstanding anything to the contrary contained herein, the ACC or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application of enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the community.

## **ARTICLE 5 ARCHITECTURAL GUIDELINES AND RULES**

5.1 **Land Use & Accessory Structures.** All Lots must be used for residential purposes only and common recreational purposes auxiliary thereto and for no other purpose. No Lot may be used as a right-of-way, street or road, or access to any property not included within the Development without the written consent of the Declarant. No structures, except as otherwise expressly herein provided, may be erected, altered, placed or permitted to remain on any lot other than one (1) single family dwelling. Accessory structures for storage or as a gazebo, pergola or for outdoor entertainment or as a pool accessory structure are allowed under the following conditions: All accessory structures must (a.) be ACC-approved and may not exceed 500 square feet in size unless specific exceptions are approved by the ACC, and (b.) must match the main house structure's exterior elements including masonry, design, roofing and color; and (c.) may not be or appear from the road as for use as a garage for road vehicle storage; and (d.) must be located tastefully in the rear yard and comply with other municipal and governing body rules with regard to lot-line set-back restrictions. Patios or decks may or may not be enclosed and are otherwise permitted by this Declaration, and must receive any necessary ACC approval, are allowed.

5.2 **Partition or Combination of Lots.** No Lot shall be subdivided or its boundary lines changed except with prior written approval of the Declarant and all necessary consents and approvals acquired from the applicable local municipality.

5.3 **Commercial Businesses Prohibited.** No commercial business of any type shall be permitted on a Lot. Nothing contained herein shall be construed as preventing the Declarant from erecting and maintaining facilities of a recreational or community nature or facilities incident to the use of the common area and easements. This section does not exclude any home office or remote work-from-home, but does exclude customer, clients, or patients being seen on residential premises.

5.4 **Common Area.** The Common Area is owned by the Declarant or the Association and no Owner may bring any action for partition or division of the Common Area by acceptance of a deed or other instrument of conveyance or assignment, each Owner is deemed to have waived such Owner's right to institute or maintain a partition action or any other action designed to cause

a division of the Common Area, and this section may be pleaded as a bar to any such action. Any Owner who institutes or maintains any such action is liable to the Declarant or the Association, and agrees to reimburse the Declarant or the Association for its costs, expenses and reasonable attorney's fees in defending any such action.

**5.5 Architectural Control.** No dwelling unit or pool house is to be erected, placed or altered on any Lot until the plans for such dwelling unit on the Lot and the professional survey and grading plan for the Lot have been submitted to and approved by the ACC. All landscaping plans and concrete driveway plans must be submitted to, and approved by, the ACC prior to commencement of work. All landscaping and driveway installation must be completed within six (6) months of completion of the dwelling unit, unless delayed by weather or other circumstances outside the Owner's reasonable control. All plans for the dwelling unit, grading, landscaping, driveways, swimming pool or pool house, if applicable, must be reviewed as to quality of workmanship and materials, harmony of external design with existing dwelling units, and as to location with respect to topography and finish grade elevation, before being approved by ACC or its successor or assigns. No home may be constructed on any Lot unless such work meets all local business codes, ordinances, and other applicable governmental restrictions in existence.

**5.6 Dwelling Size.** Each single-family dwelling on a Lot must have the following minimum square foot area: (a) 2,500 square feet minimum, if a one story dwelling; (b) 3,000 square feet minimum, if a one & one-half story or two story dwelling; and (c) 2,500 square feet minimum above front yard grade, if a multi/bi-level dwelling. If a dwelling incorporates a basement or lower level that is below the normal front yard grade, such basement or lower level does not qualify as being counted toward the total square foot minimums set forth in this paragraph. The level of the dwelling immediately above the basement is the "first level" or "first story" of such dwelling. Each dwelling must include space for parking at least two automobiles within an attached garage and such garage must have a minimum of 550 square feet. Garages exceeding 4 cars or 1,500 square feet, whichever applies, ("**Large Garage**") must be aesthetically designed so as to not appear disproportionately large compared to the dwelling unit and approval for a Large Garage is subject to the sole and absolute discretion of the ACC, which may be withheld for any reason or no reason at all.

**5.7 Setback.** Each Lot must comply with all applicable municipal and subdivision restrictions as to setback.

**5.8 Location.** All structures must be located with regard to the topography of each individual Lot, taking into consideration the elevation contours of the Lot, the Declarant or the ACC reserves unto itself, its successors and assigns, the right to control absolutely and solely to decide the precise site and location of any structure, improvements, and utilities upon all Lots and every Lot within the Development.

