

Covenants & Deed Restrictions EXHIBIT 4

**DECLARATION OF COVENANTS,
RESTRICTIONS, CONDITIONS AND
EASEMENTS FOR THE PLAT OF FIRST
ADDITION TO KILLKENNY ADDITION TO
SOUTHBRIDGE, VILLAGE OF WAUNAKEE,
DANE COUNTY, WISCONSIN**

Kilkenny Addition to Southbridge I, LLC, a Wisconsin limited liability company ("Developer"), owner of the real estate in the Village of Waunakee, Dane County, Wisconsin, which has been platted as the Plat of First Addition to Kilkenny Addition to Southbridge (the "Property"), hereby declares that all of the lots and outlots in the Property are subject to the following restrictions, covenants, conditions and easements, and that all of such lots and outlots are and shall be held, sold, occupied, conveyed and transferred subject to the covenants, restrictions, conditions and easements set forth herein:

Return to:

Michael J. Lawton
Lathrop & Clark LLP
P.O. Box 1507
Madison, WI 53701-1507

**See attached list
Parcel Identification Number**

ARTICLE 1

Definitions

For purposes of all Articles within these Covenants, Restrictions, Conditions and Easements, the following terms shall be defined in the following manner:

1.1 "Developer" shall refer to Kilkenny Addition to Southbridge I, LLC, and its successors and assigns.

1.2 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to a platted lot (exclusive of outlots) within the Property, except that as to any such lot which is the subject of a land contract wherein the purchaser is in possession, the term "Owner" shall refer to such person instead of the vendor. For purposes of Articles 3 and 4 hereof, where more than one person holds an ownership interest in any lot, the consent or agreement of a majority of the

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owners of any such lot shall be deemed to be the consent or agreement of the owner of any such lot, and any such lot shall have only one vote on any matter provided for in Articles 3 and 4 hereof.

1.3 "Property" shall mean and refer to the real estate described as the Plat of First Addition to Kilkenny Addition to Southbridge, Village of Waunakee, Dane County, Wisconsin.

ARTICLE 2

Property Subject to This Declaration

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the Village of Waunakee, Dane County, Wisconsin, and is known as the Plat of First Addition to Kilkenny Addition to Southbridge, Village of Waunakee, Dane County, Wisconsin.

ARTICLE 3

Architectural Control and Protective Covenants and Restrictions

3.1. For all buildings or other improvements of any kind or nature to be constructed, erected or placed on any lot, including outlots, subject to this Declaration, the plans, specifications, site, grading and landscaping plans for all such buildings must be submitted to the Developer or the Design Review Committee, whichever is then applicable, for written approval as to appearance, the quality of workmanship and materials, attractiveness and harmony of exterior design, including exterior colors, size, location with respect to topography and finish grade elevation, height of improvements, site layout, roof pitch, location of improvements and amount, quality and nature of landscaping, and design and construction of the substructure of any structure, prior to commencement of any construction on any lot. All buildings erected on the Property shall have a minimum roof pitch of not less than 8/12 pitch, but a variance from this minimum may be granted by the Developer or the Design Review Committee, whichever is then applicable, in their discretion. No buildings or other improvements may be constructed, erected or placed on any lot other than in accordance with the approved documents. No buildings or other improvements to any lots (other than outlots) shall be approved unless such buildings or other improvements comply with the terms of Exhibit A attached hereto and made a part hereof.

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All building fascia shall be a minimum of 10” in width and shall be of a natural product or give the same effect. All chimneys shall be fully enclosed with brick or stone. Brick or stone on the foundations in the front and on both sides of the house shall be required as specified by the Developer or the Committee. For purposes of this Declaration, the term “improvements” shall include, but not be limited to, play structures, fences, patios, decks and swimming pools.

3.2. After the Developer and its successors and assigns cease to have any title to any lot subject to this Declaration, the plans, specifications, site, grading and landscaping plans, and all other matters to be submitted to the Developer under these Covenants, Conditions, Restrictions and Easements, must be submitted to the Design Review Committee ("Committee") for approval in writing by a majority of the members of said Committee. The Committee shall consist of three persons, elected by the Board of Directors of the Kilkenny Addition to Southbridge Neighborhood Association, Inc., (“Association”) in accordance with the By-Laws of such Association, for terms of one (1) year each. In the event of the failure of the Association to elect a Committee in any year, the most recently elected members shall continue to serve until successors are duly elected.

