

**AMENDED AND RESTATED**  
**DECLARATION OF PROTECTIVE COVENANTS**  
**FOR**  
**WESTERRA BUSINESS CAMPUS**

THESE AMENDED AND RESTATED PROTECTIVE COVENANTS ("Protective Covenants") are made this \_\_\_\_ day of April, 2004 by Waterford Centre, LLC and Runzheimer Park, LLC (jointly and severally, the "Declarants" or the "Landowners").

**WITNESSETH**

WHEREAS, Declarants are the owners of, or have an ownership interest in, the real property described in Exhibits A and B attached hereto, located in the Village of Waterford, Wisconsin (the "Property"); and

WHEREAS, Declarants intend to create a high-quality office, industrial, commercial and residential mixed-use development on the Property (the "Westerra Business Campus" or the "Campus"); and

WHEREAS, Declarants desire that the investment of each subsequent owner of any part of the Property be protected and enhanced; and

WHEREAS, an orderly and attractive grouping of well-designed, well-constructed and well-landscaped buildings contributes to that objective; and

WHEREAS, subjecting such Property to covenants, conditions, restrictions, and reservations is desirable and instrumental towards achieving that objective; and

WHEREAS the Declarants, on or about May 23, 2002 adopted a certain Declaration of Protective Covenants for Westerra Business Campus, and caused the same to be recorded in the Office of the Register of Deeds for Racine County, Wisconsin as Document No. 1834523, in Volume/Reel 3441 of Records commencing at Page/Image 909; and

WHEREAS the Declarants have determined that it is in the best interest of the Campus that such Declaration of Protective Covenants be amended and re-stated as set forth herein; and

WHEREAS the Village of Waterford (the "Village"), acting through its Village Board, has made a similar determination, and has indicated its consent to these restated Protective Covenants by countersigning them as indicated below.

NOW, THEREFORE, the Declarants hereby declare that, except as is otherwise specifically provided in these Protective Covenants, the real property hereinafter

described shall be held, sold, conveyed, transferred, used and improved subject to the covenants, conditions, restrictions, reservations and easements hereinafter set forth, which shall bind and inure to the benefit of the Declarants and their successors and assigns, and to all parties hereafter having any interest in any of the Property, as the term "interest" is defined in Wis. Stats. Chapter 700:

## **1. The Property**

The Property described in Exhibit A, attached hereto and incorporated herein by reference, and shown in Exhibit B, attached hereto and incorporated herein by reference, and the development of the Property known as Westerra Business Campus (the "Campus"), are made subject to the provisions of these Protective Covenants. The Protective Covenants declared herein shall run with the land and shall affect the Property and the Campus and each part thereof and any interest in the Property or the Campus or any part thereof for all purposes, and shall be binding upon and inure to the benefit of the Landowners and all owners, lessees, and occupants of the Property or the Campus, and their successors and assigns. Owners shall be fully responsible for compliance by their tenants with the provisions of these Protective Covenants. Notwithstanding the foregoing provisions, these Protective Covenants shall not apply to Sites or areas dedicated to or otherwise acquired in fee simple (or to easements, restrictive covenants or other real property interests in Sites or areas dedicated to or otherwise acquired) by the Village, the Community Development Authority of the Village of Waterford (the "CDA") and/or the public, regardless of whether such Sites, areas or interests were dedicated or acquired prior to or after the recording of these Protective Covenants, and shall not apply to any public improvements, structures or uses (except buildings in addition to the existing municipal lift station building, the proposed municipal Well No. 4 pump house building, the proposed municipal Well No. 5 pump house and water treatment plant building and any repair, or reconstruction of any of such three buildings that leaves the exterior appearance of such buildings essentially unchanged) made, constructed, installed or conducted on such Sites or areas at any time, except those provisions of these Protective Covenants that impose restrictions or requirements upon Owners and/or their employees, agents and contractors to protect or maintain such Sites or areas, improvements, structures or uses.

## **2. Westerra Business Campus Association**

### *2.01 Formation and Function:*

The Declarants shall incorporate a Wisconsin non-profit corporation called Westerra Business Campus Association, Inc. (the "Association"). All owners ("Owner") of any separate tract, parcel or lot of the Property ("Site") shall be members of the Association. The Association, through its Board of Directors, will be responsible for enforcing these Protective Covenants and maintaining any common areas and improvements in the Campus and generally administering the Association.

## *2.02 Board of Directors*

The Association will be governed by a board of directors (the "Directors") who will initially be designated by the Declarants. The qualifications, election and duties of Directors shall be as set forth in the By-Laws of the Association.

## *2.03 Declarants' Control*

Notwithstanding any other provisions contained in the By-Laws, Declarants, their successors and assigns, shall have the right at their option to appoint and remove the members of the Board of Directors and officers of the Association and to amend the By-Laws or rules and regulations of the Association until the earlier of: (a) thirty (30) years after the first sale of a Site in the Campus by Declarants or (b) such earlier time as may be determined by Declarants. Each owner of a Site in the Campus shall be deemed by acceptance of any deed to any Site to agree, approve and consent to the right of Declarants to so control the Association.

## *2.04 Westerra Business Campus Review Board:*

The Declarants shall designate a Westerra Business Campus Review Board (the "Westerra Review Board" or the "Review Board") which shall exist for the term of these Protective Covenants and shall review and approve, conditionally approve or disapprove any structure or improvement of any kind, the construction or placement of which is proposed upon any Site within the Campus, including, without limitation, any building, paving, landscaping (including screening, walls and fences) or other improvements or modifications thereto, except as provided in Section 1, above. If the Review Board disapproves any such structure or improvement, it shall specify the deficiency in the submitted Application Plans (as defined in Section 4 herein) and the changes to the Application Plans that would be necessary in order to obtain approval from the Review Board.

Before construction or placement of any such structure or improvement shall begin on any Site, all plans and specifications therefore shall be submitted to and approved in writing by the Review Board and the Village in accordance with Section 4, below.

Membership of the Review Board shall consist of at least three (3) persons, at least one (1) of whom shall be a person with building construction experience or a land planner. The Declarants shall designate the Review Board Members, who shall serve in perpetuity unless and until such time as they may be replaced by the Declarants or resign. Upon the resignation of a member of the Review Board, the replacement member shall be appointed by the Declarants.

Any party aggrieved by a decision of the Review Board shall have the right to make a written request to the Board of Directors for review of said decision. The Board of Directors shall accept or decline such request in writing

within 15 days after receipt of same. The decisions of the Review Board accepted for review may be overruled by the Board of Directors; the determination of the Board of Directors shall be final and binding in all such review matters.

#### *2.05 Membership Voting:*

For any matter to be voted upon by the Association membership, each Owner shall have the number of votes, including fractions thereof, equal to the number of Buildable Acres, as defined in Section 5.02 below, including fractions thereof, owned by said Owner in the Campus. When a majority or percentage vote is required under these Protective Covenants, the requirement shall be calculated using the total number of votes available in the Campus.

### **3. Use Restrictions**

#### *3.01 Permitted Uses:*

The permitted uses of the land comprising the Property shall be as set forth from time to time in the applicable zoning ordinance, currently designated as §17.18 (14) of the Village of Waterford Municipal Code. Operations and uses that are not specifically authorized by these Protective Covenants may be permitted in a specific case, provided the Village of Waterford zoning ordinances will permit it, and provided that operational plans and specifications are submitted to and approved in writing by the Review Board. Approval or disapproval of such operational plans and specifications shall be based upon the effect of such operations or uses on other property subject to these Declarations or upon the occupants thereof but shall be in the sole discretion of the Review Board.

#### *3.02 Prohibited Uses:*

No mini-warehousing, heavy manufacturing, junk or salvage, animal processing, recycling or incineration facility will be permitted except on such Sites, if any, as the Review Board, in its sole discretion, shall first approve. Uses not permitted under applicable Village of Waterford zoning ordinances are prohibited. Further, whereas the Property is substantially coextensive with the boundaries of Tax Increment District No. 2 of the Village of Waterford (“TID No. 2”), so long as TID No. 2 is in existence, no tax-exempt ownership or use shall be permitted within TID No. 2, and no land and no buildings or improvements on land located within TID No. 2 shall be owned or used in such a way as not to be fully assessable and taxable for real estate tax and special assessment purposes; provided, however, that the foregoing restrictions on tax-exempt status shall not in any event apply to real property or real property interests owned by the Village, the CDA or the public, or to any public improvements or the use thereof for public street or highway, water, sewerage, storm water management, recreational or other public purposes (except buildings in addition to the existing municipal lift station building, the proposed municipal Well No. 4 pump house building, the proposed municipal Well No. 5 pump house and water treatment plant building

and any repair or reconstruction of any of such three buildings that leaves the exterior appearance of such buildings essentially unchanged).

