

Date: March 29, 2021

To: Town of Eagle Plan Commission and Town Board

From: Tim Schwecke, Town Planner

Subject: Review of deed restriction for Royal Aire Estates subdivision; Camtec Inc, applicant (Diane Zakrzewski, agent)

Application: 2021-08; <https://s.zoninghub.com/LZFWZDA5D8>

Meeting: April 5, 2021 Plan Commission and Town Board meeting

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The Town of Eagle approved the preliminary plat for Royal Aire Estates subdivision, subject to various conditions. One of the conditions requires the subdivider to submit deed restrictions to the Town for review and obtain approval of the same.

The subdivider has submitted a draft for review, which were apparently based on those for Jericho Corners Addition No 1. Staff has not verified to what extent the proposed draft differs.

Staff has reviewed the proposed restrictions to ensure (1) there is a provision regarding the greater restriction of local rules and regulation, (2) the Town is only involved to the extent it deems appropriate regarding enforcement and termination, (3) the provision in the developer agreement relating to lot grading is incorporated.

Proposed revisions are shown in markup (add, ~~delete~~).

**Public notice** Aside from being shown on a published meeting agenda, no other public notice is required.

**Review procedure** The Plan Commission makes a recommendation and the Town Board makes the final decision.

**Motion for Plan Commission:** Motion to recommend to the Town Board the acceptance of the deed restriction subject to the final review and approval of the Town Attorney

**Motion for Town Board:** Motion to accept the Plan Commission's recommendation

**Attachments:**

1. Development agreement, dated March 29, 2021

**DECLARATION OF RESTRICTIONS  
ROYAL AIRE ESTATES SUBDIVISION  
WAUKESHA COUNTY, WISCONSIN**

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This Declaration is made this \_\_\_\_\_ day  
of \_\_\_\_\_, 2021 By **CAMTEC, INC., a  
Wisconsin Corporation**, hereinafter referred to as the  
“Developer.”

**RECITATIONS**

WHEREAS, the Developer owns land located in  
the Town of Eagle, Waukesha County, Wisconsin,  
described on Exhibit “A,” attached hereto and  
incorporated herein by reference, which said land is  
otherwise to be known as the Royal Aire Estates  
Subdivision (“Subdivision”) and

WHEREAS, the land described in Exhibit “A” is a  
platted subdivision consisting of eighteen (18) lots  
platted by the Developer; and

WHEREAS, the Developer desires to subject the  
lots in the Subdivision to the conditions, restrictions,  
covenants, reservations and easements contained  
herein for the benefit of said property and for the  
benefit of each owner of any part thereof.

- Draft March 10, 2021 -

**Drafted by:** Camtec, Inc

**Return to:**  
Camtec, Inc  
P.O. Box 247  
North Prairie, WI 53153

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**Parcel Number:** EGLT1826998007

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**DECLARATION**

NOW, THEREFORE, the Developer hereby declares that the real property described herein in Exhibit  
“A” and all portions thereof shall be used, held, transferred, sold, conveyed, and improved only subject to  
the conditions, restrictions, covenants, reservations and easements in this Declaration which shall inure to  
the benefit of and shall pass with each Lot as covenants running with the land and shall apply to and bind  
all successors in interest and owners thereof.

**SECTION 1. GENERAL PURPOSE**

**1.01 General Purpose.** The purpose of this Declaration is to ensure the best use, the most appropriate  
development improvement of each Lot thereof; to protect Owners of Lots against such use of surrounding  
Lots as will detract from the residential value of their property; to preserve, as far as 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 schemes; to ensure the highest and best  
residential development of said property; to encourage and secure the erection of attractive homes  
thereon with appropriate locations thereof on Lots to prevent haphazard and inharmonious improvement  
of building sites; to secure and maintain proper setbacks from street and structures and in general to

provide adequately for high quality of improvements on said property, and thereby to preserve and enhance the value of investments made by purchasers of building sites therein.

## **SECTION 2. DEFINITIONS**

### **2.01 Definitions.**

A. "Architectural Control Committee" shall mean four (4) members, appointed by the Developer in accordance with this Declaration who shall serve as the Architectural Control Committee (herein referred to as the "ACC") for the benefit of the Royal Aire Estates Subdivision.

B. "Homeowners Association" shall mean the Royal Aire Estates Homeowners Association, a non-stock, non-profit association created by the Developer for the benefit of the Lot Owners in accordance with this Declaration (herein referred to as the HOA.)