3.3. For each building constructed, erected or placed on any lot, including outlots, subject to this Declaration, the prime contractor or builder to be hired for construction of such building shall be approved in writing by the Developer or the Committee, whichever is then applicable, prior to commencement of construction. The approval of the Developer or the Committee shall not be unreasonably withheld. Such approval may be withheld for reasons such as the proposed contractor's or builder's financial status, business history and prospects, building reputation or any other reason which would be similarly relied upon by a reasonably prudent businessman then developing a neighborhood of quality single family residences.

3.4. No alteration in the exterior appearance, design, exterior color, size, location with respect to topography and finish grade elevation, height of improvements, site layout, roof pitch, location of improvements and amount, quality and nature of landscaping, and design and construction of the subsurface of any existing buildings or improvements, including but not limited to, any exterior remodeling and the construction of patios, decks, and swimming pools, shall be made without the prior written approval of the Developer or the Committee, whichever is then applicable. No alteration of any lots (other than outlots) shall be approved unless such buildings or other

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improvements comply with the terms of Exhibit A attached hereto and made a part hereof.

3.5. The existing vegetation of each lot (including outlots) subject to this Declaration, including trees of a diameter of three (3) inches or greater, shall not be destroyed or removed except as approved in writing by the Developer or the Committee, whichever is then applicable. In the event such vegetation is removed or destroyed without approval, the Developer or Committee may require the replanting or replacement of same, the cost thereof to be borne by the Owner.

3.6. The elevation of a lot or outlot shall not be changed so as to materially affect the surface elevation or grade of the surrounding lots. A copy of all site, grading and landscaping plans shall be kept by the Developer or the Committee for the benefit of other purchasers in planning their individual elevations. Violations of the approved site, grading or landscaping plans shall give either the Developer or Committee, whichever is then applicable, or any adjacent lot owner within the Property, a cause of action against the person violating such site, grading or landscaping plan for injunctive relief or damages as appropriate. No earth, rock, gravel, or clay shall be excavated or removed from any lot within the Property (including outlots) without the approval of the Developer or the Committee, whichever is then applicable.

3.7. All lots within the Property (other than outlots) shall be used only for single family residential purposes, except that Developer may continue to use lands owned by Developer for present agricultural purposes and uses.

The following minimum floor area requirements shall apply to all detached single-family residential buildings erected on any lots subject to this Declaration:

- (a) No single story building shall have less than 1600 square feet.**
- (b) No two-story building shall have less than 2000 square feet.**
- (c) No raised ranch, bi-level, or tri-level building shall have less than 1600 square feet on the main level.**

For the purposes of determining floor area, stair openings shall be included, but open porches, screened porches, attached garages, and basements, even if the basements are finished, shall be excluded.

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The above minimum floor area requirements may be waived by the Developer or the Committee, whichever is then applicable, in the event the proposed architecture and quality of the house is such as to present an attractive appearance compatible with other houses within the Property, in the judgment of the Developer or the Committee.

3.8. All detached, single-family residential buildings must have an attached garage, and such garage must contain not less than one (1) nor more than three (3) automobile garage stalls, but the foregoing requirements may be waived by the Developer or the Committee, in whole or in part, whichever is then applicable, in their discretion.

3.9. No building previously erected elsewhere may be moved onto any lot subject to this Declaration, except new prefabricated construction which has been approved by the Developer or the Committee, whichever is then applicable, in their discretion.

3.10. Unless waived by the Developer or the Committee, whichever is then applicable, when suitable alternative paving materials are used, all driveways and alleys (including driveways located on outlots) must be paved with concrete. No more than two (2) domestic animals may be kept on any lot subject to this Declaration. No pit bulls or Dobermans may be kept on any lot. Commercial animal boarding, kenneling or treatment is expressly prohibited, whether for free or not, within the Property.

3.11. Accessory buildings or structures, including, but not limited to, storage sheds, detached garages and above ground swimming pools, are expressly prohibited within the Property except where approved in writing in advance by the Developer or Committee, whichever is then applicable, in their sole discretion.

3.12. Where public sidewalks exist, it is the responsibility of the abutting lot owner (including the owners of any outlots) to maintain same in a safe and passable condition, reasonably free from snow, ice or obstruction.

3.13. No trailer, basement, tent, shack, garage, barn, or any part thereof, shall ever be used as a residence, temporary or permanent, nor shall any residence be of a temporary character.