### *3.03 Additional Prohibited Uses:*

No nuisance or offensive or noxious odors, fumes, dust, smoke, noise, vibration, pollution, glare or other nuisance, or hazardous uses by reason of excessive danger of fire or explosion shall be permitted in the Campus. Determinations of nuisance shall be made by the Board of Directors upon the basis of written complaint or on its own initiative. Standards for nuisance or offensive and noxious use shall be those of the Village of Waterford as articulated in its official ordinances and regulations. In addition, no lighting shall be permitted on any Site that, in the judgment of the Review Board, could serve as a nuisance or hazard to other sites or the general public, as described in Section 5.13. Additionally, because two municipal water wells are located within the Campus, the commencement, after the date of approval and execution of these Protective Covenants by the Declarants, of any uses of real property or of any other activities which violate Wisconsin Department of Natural Resources regulations relating to uses or activities that are proscribed in proximity to municipal wells, or the continuation of any such uses or activities following any such commencement, shall be prohibited.

## **4. Application Plans and Approvals**

### *4.01 Application Procedure*

Prior to constructing, expanding or altering of the shape, size or appearance of any building or other structure or improvement in the Campus, or changing the use of any existing building or Site, except as provided in Section 1, above, the Owner shall submit to the Review Board for approval site and building plans and a written description of use and operations (the "Application Plans"). Each Owner shall obtain the services of an architect and/or an engineer in the development of the Application Plans and shall meet with a representative of the Review Board prior to preparation and submittal of the Application Plans. Except as provided in Section 1, above, no building, structure, or other improvement shall be constructed, altered, or placed upon any Site until the appropriate Application Plans shall have been first approved in writing by the Review Board and the Village.

Application Plans shall include the number of copies of each of the following as required by the Review Board:

- An accurate map of the area covered by the plan including the relationship to the total General Development Plan of the Campus, at scale of one inch equals 100 feet with contour lines at two foot intervals.
- The pattern of public and private roads, driveways, walkways and parking facilities and proposed design and construction standards.

- Detailed lot layout and subdivision plat or certified survey map where required.
- A scaled site plan, showing building location and setbacks (including the location of any planned building expansion), parking layout and setbacks, driveway and access locations, loading docks, site lighting and coverage, utility boxes and transformers and signage. The lighting and signage plans shall be detailed.
- Drawings showing the architectural treatment of all exterior building elevations, building heights and roof-mounted equipment and utility meters (including size, location and proposed screening) and indicating building materials and colors. The drawings shall include a colored rendering of building elevations (showing the actual proposed colors) and shall be accompanied by samples of building materials and colors.
- Scaled floor plan(s) indicating use(s).
- Diagrams specifying the location, size and proposed screening for outside waste and recycling containers and the size and type of the proposed containers.
- Statistical tabulations showing the apportionment of land uses, the density of residential use, the ratio of non-single-family residential dwelling units by bedroom count, the percentage of ground cover by buildings, the floor area ratio and the parking ratio.
- Erosion control, grading and storm water drainage plans, including any existing trees to be removed and/or preserved and including all proposed water impoundments and finished grade levels.
- Engineering plans for sanitary sewer, water and storm water management facilities.
- The location, type and design detail of all recreational or other special amenities.
- Location and description of any areas to be dedicated to the public.
- A landscaping plan, including sizes, quantities and types of plantings.
- A written description of proposed use and operation, including number of employees, workshifts, products produced and/or services provided, manufacturing processes, materials handled (including anticipated truck traffic), any hazardous materials used in operations (including proposed safety precautions), any noise emitted and any air, water or solid waste material generated (including proposed methods for storing and disposing).
- Proposed development schedule showing the overall phasing anticipated, the relationship of the proposed Precise Plan to the total schedule, the starting

and anticipated completion time for the phase covered by the Precise Plan and the area of open space to be provided with each phase.

- Proposed financing plan, including any change in ownership interest involved.
- If the plan contemplates any portion of the project to be implemented or subsequently owned by other than the petitioner, sufficient information concerning such arrangements shall be submitted to enable the Review Board and the Village to be assured that the development will be carried out in complete compliance with the spirit and intent of the approval granted.
- Analysis of the economic impact of the development upon the community.
- Agreements, bylaws, provisions or covenants which govern the organizational structure, use, maintenance and continued protection of the Planned Community Development and any of its common services, common open areas or other facilities.
- Any other plans, documents or schedules deemed necessary by the Review Board or the Village for proper evaluation of the proposal.

All plans submitted shall include the preparer's name, the date of preparation and the dates of any revisions. Any revisions to Application Plans must be approved in writing by the Review Board and the Village.

#### *4.02 Review Board Variance:*

Upon written application to it, the Review Board shall have the authority to waive or vary these Protective Covenants when such waiver or variance will conform to the standards of the Campus and where exact adherence to a standard will create an undue burden on the owner of the affected Site. Such waivers or variances shall be in writing, shall apply only to these Protective Covenants and shall not pertain to Village of Waterford zoning ordinances. Notwithstanding the foregoing provisions, any restriction or requirement of these Protective Covenants that requires Village approval or is enforceable by the Village can be waived only with the written consent of the Village.

#### *4.03 Guidelines:*

In order to assist Owners in complying with these Protective Covenants, the Association or the Review Board may publish guidelines ("Guidelines") from time to time. The Guidelines may pertain to any matters included within the scope of review described in Section 4.01 above. The Guidelines may be updated at any time, in the sole discretion of the Association or the Review Board, to reflect developments in applicable technology or to include changes deemed necessary or advisable, and shall be available to any Owner upon request. To the extent such Guidelines are published, approval of Application Plans by the Review Board shall be in accordance with the Guidelines as updated from time to

time. However, the Guidelines shall not constitute amendments or modifications of these Protective Covenants, and in the event of any conflict or inconsistency, these Protective Covenants shall control.

*4.04 Standards for Approval:*

Approval or disapproval shall be based on, among other things: adequacy of site dimensions; conformity and harmony of external design with neighboring structures and/or natural features; the effect of the location and use of the proposed improvements on neighboring sites and the operations there; the relation of the topography, grade and finished ground elevation of the site being improved to that of the neighboring sites; proper facing of main elevations(s) with respect to nearby streets; and conformity of the plans and specifications to the purpose and general master plan of the Campus and intent of these Protective Covenants. The Review Board shall not arbitrarily or unreasonably withhold its approval of any Application Plans.

*4.05 Result of Inaction:*

If the Review Board fails either to approve or disapprove any Application Plans within thirty (30) days after the same have been submitted to it in accordance with these Protective Covenants, it shall be conclusively presumed that the Review Board had disapproved said Application Plans; provided, however, that if within said thirty (30) day period the Review Board gives written notice of the fact that more time is required for the approval of such Application Plans there shall be no presumption that the same are disapproved until the expiration of a reasonable period of time as may be set forth in said notice.

*4.06 Disclaimer of Liability:*

Neither the Declarants nor the Review Board (or any member thereof) shall be liable for any damage, loss, or prejudice of any kind that may be suffered or claimed on account of (a) the approval or disapproval of any Application Plans, whether or not defective; (b) the construction or performance of any work whether or not pursuant to approved Application Plans; (c) the development of any other property within the Campus, whether or not the use there competes with any other use within the Campus, provided that the Review Board has employed a standard of care comparable to that which would exonerate an individual corporate director under Wisconsin law from personal liability to outside third-parties who contract for the sale of goods or services with such director's corporation. By accepting a deed to land located within the Campus, or taking possession of tenant space located within the Campus, every owner, lessee, licensee or occupant of any of space within the Campus shall be deemed to acknowledge and accept this disclaimer of liability and waive and release any and all claims for damages barred hereby, and further covenants not to sue said Declarants, said Review Board, nor any member of said Review Board, to recover damages for any such claim or to seek injunctive or equitable relief based thereupon.