**5.9 Structure Material.** Unless specifically otherwise approved in writing by the ACC, all structures constructed or placed on any Lot shall be built of substantially new materials and no used structures shall be relocated or placed on any such Lot. No dwelling shall have an exterior surface composed of asbestos siding, exposed concrete block, cinder block, or other similar material. The exterior wall area (excluding windows, doors, or roof areas) on the front elevation of each dwelling must consist of at least 50% stone, brick or EIFS Stucco, and on both

the left and right elevations of the dwelling each dwelling must consist of at least 25% stone, brick, or EIFS Stucco, or as approved by the ACC. All stone, brick, or EIFS Stucco on the front elevation must terminate at an inside corner unless approved by the ACC. If a dwelling has an exterior chimney, then the entire exterior of the chimney must consist of stone, brick or EIFS Stucco. The balance of the home exterior, that is not stone, brick or EIFS Stucco, including the exposed basement, if any, may either: (i) consist of stone, brick or EIFS Stucco; or (ii) LP Smartside, Hardiplank, Miratek or comparable siding products and cement board as permitted upon approval by the ACC. Vinyl and aluminum siding are not permitted. Cultured or man-made stone products are not permitted unless samples are deemed very natural in appearance and pre-approved by the ACC. Fireplace wall vents must exit either the rear or side of the dwelling. Fireplace wall vent exits are prohibited on the front of a dwelling. Fireplace roof vents are permitted if: (y) on the rear of the dwelling and in a black finish; or (z) surrounded by a chimney in accordance with the requirements of this paragraph above. Roof shingles must be of a dimensional nature or other decorative style (but not standard 3-tab) in a dark or medium natural-tone color and style approved by the ACC. Main front to back roof pitches should generally be 8/12 or greater and front facing gables should generally be 12/12 or greater unless the architectural style is deemed appropriate by the sole discretion of the ACC. Secondary and accent roof pitches may be less than those stated herein if they are approved by the ACC.

**5.10 Kind of Home.** No mobile or manufactured homes of any kind, or any home having the same general appearance, is permitted on any Lot, with the exception that pre-fabricated wall panels or roof trusses are permitted. No building or structure of a temporary nature: trailer, tent, shack, garage or other out-building shall be erected or maintained on any Lot for longer than twenty-four (24) consecutive hours. Furthermore, no building shall be permitted on any Lot unless it is erected on a solid foundation of masonry from the ground level to the first floor level.

**5.11 Driveways.** Driveways and walkways must be constructed of concrete, brick or stone pavers or other comparable surface. Asphalt driveway surfaces are prohibited, unless as may be approved by the ACC.

**5.12 Drainage.** No Owner may perform or cause to be performed any work, construct any improvements, place any landscaping or suffer the existence of any condition whatsoever that alters or interferes with the drainage pattern of the Subdivision, except to the extent such alteration and drainage pattern is approved in writing by the Declarant, and except for the rights reserved to Declarant to alter or change the drainage patterns. No buried downspouts should discharge directly onto a neighbors lot.

## **ARTICLE 6 RESTRICTIONS AND COVENANTS**

**6.1 Maintenance.** All Owners shall keep their Lots, whether occupied or unoccupied, free of all tall grass, dead, diseased or decaying trees, weeds, trash, rubbish, and debris and keep all Lots in a neat and attractive condition. All improvements erected on Lots must be maintained in a clean neat and orderly condition and in a good state of maintenance and repair.

**6.2 Unsightly Materials Prohibited.** No rubbish, garbage, debris, junk, junk vehicles, or unsightly material must be deposited on any of the lots at any time except building material



during the course of construction on the site. All rubbish, waste, or garbage must be kept in sanitary containers, and must be removed from the premises at least once a week.

**6.3 Pets.** Commercial breeding or feeding of horses, cattle, goats, hogs, sheep or poultry; the operation of a commercial dairy; dog boarding kennel or veterinary hospital; and the operation of a commercial livery or boarding stable for horse; or a riding academy; and the keeping of any hog or milk cow or horse, are strictly prohibited. Each Owner, and/or their authorized occupants, may keep a limit of three (3) domestic animals (canine or feline) for family pleasure, provided that domestic animals must be restrained outside the home on leash or by invisible fence or other appropriate protective restraint, which require approval by the ACC. All appropriate measures must be taken by the Lot Owner to eliminate and prevent offensive odors and any unsightly accumulations from said animals. Noisy animals, such as incessantly barking dogs, are prohibited. If a Lot Owner cannot control a noisy animal, then such animal must be kept indoors, or otherwise controlled by their owners as to have no noise. Noisy animals that become a persistent problem must be removed from the subdivision by their owner. All pets must be kept indoors except for brief occasions of not more than 30 minutes at a time, or 90 minutes total per day, or when on a leash and accompanied by their owners. No outdoor kennels or regular keeping of pets are allowed outdoors.