3.14. Parking of commercial or service vehicles owned or operated by residents within the Property, whether on lots, outlots or in the public street

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with the Property, is prohibited unless such vehicles are kept in garages. Storage of boats, travel trailers, mobile homes, campers, and other recreational vehicles within the Property is prohibited unless kept inside garages. This section shall not prohibit the temporary parking or storage of such vehicles for the sole purpose of loading or unloading such vehicles at the lot at which parked, for a period not to exceed twenty-four (24) hours. No cars, boats or other vehicles shall be parked on lawns or yards at any time.

3.15. All areas of lots (including outlots) not used as a building site or lawn or under cultivation as a garden shall have a cover crop or be so cultivated or tended as to keep such areas free from noxious weeds, to the extent permitted by law. All lots (including outlots), and all buildings and other improvements thereon, shall be kept in good order and repair and free of debris, including, but not limited to, the mowing of all lawns, the pruning of all trees and shrubbery and the painting (or other external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management. This paragraph shall not be construed to prevent a family garden or orchard, provided that all family gardens and orchards shall be located in the back yards and shall not exceed 35% of the total area of the lot, exclusive of the footprint of all buildings and the driveway.

3.16. On any lot conveyed by land contract or deed from the Developer, construction shall be commenced within one (1) year from the date of such land contract or deed. Upon violation of this restriction, the Developer shall have the option, exercisable by written notice to the lot owner within ninety (90) days after the expiration of such one (1) year period, to have said lot (and any appurtenant rights in any outlot, if any) conveyed to the Developer at the original sales price, free and clear of any liens and encumbrances created by act or default of the Owner of such lot, with taxes and installments on assessments for the year in which conveyance occurs being prorated as of the date of such conveyance. Developer may waive its rights under this section in writing, in its discretion.

3.17. Construction of all buildings shall be completed within eight (8) months after issuance of a building permit for the respective building. Landscaping (including grading, sodding, and seeding) and paving of driveway shall be completed, in accordance with the approved landscaping plan, within one hundred eighty (180) days of completion of construction, provided weather conditions so allow. If such construction or landscaping is delayed due to matters beyond the control of the lot owner, the time for completion shall be extended by the period of such delay.

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3.18. Except to the extent that this prohibition is limited by federal law or regulations, no exterior antennas, satellite dishes, solar panels, wind mills, walls or fences of any kind shall be permitted within the Property unless approved in writing in advance by the Developer or the Committee, whichever is then applicable, including approval of the location, material, height, size and color thereof. NO CHAINLINK, VINYL, PLASTIC OR SHADOWBOX FENCES SHALL BE ALLOWED AT ANYTIME. All fences require written approval from the Developer or the Committee, and the only fences that will be approved are ornamental metal fences or wrought iron fences, black in color. Any fence which is approved shall be set back at least five (5) feet from the lot line.

3.19. No noxious or offensive trade or activity shall be carried on within the Property, nor shall anything be done which may be or will become a nuisance to the neighborhood. This shall not be construed to prevent a family garden or orchard, provided that all family gardens and orchards shall be located in back yards and do not exceed the area described in section 3.15 above.

3.20. The elevation of any utility easement within the Property may not be changed in excess of six (6) inches without the permission of all of the applicable utilities, and any party making such change shall be responsible for any damages caused to underground utilities based on any changes in grade of more than six (6) inches.

3.21. No lot or outlot as platted shall be resubdivided, except with the approval of the Developer or the Committee, whichever is applicable. No boundary line within the Property shall be changed, except with the approval of the Developer or the Committee, whichever is then applicable. This section shall not be construed to prevent the use of one lot and part or all of another lot or lots as one building site.

3.22. No signs of any type shall be displayed to public view on any lot (including outlots) without the prior written consent of the Developer or the Committee, whichever is then applicable, except for (a) lawn signs of not more than six (6) square feet in size advertising the property where located for sale, and (b) signs erected by Developer advertising lots within the Property for sale.

3.23. All buildings and other improvements constructed on any lots subject to this Declaration shall conform to all governmental zoning

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requirements and all side yard, rear yard, setback and other requirements imposed under the zoning for the plat, as heretofore approved by the Village of Waunakee, and as amended from time-to-time hereafter.