4.07 *Fees:*

Unless waived by the Declarants, fees shall be paid to the Review Board or its appointed representative at such time as the Review Board is requested to perform any of its duties hereunder based on the following schedule:

- |     |  |          |
|-----|--|----------|
| (a) | With the preliminary development plan  | \$150.00 |
|     | (Five acres or more)   | \$200.00 |
| (b) | With the final development plan  |          |
|     | (1) When submitted on behalf of the owner by a team of design professionals, such as an architect, civil engineer, landscape architect, etc. | \$350.00 |
|     | (2) When submitted other than in accordance with (b)(1) above  | \$800.00 |

The payment of the fee for each item above shall entitle the applicant to two (2) reviews for the phase for which the fee is paid. An additional fee as set forth above shall be paid for each additional review requested. These fees may be adjusted from time to time to levels generally consistent with increases in the cost of living index, and increased fees may be established by and set forth in the Guidelines provided for herein.

**5. Site Restrictions and Building Standards**

5.01 *Designation of Sites:*

Each Site shall be created through the preparation, approval by the Village and recording of an appropriate certified survey map or final subdivision plat. Chapter 18 of the Village's Municipal Code and Chapter 236 of the Wisconsin Statutes shall be applicable to any such certified survey maps or plats. (Successive certified survey map divisions cannot result in a subdivision, as defined in Section 236.02(12) of the Wisconsin Statutes, without approval by the Village of a final subdivision plat.)

5.02 *Land/Building Ratio:*

The initial construction on each Site shall equal or exceed the following minimums for the following types of facilities unless otherwise approved in writing by the Review Board:

<u>Type of Facility</u>	<u>Minimum Square Feet/Buildable Acre</u>
Retail	3,000
Office	4,000
Industrial	5,000

“Office” facility shall mean a facility in which more than thirty percent of the floor space is intended for use as office space. The initial construction on a Site used for office or industrial purposes shall in no event be less than 5,000 square feet, unless otherwise approved in writing by the Review Board. "Buildable Acre" shall mean all acreage of the Campus except those areas designated in any attached exhibit as "wetland" areas, “storm water drainage easement” areas, road right of way, and other areas put to public use. If and when the Declarants add additional property to the Campus pursuant to Section 17, or record subsequent certified survey maps to divide the Property, the Declarants shall designate any portion of such property that will be treated as "wetland" areas, “storm water drainage easement” areas, street right of way, and other areas put to public use. No more than 75 percent of any Site shall be covered with buildings, surface pavement, or other covering materials which are impervious to surface water absorption, unless otherwise approved in writing by the Review Board. No residential building shall be higher than 28 feet, and no residential dwelling unit shall be smaller than 1,400 square feet.

*5.03 Office and Industrial Building Setbacks:*

Building setbacks shall comply with Village of Waterford Zoning requirements. No part of any building or other structure on a Site used for an office, retail or industrial facility shall be located within the following distances from the following property lines of the Site, unless otherwise approved in writing by the Review Board:

<u>Property Line</u>	<u>Distance (Feet)</u>
Abutting any public right-of-way	50
Not abutting a public right-of-way	25
Rear yard, three story buildings	35
Abutting any residential district	50

*5.04 Parking Setbacks:*

Parking setbacks shall comply with Village of Waterford zoning ordinances. No parking on a Site used for an office, retail or industrial facility shall be allowed within the following distances from the following property lines of the Site unless approved in writing by the Review Board:

<u>Property Line</u>	<u>Distance (Feet)</u>
Abutting any public right-of-way	25
Not abutting a public right-of-way	15
Abutting any residential district	25

Curbs shall be considered as part of the parking area for purposes of complying with parking setback requirements.

*5.05 Building Height*

No office building shall be higher than 45 feet, unless otherwise approved in writing by the Review Board. No other building or other structure shall be higher than 35 feet, unless otherwise approved in writing by the Review Board.

*5.06 Storage:*

No fuel or chemical storage tank that is not in compliance with applicable Federal, State and Local laws and regulations shall be allowed in the Campus. No outdoor storage of waste or recycling containers or any articles, goods, materials, finished or semi-finished products, incinerators, storage tanks, or any other items shall be permitted except as provided in Section 7.01 below.

*5.07 Fencing:*

No fences shall be constructed on any Site without the written approval of the Review Board. Fencing, where permitted, shall be solely for purposes of screening, security and landscape enhancement. Fencing shall be constructed only of permanent materials such as pressure-treated wood, masonry, or metal, and shall be approved by the Review Board in every instance. Plantings shall be provided along all fencing where such fencing is visible from any street.

*5.08 Temporary Structures:*

No temporary structures or trailers are permitted without prior written approval of the Review Board, except those belonging to construction companies during periods of construction.

*5.09 Ancillary Structures:*

No water tower, storage tank, processing equipment, solar collector, telecommunications equipment, cooling tower, satellite disks or other ancillary structure or outside equipment shall be constructed, erected or placed in the Campus without the prior written approval of the Review Board.

*5.10 Freight Handling:*

All freight loading and unloading shall be handled on those sides of a building that do not face a street. Exceptions may be made at the sole discretion of the Review Board. If an exception is made, any loading dock facing a street must be at least 100 feet from the street and screened to the Review Board's satisfaction.

*5.11 Signs:*

All signs must be approved in writing by the Review Board. On-site directional signage will be allowed in any area needed to control traffic or parking provided such signage has received written approval from the Review Board. The Association shall have the right to enforce uniform sign and mailbox standards

throughout the Campus. (Detailed requirements may be set forth in the Guidelines published by the Review Board pursuant to Section 4.03.)

*5.12 Canopies:*

No truck canopies with visible wall hangers will be permitted without written approval from the Review Board. Design of canopies shall be in keeping with the design of the building.

*5.13 Lighting:*

All exterior lighting must be approved in writing by the Review Board. Lighting of a Site shall be of a design and height and shall be located so as to illuminate only the Site. No flashing, traveling, animated, or intermittent lighting shall be visible from the exterior of any building, whether such lighting is of temporary or long-term duration. All lighting fixtures shall be maintained as originally approved. In addition, no lighting shall be permitted on any site that, in the judgment of the Review Board, would serve as a nuisance or hazard to other sites or to the general public. (Detailed requirements may be set forth in the Guidelines published by the Review Board pursuant to Section 4.03.)

*5.14 Erosion and Sediment Control:*

The drainage pattern on any Site shall not be changed significantly and no change in the drainage pattern onto lands adjacent to the Site shall be allowed. Specific erosion control, grading and storm water drainage plans shall be submitted as part of the Application Plans, and in addition to review and approval by the Review Board under Section 4 herein, must be approved by the Village of Waterford. Each Owner shall be responsible for 1) prevention of erosion of its Site, 2) control of runoff of silt debris or sedimentation from its Site onto adjacent drain systems or properties, 3) removal of any such runoff, erosion, or sedimentation and 4) repair of any damage to such Site or adjacent Site or to any storm water drainage system or storm water management improvements caused by such runoff, erosion or sedimentation. In the event that an Owner fails to comply with any of the foregoing obligations within 30 days after receipt of notice from the Association or from the Village of Waterford, the Association or Village may, in its sole discretion but without any obligation to do so, perform such obligations. If the Association performs the work, and the cost of the work remains unpaid for 30 days after the Owner is billed therefor, such charges may be collected pursuant to procedures set forth in Section 15. If the Village performs the work, 125% of the actual cost of the work shall be assessed as a special charge pursuant to Wis. Stats. §66.0627. If such charge is not paid by any Owner within the period fixed by the Village of Waterford, the charge will become a lien upon the Owner's Site and shall be extended upon the tax rolls as a delinquent tax against the Owner's Site as provided in Wis. Stats. §66.0627(4).

A comprehensive storm water management plan for the Campus has been developed and approved by the Village and the CDA. The common storm water

basins in the Campus will be maintained by the Association; however, individual Owners are required to maintain, at all times and at the Owner's expense, their individual sites and any site-specific improvements (including landscaping improvements) that may have an impact upon the comprehensive storm water management system for the Campus. All storm drainage from the completely developed Site shall be in compliance with all official Federal, State and local rules and regulations.

