

EXPANSION OF HARMONY HILLS  
SUBDIVISION AND AMENDMENT  
TO COVENANTS, CONDITIONS  
AND RESTRICTIONS OF  
HARMONY HILLS

3491135

REGISTER'S OFFICE  
WAUKESHA COUNTY, WI  
RECORDED ON

06-21-2007 3:43 PM

MICHAEL J. HASSLINGER  
REGISTER OF DEEDS

WHEREAS, WEXFORD HEIGHTS, LP (hereinafter referred to as "Declarant"), has platted and developed a subdivision with other related improvements called Harmony Hills;

WHEREAS, Declarant has imposed upon and subjected Harmony Hills to certain covenants, conditions and restrictions as set forth in the "Declaration of Covenants, Conditions and Restrictions of Harmony Hills," which said Declaration of Covenants, Conditions and Restrictions was recorded in the office of the Register of Deeds for Waukesha County, Wisconsin on September 5, 2003 as Document No. 3058651 (hereinafter referred to as "Declaration");

WHEREAS, pursuant to Section 11.2 of said Declaration, Declarant is permitted to expand the property of Harmony Hills without the consent or approval of any Owner "by subjecting to this Declaration all or any portion of the Expansion Real Estate then owned by Declarant", and

WHEREAS, Declarant desires to expand Harmony Hills as allowed and permitted by said Declaration to the Expansion Real Estate as described, and further, to amend said Declaration as applied to said Expansion Real Estate:

NOW, THEREFORE, Declarant as Owner in fee of the Expansion Real Estate which is located in Waukesha County, Wisconsin and more particularly described in Exhibit A, same being attached hereto and incorporated herein by reference (hereinafter referred to as "Subject Property"), by this document does hereby establish, subject and impose the terms, conditions, covenants and restrictions set forth in said Declaration to and upon the Subject Property described in Exhibit A, a copy of said recorded Declaration being attached hereto and marked Exhibit B, said terms, conditions, covenants and restrictions being set forth and incorporated herein by reference, except as said Declaration may be amended by this document.

As to the Subject Property, said Declaration shall be amended as follows:

1. Section 1.6 shall be amended in its entirety to recite as follows:

1.6 Common Areas. The "Common Areas" shall consist of those areas delineated on the plat and include, by way of explanation and not limitation, the Outlots (which include certain water and storm water features) and Tall Oak Court. All Common Areas shall remain free from debris and installation of any improvements by any Lot Owner or the Association.

2. Section 4.2 shall be amended in its entirety to provide as follows:

4.2 Association Responsibility. The Association shall maintain in good condition and repair, replace and operate all of the Common Areas and Common Improvements, including, but not limited to, the maintenance of the storm water detention basins, the private road shown on the Plat known as Tall Oak Court, landscaping, trees and plantings in the Common Areas and trimming of such trees for sight lines. The Association may, in its direction, install additional Common Improvements in the Common Areas which shall also become the responsibility of the Association to maintain and repair.

Return To:

JB Development  
W178 N9912 Rivercrest Drive #101  
Germantown, WI 53022-4645

pd  
09/30

3. The following shall be added to ARTICLE 5. RESTRICTIONS ON USE AND OCCUPANCY:

5.12 Use of Detention Ponds Prohibited. No Lot Owner, guest, invitee or third person shall be allowed access to or upon any pond for any purpose. Any entrance upon said pond by any person shall be considered a trespass. Enforcement hereof may be sought by any Lot Owner or the Association through any legal process, including, but not limited to, submission of a claimant to the appropriate law enforcement agency.

4. Section 6.5(i) shall be amended in its entirety to provide as follows:

(i) Each Owner is required to install and energize before occupancy, and therefore to maintain, a front yard light post and lantern (in accordance with the Village ordinances) in a style and from a manufacturer designated by the ACC from time to time, guided by an effort to keep light posts as uniform as practicable. The initial post and lantern will be purchased from Declarant. The light post and lantern must be located adjacent to the driveway.