**6.4 Noise.** No Owner shall make or permit any disturbing noises on their Lot by Owner or Owner's family, servants, employees, agents, or visitors, nor permit any conduct by such persons that will interfere with the rights, comforts or convenience of other Owners, including without limitation, fireworks, provided that fireworks may be used, as permitted by local law, in celebration of Independence Day weekend between the hours of 9 AM and 9 PM.

**6.5 Vehicles, Parking and Storage.** Each Lot dwelling shall include an enclosed garage large enough to accept at least two standard automobiles with 2 to 4 decorative garage doors as approved by the ACC, may not appear too large in proportion to the home and may not exceed 1500 sf in size, unless otherwise approved by the ACC. No other vehicles, including without limitation, boats, motor homes, ATV's, motorcycles, travel trailers, other recreational vehicles, or commercial trucks, may be stored permanently or habitually parked outside of a garage upon the Lot, or on the Lot's driveway. Furthermore, no wrecked or junked motor vehicles or vehicles without a current license plate and registration shall be placed upon the Lot. Also, no other materials of any nature other than patio, porch, or landscape furniture and accessories may be stored outdoors except as may be otherwise approved by the ACC.

**6.6 Fuel Storage.** No bulk storage of flammable, combustible or explosive fluids, chemicals or substances shall be allowed in any dwelling, or on any Lot, or on the common areas, except that small quantities of fuels used for common activities such as lawn mowing, BBQ grills and other like activities may be kept when stored out of view from any streets or neighbors in a manner which minimizes the risk of fire or explosion.

**6.7 Fences.** Fences are prohibited, except decorative, see-through pole, metal pool and dog run fences no taller than 42" or in accordance with local ordinance, whichever is higher, are permitted in rear yards, which does not project on any side beyond the width of the dwelling unit. All such fences must be approved in writing by the ACC.

**6.8 Signs.** No signs of any character may be erected, pasted, posted, or displayed upon or about any Lot or part of any Lot, or common area, without the written permission of the ACC. The ACC has the right in its sole discretion to prohibit or to restrict and control the size, construction, material, wording, location and height of all signs and may summarily remove and destroy all unauthorized signs. Declarant and Lot owners, however, may post temporary, professional "Home For Sale" signs on the Lots and these signs must be approved before being put on any Lot. Furthermore, signs used by a builder during construction or informational permit signs by the Declarant are allowed. All such permitted signs may not exceed 16 square feet in size and 5 feet in height without special approval by the ACC and must be maintained in a proper upright, manicured state. No yard signs for the sale of cars, furniture, etc. are permitted. Rummage sale signs may be permitted if for a period of no more than one week as approved by the ACC.

**6.9 Outdoor Lighting.** Each Lot Owner, at the Lot Owner's sole cost and expense, install and maintain one light-post common to the subdivision as directed by the ACC, which is of a design and color as selected by the ACC, and located near the road and driveway as specified by the ACC and Village of Merton. Any other outdoor lighting positioned and installed by a Lot Owner must be approved by the ACC and shall be of such a nature and type so as not to present a hazardous or confusing condition and so as not to create a nuisance to any other lot owner. Decorative holiday lighting is permitted for a period of up to two (2) months annually, provided that the ACC reserves the right to require a Lot Owner to remove any such decorative holiday lighting prior to the conclusion of such two (2) month period, if the ACC, in the ACC's sole and absolute discretion deems the decorative holiday lighting to be distasteful, obscene, or obnoxious.

**6.10 Mail Boxes.** Pending approval for individual mail boxes by the USPS, each Lot Owner, at the Lot Owner's sole cost and expense, must install and maintain a common-style mailbox installed individually on a decorative post as directed and approved in design and color by the ACC, or as contained in a cluster or universal mailbox with a specific mailbox, if and as required by USPS. If cluster mail boxes are required by the USPS, Owners will not obstruct use or access to the cluster mailbox with vehicles, or otherwise, in a manner that may disrupt normal U.S. mail delivery.

**6.11 Swimming Pools.** In-ground pools are permitted on any Lot subject to review and approval by the ACC. No above-ground or non-permanent pools may be placed. All pools and decorative fences must comply with all local governing ordinances, and as otherwise set forth in Section 6.7.