#### *5.15 Building Standards:*

Without being unduly restrictive, buildings shall be architecturally designed and built with such standards and specifications that will be in harmony with neighboring sites and as complimentary as possible to the entire concept of the Campus. The use of certain building materials may be discouraged or restricted by the Review Board. It is intended that the front façade and street and joint driveway side facades shall be of brick, stone, architectural concrete panels, architectural/decorative concrete block, efis (synthetic stucco), wood and/or glass, including curtain walls. Common concrete block, structural cement, prefabricated metal siding and the like will not be approved for any façade fronting on a street, and are discouraged for other facades unless the façade is an expansion wall. The use of the materials described in the preceding sentence elsewhere on any building shall be only in a manner approved in the discretion of the Review Board. All elevations of a building shall be designed in a consistent and coherent architectural manner. Changes in material, color and/or texture, when permitted, shall occur at points relating to the massing, fenestration or overall design concept of the building. The use of earth-tone colors will be encouraged and emphasized, and colors that are not compatible with that of neighbors will be prohibited. All utilities serving any building and the premises shall be underground. All roof top equipment and structures shall be concealed by screening materials which form an integral part of the design. All detached equipment, materials or structures, such as gas meters, electrical and telephone boxes, satellite discs, etcetera, shall be concealed by landscaping or decorative screening as part of the integrated, overall design of the project.

#### *5.16 Precise Implementation Plan:*

No development of the Property or of any Site shall proceed, except for public improvements and related work, and no division of the Property or of any Site shall occur, other than pursuant to and in accordance with an approved Precise Implementation Plan pursuant to Subsection 17.18(5) of the Village of Waterford Municipal Code.

## **6. Parking and Landscaping**

### *6.01 Parking Generally:*

Each Site shall be provided with adequate paved off-street automobile parking as approved by the Review Board. No parking will be permitted on any

private street, driveway, or any place in the Campus other than in approved parking spaces. Overnight parking of campers, mobile homes, boats, trailers and similar vehicles is prohibited unless prior written approval is obtained from the Association. Overnight parking of trucks and service vehicles shall be behind landscape screening so as to minimize visibility from the roadway unless prior written approval is secured from the Association.

*6.02 Parking Ratio:*

Unless otherwise approved by the Review Board, areas for current and future parking needs shall be provided as follows:

- (a) For any Site used for an office or industrial facility, a minimum ratio of one off-street passenger car parking space for each 1,100 square feet of gross warehouse building area, for each 575 square feet of gross manufacturing, production or service building area, and for each 250 square feet of gross office and/or commercial building area; and
- (b) Notwithstanding the foregoing, each Site shall have parking capacity adequate to serve the reasonably expected parking needs for the Site; and
- (c) No parking shall be permitted at any time upon any private street or driveway in the Campus or on any unpaved area of a Site, except that in residential areas, parking shall be permitted on driveways; and
- (d) No continuing or extended use shall be made of a Site or any building constructed thereon which requires, or is reasonably expected to require, parking in excess of the capacity of the parking facilities available on said Site.

*6.03 Parking Location:*

No parking shall be allowed within the parking setbacks described in Section 5.04 above unless approved in writing by the Review Board.

*6.04 Screening and Landscaping of Parking Areas:*

In the event parking is approved within the parking setbacks described in Section 5.04 above, such parking shall be screened by berm and/or increased landscaping from public view in a manner approved by the Review Board. Paved parking areas larger than 20,000 square feet shall have landscaped areas equaling not less than 5% of the parking area intermittently placed throughout the parking area which serves to define vehicular and pedestrian circulation and provides additional screening of parking areas.

*6.05 Requirement to Pave Surfaces:*

All parking surfaces, driveways and loading areas shall be paved with a bituminous or concrete surface within ninety (90) days after occupancy or substantial completion of the building, whichever comes first, weather permitting. Curbs shall be provided to the extent required by the Review Board.

*6.06 Driveways and Loading Areas:*

Driveway and loading areas shall be large enough to accommodate all vehicle maneuvering on the Site. Truck turn-arounds are prohibited on all public streets in the Campus. Driveway points of access to public streets must be approved by the Review Board. Areas on the site designated for truck/trailer storage are only allowed with prior written approval from the Review Board and such approval will be contingent on such storage area being adequately screened as determined by the Review Board in its sole discretion.

*6.07 Open Spaces and Landscaping*

Except as otherwise specifically provided in these Protective Covenants, all open spaces shall be paved, landscaped, or planted as lawns. Not less than one-half of the required building setback area from any dedicated street shall be devoted solely to lawns, trees, shrubs, and walkways of a design approved by the Review Board. Every site on which a building shall have been placed shall be landscaped in accordance with plans and specifications submitted to and approved by the Review Board as part of the Application Plans. Landscaping, as approved by the Review Board, shall be installed within ninety (90) days after occupancy or substantial completion of the building, whichever comes first, weather and appropriate planting seasons permitting, unless the Review Board approves in writing an alternate completion date. After completion, such landscaping shall be maintained in a sightly and well-kept condition. The following shall be the basic landscaping requirements for each site:

The entire site, including street terraces, shall be appropriately landscaped with grass, canopy and conifer trees, shrubs and ground cover, except for expansion areas which need only be maintained in a weed-free condition, if allowed in writing by the Review Board. All disturbed areas shall be placed into grass. All landscaping shall be neatly maintained including mowing, watering, fertilizing, and pruning.

Minimum standards for landscaping shall include the following requirements:

<u>Size of Site</u>	<u>Per Gross Acre</u>
0 – 3 Acres	9 Shade Trees
3 – 5 Acres	8 Shade Trees
5 – 10 Acres	7 Shade Trees
10+ Acres	6 Shade Trees

Substitution of two (2) flowering trees (ornamental) or two (2) evergreen trees for each shade tree up to 50% of the required number of trees is permitted. Minimum size shade trees shall be 3" caliper, flowering trees (ornamental) 8' in height, and evergreens 8' in height.

*6.08 Greenspace, Conservation, Storm Water Drainage, Wetland, and Landscaping Maintenance Areas:*

No buildings or private improvements of any kind shall be permitted in any areas that may be designated as "Greenspace", "Conservation", "Storm Water Drainage", "Wetland", or "Landscaping Maintenance" areas on any recorded Certified Survey Map of the Property or of any portion thereof or by virtue of an easement or other interest in real property conveyed to the Association or to the Village with respect to any such areas, and no buildings, improvements or development activity on or adjacent to such areas may damage or impair any such Greenspace, Conservation, Storm Water Drainage, Wetland or Landscaping Maintenance areas or its respective function as a greenspace, conservation, storm water drainage, wetland or landscaped area, without the specific written approval of the Village; provided, however, that a sign shall be permitted on the area described in Subsection 6.08.h, below; and further provided that with respect to the wetland areas described below in this Section 6.08, the Village shall waive such restrictions with respect to any portion of any such area demonstrated not to be part of any wetland by a wetland staking that is satisfactory to the Wisconsin Department of Natural Resources, but all burden and cost associated with any such waiver (including but not limited to legal or engineering review costs incurred by the Village) shall be the responsibility of the proponent of such a waiver. Without limitation, such areas shall include the following:

- a. Lot 2 of CSM No. 2308, recorded in the office of the Racine County, Wisconsin Register of Deeds on April 27, 2001 at 2:00 p.m. as Document No. 1768967 at Volume 7, Page 120, labeled "Wetland";
- b. Lot 3 of CSM No. 2309, recorded in the office of the Racine County, Wisconsin Register of Deeds as Document No. 1768968 at Volume 7, Page 126, labeled "Wetland";
- c. The designated portion of Lot 2 of CSM No. 2309 labeled "Storm Water Drainage Easement";
- d. Lot 1 of CSM No. 2310, recorded in the office of the Racine County Wisconsin Register of Deeds as Document No. 1768969 at Volume 7, Page 131, labeled "Wetland";
- e. The designated portions of Lots 2 and 3 of CSM No. 2310 labeled "Storm Water Drainage Easement";
- f. The designated portion of Lot 2 of CSM No. 2417, recorded in the office of the Racine County, Wisconsin Register of Deeds on July 19,

2002 at 4:36 p.m. as Document No. 1840821 at Volume 7, Page 500, labeled "Storm Water Drainage and Landscape Easement";

- g. The wooded area designated as "Outlot 1" of Certified Survey Map No. \_\_\_\_, a copy of which is attached as Exhibit D and incorporated herein by reference, being a portion of Lot 2 of CSM No. 2417;
- h. The wetland area shown and described on the attached Exhibit E, which is incorporated herein by reference; and
- i. The wetland area shown and described on the attached Exhibit F, which is incorporated herein by reference.