5. Section 6.6(d) shall be amended in its entirety to provide as follows:

(d) 1. In addition to the requirements of subsection 6.6(b) above imposed upon each Owner of a Lot, Declarant, pursuant to and in compliance with Section 1.F.2 of the Developer's Agreement with the Village of Menomonee Falls (hereinafter referred to as "Developer's Agreement"), shall install trees on all Lots within the subdivision as depicted in the Street Tree Plan within sixty (60) days following issuance of an occupancy permit for the Owner's home, provided that if the occupancy permit is granted later than September 15, the required trees shall be installed not later than June 1 of the following year. In the event said trees are installed prior to Owner's home being constructed, Owner shall be responsible for replacement of any such tree which was damaged or removed during construction. Notwithstanding the foregoing, (i) all trees required by the Street Tree Plan to be installed on an Owner's Lot shall be installed by the Owner prior to June 16, 2008 and (ii) each Owner shall be responsible for the perpetual maintenance, repair and replacement of the trees required by the Street Tree Plan. In the event that either Declarant or the Owner defaults on any of their respective obligations under this subsection, then (i) the Village, in addition to any of its other rights and remedies, has the right but not the obligation, to enter the Owner's Lot and to install the required trees, and without notice or hearing, to impose a special assessment on said Owner's Lot for the cost of such installation, and (ii) the Association, in addition to any of its other rights and remedies, has the right but not the obligation, to enter the Owner's Lot and to install the required trees, and to impose an assessment on said Owner's Lot for the costs of such installations pursuant to Section 12.2 hereof.

2. As set forth in Section 1.F.2.d (of said Developer's Agreement), Declarant shall have the right, by whatever means legally available, to assign the responsibility for Street Tree planting to individual Lot Owners, including without limitation, obligations set forth in any Offer to Purchase and this Declaration. However, said assignment shall not relieve Declarant from its primary obligations to the Village under this Section and said Developer's Agreement.

6. The following Sections shall be added to ARTICLE 7. SPECIAL FEATURES:

7.2 Construction Impact on Wetlands. Lots 55 and 58 within the subdivision contain pockets of wetlands. The Owner(s) of said Lots 55 and 58 shall be liable to Declarant and the Village of Menomonee Falls for any unlawful or improper encroachment upon or impact to the wetlands during construction of improvements on said Lots by the Owner(s) thereof. Declarant and the Village of Menomonee Falls retain any and all rights afforded by the Declaration, this Amendment or in law or equity to enforce compliance against the Owner(s) of said Lots 55 and 58,

including, but not limited to, any and all costs to correct any violation and attorney fees and costs of enforcement.

7.3 Grading of Certain Lots. Notwithstanding anything in the Declaration to the contrary, including, but not limited to, Section 6.6(a) thereof, in an effort to preserve existing trees in the subdivision and pursuant to Section V.A.4 of said Developer's Agreement, Lots 27, 28, 32, 33 and 34 shall not be graded by Declarant. Grading of these lots shall be completed following construction of the home on these lots by the individual Lot Owners, all pursuant to grading specifications which shall or may be imposed by the Village of Menomonee Falls.

Further, pursuant to the minutes of the Architectural Control Board of the Village of Menomonee Falls (and the provisions of said Developer's Agreement), the following shall also apply to Lots 27, 28, 32, 33 and 34:

"Prior to issuance of a building permit on Lots 27, 28, 32, 33 and 34, a plan be created by a registered landscape architect and/or an arborist showing:

- Survey - prepared by a registered surveyor.
- Site - Showing contours at 1 foot elevations.
- Grading/Filling/Erosion Control Plans.
- A landscaping plan showing the following:
  1. A plant list and coverage chart showing the location, quantity, size (at time of planting and at maturity), spacing and the scientific and common names of all landscape materials used.
  2. The dbh of existing trees shall be provided.
  3. The location and percentage of slope of all proposed berms using one foot contours.
  4. Existing plant materials proposed to remain. A separate plant list and coverage chart showing the location, quantity, size (at time of planting and at maturity), spacing, and the scientific and common names of all landscape materials used.
  5. Existing plant materials proposed to be removed. A separate plant list and coverage chart showing the location, quantity, size (at time of planting and at maturity), spacing, and the scientific and common names of all landscape materials used.
- Tree protection plan showing how and where protection will be provided by the home builder on the subject lot and also showing the proposed planting schedule.
- Maintenance plan showing how the mature trees will be preserved and maintained over time.

