

CONDOMINIUM DECLARATION
OF
HILARY HEIGHTS CONDOMINIUM

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Document Number

CONDOMINIUM DECLARATION
OF HILARY HEIGHTS
CONDOMINIUM



VOL 1652 PG 323

This Declaration is made pursuant to the Condominium Ownership Act described in Chapter 703 of the Wisconsin Statutes by the Declarant, Expedite Development, LLC.

ARTICLE I. CREATION

1.1 Purpose. The purpose of this Declaration is to subject the land described herein and the building and improvements to be erected thereon, to the condominium form of ownership and use in the manner provided by Chapter 703 of the Wisconsin Statutes, herein called the Condominium Ownership Act.

1.2 Name and Address. The name by which this condominium is to be identified is HILARY HEIGHTS CONDOMINIUM, and its initial business address is 21135 Hwy. 151, Valders, Wisconsin, 54245.

1.3 Land. The land owned by Declarant which are hereby subjected to the condominium form of ownership are the lands described as Phase 1 in said Exhibit "A" attached hereto.

ARTICLE II. DEFINITIONS

The terms used in this Declaration and Bylaws shall have the meanings stated in sec. 703.02 of the Wisconsin Statutes unless otherwise defined or unless the context otherwise requires.

ARTICLE III. DESCRIPTION OF UNITS

3.1 Buildings. This condominium shall consist of two buildings as shown on Exhibit "A." This is referred to as Phase 1. Building A contains eight units, and Building B contains two units. Attached as Exhibit "B" is the diagrammatic floor plan of Building A. Attached as Exhibit "C" is the diagrammatic floor plan of Building B.

3.2 Description of Units. Units 1, 2, 3 and 4 of Building A are on the first floor and contain two bedrooms, living/dining room, kitchen, two full bathrooms (one with laundry), storage/utility room, and attached two-car garage. Units 5, 6, 7 and 8 of Building A are on the second floor and contain three bedrooms, living/dining room, kitchen, two full bathrooms (one with laundry), storage/utility room, and attached two-car garage on ground level with

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stair access. Unit 1 of Building B consists of two floors with the first floor containing a foyer, great room, dining room, kitchen, laundry, half bathroom and attached two-car garage; and with the second floor containing three bedrooms and two full bathrooms. Unit 2 of Building B consists of one floor and contains two bedrooms, two full bathrooms, den, great room, dining room, kitchen, laundry, foyer and attached two-car garage.

3.3 Identification of Units. Units in Building A shall be designated as "Unit 1, Building A" "Unit 2, Building A" "Unit 3, Building A" "Unit 4, Building A" "Unit 5, Building A" "Unit 6, Building A" "Unit 7, Building A" and "Unit 8, Building A." Units in Building B shall be designated as "Unit 1, Building B" and "Unit 2, Building B." The designation of each unit contained therein is shown on the condominium plat.

3.4 Unit Boundaries. Each unit shall include that part of the building containing the unit that lies within the perimetric boundaries of the unit which shall consist of the vertical planes of the undecorated finished interior of the walls bounding the unit extended to intersections with the upper and lower boundaries. The upper boundary shall be the plane of the outer surface of the ceiling drywall and the lower boundary shall be the plane of the upper surface of the floor. Such boundaries shall be deemed to include the windows, window frames, doors and door frames of the unit, and the attic storage area.

ARTICLE IV. DESCRIPTION OF COMMON ELEMENTS

4.1 Common Elements. The Common Elements shall consist of all of the improvements and appurtenances to this condominium, except the individual condominium units as defined herein, including without limitation the land on which the buildings are located, bearing walls, floors, ceilings, roofs, foundations, pipes, ducts, electrical wiring and conduits, centralized utility services, drain tile, public utility lines, water and sewer laterals, outside walls and other structural parts of the building, driveways, roadways and parking areas.