C. "Common Area" shall mean Outlot 1 as shown on Subdivision Plat.

D. "County" shall mean Waukesha County, a municipal corporation, organized under the laws of the State of Wisconsin.

E. "Developer" shall mean Camtec, Inc., as well as any successor-developer.

F. "Family" shall mean one or more persons related by blood, marriage, adoption, or friendship who are living, sleeping, cooking and eating on the premises as a single housekeeping unit and shall exclude persons who are not so related or engaged as household members.

G. "House," whether singular or plural, shall mean a permitted single Family residential structure.

H. "Lot" shall mean a platted lot within the Subdivision identifiable by reference to a lot number. The term "Lot" does not include any outlot.

I. "Lot Owner," "Owner," and "Owner of Lot" shall be synonymous and shall mean the holder(s) of a legal or equitable ownership interest in fee simple to a Lot, regardless of the type of tenancy or estate, but shall not include the holder of any leasehold interest or any mortgage or other pledge or security interest in a Lot or other lien.

J. "Outlot" shall mean Outlot 1 as located on the subdivision plat. This outlot's primary purpose is for stormwater retention.

K. "Structure" and "Improvement" shall be synonymous and shall both mean and include any and all of the following, regardless of whether temporary or permanent in character or intended use: building, outbuilding, shed, booth, garage, car port, storage facility, tent; exterior lighting or antennae, tower, pole or bug control device; fence, retaining or other wall, fountain or in-ground swimming pool; planting, driveway, walkway, pet kennels or run lines, screened or other type of porch, patio or gazebo, tree house or other exterior play equipment, berms and swales, and any type of equipment or facility for any decorative, recreational or functional purpose of any kind. Use of the phrase "structure or improvement" or any other use of such words shall not imply different meanings for such terms.

L. "Subdivision" shall mean the lands described on the attached Exhibit "A" but excluding lands now or hereafter dedicated to the Town.

M. "Subdivision Plat" shall mean the Royal Aire Estates Subdivision.

N. "Successor-Developer" shall mean any person, firm or entity which expressly assumes, in writing, all of the remaining obligations of Developer to the Town and Lot Owners relating to the Subdivision or portions thereof.

O. "Town" shall mean the Town of Eagle, a municipal corporation, organized under the laws of the State of Wisconsin.

### **SECTION 3. USE RESTRICTIONS**

#### **3.01**

A. Each Lot shall be used solely for residential purposes by one Family. The term "residential purposes" shall include only those activities necessary for or normally associated with the use and enjoyment of a homesite as a place of residence and limited recreation.

B. Only one home and one outbuilding may be constructed on each Lot. An additional structure may be added. See Section 5 (5.11). No garage, tent or other improvement shall be used for temporary or permanent living or sleeping for the family or guests.

C. No outbuilding shall be constructed on any Lot prior to the commencement of construction of the residence on such Lot. Note that outbuilding construction may be subject to applicable Town of Eagle zoning ordinances.

D. Each Lot and each Home and Outbuilding shall be maintained by the lot owner so as to be neat in appearance when viewed from any street or other Lot. If not properly maintained, the Homeowner Association (identified in Section 9) may give the Home Owner a notice of violation. Developer shall not be obligated to improve or maintain any areas of the Subdivision or Lots with grass or plantings or to cut grass or foliage growing in a natural environment.

E. No Lot shall be used in whole or in part for conducting any unlawful activity or for any unlawful purpose.

F. No soil shall be removed from any lot in the Subdivision without prior consent of the ACC. Any excess soil resulting from excavations during construction of Owner's Lot shall be immediately transported, at the Owner's expense, to an appropriate dumping site.

G. In order to facilitate the development of the Subdivision, lots may be sold by the Developer to home builders to construct model homes. Once all eighteen (18) Lots have been sold by the Developer, the use of model homes shall be thereafter prohibited.

H. Recreational Vehicles shall not be parked, kept or stored on any undeveloped area of the Subdivision, nor shall any such Recreational Vehicle be parked, kept or stored on any Lot outside an enclosed garage, without the prior approval of the ACC (which may be withheld for any reason including,

but not limited to, aesthetics.) Furthermore, recreational vehicles shall not be used or operated on any Lot within the Subdivision except on dedicated streets in accordance with applicable traffic laws.

I. Animals shall be allowed as permitted by the Town ordinances. Large animals such as horses must be fenced within a secure area so as to be safely contained. Household pets such as dogs and cats are not considered large animals. All animal rules shall follow the Town ordinance. Tractors or other machinery must be stored inside outbuilding when not in use. Manure must not be piled but either removed or spread on owner's pasture.