3.24. No swale, drainage way, or stormwater detention area within the Property, whether established by easement or not, which is in existence at the time of development on any lot or outlot on the Property, shall be re-graded or obstructed, so as to impede the flow of surface water across such swale or drainage way, or interfere with the proper functioning of any such swale, drainage way or stormwater detention area, and no structure, planting or other materials shall be placed or permitted to remain within any such swale, drainage way or stormwater detention area.

3.25. The following landscaping requirements apply to all lots within the Property (other than outlots):

- (a) Front and side yards must be sodded, including street terraces, except that the Developer or the Committee, whichever is then applicable, may permit the front yard and side yard to be seeded where weather conditions permit and appropriate alternative materials and practices are employed, in their discretion.
- (b) Rear yard areas which are not sodded must be seeded.
- (c) Landscape plantings and maintenance of the premises and adjoining street terrace shall be the responsibility of the lot or outlot owner(s). Complete visual screening of the front, rear or side of any lot or outlot is prohibited without approval of the Developer or the Committee, whichever is then applicable. Lawn trees shall be planted within 45 days of occupancy of the residence, or upon completion of construction, whichever occurs first, except that trees are not required to be planted during the winter months when the ground is frozen, but shall be planted as soon as weather conditions permit.
- (d) The landscaping plan for each lot (other than outlots) shall achieve a minimum of 700 landscaping points as determined by the following point schedule:

<u>Landscaping Element</u>	<u>Point Value</u>
Canopy Tree (2"-3" caliper at least 18 inches)	125

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Canopy Tree (3"-4" caliper at least 18 inches)	150
Canopy Tree (greater than 4" at 18 inches)	200
Canopy Tree or Small Tree (1"-1-1/2" caliper at 18 inches, i.e., Crab, Hawthorn)	100
Evergreen Tree (4 to 6 feet in height)	100
Large Deciduous Shrub (3-yr. transplant, 36" min.)	20
Small Deciduous Shrub (3-yr. transplant, 18" min.)	10
Decorative Wall (per face foot)	5

3.26. The Developer, after a period of ten (10) years from the date of recording the final Plat or after seventy-five (75%) of the lots within the Property (other than outlots) have been sold, whichever occurs first, may elect to assign all of the Developer's rights to approve all of the items set forth in Article 3 hereof to the Committee.

3.27. Article 3 hereof shall run with the land and shall be binding upon and inure to the benefit of all persons having an interest in the Property for a period of thirty (30) years after the Plat is recorded, after which time Article 3 of this Declaration shall automatically stand renewed for successive five (5) year periods unless the same is canceled as provided in Section 3.28 below. If any person, or his heirs, successors or assigns, shall violate or attempt to violate any of the covenants and restrictions contained in Article 3 hereof while Article 3 hereof is effective, the Developer, the Committee or any person or persons owning any lot or lots within the Property, and in the case of Sections 3.21, 3.24, 3.25(c) or (d), 3.33, 3.34 and 3.36 hereof, the Village of Waunakee shall have standing to bring proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants or restrictions, and the prevailing party shall be awarded reasonable actual attorney fees and costs, and any person violating any of these covenants or restrictions shall be liable for all costs of removing any such violation. The Village of Waunakee shall not be required to take any action hereunder.

3.28. Article 3 hereof, or any part thereof, may be canceled, released, amended, or waived in writing as to some or all of the lots subject to this Declaration by an instrument signed by the Developer, or if the Developer's rights under Article 3 of this Declaration have been assigned to or assumed by the Committee, then by an instrument in writing signed by the Owners of a majority of the lots (other than outlots) subject to this Declaration, but no provisions of Sections 3.21, 3.24, 3.25(c) or (d), 3.33, 3.34 and 3.36 hereof may be canceled, released, amended or waived without the written consent of the Village of Waunakee.

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3.29. Invalidation of any one of these covenants or any severable part of any covenant, by judgment or court order, shall not affect any of the other provisions, which shall remain in full force and effect, and the provision so invalidated shall be deemed reformed to the extent possible to cure any such default.

3.30. In the event the Committee does not affirmatively approve or reject the plans, specifications and site, grading and landscaping plans, the prime contractor or builder, alterations, or any other matters which must be submitted to the Developer or Committee, within thirty (30) days after the same have been submitted to the approving authority in writing, then such approval shall be deemed granted in such instance. No such time limit shall apply to the Developer. The Developer or the Committee may condition any such approval upon the owner reimbursing the Developer or the Committee for the actual, reasonable costs incurred by the Developer or the Committee for architectural or engineering services which were required to review any proposal before the Developer or the Committee.

