

AMENDMENT TO THE
COVENANTS AND DECLARATIONS
OF RESTRICTIONS FOR
BOXHORN RESERVE SUBDIVISION

3869395

REGISTER OF DEEDS
WAUKESHA COUNTY, WI
RECORDED ON

November 07, 2011 02:57 PM
James R Behrend
Register of Deeds

2 PGS
TOTAL FEE: \$30.00
TRANS FEE: \$0.00
Book Page -



RESERVED FOR RECORDING DATA

DOCUMENT NUMBER

NAME AND RETURN ADDRESS: CREATIVE HOMES, INC.
ATTN: RICK J. PRZYBYLA
9244 W. GRANDVIEW COURT
FRANKLIN, WI 53132

PARCEL IDENTIFICATION NO.: MSKC 2253-999-006

THIS AMENDMENT to the Covenants and Declaration of Restrictions for Boxhorn Reserve Subdivision, (hereafter "Declaration"), which was recorded with the Waukesha County Register of Deed on September 23, 2005, as Document No. 3319883, is made effect this 31ST day of October, 2011;

RECITALS:

WHEREAS, this Amendment effects all lots located in Boxhorn Reserve Subdivision, (hereafter "Subdivision"), the legal description of which is as follows:

All of the Lots in BOXHORN RESERVE, being a part of the Southeast 1/4 and Southwest 1/4 of the Northeast 1/4 of Section 24, Township 5 North, Range 20 East, in the City of Muskego, Waukesha County, Wisconsin.

WHEREAS, this Amendment is being made by the Developer of said Subdivision, Creative Homes, Inc., (hereafter "Developer"), pursuant to Paragraph 20 of said Declaration;

NOW, THEREFORE, for valuable consideration and mutual covenants, the receipt and sufficiency of which is hereby acknowledged, and in accordance with the terms and provisions of Paragraph 20 of said Declaration, said Developer hereby amends said Declaration as follows:

1. The sentence beginning with "***Note: Lot #1 ...**" and ending with "**... on the first floor.**", in Paragraph 4. DWELLING STRUCTURE of said Declaration is hereby deleted, and replaced with the following:

***Note: The square footage requirements for Lot Numbers 1, 2, 3, 4, 5 and 16 are as follows: (a) Not less than 1,900 square feet in the case of a one-story dwelling; (b) Not less than 2,100 square feet in the case of a one and one-half story dwelling, with a minimum of 1,100 square feet on the first floor; and (c) Not less than 2,100 square fee in the case of a two-story dwelling, with a minimum of 1,100 square feet on the first floor.**

3319883



WC3319883-008

Document Title

Declaration of Restrictions

REGISTER'S OFFICE
WAUKESHA COUNTY, WI
RECORDED ON

09-23-2005 11:00 AM

MICHAEL J. HASSLINGER
REGISTER OF DEEDS

REC. FEE: 18.00
REC. FEE-CO: 5.00
REC. FEE-ST: 2.00
TRAN. FEE:
TRAN. FEE-STATE:
PAGES: 8

Recording Area

Name and Return Address

Creative Homes Inc.
9244 Grandview Ct.
Franklin WI 53132

Parcel Identification Number (PIN)

oil
25
8

COVENANTS AND DECLARATIONS OF RESTRICTIONS

BOXHORN RESERVE SUBDIVISION MUSKEGO, WI

KNOW ALL MEN BY THESE PRESENTS that the undersigned, **CREATIVE HOMES, INC.**, being the owner of Boxhorn Reserve Subdivision being described as:

Being a part of the SE ¼ and the SW ¼ of the NE ¼ of Section 24, T5N, R20E, in the City of Muskego, Waukesha County, Wisconsin, to include lots 1-19.

And intending to establish a general plan for the use, occupancy and enjoyment of said Subdivision, does hereby declare that all lots therein shall be subject to the following restrictions and covenants, which shall remain in force for a period of fifty (50) years from the date of recording hereof.