J. No lot shall be used in whole or in part for the storage of rubbish of any character whatsoever or for the storage of any property or thing that will cause such Lot to appear in an unclean or untidy condition, including but not limited to (except during construction) trucks, commercial vehicles (as defined by the Wisconsin Department of Transportation) motorcycles, boats, snowmobiles, ATVs and mobile homes or trailers or any other property that will be obnoxious to the eye; nor shall any substance, thing or material be kept upon any Lot that will emit foul or obnoxious odor; or that will cause any noise that will or might disturb the peace, quiet, comfort or serenity of the occupants of surrounding property or any other Lot.

**3.02** No signs or banner of any kind shall be placed or displayed to public view on any Lot except one (1) sign of not more than six (6) square feet advertising the property for sale. Developer may place sign at entryways showing available lots for sale. Size of sign shall not exceed 4'x8'. As soon as last lot is sold, sign shall be removed by developer.

**3.03** No exterior solar collectors or similar devices shall be erected, installed or used without the written permission of the ACC.

**3.04** All refuse and garbage receptacles shall be stored in the home or garage except for twelve (12) hours before and twelve (12) hours after the scheduled garbage pickup.

**3.05** The Homeowner Association (HOA) shall be responsible for maintaining the planting island, if any, located at the entrance to the subdivision as depicted on the Subdivision Plat. The HOA shall assess Lot Owners annually and equally for maintenance expense. (See Section 9.)

#### **SECTION 4. CONSTRUCTION OF IMPROVEMENTS**

**4.01** No Home or other structure or improvement of any kind shall be installed, erected, constructed, placed or moved on or to any Lot (or altered or changed with respect to layout, location or exterior design, appearance, color or material composition) without:

A. Prior submission of detailed plans to the ACC and such other additional material as the ACC requests in order to conduct its review and approval; and

B. Plans submitted for consideration and review by the ACC shall include, without limitation, and in addition to any additional materials, plans or drawings requested by the ACC, the following:

1. Construction drawings, plans and specifications (prepared by a qualified home designer architect if the improvement involves construction of a Home or addition or change) showing dimensions, composition and color of exterior materials and equipment, if any; and

2. Plot plan showing the location of the improvement with respect to setbacks from Lot lines and other buildings and improvements, finish grade elevations, topography and other data pertinent to such review by the ACC as it may reasonably request.

C. The ACC shall consider the acceptability of the following improvement or construction features, without limitation, in its sole judgment, when considering a submission under this section:

1. Material composition and quality;
2. Exterior design, appearance and color; no significantly bright colors shall be used on any building, structure or fencing.
3. Fencing: No barbed or wire fencing shall be allowed. All fencing must be wood or good quality plastic, have at least three (3) horizontal boards, and approved by the ACC.
4. Coordination with other existing or contemplated surroundings, setbacks, finished grade elevations drainage and plantings and general aesthetics;
5. Location and orientation on a Lot.

**4.02** Upon receipt of written approval by the ACC of the submitted plans for the proposed improvement and upon receipt of any necessary Town and other governmental approvals or permits, construction or installation of the improvement may commence and, once commenced, shall be completed as to all exterior items within twelve (12) months following issuance of required building permit by the Town. The ACC may, in its discretion, extend such completion deadline up to an additional six (6) months in the event it finds the delay has been caused primarily by factors beyond the control of the Lot Owner and his/her contractors.

**4.03** The ACC shall approve in writing any subsequent improvements to home and lot. No oral statements, representations or approvals shall be binding on the ACC under any circumstances, regardless of any reliance thereupon by any Lot Owner.

**4.04** This Declaration may be amended after approval by the ACC by recording in the Office of the Register of Deeds for Waukesha County, Wisconsin, a document to that effect executed by the owners of at least 16 of the 18 lots in the Subdivision, with all signatures notarized. Such amendment shall become effective only upon recording. The consent of the owner of a lot shall bind all future mortgage lenders to any such amendments of the Declaration. The Town of Eagle, by its Town Board, may reject or accept any amendments.

**4.05** In order for any approval or permission of the ACC under this Section to be binding or effective, it must be in writing and signed by the Developer. No oral statements, representations or approvals shall be binding on the ACC under any circumstances, regardless of any reliance thereupon by any Lot Owner.

## **SECTION 5. MINIMUM LIVING AREA AND OTHER REQUIREMENTS**

**5.01** All Houses shall have a minimum living area (exclusive of basement, exposed basement, attic, garage, porches, patios, decks and storage areas) as follows:

- A. not less than 2,000 square feet for a one-story home;
- B. not less than 2,400 square feet for a two-story home;
- C. not less than 2,000 square feet for a split-level home.