3.31. In exercising any authority under Article 3 of this Declaration, the Developer or Committee, as appropriate, shall act in accordance with the following standards:

- (a) to assure the most appropriate development and improvement of the Property;**
- (b) to protect each Owner of a lot against improper uses by other lot owners;**
- (c) to preserve the beauty of the Property;**
- (d) to guard against the erection of poorly designed or poorly proportioned structures, or structures built of improper or unsuitable material;**
- (e) to encourage and secure the erection of attractive, adequate sized homes, which are attractive, and conform and harmonize in external design with other structures within the Property, and which are properly located upon the lot in accordance with its topography and finished grade elevation; and**

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- (f) to provide for high quality improvements which will protect the investments of purchasers of lots.

3.32. The Developer and the Committee shall not be liable for any loss suffered by any person on the basis of the approval or disapproval of any proposed use, plans, specifications, site, grading or landscaping plan or other matter, including any loss arising out of the negligence of the Developer or Committee.

3.33. If any Owner shall violate or attempt to violate any covenant or restriction with regard to drainage swales, drainage ways or stormwater detention areas, the Developer, the Committee, the Village of Waunakee, or any affected lot owner, shall have standing to bring proceedings at law or in equity against the person or persons violating or attempting to violate such covenant or restriction or failing to perform such duties, and shall be awarded appropriate relief, including reasonable, actual attorney fees and costs, to remedy said violation. The Village of Waunakee shall not be required to take any action hereunder.

3.34. The Owner of any lot within the Property which abuts upon or is adjacent to land used for farming or grazing purposes (other than lands used by Developer or his tenant or successor for such purpose) shall erect and maintain, if requested by the adjacent property owner, a partition fence, satisfying the requirements of the Wisconsin Statutes for a legal and sufficient fence, between the Owner's lot and the adjacent land, without cost to the adjoining property owner, so long as the adjoining land is used for farming or grazing purposes. The Developer, the Committee or the Village of Waunakee, as the case may be, shall have standing to bring proceedings at law or in equity against the Owner of such lot, and shall be awarded appropriate relief, including reasonable, actual attorney fees and costs, in the event of any violation hereof. The Village of Waunakee shall not be required to take any action hereunder.

3.35. While the Developer retains ownership of any lots within the Property, the Developer reserves the right to submit some or all of said lots and related outlots as a site for the Parade of Homes of the Madison Area Builders Association. In the event some or all of said lots and related outlots are selected as a site for the Parade of Homes by the Madison Area Builders Association, this Declaration of Covenants, Restrictions and Conditions shall, as to the lots and outlots enrolled in the Parade of Homes, for the limited period of time commencing 48 hours prior to the commencement of the Parade of Homes and ending 48 hours after the conclusion of said Parade

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of Homes, be deemed temporarily altered and modified, to the extent necessary, to permit the Madison Area Builders Association to hold its Parade of Homes in the Property, pursuant to the then current Parade of Homes Rules and Developer's Checklist of the Madison Area Builders Association. All purchasers of lots within the Property, and their successors and assigns, shall take title subject to this specific reservation by the Developer and shall waive all rights to object to violations of this Declaration by Developer, the Madison Area Builders Association, or any of the builders or participants in such Parade of Homes during the period of such Parade(s) as set forth above.

3.36. In order to reduce runoff and protect water quality, all downspouts and downspout extenders are to drain into a permeable area such as grass or a planting bed within each respective lot. Individual lots within the plat are required to infiltrate the first 1-inch of the runoff created within such lot from its buildings, rooftops and impervious surfaces. The Lot Owner shall deep till or chisel-plow all disturbed areas beyond the street and building footprints to promote infiltration of stormwater, prior to the installation of landscaping, with the use of appropriate compost where necessary. During the construction of a dwelling unit on any Lot, the Owner shall cause all silt and debris in the street, whether public or private, to be cleaned up and removed on a daily basis at the end of each day to prevent runoff of silt and debris from the Lot into the stormwater management system.

ARTICLE 4

Kilkenny Addition to Southbridge Neighborhood Association, Inc.

Definitions

For purposes of Article 4 of these Covenants, Restrictions, Conditions and Easements, the following terms shall be defined in the following manner:

4.1. "Association" shall mean and refer to Kilkenny Addition to Southbridge Neighborhood Association, Inc., its successors and assigns.