**6.12 Access.** There shall be no overland vehicular access to any Lot except from designated roads and paths lying within the Common Areas. The Declarant, its agents or employees are entitled to access each Lot from time to time during reasonable working hours, upon oral or written notice to the Owner, as may be necessary for the maintenance, repair or replacement of any portion of the Common Areas, or facilities situated upon such Lot which serve another Owner's Lot. The Declarant or its agent shall also have access to each Lot at all times without notice as may be necessary to make emergency repairs to prevent damage to the Common Areas or another Lot.

**6.13 Amendments to Regulations.** Reasonable regulations governing the use of the Common Areas and external appearance of all structures erected on the Lots may be made and

amended from time to time by the Declarant or the ACC; provided, however, that all such regulations and amendments thereto shall be approved by a majority vote of the Directors of the Owners Association before effective.

## **ARTICLE 7 INSURANCE**

**7.1 By the Declarant or Association.** The Declarant or Association or its duly authorized agent are entitled to obtain insurance to the extent reasonably available for all improvements on the Common Areas against loss or damage in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction work in the event of damage or destruction from any reasonable hazard. The Declarant may also obtain a broad form public liability policy covering all Common Areas. In the event of damage or destruction to property insured by the Declarant by fire or other casualty, the Declarant or its agent shall, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the property to as good a condition as formerly enjoyed. If the insurance proceeds are insufficient to pay all costs of repairing or rebuilding of such destroyed improvement, then the Declarant or its agents shall levy a special assessment against all Owners to make up such deficiency. If the insurance proceeds exceed the cost of repair, then the excess proceeds shall be distributed to the respective Owners and Mortgagees as their interests appear.

**7.2 Liability Insurance by Declarant or Association.** The Declarant or Association are entitled to obtain a comprehensive policy of public liability insurance insuring the Association and its Members for all liability for property damage, bodily injury or death in connection with the operation, maintenance and use of the Common Area within the Magnolia Place Subdivision.

**7.3 By the Owner.** It is the individual responsibility of each Owner to provide, as an Owner sees fit, insurance on the improvements on Owner's Lot and dwelling for damage or destruction from all reasonable hazards. Each Owner shall maintain as the Owner sees fit homeowner's liability insurance, theft and other insurance covering personal property damage or personal liability loss.

## **ARTICLE 8 MAINTENANCE ASSESSMENTS**

**8.1 Creation of the Lien and Personal Obligation for Assessments.** Each Owner of any Lot, covenants and agrees to pay to the Association:

(a) Annual assessments or charges as provided in this Declaration for the purpose of funding the maintenance fund as established and directed by the Association.

(b) Special assessment for capital improvements and other purposes as stated in this Declaration; such annual and special assessments to be fixed, established and collected from time to time as provided below.

(c) Default assessments which may be assessed against an Owner's Lot pursuant to the Magnolia Place Documents for failure to perform an obligation under the

Magnolia Place Documents or because the Association has incurred an expense on behalf of the Owner under the Magnolia Place Documents. The annual, special and default assessments, together with interest, costs and reasonable attorney's fees, shall be a charge upon the land and shall be a continuing lien upon the Lot against which each such assessment is made until paid. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due.

**8.2 Purpose of Assessments.** The assessments levied by the Association shall be used for maintenance of the Common Area, including but not limited:

(a) to keep the Common Areas clean and free from debris and to maintain any amenities located thereon in a clean and orderly condition, to maintain the landscaping thereon in accordance with the highest standards for private parks including any necessary removal and replacement of landscaping, and to repair, replace, and provide for additions to the improvements as stated in the Magnolia Place Documents.

(b) to pay all taxes, if any, levied against the Common Areas and any properties owned by the Association.

(c) to erect and maintain entrance signs at the entrances to the Development and signs on the Common Areas, said signs to be of standard construction and quality.

(d) to pay the premiums on all hazard insurance carried by the Association on the Common Areas and all public liability insurance carried by the Association pursuant to the By-Laws.

**8.3 Date of Commencement of Annual Assessment; Due Dates.** The annual assessments commence for each Lot upon the sale of the Lot to an Owner who is not the Declarant. The initial annual assessment is \$600.00, which may be adjusted upon the sole discretion of the Declarant during the Class B membership term and as set forth in Section 8.4 below after the Board of Directors is formed. The annual assessments must be prorated according to the number of months remaining in the calendar year. Upon the sale of a Lot to a new Owner, the annual assessments commence as to that Lot on the first day of the month following the conveyance of the Lot to the new Owner.