Note: Any variance of square footage as specified above must be approved by the ACC. Other Town of Eagle zoning restrictions may apply.

**5.02** It is specifically intended by the architectural control provisions that there be a compatibility of architectural styles amongst the various homes that are in close visual proximity to one another, while at the same time retaining diversity so as to avoid the monotony of duplication. Toward this end, the ACC may evaluate and approve the use of a particular architectural style of home on any given Lot in the Subdivision.

**5.03** The ACC shall have the exclusive right to make exceptions and determine whether the requirements set forth in this Section 5 have been met. Any decision of the ACC shall be final and conclusive.

**5.04** All Houses shall include an attached garage containing a minimum of six hundred (600) square feet. All garages shall be equipped with automatic garage door openers for all overhead doors. Garage doors are to be located and constructed so as to avoid a front or street exposure orientation.

**5.05** The exterior of all fireplaces shall be of masonry, stucco, or stone construction. The exterior of all structures shall be constructed of wood, brick, stone, stucco or a combination thereof, except that trim around doors or windows may be metal or vinyl, subject to approval in writing by ACC. In no event shall the exterior of any structure consist of metal or vinyl siding. All roofs shall consist of natural shake, architectural dimensional asphalt shingles, tile or slate. (Three-tab shingles shall not be permitted.) Comparable or superior construction materials may be substituted if said substituted materials are approved in writing by the ACC.

**5.06** One (1) Outbuilding shall be allowed and may contain a maximum of 1,800 square feet, and the height cannot be higher than the house peak height. Outbuilding exterior shall match the house in same colors and same materials of construction. If Owner has horses and desires a larger outbuilding to serve as an arena or a barn, the ACC and the Town of Eagle must approve building plans.

**5.07** If shutters are used for windows on the front of the house, they shall also be used on appropriate windows on the sides and rear of the house. Similarly, window casings and trim features on the front of the house shall be used consistently on the sides and rear of the house. This paragraph also applies to the outbuilding.

**5.08** Any exposed basement or foundation walls shall be covered with masonry veneer, plaster, stone, or of siding identical to that siding used on the House.

**5.09** No modular style Houses or pre-manufactured Houses shall be permitted in the Subdivision.

**5.10** Outdoor lighting shall be incandescent or of low-sodium, and light fixtures shall be shielded or directed downward so as to eliminate skyward, and minimize horizontal illumination or unnecessary illumination on neighboring Houses. Each lot owner must purchase and install one electric lamp and post (including an automatic photocell) and one mail box approved by the ACC and installed at owner's expense where the drive abuts the front Lot line.

**5.11** Swimming pools are only allowed within the buildable area of Lot and must be approved in writing by the ACC. Only in-ground type pools shall be permitted. Pools must be screened or separated from direct view of the street, other Lots, and neighboring properties. If physically detached from the residence, the pool should be visually blended into the landscape. All pool-related pump and filter equipment must be

concealed to minimize noise nuisance. An additional structure shall be allowed to enclose pool equipment, but must be approved by the ACC. All pools must be constructed and kept operable in accordance with County and State of Wisconsin rules and regulation. Upon abandonment, or should the pool become a nuisance, the Owner shall demolish the same and, insofar as is practicable, restore the land to a condition approximating that which existed prior to the construction of the pool, and will thereafter properly landscape and maintain said restored land. The method of demolishing the pool shall be subject to approval by the ACC.

**5.12** Prior to installation of air conditioning, ventilation or other mechanical systems that may generate noise, the Owner shall obtain the prior written approval of the ACC as to the location and type of systems. Said systems shall be screened from view. No window or roof top units will be allowed.

**5.13** One dog house per lot may be permitted, subject to prior review and approval of submitted plans as to location, appearance and construction. Dog fences or fenced dog “runs” are permitted, subject to prior review and approval of ACC.

**5.14** Each Lot shall be improved by the Lot Owner with an approved hard surface driveway extending from the street to the garage within twelve (12) months following issuance of an occupancy permit for the Home by the Town. Hard surfaces include but are not limited to, asphalt, cement, and brick pavers. A plot plan showing the location of the drive shall be submitted to the ACC for its prior written approval.

**5.15** Any open culvert shall be finished with natural stone, masonry, or asphalt at Lot Owner’s expense. The location, positioning and finishing of all culverts shall be approved in writing in advance by the ACC and by the Town.