1. **GENERAL PURPOSES.** The purpose of this Declaration is to insure the best use and most appropriate development and improvement of each building site thereof; to protect owners of building sites against such use of surrounding building sites as will detract from the residential value of their property; to preserve as far as is practical, the natural beauty of said property, to guard against the erection thereon of poorly designed or poorly proportioned structures; to obtain harmonious use of material and color scheme; to insure the highest and best residential development of said property; to encourage and secure the erection of attractive homes thereon with appropriate locations thereof on building sites; to prevent haphazard and inharmonious improvements of building sites; to secure and maintain proper setbacks from street and adequate free spaces between structures, and in general, to provide adequately for a high quality of improvement in said property, and thereby to preserve and enhance the value of investments made by purchasers of building sites therein.

2. **STRUCTURES.** No lot shall be used for other than single-family residence purposes. All structures shall be designed by a registered architect or professional engineer or designer, experienced in residential design. The plans shall show the square footage for both first floor and second floor if a two story. Each dwelling shall have a minimum of two full baths. Each dwelling shall have a minimum roof pitch of 8/12, however actual roof pitch shall be at the developer's discretion depending on the type of home. Roof color shall be limited to that of weathered-wood, driftwood, black, deep browns, or similar color tones. Roof color **must** be approved by Developer. All fireplaces must have a black chimney terminator cap of traditional square style. There shall be no bare walls allowed. It is at the sole discretion of the Developer to add windows, brick, shutters, trim boards, vents or any item that will enhance said dwelling. Steel exterior front doors will be allowed for front elevations only with a **storm door**. Vinyl windows will be allowed only when accompanied with trim boards and/or shutters around each vinyl window. All vinyl windows are at the discretion of the Developer. All exterior walls, including, but not limited to, siding, corner boards, fascia boards, and soffit must be constructed with natural materials such as brick, stone, or wood. HardiPlank siding will be allowed. All materials must be approved by Developer. It shall be solely at Developer's

discretion to require front elevation of home to include some type of brick or stone. Exterior of all homes shall be of a traditional, colonial, French, country, or Tudor design. No contemporary or Spanish style homes will be allowed. All exterior color selections, including, but not limited to siding, trim, gutters, roof, front door, shutters, garage door, etc. MUST be approved by Developer PRIOR to submitting plans to the City of Franklin for architectural approval.

Lot owner is encouraged to get approval prior to purchasing said Lot if there is a doubt about home to be constructed.

The following items MUST be submitted to Developer/Creative Homes, Inc. PRIOR to obtaining any approvals, (this includes architectural approval), from the City of Muskego:

- A. Three (3) sets of **final** home plans
- B. Three (3) copies of **final** survey showing location of home on said lot
- C. **Final** Color Selection Form (supplied by Creative Homes, Inc.), indicating all **final** color selections

**** Creative Homes, Inc. will not grant any approvals unless all of the required information is submitted ****

**** Creative Homes, Inc. will process and conduct an architectural review, within 30 Days, once all required information is submitted ****

**** Creative Homes, Inc. encourages buyer(s) to plan ahead in the submission of required information ****

Important: If lot owner(s), at anytime, repaints or changes the exterior color of the home in any way from the original approved selections, it is necessary to obtain architectural approval from Developer / Creative Homes, Inc. or the Board of Directors, whichever one correctly applies, prior to making the change.

3. **RESTRICTION ON SUBDIVISION.** There shall be no further division or subdivision of lots in this Subdivision without approval of the Plan Commission of the City of Muskego.

4. **DWELLING STRUCTURE.** No Dwelling shall exceed two and one-half stories in height. The ground area within the perimeter of the building at grade exclusive of porches, garages, bays, patios, breezeways and similar additions, shall not be less than the following schedule: (a) Not less than 2,100 square feet in the case of a one-story dwelling; (b) Not less than 2,400 square feet total in the case of a dwelling of a one and one-half story, with a minimum of 1,300 square feet on the first floor; (c) Not less than 2,400 square feet in the case of a two-story, with a minimum of 1,300 square feet on the first floor.

*Note: Lot #1 square footage requirements are as follows: (a) Not less than 1,900 square feet in the case of a one-story dwelling; (b) Not less than 2,200 square feet total in the case of a one and one-half story, with a minimum of 1,100 on the first floor; (c) Not less than 2,200 square feet in the case of a two-story, with a minimum of 1,100 on the first floor.