**8.4 Calculation and Apportionment of Annual Assessments.** After the formation of the initial Board of Directors, the Board of Directors shall prepare a budget by April 15 of each year estimating its net cash flow requirements for the next year and an estimate of the assessments to be charged each Owner, and the Board shall distribute the proposed budget to the Owners. On or before April 30<sup>th</sup> of each year, the Board shall approve the budget in final form and shall determine, levy and assess the Association's annual assessments for the approaching year. Each budget shall include funds for establishing and maintaining reserves for periodic repairs, replacement and maintenance of any improvements on the open space and Common Area which must be replaced on a periodic basis, and for taxes, capital improvements, deficiencies for the prior year's maintenance fund and other purposes, and shall include any expected income and surpluses from the prior year's fund.



8.5 **Special Assessments.** In addition to the annual assessments authorized above, the Board of Directors may levy in any fiscal year one or more special assessments applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a described capital improvement on the Common Area, including the necessary fixtures and personal property related thereto, or to make up any shortfall in the current year's budget. Notice of the amount and due dates for each special assessment must be sent to each Owner at least (30) days prior to the due date.

8.6 **Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Lots, except that no assessment will be charged to any Lot owned by the Declarant and that the Board may provide for a reduced assessment to be paid by those Lot owners whose property is undeveloped; provided, however, that the Owners of undeveloped Lots are assessed on a uniform basis. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

8.7 **Owner Liability.** No Owner may waive or be exempt from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of any assessment may be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the By-Laws or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

8.8 **Default Assessments.** All monetary fines assessed against an Owner pursuant to the Association documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association documents, shall be a default assessment and shall become a lien against such Owner's Lot which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such default assessment shall be sent to the Owner subject to such assessment at least thirty (30) days prior to the due date.

8.9 **Effect of Non-payment of Assessment; Lien; Remedies of Association.** Any Association installment, whether pertaining to an annual, special or default assessment, which is not paid within thirty (30) days of its due date is delinquent. If an assessment installment becomes delinquent, then the Association, in its sole discretion, may take any or all of the following actions:

- (a) Enforce a late charge as provided in the By-Laws.
- (b) Assess a late charge of at least 12% per delinquency.
- (c) Assess an interest charge from the date of delinquency at the rate per annum of 2 points above the prime rate charged by the Association's bank or such other rate as shall have been established by the Board of Directors.
- (d) Suspend the voting rights of the Owner during any period of delinquency.



(e) Accelerate all remaining assessment installments for the fiscal year in question so that unpaid assessments for the remainder of the year shall be due and paid at once.

(f) Bring legal action against any Owner personally obligated to pay the delinquent installments.

(g) File a lien with respect to the Lot, and foreclose as set forth below:

The Association may file a statement of lien by recording in the appropriate offices of Waukesha County, Wisconsin, a written statement with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot, the name of the Association, and amount of the delinquent assessments then owing, which statement must be signed and acknowledged by the President of the Association, and which must be served on the Owner of the Lot by mail to the address of the Lot or at such other address as the Association may have in its records for the Owner ("Lien Notice"). Thirty (30) days following the mailing of the Lien Notice, the Association may proceed to foreclose the statement of lien in the same manner as provided for foreclosure of mortgages under the statutes of the State of Wisconsin. The lien is in favor of the Association and is for the benefit of all other Owners. In a foreclosure action, the Association is entitled to recover as a part of the action the interest, costs and reasonable attorney's fees with respect to the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of a Lot. The remedies herein provided are not exclusive and the Association may enforce any other remedies to collect delinquent assessments as may be provided by law.

**8.10 Successor's Liability for Assessments.** In addition to the personal obligation of each Owner to pay all assessments and the Association's perpetual lien for assessments, all successors to the fee simple title of a Lot, are jointly and severally liable with the prior Owner or Owners for any and all unpaid assessments, interest, late charges, cost, expenses and attorney's fees against such Lot without prejudice to any successor's right to recover from any prior Owner any amounts paid by such successor. The liability of a successor is not personal and terminates upon termination of such successor's fee simple interest in the Lot. In addition, such successor is entitled to rely on the statement of the status of the assessments issued by or on behalf of the Association.

**8.11 Subordination of the Lien.** The lien of the assessments is subordinate to the lien of any first mortgage. The lien of the assessments is superior to and prior to any homestead exemption provided now or in the future by laws of the State of Wisconsin. No sale or transfer of any Lot pursuant to a decree of foreclosure or any other proceeding or deed in lieu of foreclosure for the purpose of enforcing a first mortgage extinguishes the lien of such assessments as to installments which become due prior to such sale or transfer, and the amount of such extinguished lien may be reallocated and assessed to all Lots as a common expense at the direction of the Board of Directors. No sale or transfer relieves the purchaser or transferee of a Lot from liability for, nor the Lot from the lien of any assessments made after the sale of transfer.