**5.16** All utility lines and wiring for gas, electric, telephone and cable television service to the House, Garage, Outbuilding or other improvement shall be installed underground unless otherwise permitted in writing by the ACC prior to installation at Lot Owner’s expense.

**5.17** No exterior antenna (other than a dish-type antenna not to exceed twenty-four (24) inches in diameter) shall be permitted without the prior written approval of the ACC. In reviewing a request for an exterior antenna, the ACC shall take into account the location and visibility of the antenna and whether it may be seen by adjacent lot owners or persons moving in any public street. In no case shall more than one dish-type antenna of any size be located on any Lot.

**5.18** No owner of any lot shall or will at any time alter the grade of any lot from that which is naturally occurring on that lot at the time the site development improvements have been completed by the developer unless and until the lot owner shall first obtain the written approval of the Town Engineer for such grade alteration. In order to obtain this approval, it shall first be necessary for the lot owner, at the lot owner’s expense, to have prepared a grading plan which shows in detail the area to be re-graded, the existing and proposed topography, analyses of the effects on site drainage, states that the effects on site drainage will not be in violation of law as to alteration of natural drainage courses, and is a plan which does not unreasonably affect an adjacent property owner as regards drainage or their viewing of unreasonable slope treatment. The Town Engineer’s approval, if granted, shall not relieve the lot owner from the ultimate responsibility for the design, performance, and function of the grade alteration and/or drainage condition, and the lot owner by requesting the alteration, and/or by altering the grade, thereby agrees to indemnify and hold harmless the Town and its agents, employees and independent contractors and the developer regarding the same. The developer and/or the Town and/or their agents, employees or independent contractors shall have the right to enter upon any lot, at any time, for the purpose of inspection,



maintenance, correction of any drainage condition, and the property owner is responsible for cost of the same.

**5.19** No building or construction materials shall be stored on any Lot outside of the House, other than during periods of actual construction or remodeling and then only for so long as may be necessary. Excess excavated material shall not be stored on any Lot after construction without the prior written approval of the ACC, unless required for back filling, finish grading or landscaping. During any earth moving activities, erosion control practices shall be maintained. Each Lot Owner shall comply with the soil and erosion control plan ordinances of the Town and County.

**5.20** Each Lot Owner shall include the following provisions at Lot Owner's expense in all construction contracts:

A. The roadway abutting the Lot shall be cleaned at least once a week of mud and debris during the period of construction.

B. There shall be no loud music at the construction site during the period of construction.

C. A dumpster shall be provided at the building site for the period of construction for debris.

D. All burning of debris must comply with municipal burning ordinances and regulation.

E. Toxic or potentially toxic materials shall not be burned or buried on site.

F. There shall be no more than one sign on any Lot during the period of construction; said sign shall not exceed six (6) square feet in area, and shall have one side of signage only.

G. No sign of any contractor shall be placed at the entry way to the Subdivision or on any other Lot other than the Lot on which the Contractor is working.

H. The contractor shall comply with the soil and erosion control plan ordinances of the Town and County.

I. Drones are not allowed to fly over the Subdivision.

J. If the Lot Owner does not include the provisions set forth in this Section 5 in the contract with the contractor, or if the Lot Owner does not enforce those provisions, the ACC may take the necessary action to enforce this Section 5 at the Lot Owner's expense.

## **SECTION 6. LANDSCAPING AND DRAINAGE**

**6.01** Within six (6) months following issuance of an occupancy permit for a House, a complete landscape plan to include a minimum of four (two inch) trees and seeding or sodding shall be submitted to the ACC for its prior written approval. All landscaping shall be completed at the Lot Owner's expense and in accordance with the plan approved by the ACC within twelve (12) months following the issuance of the occupancy permit.

**6.02** To avoid a substantial increase in surface water drainage onto adjoining Lots the landscaping plan shall provide for adequate drainage of storm and surface water away from adjoining Lots if natural drainage on the Lot is to be or has been altered by grading or landscaping by the Lot Owner.

**6.03** No lot line fence, wall, hedge or screen planting shall be installed unless in accordance with landscaping or other plans approved in advance by the ACC.

**6.04** The Lot Owner shall maintain the right of way pursuant to the drainage plan and in accordance with the directives of the ACC.