For purposes of figuring total area, the undersigned, in his sole discretion, shall determine what constitutes a two-story or a one and one-half story dwelling. All buildings shall be completed within the allotted time set by the City of Muskego in its ordinance. **Three (3) sets of plans, and three (3) copies of the survey, showing the location of the homes, and naming the roof color, trim color, and the siding color, shall be submitted to Rick J. Przybyla/Creative Homes, Inc., / Developer 9244 W. Grandview Court, Franklin, WI 53132, of which one set will be signed by owner if it meets numbers 1, 2 and 4 above.**

5. **GARAGES.** No garage shall be larger than necessary to accommodate four (4) cars and all garages shall be attached to the dwelling either forming an integral part with the dwelling house or by connection of porch or breezeway. * Detached garages shall be allowed only at the approval of Developer / Creative Homes, Inc. and must match home with regards to design, materials, colors, roof, windows, etc. Detached garages shall be allowed on Lot 10 or Lot 11 ONLY, and must be constructed at the same time home is constructed. Plans

for the garage MUST be submitted with the plans for the home and follow the guidelines outlined in Number 4 above. Please note: Garages must not be the focal point or overpower the home with regards to design. All garages shall be solely at Developers / Creative Homes, Inc. discretion.

6. **TEMPORARY STRUCTURES.** No structures of any kind shall be moved onto any lot and no living quarters of temporary character shall be permitted at any time, it being the intention that only permanent, private dwellings and garages shall be permitted. All garages shall be built at the same time as the private dwellings and shall be large enough to accommodate a minimum of two (2) cars. No boats, trailers, mobile homes, Winnebagos, or commercial trucks may be parked on the premises outside the garage other than for the delivery of materials or merchandise, except during the construction or remodeling periods. Any vehicles requiring long term storage and/or parking must fit completely inside the garage.

7. **STORAGE.** No lot shall be used in whole or in part for the storage of rubbish of any character whatsoever, nor for the storage of any property that will cause such lots to appear in an unclean or untidy condition, or that will be obnoxious to the eye; nor shall any substance be kept upon any lot that will emit foul or obnoxious odor. Also prohibited is anything that will cause any noise that will or might disturb the peace, quiet, comfort or serenity of the occupants of surrounding properties. Storage sheds which are constructed, must comply with City requirements. These said sheds **must** match the home constructed on said lot including, but not limited to, style, design, color, roof material and siding material and **MUST BE APPROVED BY DEVELOPER PRIOR** to obtaining approval from the City of Muskego. (See No. 12) A drawing of the shed, along with a plat showing location on lot must be submitted for approval.

8. **UTILITY LINES.** All electric, cable and telephone lines shall be placed underground.

9. **CONCRETE APPROACH.** It is at the sole discretion of the Developer / Creative Homes, Inc. to install curb cuts on any of the lots. If Developer / Creative Homes, Inc. does not install a curb cut, it shall be solely the lot owner(s) responsibility to install a curb cut per City of Muskego requirements. If Creative Homes, Inc. does install curb cut(s), and it is(are) not in the appropriate location, it shall be the sole responsibility of the property owner to relocate the curb cut, per City of Muskego requirements, and solely at lot owner(s) expense. Also, if curb, gutter, and/or sidewalks are damaged and the city requires replacement, it shall be paid for by the owner of the lot. Buyer and Developer to inspect curb, gutters, and sidewalks prior to closing and to ensure they meet City of Muskego standards.

10. **ANIMALS.** No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot except two dogs, two cats, and other small household pets such as canaries or parakeets, provided they are not kept, bred or maintained for any commercial purposes.

11. **GRADES.** The undersigned reserves the right to set finished yard grades. It is the sole responsibility of the lot owner to remove the excess dirt from excavation that is not needed. All dirt from excavation of any lot which is not used on the premises shall be deposited in such place in the Subdivision as shall be directed by the Developer / Creative Homes, Inc., or if not needed in the Subdivision, within a three (3) mile radius of said Subdivision, if and only if the Developer / Creative Homes, Inc. specifies and approves a need for the dirt. Trucking of such dirt shall be solely at the cost of the lot owner. If the Developer / Creative Homes, Inc. does not want or need the excess dirt, it shall be the sole responsibility of the lot owner to remove the excess dirt from excavation.