**8.12 Notice of Action.** Any first Mortgagee that makes a prior written request to the Secretary of the Association and furnishes its name and address in the legal description of the Lot

in which it has an interest to the Secretary must timely provide written notice of any delinquency in payment, special or default assessment levied against the Lot encumbered by its first mortgage. In addition, any first Mortgage is entitled to cure a delinquency and obtain a release from the lien imposed or perfected by reason of such delinquency.

**8.13 Exempt Property.** The following portions of the property are exempt from the assessments, charges and liens created under this Declaration:

(a) All properties and other interests therein dedicated and accepted by the Village of Merton, Wisconsin and devoted to public use, if any.

(b) All utility easements and Common Area.

**8.14 Statement of Status of Assessments.** Upon ten (10) days prior written notice, the Treasurer must provide the requesting Owner, active purchaser, or mortgagee a statement of the account for a Lot setting forth:

(a) The amount of any unpaid assessments (whether annual, special or default assessments), interest, late charges, costs, expenses and attorney's fees then existing against a particular Lot,

(b) The amount of the current periodic installments of the annual assessments and the date through which they are paid,

(c) Any other information deemed proper by the Association. The information contained in such statement when signed by the Treasurer, is conclusive upon the Association as to the person or persons to whom such statement is issued and who rely upon it in good faith.

**8.15 Failure to Assess.** The omission or failure of the Board to fix the assessment amounts or rates or to deliver or mail to each Owner an assessment notice is not a waiver, modification or release of any Owner from the obligation to pay assessments. In such event, the Owner shall continue to pay annual assessments on the same basis as for the last year for which an assessment was made until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

## **ARTICLE 9 DURATION AND AMENDMENTS**

**9.1 Term.** The covenants and restrictions of this Declaration run with and bind the Property, and inure to the benefit of and are enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of twenty-five (25) years from the date that this Declaration is recorded, after which time this Declaration automatically extends for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, is recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change covenants and restrictions, in whole or in part, or to terminate the same.

## **9.2 Amendments.**

(a) If Declarant maintains the power to appoint the Board of Directors, then Declarant is entitled to unilaterally modify and amend this Declaration provided the modifications and amendments are lawful and do not violate the community development plan. No house that is complete, or substantially complete, at the time of the adoption of an amendment and which conformed to the Declaration prior to the amendment are rendered nonconforming by the adoption of an amendment. Any such amendment by Declarant is effective when a written instrument setting forth the amendment is recorded in the appropriate offices of Waukesha County, Wisconsin.

(b) After the termination of the Declarant's right to appoint the Board of Directors, this Declaration may be amended only by the affirmative vote or written consent of Voting Members representing seventy-five (75%) percent of the total votes of the Association. No amendment may remove, revoke or modify any right or privilege of Declarant as specifically provided for in this Declaration or Amendments without the written consent of the Declarant or the assignee of such right or privilege. Any amendment must be recorded with the Register of Deeds for Waukesha County, Wisconsin.

(c) The Declarant may at any time within five (5) years from the date of the recording of this Declaration, even if the termination of Declarant's right to appoint the Board of Directors has already occurred, amend this Declaration to correct scrivener's errors and to clarify any ambiguities determined to exist herein, or to change or add provisions of this Declaration, for the purpose of meeting the requirements of governmental agencies, including but not limited to the Federal Housing Administration and the Veterans Administration. Such amendment needs to be executed and acknowledged by the Declarant only, and need not be approved by the Association, the Owners, lienors and mortgagees of Lots, whether or not elsewhere required for amendments. No amendment shall alter the subordination provisions of this Declaration without the prior approval of any mortgagee enjoying such protection.

**9.3 Revocation.** This Declaration cannot be revoked except as provided herein regarding total condemnation without the consent of all of the Owners in a written instrument duly recorded.

## **ARTICLE 10 ENFORCEMENT OF COVENANTS**

**10.1 Violations Deemed a Nuisance.** Every violation of this Declaration or any of the other Magnolia Place Documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed at law or in equity against anyone in violation of these covenants are available.

**10.2 Compliance.** Each Owner, or other occupant, of any part of a Lot shall comply with the provisions of the Magnolia Place Documents, as amended from time to time.

10.3 **Failure to Comply.** Failure to comply with the Magnolia Place Documents is grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing as provided in the By-Laws shall be given to the delinquent party prior to commencing any legal proceedings.