**6.05** No owner of any lot shall or will at any time alter the grade of any lot from that which is naturally occurring on that lot at the time the site development improvements have been completed by the developer unless and until the lot owner shall first obtain the written approval of the Town Engineer for such grade alteration. In order to obtain this approval, it shall first be necessary for the lot owner, at the lot owner's expense, to have prepared a grading plan which shows in detail the area to be re-graded, the existing and proposed topography, analyzes the effects on site drainage, states that the effects on site drainage will not be in violation of law as to alteration of natural drainage courses, and is a plan which does not unreasonably affect an adjacent property owner as regards drainage or their viewing of unreasonable slope treatment. The Town Engineer's approval, if granted, shall not relieve the lot owner from the ultimate responsibility for the design, performance, and function of the grade alteration and/or drainage condition, and the lot owner by requesting the alteration, and/or by altering the grade, thereby agrees to indemnify and hold harmless the Town and its agents, employees and independent contractors and the developer regarding the same. The developer and/or the Town and/or their agents, employees or independent contractors shall have the right to enter upon any lot, at any time, for the purpose of inspection, maintenance, correction of any drainage condition, and the property owner is responsible for cost of the same.

## **SECTION 7. MAINTENANCE OF EASEMENTS AND BERMS**

**7.01** The Owners of all Lots upon which easements are located according to the Subdivision Plat or imposed on a Lot by the Developer prior to sale of the Lot by the Developer are responsible for maintaining the easement for its intended purpose.

**7.02** Lot owners of Lot #1 and Lot #18 shall be responsible for maintaining berms off Sprague Road for aesthetical purpose, which includes cutting grass and keeping area free of debris. If there is need for any major repair involving significant cost, the Homeowner Association shall review the situation, obtain bids for work needed, and impose an equal fee upon all 18 lot owners in order to keep the entrance to the Subdivision attractive.

## **SECTION 8. COMMON AREAS**

**8.01** Outlot 1 as shown on the Subdivision Plat is primarily for the purpose of stormwater drainage. Each lot owner shall have One/Eighteenth (1/18) undivided interest in said outlot, and all deeds and other conveyances of any lot in the subdivision shall be deemed to include the 1/18 undivided interest in said outlot. The Homeowner Association to be established as set forth in this Declaration shall be responsible for the management and maintenance of said outlot and shall establish reasonable rules and regulations regarding the use of said outlot, which rules and regulations shall apply equally to all lot owners. Such rules

and regulations shall be established by majority vote. The HOA shall further have the right to grant easements on, over and across said outlot, without having to seek prior consent of lot owners.

**8.02** The following activities on Outlot 1 are expressly prohibited unless and until the HOA establishes express rules and regulations permitting same, in which event such use shall be subject to the rules and regulations as so enacted:

A. No motorized vehicles of any type, including but not limited to all-terrain type vehicles, snowmobiles, motorcycles, automobiles, trucks or other on-road or off-road type vehicles may be used or ridden on the Outlot at any time except for the purpose of maintaining the Outlot area.

B. No animals, horses, livestock or poultry of any kind shall be raised, bred or kept on the Outlot.

**8.03** The foregoing provisions of section 8.02 shall not be interpreted as to require the HOA to enact rules or regulations allowing any of the foregoing uses at any time, Further, the foregoing provisions shall not be interpreted so as to prohibit the HOA from enacting rules or regulations prohibiting other uses of all or a portion of the Outlot.

**8.04** The Outlot shall be planted and maintained in a natural state consisting of prairie grasses as determined appropriate to provide proper drainage. Furthermore, said Outlot is hereby restricted against any building of any structure whatsoever.

**8.05** Any and all easements on over and/or across the Outlot are subject to the prior reasonable written approval of the Town Board.

**8.06** In the event that maintenance of the Outlot is not carried out to the satisfaction of the Town, in the Town's sole discretion the Town is hereby authorized to treat such Outlot area as a special service district within the meaning of the Wisconsin Statutes and the Town shall thereafter be authorized to provide the necessary maintenance service to the Outlot and to levy the cost thereof as a special assessment on the tax bills of all Lots within the Subdivision.

#### **SECTION 9. HOMEOWNERS ASSOCIATION**

**9.01** An Association shall be created by the Developer for the purpose of managing the affairs of the Subdivision, including any signage identifying the Subdivision, and said Association shall herein be referred to as the Homeowner Association ("HOA.")

**9.02** After the last Lot in the subdivision is sold and structures are approved by the Architectural Control Committee (ACC), the Homeowner Association ("HOA") shall take over as the governing power of the Royal Aire Estates Subdivision for the purpose of managing the affairs of the Subdivision. Said HOA shall be established as follows:

A. Each Lot Owner of the Royal Aire Estates Subdivision shall be a member of the HOA. Each Lot shall be entitled to one (1) vote at meetings of the HOA. There are eighteen (18) Lots in the Royal Aire Estates Subdivision. Membership in the HOA shall pass with title to each Lot.