Applications shall be reviewed by staff and one member of the Architectural Control Board prior to issuance of a building permit. Any circumstance that brings into question the ability to preserve vegetation shall be referred to the Architectural Control Board."

Owners of Lots 27, 28, 32, 33 and 34 are encouraged to contract the Village of Menomonee Falls as to compliance with the foregoing.

**(Signatures on next page)**

Signature Page for Expansion  
of Harmony Hills

Executed this 20 day of June, 2007

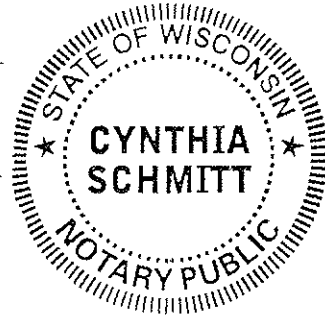
WEXFORD HEIGHTS, LP  
By: JBJRE, LLC, its General Partner

By: *Theresa M. Weitemann*  
Theresa M. Weitemann, Member

STATE OF WISCONSIN    )  
  ) ss.  
COUNTY OF WAUKESHA    )

Personally came before me this 20 day of June, 2007, the above named Theresa M. Weitemann, Member of JBJRE, LLC, which is the general partner of Wexford Heights, LP, by its authority, and to me known to be the person who executed the foregoing instrument, and acknowledged the same.

*Cynthia Schmitt*  
Cynthia Schmitt  
Notary Public, State of Wisconsin  
My Commission Expires: 4/19/09



This instrument was drafted by:

Richard A. Rechlicz, Esq.  
Ladewig, Rechlicz & Iggens, LLP  
N88 W15125 Main Street  
Menomonee Falls, WI 53051  
(262) 251-2245

EXHIBIT A

LEGAL DESCRIPTION

Being a part of Lot 1 of Certified Survey Map No. 9499 and lands in the Northeast and Southeast 1/4 of the Northwest 1/4 Section 25, Town 8 North, Range 20 East, Village of Menomonee Falls, Waukesha County, Wisconsin, more particularly bounded and described as follows:

Commencing at the North 1/4 corner of said Section 25, running thence South  $89^{\circ}57'57''$  West along the centerline of Mill Road, 230.00 feet; thence South  $00^{\circ}13'43''$  West, 50.00 feet to the point of beginning of lands hereinafter described:

Continuing South  $00^{\circ}13'43''$  West along the West line of Harmony Hills I, 194.85 feet to a point; thence South  $04^{\circ}57'57''$  East along the West line of Harmony Hills I, 110.45 feet to a point; thence South  $00^{\circ}13'43''$  West along the west line of Harmony I, 1167.48 feet to a point; thence South  $89^{\circ}52'13''$  West, 229.94 feet to a point; thence South  $00^{\circ}13'43''$  West, 630.25 feet to a point; thence North  $89^{\circ}45'43''$  East, 130.00 feet to a point; thence South  $00^{\circ}13'43''$  West, 500.04 feet to a point in the South line of the Northwest 1/4 of Section 25, thence South  $89^{\circ}45'15''$  West along the said South line, 1011.54 feet to a point; thence North  $00^{\circ}10'34''$  East, 2606.30 feet to the South line of Mill Road; thence North  $89^{\circ}57'57''$  East along the South line of said Mill Road, 1103.84 feet to the point of beginning.

Containing 62.00 acres more or less.

EXHIBIT B  
DECLARATION OF  
COVENANTS, CONDITIONS AND  
RESTRICTIONS OF  
HARMONY HILLS

3058651

REGISTER'S OFFICE  
WAUKESHA COUNTY, WI  
RECORDED ON

09-05-2003 3:42 PM

MICHAEL J. HASSLINGER  
REGISTER OF DEEDS

REC. FEE: 52.00  
REC. FEE-CO: 5.00  
REC. FEE-ST: 2.00  
TRAN. FEE:  
TRAN. FEE-STATE:  
PAGES: 25

Return to:  
J.B.J. Companies, Inc.  
W178 N9912 Rivercrest Drive, #101  
Germantown, WI 53022

*Handwritten signature/initials*

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
HARMONY HILLS**

This Declaration of Covenants, Conditions and Restrictions of Harmony Hills (this "Declaration") is made and entered into by Wexford Heights, LP ("Declarant").