11a. **SPLIT LEVEL LOTS.** To be determined per final master plan. Any change from said plan must be approved by Developer **and** the City of Franklin Engineering Department.

12. **CONTROL.** In order to maintain harmony in appearance and to protect the owners of the lots in the Subdivision, no building, fence, sign, wall, solar panels, satellite dish, 24" or larger, cyclone fences (landscape fences, open rail type, are the exception) or other structure shall be erected, constructed or maintained upon any lot, nor shall any change or alteration be made thereon unless the complete plans and specifications, thereof (a plot plan showing the exact location of such buildings, garage, fence, wall or other structure, the elevation thereof and the grade of the lot and sketch or view of such building or structures or changes), shall have been submitted to and approved in writing by the undersigned or his assigns as herein provided. The decision of the undersigned with respect to any such matter shall be final and binding upon all parties. **(Upon the undersigned owner being divested of all rights, will, and interest in and to any lot in said Subdivision, control hereunder shall be passed to a committee, to be designed by a majority of the owners of record of the lots of the Subdivision.)**

(Only In-ground swimming pools will be allowed, and must be located as close as possible to rear of home, with extensive landscaping and a privacy fence surrounding the swimming pool, per Developer's approval. A plan showing the exact location of the swimming pool, and landscape and/or privacy fence specifications must be submitted to Developer / Creative Homes, Inc. **PRIOR** to construction or installation).

13. **LANDSCAPE - ARCHITECTURAL CONTROL.** All landscaping must be completed within one (1) year after the completion of the residence and should conform to the grading as set forth by the City of Muskego Engineering Department and is the sole responsibility of the homeowner. Said landscaping must include a hard surfaced drive consisting of concrete or similar material. No asphalt driveways will be allowed. No permanent gravel drive will be permitted. The hard surface drive must be installed within one (1) year from the date the premises are substantially completed. Developer will select and approve a mailbox and post along with a light post, which shall be purchased by Developer, and the cost charged to buyer at time of closing (\$ 1795.00). Lamp post to be installed approximately 16 feet from back of curb and within 8 feet of driveway (front of lot). Lamp post shall not encroach on city right of away. **Installation of both the mailbox and post and lamp post shall be the sole responsibility of the lot owner.** At least two trees, minimum caliper of 2 inches shall be installed on each lot at time of landscaping. **It is the sole responsibility of the lot owner to cut grass and/or noxious weeds per city requirements.**

14. **VIOLATION.** Any violations of these restrictions, which exist for a period of one year without a written protest thereof being received by the owner of the lot involved, shall not be considered a violation thereafter. These restrictions shall be deemed and construed to run with the land and shall be binding upon the respective owners of each of said lots and upon all persons holding or claiming under or through them. Upon the violation of any one or all of these restrictions by any owner or owners of said lots, their heirs, executors, administrators or assigns, the owner shall have the right to proceed at law or inequity against the person or persons violating or attempting to violate any such covenant or restrictions and shall be entitled to both equitable and legal relief. Invalidation of any one of these covenants and restrictions by judgment of Court order shall be construed and deemed severable and all of which are not so invalidated, shall remain in full force.

15. **UTILITIES.** Developer reserves the right for a period of three months after the execution of this document hereof, to grant easements to WE Energies and SBC, or other similar applicable companies, for utility purposes over, upon, under and across **ALL** lots in this Subdivision, whether owned by the developer or third parties. Such easements shall, so far as is reasonably possible, be confined to areas within 20 feet of all lot lines and be granted on standard utility forms.