B. The Association shall act by majority vote of the association members. So long as any vacant Lot in the Subdivision is owned by the Developer, the Developer shall be entitled and shall have the right to appoint directors. Said right shall lapse and be of no further meaning or effect at such time as Developer sells all lots. Directors appointed by the Developer need not be lot owners and may include the Developer.

C. Directors shall serve until the next annual meeting of the Association at which time successor directors shall be elected by the Association.

D. In the event the County and/or the Town become Owners of any Lot through the tax delinquency process, neither the County or the Town shall have any personal obligation for the payment of the Homeowner Association fees.

E. Each Lot in the Subdivision shall be subject to assessment by the Association for a share of the Association's existing or anticipated expenses, which assessments shall constitute a lien on the Lot as provided in 779.70 Wis. Stats, or any amendment thereto, and, except as set forth below with respect to County and/or the Town, shall be the personal obligation of the Lot Owners, until paid. The Association shall have all rights to act on or enforce said lien as set forth in 79.70 Wis. Stats., or any amendment thereto. Each lot shall be responsible for an equal share of said expenses. In the event the County and/or the Town become Owners of any Lot through the tax delinquency process, the foregoing provision shall not be deemed to supersede any law limiting or eliminating the liability of the County or the Town with respect to fees or assessments imposed by this Declaration. Further, in the event Waukesha County and/or the Town become Owners of any Lot through a tax delinquency process neither the County or the Town shall have any personal obligation for the payment of Association assessments.

#### **SECTION 10. ARCHITECTURAL CONTROL COMMITTEE**

**10.01** Camtec, inc., Owner of Royal Aire Estates Subdivision, who also is the Developer of said Subdivision, will form a committee consisting of four (4) members: the Developer and three other persons appointed by the Developer, and this committee shall hereinafter be referred to as the Architectural Control Committee ("ACC.")

**10.02** As long as any Lot in the Royal Aire Estates Subdivision is owned by the Developer, said Developer shall have the right to appoint any and all members of the ACC. Said right shall lapse and be of no further meaning or effect at such time as Developer sells all Lots to Lot Owners and approval by the ACC of the structures has been concluded.

**10.03** When the Developer no longer owns any lots in the Royal Aire Estates Subdivision, and structures have been approved for construction by the ACC, the ACC shall cease and the Homeowner Association (HOA) shall commence to oversee concerns of the subdivision. Note: Developer may at its discretion when still owning lots turn the obligations over to the HOA. See Section 9 referencing the Homeowner Association (HOA.)

**10.04** Meetings of the ACC shall be held at times and places as the ACC determines. For all meetings of the ACC, a quorum (at least three (3) of the four members) shall be necessary to transact business. A majority of those in attendance must approve any transactions.

**10.05** The ACC shall cease to exist after all lots are sold and the Subdivision Development is complete. Thereafter the Homeowners Association shall control the well-being of the Subdivision.

**10.06** Any action of the ACC authorized under this Declaration may be taken upon unanimous consent of all ACC members without a meeting.

## **SECTION 11. MISCELLANEOUS**

**11.01 Covenants Run with Land.** All terms, conditions and provisions of this Declaration (and as may be amended) shall constitute covenants running with the land.

**11.02 Plat Restrictions.** All restrictions, limitations, covenants or requirements set forth in the recorded Subdivision Plat for Royal Aire Estates are incorporated here and by reference as is set forth at herein.

**11.03 Enforcement of Declaration.**

A. The Developer, until the duties are turned over to the HOA, shall have the right to enforce, in the name of the Homeowner Association, all the terms, conditions, and provisions of this Declaration and any rules and regulations adopted by the Homeowner Association. Any Lot Owner violating any of the terms, conditions or provisions of this Declaration or any rules or regulations adopted by the Homeowner Association shall pay all costs, which may include expenses and attorney fees incurred by the Homeowner Association. Neither the Homeowner Association (HOA) nor the Architectural Control Committee (ACC) shall be subject to any suit or claim by any Lot Owner.

B. Each remedy set forth in this Declaration and/or in the rules and regulations adopted by the ACC and/or the HOA shall be in addition to all other rights and remedies available at law or in equity. All such remedies shall be cumulative and the election of one shall not constitute a waiver of any other. Any forbearance or failure of the ACC or the HOA to exercise any such right or remedy for any violation shall not be a waiver of such right or remedy under any circumstances unless a written waiver is obtained from the ACC and/or HOA.