**Recitals**

Declarant owns certain real property, described on the attached Exhibit A, upon which Declarant intends to develop a subdivision for residences and other related improvements.

By this Declaration, Declarant intends to subject such property and improvements to certain easements, rights, restrictions, and obligations with respect to the ownership, use and maintenance of such property and improvements and all components thereof.

Declarant also owns or may acquire further real property that is within one mile of the exterior boundary of the land described on Exhibit A, which Declarant may annex to the subdivision and submit to this Declaration. Nothing in this Declaration, however, shall be deemed to restrict or otherwise affect any real property that is not described on Exhibit A, until the Declarant subjects such real property to this Declaration pursuant to Section 11.5 below.

Now, therefore, Declarant, as fee owner of the property described on Exhibit A, by this Declaration (1) establishes and imposes certain provisions, restrictions, conditions, easements and uses upon such real property; and (2) specifies that the provisions of this Declaration shall constitute covenants running with the land which shall be binding upon Declarant, its successors and assigns, and all subsequent owners and occupants of all or any part of such real property.

**ARTICLE 1. DEFINITIONS**

The following terms shall have the assigned definitions:

- 1.1 Association. The "Association" shall mean Harmony Hills Community Association, Inc., the members of which shall be all Owners of Lots in the Subdivision.
- 1.2 Association Insurance. "Association Insurance" shall mean all policies of insurance as may be maintained by the Association under this Declaration.
- 1.3 Board. The "Board" or "Board of Directors" shall be the governing body of the Association, elected according to the Bylaws.
- 1.4 Building. A "Building" shall be any freestanding structure located in the Subdivision. A "dwelling" or a "residence" is a Building intended for occupancy in accordance with Section 5.1.
- 1.5 Bylaws. The "Bylaws" shall mean the Bylaws of the Association as adopted by the Board.

1.6 Common Areas. The "Common Areas" shall consist of the Outlots (which include certain water and stormwater features).

1.7 Common Improvements. The "Common Improvements" consist of the following, some of which may be located in Common Areas and some of which may be located in public streets: all signs on the Property generally identifying the Subdivision as Harmony Hills Subdivision, and any detention ponds, Buildings or other improvements made by the Association in the Common Areas.

1.8 Declarant. The "Declarant" shall mean Wexford Heights, LP and the successors and assigns of Declarant pursuant to assignment in accordance with Section 15.7 of this Declaration.

1.9 Declaration. "Declaration" shall mean this Declaration as the same may be amended from time to time.

1.10 Director. A "Director" shall mean a member of the Board.

1.11 Drawings. The term "Drawings" is defined in Section 6.1(b).

1.12 Expansion Real Estate. "Expansion Real Estate" shall mean any real property that is within one mile of the exterior boundary of the property described in Exhibit A which Declarant may annex to the Subdivision pursuant to Section 11.2.

1.13 Harmony Hills Documents. "Harmony Hills Documents" shall consist of this Declaration, Articles of Incorporation of the Association and the Bylaws of the Association.

1.14 Lot. "Lot" shall mean a platted lot intended for construction of a residence as shown on the Plat except for Lot 1 of the Plat. Nothing in this Declaration shall be construed to place any restrictions, responsibility, right or benefit on Lot 1 of the Plat.

1.15 Mortgage. "Mortgage" shall mean a recorded lien mortgage against a Lot or the vendor's interest under a recorded lien land contract relating to a Lot.

1.16 Mortgagee. "Mortgagee" shall mean the holder of a Mortgage.

1.17 Occupant. "Occupant" shall mean the Owner and any other person residing on a Lot.

1.18 Outlot. "Outlot" shall mean an Outlot as shown on the Plat. The reference to an Outlot by a number shall mean that particular Outlot as shown on the Plat.

1.19 Owner. "Owner" shall mean each fee simple owner of a Lot. The Declarant is an Owner with respect to Lots to which it holds title.

1.20 Pet. A "Pet" is a domestic dog, cat or bird (other than large birds of prey) which are not maintained for breeding or commercial purposes. By virtue of this definition, no other animals are permitted to be on the Property as pets of any Occupant.

1.21 Plat. A "Plat" is the plat of the Property as recorded in the Register's Office and, as appropriate, the plats of property subjected in the future to this Declaration under Article 11.