4.2 Limited Common Elements. A portion of the Common Elements are designated as "Limited Common Elements." Such Limited Common Elements consist of driveways, decks, walkways, utility services, electrical wiring and conduits appurtenant to each unit.

4.3 Use of Common Elements. Each unit owner is entitled to the use, enjoyment and occupancy of the Common Elements; provided, however, the Limited Common Elements shall be reserved for the exclusive use of the owner occupant of the unit to which they are appurtenant.

ARTICLE V. PERCENTAGE OF OWNERSHIP IN COMMON ELEMENTS

Each unit owner shall own an undivided percentage interest in the Common Elements as a tenant-in-common with all other unit owners. Such interest shall be included and passed with the title to each unit. The percentage interest appurtenant to each unit is 10% (100% divided by 10). The percentage ownership shall not be changed except as provided herein pertaining to the possible expansion of this condominium.

ARTICLE VI. ASSOCIATION OF UNIT OWNERS

All unit owners shall be a member of the Association to be known as Hilary Heights Condominium Owner's Association, Inc. ("Association") which shall be responsible for carrying out the purposes of this Declaration, including the exclusive management and control of the Common Elements and facilities and Limited Common Elements. The Association will be incorporated as a non-profit, non-stock corporation under the laws of the State of Wisconsin. All unit owners and occupants of units shall abide by and be subject to all of the rules, regulations, duties and obligations of this Declaration and the Bylaws and rules and regulations of the Association. The owners of each of the units shall have one vote for each unit owned for any Association meeting.

ARTICLE VII. RESIDENTIAL PURPOSE

All of the units and the Common Elements are intended for and restricted exclusively to residential use as governed by the terms and conditions contained herein and the Bylaws of the Association. All units shall be owner occupied except for units owned by the Declarant and units owned by the occupant's family. Family shall be defined as spouse, parent, child, grandparent, grandchild, brother or sister. The Bylaws may also contain limitations on the maximum number of occupants for each of the units.

Notwithstanding the above, during the period in which sales of units by the Declarant are in process, the Declarant may occupy or grant permission to any person or entity to occupy, with or without rental, as determined by the Declarant, one or more units for business or promotional purposes, including but not limited to clerical activities, sales office, model units for display and the like; provided that the activities in the units so occupied do not interfere with the quiet enjoyment of any other owner or occupant.

ARTICLE VIII. SERVICE OF PROCESS

Service of process shall be made upon Expedite Development, LLC, 21135 Hwy. 151, Valders, Wisconsin, 54245.

ARTICLE IX. DAMAGE AND DESTRUCTION

9.1 Full Insurance Coverage. In the event of a partial or total destruction of condominium property (either a unit or units or Common Elements) which damages are fully covered by insurance, it shall be rebuilt and repaired as soon as practicable and substantially to the same design, plan and specifications as originally built, unless within 90 days of the date of the damage or destruction all units owners agree not to rebuild or repair. On reconstruction, the design, plan and specifications of any building or unit may vary from that of the original upon approval of the Association; provided, however, that the number of square feet of any unit may not vary by more than 5% from the number of square feet for such unit as originally constructed, and the location of the building shall be substantially the same as prior to damage or destruction. The proceeds of all insurance collected for such damage or destruction shall be available to the Association for the purpose of repair or reconstruction as provided herein.

9.2 Insufficient Insurance Proceeds—Repair. In the event of a partial or total destruction of condominium property (either a unit or units or Common Elements), the Association shall promptly undertake to repair or reconstruct it to a condition compatible with the remainder of the condominium, subject to the provisions of Article 9.3. All costs of the repair or reconstruction in excess of available insurance proceeds shall be a common expense.

9.3 Insufficient Insurance Proceeds—Partition. In the event of a partial or total destruction of condominium property (either a unit or units or Common Elements) where the damages exceed the available insurance proceeds, the condominium shall be subject to an action for partition upon obtaining the written consent of the unit owners having 75% or more of the votes, providing such action is taken within 30 days after written notice to all unit owners of it being determined that the damages exceed the available insurance proceeds.