See also Section 11.05, below.

#### *6.09 Existing Trees:*

Trees may be cut on any Site only to the extent needed for construction and/or landscaping purposes and only following written approval from the Review Board. The trees in the wooded area described in Subsection 6.08.g, above, shall not be cut or otherwise destroyed without the specific written approval of the Village.

#### *6.10 Right to Act on Owner's Behalf:*

If, in the opinion of the Association or the Village, any Owner fails to complete all required parking and landscaping as shown on approved Application Plans within the time periods specified in Sections 6.05 and 6.07 above, either the Association or the Village of Waterford or both may give such Owner written notice and such Owner must, within thirty (30) days after such notice, complete such improvements in accordance with the notice. In the event that such Owner fails to complete such improvements within such 30-day period, the Association or the Village shall have the right and power, but not the obligation, to complete such improvements. If the Association completes such improvements and the cost of the work remains unpaid for 30 days after the Owner is billed therefore, such charges may be collected pursuant to the procedure set forth in Section 15. If the Village performs the work, 125% of the actual cost of the work shall be assessed as a special charge pursuant to Wis. Stats. §66.0627. If such charge is not paid by any Owner within the period fixed by the Village of Waterford, the charge will become a lien upon the Owner's Site and shall be extended upon the tax rolls as a delinquent tax against the Owner's Site as provided in Wis. Stats. §66.0627(4).

## **7. Screening:**

### *7.01 Storage:*

Waste and recycling containers shall be screened from view from the streets and adjacent sites by completely opaque screens, unless otherwise approved in writing by the Review Board. No other articles, goods, materials, finished or semi-finished products, incinerators, storage tanks, or other items shall be kept outdoors or exposed to public view, or to view from adjacent sites. A variance may be granted upon written application and prior written approval, as provided in Section 4. In the event that such approval is granted, such items shall be screened from view by extended building walls or completely opaque screens, and under no circumstances shall such storage occur within 50 feet of any street or lot line.

*7.02 Roof-Mounted Equipment:*

Roof mounted equipment shall be so located and/or screened and/or painted to minimize visibility from streets and adjacent Sites.

*7.03 Loading Docks:*

Outside loading docks shall be screened from view from the streets and adjacent sites by extended building wall, berm and/or landscaping.

*7.04 Utility Connections:*

Unless otherwise approved in writing by the Review Board, all utility connections, including all electrical and telephone connections and other installation of wires to buildings, shall be made underground from the nearest available source. No transformer, electric, gas or other meter of any type or other apparatus shall be located on any power pole nor hung on the outside of any building. All transformers and meters shall be placed on or below the surface of the property and where placed on the surface shall be screened and/or landscaped so as to minimize visibility from streets and adjacent sites. No electric utility boxes or transformers shall be located between a building and an abutting street.

**8. Utility Easements**

Either of the Declarants and/or the Association shall have the right to grant easements for utilities within the building setback areas of any Site for the benefit of Owners of other Sites within the Campus. Such easements shall be approved by a resolution of the Board of Directors and signed by officers of the Declarants and/or Association as appropriate, and shall be recorded with the Register of Deeds for Racine County, Wisconsin.

**9. Construction Obligation and Repurchase Rights**

*9.01 Construction Obligation:*

Each Owner shall promptly begin, diligently pursue and ultimately complete construction of buildings and other improvements on its Site pursuant to

and in accordance with Application Plans approved in writing by the Review Board and the Village. (See Section 4, above).

In the event that construction of improvements has not been commenced within two (2) years after the date of closing of (a) the initial sale of a Site by Declarants or (b) any resale by a subsequent Owner, then, until such construction is commenced, the Declarants shall have the option of repurchasing the Site from the Owner (the "Commencement Option"). Commencement of construction is defined to be construction of structural framing above ground level. To exercise the Commencement Option, the Declarants shall provide written notice of exercise of option (the "Notice") to Owner at Owner's last known address, including the date of repurchase closing. Notice shall be deemed to be received two days after deposit of the notice, postage prepaid, in the U.S. mail. If the Declarants have not exercised the Commencement Option within one hundred eighty (180) days after the expiration of one (1) year after Owner's closing, the Village of Waterford may exercise the option to repurchase the Site in the same manner (the "Village Commencement Option") for a period of sixty (60) days following the expiration of such 180-day period. The repurchase, as described in Section 9.02 below, shall occur within sixty (60) days after delivery of the Notice on the date specified in the Notice.

If after commencing construction work on any Site, construction ceases for a period of one hundred eighty (180) consecutive days at any time before the completion of construction as provided in Owner's approved plans ("Cessation of Construction"), the Declarants shall have the option to repurchase the Site from the Owner at any time within one (1) year after cessation of construction (the "Construction Option"). To exercise the Construction Option, Declarants shall provide written Notice of Exercise of Option as described above. If the Declarants have not exercised the Construction Option within one (1) year after the date of Cessation of Construction, the Village of Waterford may exercise the option to repurchase the Site in the same manner (the "Village Construction Option") for a period of sixty (60) days following the expiration of such one year period. Repurchase, as described in Section 9.02 below, shall occur within sixty (60) days after delivery of the Notice on the date specified in the Notice.

If Owner does not complete construction of the improvements as described in the approved plans and obtain an occupancy permit for the improvements within three (3) years after the date of closing of Owner's purchase of the Site from Declarants or a prior Owner, the Declarants shall have an option to repurchase the Site from the Owner (the "Completion Option"). To exercise the Completion Option, Declarants shall provide written Notice as described above. If the Declarants have not exercised the Completion Option within one hundred eighty (180) days after the expiration of the two (2) year period, the Village of Waterford may exercise the option to repurchase the Site in the same manner (the "Village Completion Option") for a period of sixty (60) days following the expiration of such 180-day period. Repurchase, as described in

Section 9.02 below, shall occur within sixty (60) days after deliver of the Notice on the date specified in the Notice.

In the event the Declarants are not in existence or do not have the legal authority to act at the time a right of repurchase arises under this Section, and there is no person or entity in existence as a successor or assign of the Declarants who may exercise the repurchase right, then the Village of Waterford shall have the right of repurchase without waiting for the expiration of the period of time for the Declarants 's election to repurchase.

*9.02 Terms of Repurchase:*

If the Declarants or the Village of Waterford exercise any of the options described in Section 9.01 above, at repurchase closing the Owner shall tender a warranty deed free and clear of all liens and encumbrances except municipal and zoning ordinances, recorded easements for public utilities and these Protective Covenants in exchange for a sum equal to Ninety Percent (90%) of Owner's purchase price for the Site less any unpaid real estate taxes, the proration for the then current year's real estate taxes, and the title insurance premium. Owner shall provide the party exercising the option with a title insurance policy for the full amount of Owner's purchase price.

In the event of repurchase as provided in this section, Owner shall also be liable to the Declarants or the Village of Waterford, as appropriate, for all reasonable costs and expenses incurred in retaking and restoring the Site to marketable condition, and such costs and expenses shall be deducted from the amount of the purchase price paid to the Owner. In the event of exercise of a Construction or Completion Option, the repurchaser also shall compensate said Owner for valuable completed improvements to such an extent that the repurchaser is not unjustly enriched. Owner shall be deemed to consent to enforcement of the options described in Section 9.01 on the above terms by specific performance.

*9.03 Right of First Refusal to Repurchase Vacant Land:*

In the event that any Owner shall wish to convey any vacant portion of a Site or a vacant Site (the "Vacant Site") at any time within two (2) years after closing acquisition of the Vacant Site from Declarants, it shall first give the Declarants the right to purchase the Vacant Site at Owner's original purchase price and on the same terms and conditions as Owner's purchase. Within thirty (30) days after receipt of written notice that Owner wishes to convey a Vacant Site, Declarants shall notify Owner of its decision concerning repurchase. If Declarants decide to repurchase, closing shall occur within sixty (60) days after Declarants' receipt of Owner's written notice. If the Declarants are repurchasing a portion of a Site, the purchase price shall be prorated to reflect the total buildable square footage of the Vacant Site as compared to the total original buildable square footage of the Site purchased by Owner. "Buildable" shall mean that part of a Site not located within a Greenspace as described in Section 6.08 above.