4.2. "Board" shall mean and refer to the Board of Directors of the Association.

4.3. "Declaration" shall mean the Declaration of Covenants, Restrictions, Conditions and Easements for the Plat of Kilkenny Addition to

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Southbridge, as they may from time-to-time be amended, and this Declaration for the First Addition to the Kilkenny Addition to Southbridge, as they may from time-to-time be amended.

Association Membership and Board of Directors

4.4. **Members.** The Owner of each platted lot (other than outlots) within the Plat of Kilkenny Addition to Southbridge, Village of Waunakee, Dane County, Wisconsin, as defined in Sec. 1.2 hereof, and the Owner of each platted lot (other than outlots) within the Plat of First Addition to Kilkenny Addition to Southbridge, shall be a member of the Association. Each platted lot shall have one (1) vote only in the affairs of the Association. Where more than one person holds an ownership interest in any lot, all persons holding such interest shall be members, but such lot shall have only one (1) vote. The members shall have such rights as are set forth herein, in the Articles and By-Laws of the Association, as amended from time-to-time, and as may be provided by the laws of the State of Wisconsin.

4.5. **Board of Directors.** The affairs of the Association shall be managed by the Board. The Board shall be selected in the manner, and shall have such duties, powers and responsibilities as are set forth herein, in the Articles and By-laws of the Association, as amended from time-to-time, and as may be provided by the laws of the State of Wisconsin, subject to the rights of Developer as set forth in such instruments. The Board of Directors shall elect the members of the Design Review Committee under the circumstances described in Sections 3.2 and 3.26 hereof.

Common Areas; Entrance Sign; Design Review Committee

4.6. **Acquisition of Common Areas.** The Association may take title from time-to-time to real property within the Property or outside of the Property for the purpose of providing common areas for the use and benefit of the members. The Association shall have the right to exclusive management and control of all such common areas and all improvements thereon.

4.7. **Obligations of Association.** The Association shall have the duty to maintain common areas in good, clean, attractive and sanitary condition, order and repair, and to make such improvements and perform such maintenance as shall further the interests of the members.

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4.8. Easement of Enjoyment. Subject to the provisions of this Declaration, all common areas shall be held by the Association for the benefit of the members. Each of said members shall have an equal, undivided right to use and enjoyment of such common areas, subject to the right of the Association to establish reasonable rules for the use of such common areas.

4.9. Entrance Sign. The Association shall maintain in good order and repair the entrance sign to the Property, including lighting thereof, and any pump, electrical equipment, piping and wiring associated therewith, and shall provide water and electrical power therefor, at the expense of the Association.

4.10 Design Review Committee. The Association, with the approval of the Board of Directors, may provide financial assistance to the Design Review Committee to enable it to carry out its activities, including the hiring of planners, architects, engineers and legal counsel, and the payment of the costs and expenses, including attorney fees, incurred by the Design Review Committee in enforcing any part of the Covenants, Restrictions, Conditions and Easements or the comparable covenants for any addition to the Property developed by Developer.

Assessments

4.11. Creation of Lien and Personal Obligation of Assessments. The Developer hereby covenants, and each Owner of any lot within the Property, and any Owner of any lot within any addition to the Property developed by Developer, other than outlots, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all assessments in the amount and manner hereinafter provided. All such assessments, together with interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and a continuing lien upon the lot (but not any outlot) against which each such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the person who was the Owner of such lot (other than outlots) at the time when the assessment became due and payable.

4.12. Creation of Assessments. Assessments shall be determined, established and collected, in the following manner:

- (a) **Budget.** In December of each year starting in December 2012, the Board shall determine a budget for the ensuing calendar year,

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which shall include the costs to be incurred by the Association in connection with the maintenance, improvement and operation of common areas and plat signs, payment of taxes and insurance, and other costs connected therewith, including a reasonable reserve for depreciation and any financial assistance to be provided to the Design Review Committee under Section 4.10 above or the Design Review Committee under the Covenants for any addition to the Property developed by Developer. Such budget shall be approved by a vote of two-thirds (2/3) of the Board on or before the last day of December each year.