1.22            Property. The "Property" shall mean the real estate subject to this Declaration, as described on Exhibit A and all Buildings and other improvements constructed or to be constructed thereon, and such other real estate as is subjected to this Declaration under Article 11.

1.23            Register's Office. The "Register's Office" shall mean the office of the Register of Deeds for Waukesha County, Wisconsin.

1.24            Rules. The "Rules" shall mean rules established by the Association governing the administration of the Common Areas and Common Improvements.

1.25            Subdivision. "Subdivision" shall mean all of Lots as shown on the Plat.

1.26            Street Tree Plan. "Street Tree Plan" shall mean the design plans depicting all shade trees submitted to the Village by the Declarant.

1.27            Village. "Village" shall mean the Village of Menomonee Falls, Wisconsin, and its successors.

## ARTICLE 2. ASSOCIATION OF OWNERS

2.1            Administration. Declarant shall establish the Association, which shall be incorporated and shall adopt Bylaws for its governance and administration of this Declaration, the Common Areas and the Common Improvements. The Board may, but need not, from time to time adopt and amend Rules that are binding on all Owners and Occupants. The Board shall administer and enforce the Common Areas, the provisions of this Declaration and the Bylaws, the Rules, and all other uses of and restrictions on the Property. Until the establishment of the Association, all powers of the Association shall be exercised by Declarant.

2.2            Membership and Voting. Each Owner shall be a member of the Association. In the Association, the Owner(s) of each Lot shall be entitled to one vote for each Lot owned. If one or more Lots change their status to some other form of ownership, the votes appurtenant to each original Lot shall not be changed. No member shall be permitted to vote if such member is more than thirty (30) days delinquent in the payment of any amount due to the Association under Article 3 of this Declaration.

2.3            Control of Association. Declarant shall have the right to appoint and remove Directors of the Association and to exercise any and all powers and responsibilities assigned to the Association, the Board, or its officers, by the Articles, By Laws, this Declaration or the Wisconsin Nonstock Corporation Law (as amended from time to time), until the earliest of: (1) fifteen 15 years from the date that the first Lot is conveyed to any person other than Declarant; or (2) thirty (30) days after the conveyance by Declarant to purchasers of 75% of the Lots; or (3) Declarant's election to waive its rights to control.

2.4            Management. The Association may employ a professional management agent or company to assist in carrying out its duties regarding the Common Areas, the Common Improvements, and this Declaration, with such experience and qualifications and on such terms and conditions as are acceptable to the Board. Any such agreement must be terminable by the Board, without cause, upon ninety (90) days notice without payment of any penalty.

2.5            Approvals. Any proposal by an Owner requiring Board approval shall be submitted in writing, in such detail and with such supporting documents as the Board may require to facilitate its understanding and review. The Board may approve or disapprove any proposal submitted by an Owner after

considering one or more of the following concerns and any additional concerns as the Board deems prudent: (1) freedom and safety of access and convenience to other areas of the Property; (2) the costs to be paid by the Owner for restoration of Common Areas and Common Improvements to their prior physical condition upon the completion of work or use contemplated by the proposal; and (3) a fair and reasonable monthly charge to be paid by the Owner to the Association for any encroachment on any Common Areas resulting from the proposal. The Board may at its discretion impose further conditions upon its consent to any proposal as it deems appropriate, including payment of out of pocket charges for professional advice and a standard review fee. Approval of a proposal shall be deemed given if the Association president indicates approval in writing. Proposals to affect the Common Areas or Common Improvements require approval of the Board, not the ACC. If the result of a proposal would be to cause an encroachment on any public street or utility, or any easement area or would affect the storm water drainage system on the Property, the prior express written consent of the Village is required.