C. Under no circumstances shall any violation of this Declaration or of any rule or regulation adopted by the ACC and/or HOA result in any reversion of title to any Lot.

D. The Town of Eagle has the right, but not the obligation, to enforce any provision it deems to be material to its approval of the final subdivision plat for Royal Aire Estates subdivision.

**11.04 Amendments to Declaration.** This Declaration may be amended, after approval by the Town Board for the Town by recording in the office of the Register of Deeds for Waukesha County, Wisconsin, a document to that effect executed by the Lot Owners of at least 16 of the 18 lots in the Subdivision, with all signatures having been duly notarized. Such amendment shall become effective only upon recording. The consent of the Owner of a Lot shall bind all future mortgage lenders or future Owners to any such amendment to this Declaration and any other requirement of the law. The Town shall have the right to review and approve any amendments.

**11.05 Term of Declaration.** This Declaration (and any amendments) shall be binding upon all parties and persons having any interest in the land effected hereby for an initial period of forty (40) years from the date this Declaration is recorded. Following the initial 40-year period, this Declaration shall be automatically renewed for a subsequent 40-year period, and for subsequent 40-year periods thereafter unless prior to the expiration of a 40-year period, 16 of the 18 Owners of Lots in the Subdivision agree to terminate this Declaration, and written proof thereof in recordable form is submitted and approved by the Town Board and thereafter recorded in the Office of the Register of Deeds for Waukesha County, Wisconsin. If the Town Board does not approve a written termination of this Declaration pursuant to this paragraph, then said termination shall be invalid and ineffective. Said termination shall be valid and effective only upon recording as provided herein.

**11.06 Severability.** Invalidity of any provision of this Declaration, regardless of how determined, shall in no way affect any of the other provisions, which shall remain in full force and effect.

**11.07 Interpretation.** This Declaration shall be construed and interpreted in favor of restricting the use of each Lot consistent with the purposes hereof, and any ambiguity shall be resolved against any Lot Owner who installs any structure or engages in any activity not clearly authorized under this Declaration or approved in writing as provided elsewhere herein.

**11.08 Applicable Law.** This Declaration shall be construed and enforced in accordance with, and governed by, the laws of and in the courts of the State of Wisconsin. Nothing in this Declaration shall be interpreted or construed to supersede the ordinances or statutes of the Town of Eagle, Waukesha County or the State of Wisconsin.

**11.09 Reservation of Right to Grant Easements.** The Developer, or the successor-Developer, hereby reserves the right to grant and convey easements to the Town and/or to a public or private utility company upon, over, through or across those portions of any Lot in the Subdivision within ten (10) feet of any lot line for purpose of allowing the Town or public or private utility company to furnish gas, electric, water, sewer, cable television or other utility service to any Lot(s) or through any portions of the Subdivision or for purposes of facilitating drainage of storm or surface water within or through the Subdivision. Such easements may be granted by the Developer, in its own name and without consent or approval of any Lot Owner, until such time as Developer has conveyed legal title to all Lots in the Subdivision to persons other than the Developer.

**11.10** All Developer's rights pursuant to this Declaration may be assigned by Developer to one or more successor developers.

**11.11** In the event a provision herein allows a use of land, building, structure; an activity; or any other thing that is contrary to any governmental rule or regulation, such governmental rule or regulation shall control.

**11.12** No Lot Owner (other than the officers of the Homeowner Association) shall have any authority to act for the Association or the other Lot Owners, as agent or otherwise, nor to bind the Association or the other Lot Owners to contracts, negotiable instruments or other obligations or undertakings of any kind.

**IN WITNESS WHEREOF,** this Declaration is executed by CAMTEC, INC., Developer, as of the date first written above.

CAMTEC, INC.

By: \_\_\_\_\_  
Diane T. Zakrzewski, President

Subscribed and Sworn to Before Me  
This \_\_\_\_ day of \_\_\_\_\_ 2021

\_\_\_\_\_  
Notary Public, Waukesha County, WI  
My Commission Expires: \_\_\_\_\_

CAMTEC, INC.

By: \_\_\_\_\_  
Sandy D. Campbell, Secretary

Subscribed and Sworn to Before Me  
This \_\_\_\_ day of \_\_\_\_\_ 2021

\_\_\_\_\_  
Notary Public, Waukesha County, WI  
My Commission Expires: \_\_\_\_\_

EXHIBIT A – LEGAL DESCRIPTION