## **10. Disclaimer of Liability**

Neither the Association, nor the Review Board shall be liable to any person or entity submitting Application Plans for approval, or seeking any other approval under these Protective Covenants, or to any other person or entity affected by these Protective Covenants, by reason of engineering, architectural or technical errors or omissions in the Application Plans or materials submitted for approval. The Association and Review Board shall not be deemed to provide architectural or engineering services in the review and approval of Application Plans, or in any other manner. Neither the Association nor the Review Board shall be responsible for inspecting improvements during construction or for ensuring compliance with approved Application Plans.

## **11. Site Maintenance**

### *11.01 General Site Maintenance:*

Except as otherwise provided in Section 14, below, the Owner of any Site shall have the duty of, and responsibility for, keeping the buildings, paving, landscaping, lighting and other improvements, on the Site in a well-maintained, safe, clean, and attractive condition at all times. All grass, trees, and shrubbery must be kept in good appearance at all times. All grass must be cut whenever necessary and weeds must be controlled up to the curbs of public rights-of-way. Each Owner shall be responsible for removal of any rubbish or trash of any character which may accumulate on a Site. Damaged or cracked areas of all parking lots, sidewalks, and other hard surfaces shall be promptly repaired or replaced. Although the Owner may by contract require tenants or occupants to perform the foregoing duties, the Owner shall be responsible for the satisfactory discharge of such duties.

### *11.02 Site Maintenance During Construction or Site Preparation:*

During construction or site preparation work, it shall be the responsibility of each Owner to insure that construction sites are kept free of unsightly accumulations of rubbish and scrap materials. Each Owner shall be responsible for promptly cleaning up any debris resulting from construction or site preparation work by the Owner, its employees, agents, contractors or subcontractors. Each Owner shall be responsible for promptly cleaning up any mud or dirt tracked, washed or otherwise deposited onto the roadways within the Campus or onto any nearby roadways during such construction or site preparation work

### *11.03 Damage to Public Right-of-Ways and Common Areas:*

No Owner or its employees, contractors or agents shall dispose of snow or any other materials in the public right-of-ways located in the Campus. No Owner or its employees, contractors or agents shall damage any public right-of ways in the Campus, or any Common Area (as described in Section 14.01, below), or

Greenspace, Storm Water Drainage or Wetland areas (as described in Section 6.08, above).

*11.04 Right to Act on Owner's Behalf:*

If, in the opinion of the Association or the Village of Waterford , any Owner fails to comply with the maintenance or damage provisions set out in Sections 11.01, 11.02 or 11.03, above, the Association or the Village or both may give such Owner written notice and such Owner must, within 15 days after such notice, undertake the care and maintenance required to restore said Owner's property to a well-maintained safe, clean, and attractive condition, or to repair any damage, in accordance with the notice. In the event that such Owner fails to remedy the condition after notice, the Association or Village shall have the right and power, but not the obligation, to perform such care and maintenance, or to repair any damage, as it deems necessary or desirable to remedy the violation. If the Association performs the work, and the cost of the work remains unpaid for 30 days after the Owner is billed therefor, such charges may be collected pursuant to the procedure set forth in Section 15. If the Village performs the work, and the cost of such work remains unpaid for 30 days after the Owner is billed therefor, such charges may be collected in any manner permitted by law, including without limitation the assessment of up to 125% of the actual cost of the work as a special charge pursuant to Wis. Stats. §66.0627. If such charge is not paid by any Owner within the period fixed by the Village of Waterford , the charge will become a lien upon the Owner's Site and shall be extended upon the tax rolls as a delinquent tax against the Owner's Site as provided in Wis. Stats. §66.0627(4).

*11.05 Special Provisions for Maintenance of the Surface Water Drainage System*

All storm water drainage areas, detention and/or retention pond areas and wetland areas that serve as part of the common storm water management system for the Campus (those areas described in Subsections 6.08.a-f and h and i, above), must remain the property of the Declarants or the Association or be conveyed by deed with parcels of property adjacent to the surface water drainage system subject to easements in favor of the Association and the Village for maintenance of the storm water drainage systems and storm water management improvements and where required by the Village, must be conveyed subject to deed restrictions which will limit the usage of the property subject to the easement so as to prohibit interference with the elevations established for the surface water management system. Prior to conveyance of any parcel burdened by the presence of the storm water management system or any part thereof, the easement language and deed restriction language must be reviewed and approved by the Village Attorney.

The Association shall maintain all storm water drainage structures and improvements in the areas described in Subsections 6.08.a-f and h and i, above, including without limitation the detention or retention ponds, berms or earthworks (but not including Village storm sewers), in good condition, maintenance and repair, to generally accepted engineering standards. The Owners of any land

within the Campus which affects the storm water management system and/or upon which other portions of the storm water drainage system are located must keep them in good maintenance and repair, including but not limited to the removal of litter and maintenance of landscaping, including the mowing of grass. In the event that said required maintenance or repair is not performed, the Village, except in case of emergency, shall provide a 30 day notice to the Owner of record of the Site upon which the surface water drainage system is located to perform such maintenance and/or repair. If said maintenance or repair is not performed within the time specified, and in the case of emergency requiring immediate action, the Village may perform such maintenance and/or repair. If the cost of such work remains unpaid for 30 days after the Owner is billed therefor, such charges may be collected by the Village from the Owner in any manner permitted by law, including without limitation, the assessment of up to 125% of the actual cost of the work as a special charge pursuant to Wis. Stats. §66.0627. If such charge is not paid by an Owner within the period fixed by the Village, the charge will become a lien upon the Owner's Site and shall be extended upon the tax rolls as a delinquent tax against the Owner's Site as provided in Wis. Stats. §66.0627(4).

In the event that the Association owns or holds easements to the land upon which detention/retention pond structures or improvements are located (see Section 6.08), and the Village performs such maintenance or repair pursuant to the above provisions, and the cost of such work remains unpaid for 30 days after the Association is billed therefor, such charges may be collected by the Village from the Association or the Owners of property subject to these Protective Covenants in any manner permitted by law, including without limitation, the assessment of up to 125% of the actual cost of the work as a special charge against the Owners pursuant to Wis. Stats. §66.0627. Each and every Owner of the land subject to these Protective Covenants shall be jointly and severally liable for such charges and assessments. If such charge is not paid by an Owner within the period fixed by the Village of Waterford, the charge will become a lien upon the Owner's Site and shall be extended upon the tax rolls as a delinquent tax against the Owner's Site as provided in Wis. Stats. §66.0627(4).

## **12. Inspection**

Upon reasonable advance notice to Declarants, the Association and the Village of Waterford may from time to time at any reasonable hour or hours, enter or inspect any Site or improvements to ascertain compliance with these Protective Covenants. The Association and the Village shall use Their best efforts not to compromise security measures and shall strive not to interfere with normal conduct of business when inspecting property under this provision.

## **13. Enforcement**

*13.01 By Legal Action:*

These Protective Covenants may be enforced at law or in equity by the Association or the Village of Waterford. However, if any Owner shall file with the Association a written petition for enforcement or commencement by the Association of proceedings to enforce these Protective Covenants and the Association shall fail to act accordingly within 30 days, or shall refuse such petition, then such petitioner may within a period of six months after filing such petition commence an action or proceeding against the violating Owner in law or in equity for enforcement or for damages arising from any violation of these Protective Covenants. The result of every action or omission whereby any provision of these Protective Covenants is violated in whole or in part is hereby declared (and consented by anyone subject hereto) to constitute a nuisance, and every remedy allowed by law or equity shall be available and may be exercised by the Declarants, the Association, or by any owner or lessee of property subject to these Protective Covenants. Neither the Association, nor the Village of Waterford shall be liable to any person or entity for failure or refusal to enforce any provision of these Protective Covenants. The failure of the Declarants, or the Association, or any property owner or the Village to enforce any provisions of these Protective Covenants shall in no event constitute a waiver of the right to do so, nor a waiver of any right to enforce any other provision hereof.