ARTICLE X. MAINTENANCE

10.1 By the Association. The Association shall maintain, repair and replace at its expense:

- (a) All portions of the Common Elements, including but not limited to the outside walls of the building containing the units, fixtures on the exterior thereof, boundary walls of units, load-bearing columns and load-bearing walls; (interior surfaces of a unit are not Common Elements and such interior surfaces are not the responsibility of the Association); excepting, however, ~~the decks.~~
- (b) All conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services which are contained in the Common Elements (except such maintenance, repair and replacement required by the negligence of a user of a unit and except as set forth below); and all such facilities contained within a unit which service part or parts of the condominium other than the unit within which contained.

- (c) All incidental damage caused to a unit by such work shall be promptly repaired at the expense of the Association.
- (d) All damage which is insured by coverage obtained by the Association.

10.2 By the Owner. The responsibility of the unit owner shall be as follows:

- (a) To maintain, paint, repair and replace at his expense his deck and all portions of his unit, except the portions to be maintained, repaired and replaced by the Association. Such shall be done without disturbing the rights of other unit owners.
- (b) To maintain, repair and replace at his expenses all interior walls; all heating equipment; electrical fixtures; switches and outlets; flowage in all plumbing pipes; and all appliances and fixtures located in his unit.
- (c) Not to paint or otherwise decorate or change the appearance of any portion of the exterior of the building.
- (d) To promptly report to the Association any defects or needs for repairs, the responsibility for the remedying of which is that of the Association.
- (e) Any of the foregoing which is covered by insurance obtained by the Association shall be the responsibility of the Association.

ARTICLE XI. LIABILITY FOR COMMON EXPENSES OR LIMITED COMMON EXPENSES

Each unit owner shall be liable for a proportionate share of the common expenses or limited common expenses, such share being the same as the undivided share in the Common Elements or Limited Common Elements which is appurtenant to his unit. Declarant shall pay the proportionate share of common expenses allocated to those unsold units which Declarant has determined are substantially completed, there being no assessment due on incomplete or non-constructed units.

ARTICLE XII. WAIVER OF DAMAGES

The Declarant shall not be liable for any claims arising out of or by reason of any actions performed pursuant to this Declaration, or in the Declarant's capacity as developer, contractor, owner, manager, or seller of the property, whether or not such claim (a) shall be asserted by an owner, occupant, or the Association, or by any person or entity claiming through any of them; (b) shall be on account of injury to person or damage to or loss of

property wherever located and however caused; or (c) shall arise in contract or in tort. Without limitation to the generality of the foregoing, the foregoing enumeration includes all claims for, or arising by reason of, the condominium or any part thereof being or becoming out of repair or containing any patent or latent defects, or by reason of any act or neglect of any owner, occupant, the Association, and their respective agents, employees, guests and invitees, or by reason of any neighboring property or personal property located on or about the condominium, or by reason of the failure to function, or disrepair of, any utility services (heat, air conditioning, electricity, gas, water, sewerage, etc.).

ARTICLE XIII. ALTERATIONS WITHIN UNITS

A unit owner may make any improvements or alterations within his or her unit that do not impair the structural integrity or lessen the support of any portion of the condominium. A unit owner may not change the exterior appearance of a unit or of any other portion of the condominium without permission of the Association.

ARTICLE XIV. EASEMENTS

Easements are reserved through the condominium property as may be required or desirable for utility services and for such other purposes as the Declarant/Association may deem to be appropriate in order to adequately serve the condominium, including any expansion area; provided, however, such easements through a unit shall be only according to the plans and specifications for the building, or as the building is constructed, unless approved in writing by the unit owner. Declarant reserves the right to grant, convey, transfer, cancel, relocate, establish and deal with, upon such terms as it may determine, easements in favor of public and private utilities over and upon the Common Elements and facilities for the purpose of providing, constructing, operating, adding to, repairing, maintaining and removing utility services in and to the units. Such easements are covenants running with the land of the condominium.