16. **CONSTRUCTION.** The owner's builder and/or owner of said lot, shall be responsible for cleaning up the debris that has blown from their building site under construction. The owner's builder and/or owner of said lot, shall also be responsible for cleaning up the mud and dirt on the roadways caused by their construction. The owner's builder and/or owner, shall clean roadway of debris and dirt within twenty-four (24) hours after receiving verbal or written notice. Owner/builder is to advise Developer of any cracks or damage to curbs, gutters, and/or sidewalks prior to closing of lot. The owner's builder and/or owner shall be responsible for any damage done to curbs and/or gutters. (No. 9)

17. **BUILDING CONSTRUCTION.** If owner of said lot does not start construction within six (6) months from date of closing, lot may require re-seeding, and the owner shall be solely responsible for seeding and maintaining said lot. Lot owner shall start construction on home within one (1) year from date of purchase and owner and/or builder shall complete dwelling within one (1) year from start of construction.

It is the sole responsibility of the lot owner to cut grass and/or noxious weeds per city requirements.

18. **MEMBERSHIP.** Each Homeowner / Lot-owner shall be a Member of "Boxhorn Reserve Homeowner Association Inc.". Such membership shall be appurtenant to and may not be separated from ownership of any Lot. Every member of the association shall have one vote for each Lot owned by the Member. When more than one person or entity holds an interest in a Lot, who votes shall be determined among themselves. So long as Developer, or its successors, shall own 3 or more Lots, the authority and functions of the Board of Directors of the Association shall remain in and be exercised solely by the Developer, or its successors. When Developer, or its successors no longer own 3 or more Lots, Developer shall promptly select three Homeowners to serve on the Board of Directors of the Association until an annual meeting of Members is held. At that time the Board of Directors shall be elected. The Members of the Board of Directors shall not be entitled to any compensation for their services. Any Member who is delinquent in the payment of assessments charged against his Lot shall not be entitled to vote until all such assessments have been paid in full.

19. **GENERAL PROVISIONS; TERMS & EXTENSIONS.** The restrictions and covenants herein contained shall be binding upon all persons, parties, and entities having an interest in the land affected thereby, claiming under them for a period of fifty (50) years from the date hereof, at which time these Declarations of Restrictions shall be automatically renewed for successive periods of ten (10) years, unless, prior to the end of the initial or any successive period, a document signed by the owners of at least seventy-five percent (75%) of the lots has been recorded terminating or amending these Declarations of Restrictions either in whole or in part.

20. **AMENDMENT.** It shall be understood that the contents found within these Declarations of Restrictions, or any provisions to these Declaration of Restrictions, may be annulled, waived, changed, modified, or amended, at any time, by a written declaration, executed in such manner as to be recordable, setting forth such annulment, waiver, change, modification, or amendment, as executed,

- a. Solely by Developer / Creative Homes, Inc., or its successors or assigns, until such time the Developer / Creative Homes, Inc. shall no longer own 3 or more Lots.
- b. Thereafter, by the owners of at least seventy-five percent (75%) of the Lots.

21. **ANNUAL GENERAL ASSESSMENT.** There will be a Homeowners Association Assessment each year, which shall be used exclusively for the care, maintenance, operation, and preservation of the water retention basin located on the property known as Outlot 1 of Boxhorn Reserve, as well as all common lands. Common lands include, but are not limited to, the entry way, entrance sign, and landscaping. The assessed fee shall include, but shall not be limited to, the cost of labor, equipment, materials, insurance, management,

and supervision thereof, and costs for fees paid for auditing the books of the Association, and for necessary legal services and counsel fees to the Board of Directors. Payment may be made by special assessment or annual assessment, as the Association determines. The Homeowners Association shall have the power to levy assessments against the owners of individual lots for the purposes of carrying on the business of the Association, and for payment of expenses properly incurred by the Association.

21a. **DETERMINATION OF THE ASSESSMENT.** The Board of Directors of Boxhorn Reserve Subdivision shall prepare and annually submit to Homeowners a budget of expenses for the coming year listing all costs contemplated within the purposes of the annual general assessment described in # 18 above. Upon adoption and approval of the annual budget by a majority of the Members, the Board shall determine the assessments by dividing the amount of the budget among the Lots equally.

22b. **METHOD OF ASSESSMENT.** The assessment for each lot shall be levied at approximately the same time each year. The Board shall declare the assessments so levied due and payable within 30 days from the date of such levy. The Secretary or other officer shall notify the Homeowner of each lot as to the amount of the assessment and the date such assessment becomes due and payable. Such notice shall be mailed to the Homeowners at the last known post office address by United States mail, postage prepaid.