- (b) **Limitation on Assessments.** The maximum annual assessment which may be authorized under this Article shall be \$100 for each lot to which the Association has the power to make assessments hereunder (excluding outlots), until the actual annual costs of maintenance, improvement and operation of common areas and payment of taxes, insurance and other costs associated therewith, including a reasonable reserve for depreciation and any financial assistance to be provided to the Design Review Committee or such committee in any addition to the Property developed by Developer, shall exceed the annual revenue generated by an assessment of \$100 per lot, in which event the maximum assessment per lot shall be such actual costs of maintenance, improvement and operation of common areas and payment of taxes, insurance and other costs associated therewith, including a reasonable reserve for depreciation and any financial assistance to be provided to the Design Review Committee or comparable committee in any addition to the Property developed by Developer, divided equally among all lots as to which the Association has the power to make assessments hereunder (excluding outlots).
- (c) **Declaration of Assessments.** The Board shall declare assessments so levied due and payable thirty (30) days from the date of such levy, except for assessments made pursuant to the last sentence of subsection (b) above which shall be due and payable from the purchaser at the time of closing. The Board shall notify each Owner of the action taken by the Board, the amount of the assessment against the lot owned by such Owner and the date such assessment becomes due and payable. Such notice shall be mailed to the Owner at the last known post office

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address by United States mail, with postage prepaid, or be personally delivered to the Owner.

- (d) **Collection of Assessments.** In the event any assessment levied against any lot remains unpaid for a period of sixty (60) days from the date of the levy, or from the date of closing with respect to park impact fee assessments, the Board may, in its discretion, file a claim for a maintenance lien against the lot for which payment is not made, and upon compliance with the provisions of Section 779.70, Wisconsin Statutes, or other applicable authority, such claim shall be and become a lien against such lot or unit. The claim shall thereafter accrue interest at the rate of interest payable upon legal judgments in the State of Wisconsin, and the Board may exercise such remedies to collect such claim as may be afforded by law. The Owner of the subject lot shall be responsible for all costs of collection incurred by the Association in connection therewith. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of any common areas or abandonment of his lot.
- (e) **Joint and Several Liability of Grantor and Grantee.** Upon a voluntary conveyance, the grantee of a lot shall be jointly and severally liable with the grantor for all unpaid assessments as provided in this Article up to the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amount paid by the grantee therefore, except that this sentence shall not cause the Developer to be liable for any park impact fee assessment to be paid at closing by any purchaser from Developer. However, any such grantee shall be entitled to a statement from the Association setting forth the amount of such unpaid assessments and any such grantee shall not be liable for, nor shall the lot conveyed be subject to a lien for, any unpaid assessment against the grantor pursuant to this Article in excess of the amount therein set forth. If the Association does not provide such a statement within ten (10) business days after the grantee's request, it is barred from claiming any lien which is not filed prior to the request for assessments owed by the grantor.

4.13. **Term.** Article 4 hereof shall run with the land and shall be binding upon and inure to the benefit of all persons having an interest in the Property for a period of thirty (30) years after the Plat of First Addition to Kilkenny Addition to Southbridge is recorded, after which Article 4 of this

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Declaration shall automatically stand renewed for successive five (5) year periods unless the same is canceled as provided in Section 4.14 below.

4.14. Cancellation, Release, Amendment or Waiver. Article 4 hereof, or any part thereof, may be canceled, released, amended or waived in writing as to some or all of the lots subject to this Declaration by an instrument signed by the Developer, or if the Developer's rights under Article 3 of this Declaration have been assigned to or assumed by the Design Review Committee, then by an instrument in writing signed by both (a) the Owners of a majority of the lots (other than outlots) who are Members of the Association, and (b) a majority of the Board of the Association.

4.15. Severability. Invalidation of any one of these covenants or any severable part of any covenant, by judgment or court order, shall not affect any of the other provisions, which shall remain in full force and effect, and the provision so invalidated shall be deemed reformed to the extent possible to cure any such defect.

IN WITNESS WHEREOF, the undersigned have executed this instrument on this _____ day of August, 2011.

KILKENNY ADDITION TO SOUTHBRIDGE I, LLC

By: _____
Donald C. Tierney, Member

By: _____
Joanne K. Tierney, Member

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

On this _____ day of August, 2011, before me, a Notary Public, personally appeared Donald C. Tierney and Joanne K. Tierney to me known, who being by me duly sworn, did depose and say that they executed such

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document on behalf of Kilkenny Addition to Southbridge I, LLC, as the members thereof.

Signature of Notary Public (in black ink only)

Print name of Notary Public (in black ink only)

Notary Public, State of Wisconsin

My Commission: _____.

This instrument drafted by:
Michael J. Lawton