*13.02 Association May Levy Fines as Liquidated Damages:*

The Association may levy fines for continuing or flagrant violations of these Protective Covenants, including the parking provisions contained in Section 6. Such fines, which are in the nature of liquidated damages intended, agreed, and stipulated to be reasonable to compensate the Association for costs of administration that are difficult to calculate with precision on an individual basis, shall be \$50 per violation or per day of continuing violation, until such time as a different fine schedule is adopted by the Board of Directors. Fines shall be assessed by written notice from the Board of Directors. Fines for continuing violations shall not commence earlier than 48 hours prior to delivery of written notice to the Owner. Such fines, if they remain unpaid for 30 days, may become a lien against the Site pursuant to the procedures set forth in Section 15.

*13.03 Right to Act on Owner's Behalf:*

In addition to the foregoing remedies, the Association may undertake the obligations of any Owner arising under Section 5.14, Section 6.10 or Section 11 of these Protective Covenants. The right to act on Owner's behalf shall arise if the Owner has not acted to correct a violation of 5.14, concerning sediment and erosion control, Section 6.10, concerning parking and landscaping, or Section 11, concerning maintenance, after receipt of notice of violation from the Association and an opportunity to cure the violation, both as provided in Section 5.14, Section 6.10 and Section 11, respectively.

**14. Campus Maintenance**

*14.01 Common Area Maintenance*

The Association shall be responsible for maintenance of the following (together, the "Common Areas"):

- a. Entrance monuments and signs for the Campus, including all related landscaping and lighting, wherever located (and the Association shall be responsible for the operational costs of any internal or external lighting of such monuments and signs);
- b. Any parcel of land or improvement located in Expansion Lands (as defined in Section 17 below) and designated by the Declarants as Common Areas at the time such Expansion Lands are added to the Campus;
- c. Any property owned by the Association or in which the Association owns an interest;
- d. The public pedestrian path and related shoulder areas located on and across Lot 1 of CSM No. 2407, recorded in the office of the Racine County, Wisconsin Register of Deeds on May 31, 2002 at 4:35 p.m. as Document No. 1833660 at Volume 7, Page 464, Lot 2 of CSM No. 2312, recorded in the office of the Racine County, Wisconsin Register of Deeds on April 27, 2001 at 2:00 p.m. as Document No. 1768971 at Volume 7, Page 141, and Lot 2 of CSM No. 2417, recorded in the office of the Racine County, Wisconsin Register of Deeds as Document No. 1840821 at Volume 7, Page 500 (such maintenance shall include maintenance and repair of the gravel surface, weeding and trash pickup but not snow removal);
- e. The Conservation Easement areas shown and described on the attached Exhibits E and F, which are incorporated herein by reference; and
- f. The landscaping in the areas of any Landscaping Maintenance and Access Easements conveyed by Waterford Centre, LLC to the Association.

Except as otherwise provided in this Section 14, the Owners of Sites within the Campus shall be responsible for maintenance of such Sites, including Greenspace within such Sites, as set forth in Section 11 of these Protective Covenants.

*14.02 Right to Act on Association's Behalf:*

If, in the opinion of the Village of Waterford, the Association fails to maintain the Common Area in a safe, clean and attractive condition, the Village may give the Association written notice and the Association must, within 15 days after such notice, undertake the necessary maintenance. In the event that the Association fails to remedy the condition after notice, the Village shall have the

right and power, but not the obligation, to perform the maintenance necessary to remedy the violation. If the Village performs the work, and the cost of such work remains unpaid 30 days after the Association is billed therefor, such charges may be collected by the Village from the Association and the Owners of property subject to these Protective Covenants in any manner permitted by law, including without limitation, the assessment of up to 125% of the actual cost of the work as a special charge against the Owners of Sites within the Campus pursuant to Wis. Stats. §66.0627. Each and every Owner of the land subject to these Protective Covenants shall be jointly and severally liable for such charges and assessments. If such charge is not paid by any Owner within the period fixed by the Village, the charge will become a lien upon the Owner's Site and shall be extended upon the tax rolls as a delinquent tax against the Owner's Site as provided in Wis. Stats. §66.0627(4).

## **15. Association Assessments**

### *15.01 General Annual Assessment:*

All Sites and the Owners thereof shall be subject to a general annual assessment, determined and levied by the Board of Directors, for the purpose of paying the costs and expenses incurred by the Association in performing its purposes and functions, including but not limited to the enforcement of these Protective Covenants. The Board of Directors by November 1 of each year shall prepare an annual budget and shall determine a general annual assessment based thereon which shall be sufficient to meet the estimated costs and expenses of the Association for the ensuing year.

The annual budget shall be considered and approved at the annual meeting by the members of the Association. If within fifteen (15) days after the annual membership meeting a petition is presented to the Board of Directors protesting such assessments or the budget upon which they are based, and the petition is signed by members having more than fifty percent (50%) of the total number of votes available in the Campus, then the Directors shall notify all members of a meeting called for the sole purpose of reviewing such assessments or budget. At such meeting, the vote of more than fifty percent (50%) of the total number of votes available in the Campus may revise the budget and assessments, and such revised budget and corresponding assessments shall replace for all purposes the ones previously established; provided, however, that the annual budget and assessments may not be revised downward to a point lower than the average total budget for the preceding two years and provided further, that if a budget and assessments have not been established and made for two preceding years, then the budget and assessments may not be revised downward until two years of experience exist.

The general annual assessment shall be allocated and prorated among the members of the Association in proportion to the Buildable Acres owned by each Owner, and shall be paid at the time and in the manner determined by the Board

of Directors, which time shall not be sooner than thirty (30) days after the date of the annual membership meeting at which the annual budget shall have been submitted to the membership.

*15.02 Special Assessments:*

Each Site and the Owners thereof shall be subject to special assessment by the Board of Directors to cover all or any part of any extraordinary expenses incurred by the Association but not included in the annual budget. Such special assessments shall be allocated among the Owners in proportion to the Buildable Acres owned by each Owner. Special assessments shall be due and payable sixty (60) days after the affirmative vote declaring such special assessments by the Board of Directors of the Association. Special assessments levied in any one calendar year shall not exceed 20% of the annual budget for such year without approval of a majority of the total number of votes available in the Campus.

*15.03 Collection and Enforcement:*

The right to collect or enforce the collection of any assessments, special assessments, charges or fines assessed by the Association under these Protective Covenants is hereby delegated exclusively to the Association. The Owners shall be obligated to pay such charges, assessments, special assessments or fines, when due, and such charges, assessments, special assessments or fines shall also be and constitute a lien until paid, against the Site to which charged. All charges, assessments, special assessments and fines levied by the Association which are unpaid when due shall bear interest from such due date at a rate equal to three percent (3%) per annum above the prime interest rate reported in the Wall Street Journal, or if the Wall Street Journal is unavailable, the prime interest rate in a similar publication selected by the Association, until paid in full provided, however, that the interest rate shall be not less than twelve percent (12%) per annum ("Interest"). Such Interest, together with the underlying assessment or fine, shall from such time as the assessment or fine is unpaid when due become and remain a part of the lien upon such Site until paid.

*15.04 Lien Against Site:*

In the event that any assessment, charge or fine levied against any Site hereunder remains unpaid for a period of sixty (60) days from the due date, the Board of Directors may, in its discretion, file an action at law or a claim pursuant to Section 779.70(4) of the Wisconsin Statutes for a lien against such Site at any time within six (6) months from the date of the levy, such claim to be filed in the office of the Clerk of the Circuit Court of Racine County. The resulting lien may be enforced by foreclosure proceedings brought by the Association. Any such foreclosure action shall be brought in the same manner as an action to foreclose a real estate mortgage, and there shall be added to the amount due the costs of suit and Interest, together with a reasonable attorney's fee.

Any lien upon a Site securing unpaid assessments, special assessments, charges or fines arising hereunder shall be subject to and subordinate to the lien of any first mortgage upon such Site whether the mortgage is executed or recorded prior to or after the creation of such lien. Nothing herein contained shall prevent or impede the collection of lawful charges, assessments and taxes by the Village of Waterford .