22c. **INTEREST ON UNPAID ASSESSMENTS.** Any assessment which is not paid when due shall thereafter until paid in full, bear interest at the rate of 12% per annum or the highest rate permitted by law, whichever is higher.

23. **CITY OF MUSKEGO RESPONSIBILITIES.** In the event that the Boxhorn Reserve Homeowners Association fails to maintain the water retention basin located on Outlot 1 of Boxhorn Reserve Subdivision, or any other required maintenance areas, in a reasonable and orderly condition, the City of Muskego Common Council may serve written notice upon the organization or upon the residents and/or lot owners of Boxhorn Reserve, setting forth the manner in which the organization has failed to maintain the common areas. Said notice shall include a demand that such deficiencies of maintenance be remedied within thirty (30) days, and shall also state the date and place of a public hearing which shall be held within fourteen (14) days of the notice. At such hearing, the Common Council may modify the terms of the original notice as to the deficiencies and may give an extension of time to correct the problems. Deficiencies not corrected within thirty (30) days of any extension may result in the City, (in order to preserve taxable values of the development and to prevent the quality of the water retention basins from deteriorating, or any common landscape area from becoming a public nuisance), being allowed to enter upon these areas and maintain them for a period of one (1) year. Prior to the end of the one (1) year period described above, the Common Council shall call a public hearing upon notice to the organization, or upon notice to the residents and lot owners of Boxhorn Reserve, at which hearing the residents and lot owners or the organization shall show why the City of Muskego shall not continue the maintenance on these lands for an additional year. If the Common Council does determine that the organization, and/or residents and lot owners are capable and able to maintain the applicable areas of Boxhorn Reserve Subdivision, specifically, but not limited to, the water retention basin on Outlot 1 of Boxhorn Reserve, in reasonable conditions, then the Common Council shall cease to maintain common areas at the end of said year. If the Common Council determines that the organizations and/or residents and lot owners are not capable and able to maintain common areas, then the Common Council may, at its discretion, continue to maintain these areas subject to a similar hearing and determination in the next succeeding year and in each year thereafter. The cost of such maintenance by the City of Muskego, shall be assessed against the property owners within Boxhorn Reserve Subdivision, and shall become a tax lien on said property. The City of Muskego, at the time of entry upon the common areas,

shall file a notice of such lien at the Waukesha County Register of Deeds office, upon the properties affected by such liens.

24. **MODEL HOMES.** "MODEL HOMES" or "SPEC HOMES" will be allowed ONLY with written permission by **CREATIVE HOMES, INC. / RICK J. PRZYBYLA** on any lot in the subdivision except those as may be constructed by **CREATIVE HOMES, INC.** No owner, therefore, of any lot may construct thereon a home, which is not going to be occupied as a principal residence by the owner of said lot without written permission by **CREATIVE HOMES, INC. / RICK J. PRZYBYLA.** For the purposes of this paragraph, a model home and/or spec home are defined as any home constructed on any lot with the intent, purpose, or result of being displayed, presented, and/or advertised as a home which is capable of being duplicated and/or constructed again elsewhere, and is advertised as a model or spec for such purposes. This clause may be enforced by injunction against any such use of the lot.

25. **ADDENDUMS.** The following Addendum A and Addendum B are made part of and are incorporated into the Covenants and Restrictions for Boxhorn Reserve Subdivison. Addendum A is entitled "Boxhorn Reserve Storm Water Management Plan", and Addendum B is entitled "Boxhorn Reserve Retention Pond Maintenance Agreement". Both Addendum A and Addendum B are recorded documents and are also on file with the City of Muskego.

THIS INSTRUMENT DRAFTED BY: Rick J Przybyla.

Rick J Przybyla
CREATIVE HOMES, INC.
Rick J. Przybyla
President



PLEASE RETURN TO:

RICK J. PRZYBYLA
CREATIVE HOMES, INC.
9244 W. Grandview Court
Franklin, WI 53132

Signature of Rick J. Przybyla authenticated the 14th day of September, 2005.

Denise M Breiling
Notary Public

My commission expires: 5-12-07