ARTICLE XV. AMENDMENTS

This Declaration may be amended with written consent of 67% of the unit owners and mortgagees if such amendments are not contrary to the Condominium Ownership Act, Chapter 703 of the Wisconsin Statutes; provided, however, that as long as the Declarant owns any units, including units in the expansion area as described below or any of the land located in the expansion area, then the Declarant's consent to any amendment shall be required together with the required vote of the unit owners and mortgagees. An amendment becomes effective when it is recorded in the same manner as this Declaration.

ARTICLE XVI. PERSONAL APPLICATION

The acceptance of a deed of conveyance or entering into occupancy of any unit shall constitute an acceptance of the provisions of this Declaration, the Bylaws and the rules and regulations adopted pursuant thereto. The provisions contained in such instruments shall be covenants running with the land, and shall bind any person having an interest in such unit, as though such provisions were recited in full in each deed.

ARTICLE XVII. DISPUTE RESOLUTION AND ARBITRATION

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a first class condominium residential development. In the event of any controversy arising under this Declaration, same shall be submitted to arbitration under the laws of the State of Wisconsin, as a prerequisite to the commencement of any legal proceeding. Such arbitration shall be before one disinterested arbitrator if one can be agreed upon, otherwise before three disinterested arbitrators, one named by the party or parties submitting the matter at issue, one named by the party or parties contesting the matter at issue, and one by the two thus chosen. The arbitrator or arbitrators shall determine the controversy in accordance with the laws of the State of Wisconsin as applied to the facts found by him or them. The expense of the arbitration proceeding conducted hereunder shall be borne equally by the parties. All arbitration proceedings hereunder shall be conducted in Manitowoc County, Wisconsin.

ARTICLE XVIII. SEVERABILITY

The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase or word or other provision of this Declaration of Condominium and Bylaws shall not affect the validity of the remaining portions.

ARTICLE XIX. TRANSFER OF DECLARANT'S INTEREST

The Declarant reserves the right to assign or convey some or all of its rights, duties, powers and obligations to one or more third parties who shall then acquire all the same rights, duties, powers and obligations as set forth in this Declaration as if said third party was the original Declarant of the condominium.

ARTICLE XX. EXPANSION


Declarant hereby reserves the right, in its sole discretion, to expand the condominium for a period of up to ten years from the date of recording hereof. The land subject to such expansion is described as Phase 2 on Exhibit "A." Such expansion will include up to two additional buildings. Both buildings shall contain six units and be identified as Building C and Building D. The location of the buildings are shown on Exhibit "A." As a result, the maximum number of units which may be added by the expansion is 12, making a total potential of 22 units. All units shall have one vote and their undivided percentage interest shall be one divided by the total number of units. Therefore, if all 22 units were built, the percentage of each unit would be 4.545%. The Declarant is in no manner obligated to expand the condominium and it may develop only a portion of the units described above.

Executed by the Declarant this 17th day of May, 2002.

EXPEDITE DEVELOPMENT, LLC

BY: _____

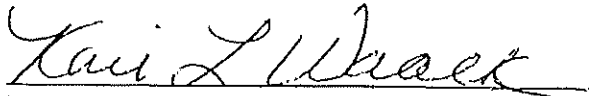

KEVIN J. KLEINERT, Member


PATRICK S. DUNCANSON, Member

ACKNOWLEDGMENT

STATE OF WISCONSIN)
)SS
COUNTY OF MANITOWOC)

Personally came before me this 17th day of May, 2002, the above named, Kevin J. Kleinert and Patrick S. Duncanson, members of Expedite Development, LLC, to me known to be the persons who executed the foregoing instrument and acknowledged the same.



KARI L. WAACK
Notary Public, Manitowoc County, WI
My Commission Expires 6/12/05.

This Instrument Was Drafted By
Attorney Derek McDermott