## **16. Amendment and Term of Protective Covenants**

### *16.01 Amendment of Protective Covenants:*

These Protective Covenants may be terminated, extended or amended, with a written affirmative vote of 66-2/3% of the total number of votes available in the Campus; provided, however, that as long as Declarants own any portion of the Campus, no such termination, extension or amendment shall be effective without the written approval of Declarants and provided that these Protective Covenants may not be terminated, extended or amended without the prior written consent of the Village of Waterford.

### *16.02 Term of Protective Covenants:*

These Protective Covenants shall remain in force for 30 years from the date hereof. Thereafter, these Protective Covenants shall renew automatically for successive periods of 5 years each unless terminated by a majority vote of the total number of votes available in the Campus, provided that these Protective Covenants may not be terminated without the prior written consent of the Village of Waterford.

## **17. Expansion of Westerra Business Campus**

Declarants may from time to time during the term of these Protective Covenants, with the consent of the Village of Waterford, add property to the Campus (the "Expansion Lands"), and by recorded supplement to these Protective Covenants, declare such Expansion Lands, and the owners of such property to be subject to the terms of these Protective Covenants. Declarants shall designate those portions, if any, of such Expansion Lands as that will be "Greenspace" or "Common Areas".

## **18. Termination and Assignment of Declarants' Rights**

The rights of Declarants under these Protective Covenants as set forth in Sections 2.03, 2.04 and 16.01 and 17 shall terminate thirty (30) years after the date of these Protective Covenants. Declarants may assign all or part of their rights under these Protective Covenants.

## **19. Municipal Rights of Approval**

All pertinent requirements of governmental agencies shall be applicable to the development of the Campus and all construction in the Campus must be approved by the Village of Waterford according to its land division ordinance, Chapter 18 of the Village's Municipal Code, its Zoning Ordinance and applicable building code, erosion control and fire protection ordinances. The Declarants, the Association and all the Owners, together with their successors and assigns, are subject to all rules, codes, regulations and ordinances of the Village of Waterford, the State of Wisconsin and the federal government, and the same may be more restrictive than these Protective Covenants. In the event there is a conflict between the requirements of these Protective Covenants and any provision of any Village, State or federal law or regulation, the more restrictive provision shall apply.

**20. Waiver of Rights**

The failure of the Association, the Review Board or the Village of Waterford, or any Owner to enforce any provision of these Protective Covenants shall not be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other restriction.

**21. Right to Divide Sites**

At the time of purchase of a Site from Declarants, such Site shall be considered as a single building site for all purposes hereunder. Dividing of such Site by an individual Owner shall not be permitted without prior approval by the Association and the Village of Waterford.

**22. Effect of Invalidation of Any Provision**

In the event that any provision of these Protective Covenants shall be held to be invalid by any court, the invalidity of such provision shall not affect the remaining provisions of these Protective Covenants, which shall continue in full force and effect to the extent enforceable.





## **APPROVAL OF PROTECTIVE COVENANTS**

The undersigned Bank One, Wisconsin, as mortgagee of some or all of the land comprising the Property and holder of certain other liens or encumbrances on the Property ("Mortgagee"), for good and valuable consideration the receipt and sufficiency of which is acknowledged, hereby approves the foregoing Protective Covenants, consents to the recording of the Protective Covenants in the public records of Racine County, Wisconsin, and subordinates the following mortgages, liens or encumbrances to the Protective Covenants: Mortgage from Waterford Centre, LLC to Bank One, Wisconsin, to secure the originally stated indebtedness of \$800,000.00, dated July 14, 2000 and recorded in the office of the Racine County, Wisconsin Register of Deeds on July 17, 2000 in Volume 3051 of Records, Pages 115-121, as Document No. 1735295; Mortgage from Waterford Centre, LLC to Bank One, Wisconsin, to secure the originally stated indebtedness of \$800,000.00, dated October 24, 2000 and recorded in the office of the Racine County, Wisconsin Register of Deeds on November 2, 2000 in Volume 3087 of Records, Pages 54-61, as Document No. 1748008; Mortgage from Waterford Centre, LLC to Bank One, Wisconsin, to secure the originally stated indebtedness of \$8,400,000.00, dated November 8, 2000 and recorded in the office of the Racine County, Wisconsin Register of Deeds on November 14, 2000 in Volume 3090 of Records, Pages 471-478, as Document No. 1749170; Mortgage from Waterford Centre, LLC to Bank One, Wisconsin, to secure the originally stated indebtedness of \$8,400,000.00, dated November 8, 2000 and recorded in the office of the Racine County, Wisconsin Register of Deeds on November 14, 2000 in Volume 3090 of Records, Pages 479-486, as Document No. 1749171; Assignment of Land Sale Contract from Waterford Centre, LLC to Bank One, Wisconsin, dated November 8, 2000 and recorded in the office of the Racine County, Wisconsin Register of Deeds on November 14, 2000 in Volume 3090 of Records, Pages 494-499, as Document No. 1749174; Mortgage from Runzheimer Park, LLC to Bank One, NA to secure the originally stated indebtedness of \$8,400,000.00 dated November 8, 2000 in the office of the Racine County, Wisconsin Register of Deeds on November 14, 2000 in Volume 3090 of Records, Pages 500-507, as Document No. 1749175; Purchaser's Assignment of Land Sale Contract from Runzheimer Park, LLC to Bank One, Wisconsin, dated November 8, 2000 and recorded in the office of the Racine County, Wisconsin Register of Deeds on November 14, 2000 in Volume 3090 of Records, Pages 508-514, as Document No. 1749176; and Subordination of Lease Agreement by and between Runzheimer Park, LLC, Runzheimer International, Ltd. and Bank One, Wisconsin dated November 8, 2000 and recorded in the office of the Racine County, Wisconsin Register of Deeds on November 29, 2000, in Volume 3090 of Records, as Pages 502-506, as Document 1750582; Mortgage from Waterford Centre, LLC to Bank One, NA to secure the originally stated indebtedness of \$800,000.00, dated July 27, 2000 and recorded in the Racine County, Wisconsin office of the Register of Deeds on August 24, 2000 in Volume 3063 of Records, Pages 364-370, as Document No. 1739722; Mortgage from Waterford Centre, LLC to Bank One, Wisconsin, to secure the originally stated indebtedness of \$800,000.00, dated October 24, 2000 and recorded in the office of the Racine County, Wisconsin Register of Deeds on November 2, 2000 in Volume 3087 of Records, Pages 62-69, as Document No. 1748009; Mortgage from Waterford Centre, LLC to Bank One, Wisconsin, to secure the originally stated







EXHIBIT A  
Legal Description  
of  
Westerra Business Campus  
(Attached)

These Protective Covenants shall not apply to Sites or areas dedicated to or otherwise acquired in fee simple (or to easements, restrictive covenants or other real property interests in Sites or areas dedicated to or otherwise acquired) by the Village of Waterford, the Community Development Authority of the Village of Waterford and/or the public, regardless of whether such Sites, areas or interests were dedicated or acquired prior to or after the recording of these Protective Covenants, and shall not apply to any public improvements, structures or uses (except buildings in addition to the existing municipal lift station building, the proposed municipal Well No. 4 pump house building, the proposed municipal Well No. 5 pump house and water treatment plant building and any repair, expansion or reconstruction of any of such three buildings) made, constructed, installed or conducted on such Sites or areas at any time, except those provisions of these Protective Covenants that impose restrictions or requirements upon Owners and/or their employees, agents and contractors to protect or maintain such Sites or areas, improvements, structures or uses.

**EXHIBIT B**  
**Maps of Westerra Business Campus**  
**(Attached)**

These Protective Covenants shall not apply to Sites or areas dedicated to or otherwise acquired in fee simple (or to easements, restrictive covenants or other real property interests in Sites or areas dedicated to or otherwise acquired) by the Village of Waterford, the Community Development Authority of the Village of Waterford and/or the public, regardless of whether such Sites, areas or interests were dedicated or acquired prior to or after the recording of these Protective Covenants, and shall not apply to any public improvements, structures or uses (except buildings in addition to the existing municipal lift station building, the proposed municipal Well No. 4 pump house building, the proposed municipal Well No. 5 pump house and water treatment plant building and any repair, expansion or reconstruction of any such three buildings) made, constructed, installed or conducted on such Sites or areas at any time, except those provisions of these Protective Covenants that impose restrictions or requirements upon Owners and/or their employees, agents and contractors to protect or maintain such Sites or areas, improvements, structures or uses.