10.4 **Who May Enforce.** Any action to enforce the Magnolia Place Documents may be brought by Declarant or the Board of Directors in the name of the Association on behalf of the Owners. If, after a written request from an aggrieved Owner, none of the foregoing persons or entities commences an action to enforce the Magnolia Place Documents, then the aggrieved Owner may bring such action.

10.5 **Remedies.** Any violation of the Magnolia Place Documents affords the Board, or Declarant, on behalf of the Owners, the right to enter upon the offending premises or take appropriate peaceful action to abate, remove, modify or replace, at the expense of the offending Owner, any structure, thing or condition that may exist thereon contrary to the interest and meaning of the Magnolia Place Documents. If the offense occurs on any easement, walkway, Common Area or the like, the cure is at the expense of the Owner or other person responsible for the offending condition.

10.6 **Non-Exclusive Remedies.** All the remedies set forth herein are cumulative and not exclusive.

10.7 **No Waiver.** The failure of the Board of Directors, Declarant, the Association, the ACC or any aggrieved Owner to enforce the Magnolia Place Documents does not constitute a waiver of the right to do so for any subsequent violations or of the right to enforce any other part of the Magnolia Place Documents.

10.8 **No Liability.** No member of the Board of Directors, Declarant, the ACC or any Owner is liable to any other Owner for the failure to enforce any of the Magnolia Place Documents.

10.9 **Recovery of Costs.** If legal assistance is obtained to enforce any of the provisions of the Magnolia Place Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Magnolia Place Documents or the restraint of violations of the Magnolia Place Documents, the prevailing party is entitled to recover all costs incurred by it in such action, including reasonable attorney's fees as may be incurred, or if suit is brought, as may be determined by the Court.

## **ARTICLE 11 PRINCIPLES OF CONSTRUCTION**

11.1 **Severability.** This Declaration, to the extent possible, must be construed or reformed so as to give validity to all of its provisions. Any provision of this Declaration found to be prohibited by law or unenforceable is ineffective to the extent of such prohibition or unenforceability without invalidating any other part hereof.

11.2 **Construction.** In interpreting words in this Declaration, unless the context otherwise provides or requires, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.



11.3 **Headings.** The headings are included for purposes of convenient reference, and they shall not affect the meaning or interpretation of this Declaration.

11.4 **Registration of Mailing Address.** Each Member shall register a mailing address with the Secretary of the Association from time to time, and notices or demands intended to be served upon or given to a Member must be personally delivered or sent by mail, postage prepaid, addressed in the name of the member at such registered mailing address.

11.5 **Notice.** All notices or requests required shall be in writing. Notice to any Member is deemed delivered and effective upon personal delivery or three (3) days after posting, when sent by certified mail, return receipt requested, to the address of such Member on file in the records of the Association at the time of such mailing. Notice to the Board, the Association, or ACC is deemed delivered and effective upon personal delivery or three (3) days after posting, when sent by certified mail, return receipt requested, to the Association, the Board, or ACC at such address as established by the Association from time to time by notice to the Members. General notices to all Members or any classification do not need to be certified, but may be sent regular first class mail.

11.6 **Waiver.** No failure on the part of the Association, the Board or the ACC to give notice of default or to exercise delay in exercising any right or remedy operates as a waiver, except as specifically provided above if the board or the ACC fails to respond to certain requests. No waiver is effective unless it is in writing, signed by the President or Vice-President of the Board on behalf of the Association, or by the Chairman of the ACC on behalf of the ACC.

11.7 **Limitation of Liability on Indemnification.** The Association shall indemnify every officer, director and committee member against any and all expenses, including trial and appellate attorney's fees and costs reasonably incurred by or imposed upon any officer or director in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which they may be a party by reason of being or having been an officer or director. The officers and directors are not liable for any mistake of judgment, negligent or otherwise, except for their own individual willful malfeasance, misconduct or bad faith. The officers and directors have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for is not exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association may, as a common expense, maintain adequate general liability insurance and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

11.8 **Conflicts Between Documents.** In case of conflict between this Declaration and the Articles of Incorporation or the By-Laws, this Declaration controls.

11.9 **Indemnity for Damages.** Each and every Owner and future Owner, in accepting a deed or contract for any Lot subject to these restrictions, agrees to indemnify Declarant for any damage caused by such Owner, or the contractor, agent or employees of such Owner, to roads,



streets, gutters, walkways or other aspects of public ways, including all surfacing thereon, or to water, drainage or storm sewer lines, or sanitary sewer lines, or other utilities such as telephone, cable television, electricity or gas lines.

**11.10 Assignment.** The Declarant may assign all or any part of its rights and reservations to any successor who takes title to all or part of the Subdivision in a bulk purchase for the purpose of development and sale. Such successor is identified, the particular rights being assigned must be specified, and, to the extent required, concomitant obligations shall be expressly assumed by such successor, all in written instrument duly recorded in the recorder of deeds office of Waukesha County, Wisconsin.

**11.11 Rights of Owners.** Whenever all or any part of the Common Area is taken or conveyed in lieu of and under threat of condemnation by the Board of Directors acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner is entitled to notice of the taking, but the Association must act as attorney-in-fact for all Owners in the proceeds incident to the condemnation proceeding, unless otherwise prohibited by law.

**11.12 Partial Condemnation; Distribution of Award; Reconstruction.** The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows: If taking involves a portion of the Common Area on which Improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Owners representing at least sixty-six (66%) percent of the Class "A" votes in the Association otherwise agree, the Association must restore or replace such Improvements so taken on the remaining land included in the Common Area to the extent lands are available therefore, in accordance with the plans approved by the Board of Directors and the ACC. If such Improvements are to be repaired or restored, the provisions hereinabove regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after such restoration or replacement is completed, then such award or net fund shall be distributed in equal shares per Lot, first to the Mortgagees and then to the Owners as their interests appear.

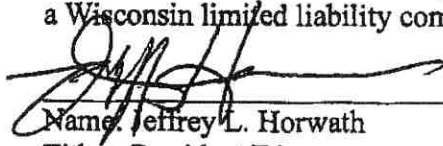
**11.13 Complete Condemnation.** If all of Magnolia Place Subdivision is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance of condemnation, then the Association created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Common Area shall be distributed equally to all Owners.

*[Signature Pages Follow]*

The foregoing is agreed to and accepted by the undersigned parties.

**DECLARANT:**

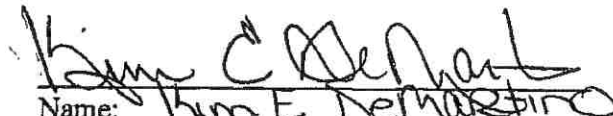
HORWATH DEVELOPMENT, LLC,  
a Wisconsin limited liability company

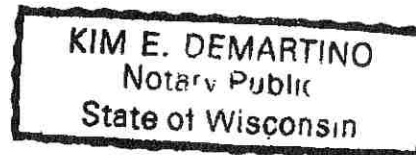
  
Name: Jeffrey L. Horwath  
Title: President/Director

**ACKNOWLEDGMENT**

STATE OF WISCONSIN     )  
                                          ) ss.  
COUNTY OF WAUKESHA    )

Personally came before me Jeffrey L. Horwath, the President, of Horwath Development, LLC, a Wisconsin limited liability company, who executed the above instrument and acknowledged the same.

  
Name: Kim E. Demartino  
Notary Public, State of Wisconsin  
My Commission: 7-14-25



## **EXHIBIT A**

### **Legal Description and Parcel Numbers**

#### **PARCEL I:**

The North 1/2 of the Northeast 1/4 of Section 25, Township 8 North, Range 18 East, in the Village of Merton, Waukesha County, Wisconsin, EXCEPTING THEREFROM those premises conveyed by Warranty Deed recorded August 14, 1987 in Reel 923, Image 642, as Document No. 1443123; and further EXCEPTING all of the Certified Survey Map No. 5466 as Recorded on April 7, 1988 in Volume 44 of Certified Survey Maps, Page 125 as Document No. 1473761; and ALSO EXCEPTING those premises conveyed by Warranty Deed recorded June 18, 2003 as Document No. 3009812, described as follows: The North 1/2 of the Northeast 1/4 of Section 25, Township 8 North, Range 18 East, Village of Merton, County of Waukesha, State of Wisconsin, lying West of the centerline of Winkleman Road.

#### **PARCEL II:**

The West 1/2 of the Northwest 1/4 of the Northwest 1/4 of Section 30, Township 8 North, Range 19 East, in the Village of Merton (formerly Town of Lisbon), including the West 20 acres (also described as the West 1/2) of the Northwest 1/4 of the Northwest 1/4 of Section 30, Township 8 North, Range 19 East, in the Village of Merton (formerly Town of Lisbon), all in Waukesha County, Wisconsin. EXCEPTING THEREFROM all of the Certified Survey Map No. 5466 as recorded April 7, 1988 in Volume 44 of Certified Survey Maps, Page 125 as Document No. 1473761.

For informational purposes only:

Property Address: Vacant Land Winkleman Rd, Hartland, WI 53029

Tax Key Number: PARCEL I: MV 0385-997-004 and PARCEL II: MV 0262-998-004