2.6 Ownership of Common Areas. Each Owner of a Lot shall own a percentage interest in the Common Areas as a tenant in common with all other Owners. The interest of each Lot is a fraction equal to 1 divided by the number of Lots. Initially, the interest is 1/9<sup>th</sup>. Each such interest is subject to the following incidences:

- (a) By each initial conveyance of a Lot to an Owner, each Owner shall obtain its interest in the Common Areas. Each Owner, on its own behalf and on behalf of its successors and assigns, by acceptance of a deed or other transfer of a Lot, waives any and all right that the Owner might now or hereafter have to maintain any action or petition for partition with respect to the Owner's interest in the Common Areas or to compel any sale by action at law or in equity. No Owner shall sever its interest in the Common Areas from its ownership of its Lot.
- (b) The Declarant and the Owners hereby appoint the Association as the "agent" for the administration of the Common Areas, with the complete authority over the Common Areas as described herein. The Association shall not have the right to sell, mortgage or lease any or all of the Common Areas except if approved by the Owners as an amendment hereto under Article 9.
- (c) The appointment of the Association as the agent for the Common Areas is not intended to create any other agency, joint venture or partnership relationship among the Owners or between the Association and the Owners. No Owner shall have fiduciary duties to another by virtue of the tenancy-in-common interest in the Common Areas. The Association shall not have any duties as a partner, or the like, including but not limited to income tax reporting to the Owners.
- (d) The rights of the Association, as agent, and the Owners as to the Common Areas shall not be affected by federal or state bankruptcy or insolvency proceedings, or analogous proceedings for creditor or debtor relief, against any one individual Owner.
- (e) Declarant is advised that each Owner's interest in the Common Areas will be assessed and taxed for real estate tax purposes, and will be included on the tax bill for such Owner's Lot. Declarant makes no assurance that taxes will be levied in this manner. If any one Owner fails to pay taxes as and when due with respect to such Owner's interest in one or more of the Common Areas, then the Association may, but is not obligated to, pay such amount and levy a special assessment in such amount on such Owner.
- (f) Appointment of the Association as agent shall not be rescinded or limited unless the appointment is rescinded or limited by an amendment to this Declaration in accordance with Article 9.

2.7 Relationship with Other Associations. The Association has the authority to merge with, enter into joint management contracts or arrangements, or otherwise associate itself with another association of home owners which association affects any of the Expansion Real Estate, as an alternative to the portion so affected being, and until and unless such portion is, subjected to this Declaration as an expansion under Section 11.2.

### ARTICLE 3. ASSESSMENTS

3.1 Budget and Assessments. The Association shall annually adopt a budget of common expenses and levy assessments on the Lots allocating such assessments equally to each Lot, subject to the limitations herein. The budget shall include amounts representing assessments that are bad debts, and may but need not include a replacement reserve, which in each case shall constitute part of the general assessments. The Association may also levy (a) special assessments on all Lots for any purpose for which a general assessment may be levied and special assessments, or (b) fines on particular Owners for the purpose of collecting any amounts due the Association or enforcing compliance by such Owners with any provision of this Declaration, the Bylaws or any Rules. The Board may adopt a Rule to impose uniform charges for services which the Association provides related to transfer of Lots, review of proposals under Section 2.5, and the like. The Board may adopt an initial budget showing the anticipated amounts necessary to cover common expenses.

3.2 Installments: Late Payments. General assessments shall be levied on an annual basis but shall be due and payable as determined by the Board from time to time. Special assessments shall be due and payable at such time and in such manner as the Board may determine. Any assessment or installment of an assessment not paid within ten (10) days of its due date may be subject to a late charge and/or interest as set forth in the Bylaws or in a Rule.

3.3 Enforcement: Liens. If an Owner defaults in any payment, the Association shall take appropriate measures as permitted by law. The defaulting Owner shall be responsible for all costs incurred by the Association in seeking to enforce payment including the Association's reasonable attorneys' fees. Owners shall be personally liable for assessments or fines and a lien shall be imposed against such Owner's Lot for any unpaid assessments. The lien shall be effective as of the recording of a notice thereof in the Register's Office, in the same manner as a condominium lien would be imposed. The lien shall be enforced generally in the manner in which condominium liens are enforced. Liens for unpaid assessments shall also extend to and secure interest, fines and reasonable costs of collection including attorneys' fees incurred by the Association incident to the collection of assessments or enforcement of liens. The Association may purchase a property upon the foreclosure of its lien. Under Section 2.2, an Owner delinquent in payments may in some cases not be permitted to vote on matters before the membership of the Association.

3.4 Association Statements. Within five (5) business days of written request from an Owner or a Mortgagee, the Association shall provide a letter stating the existence and amount of outstanding general or special assessments against the Owner's property, if any. Notwithstanding anything to the contrary in the preceding sentence, all property conveyed by Declarant shall be deemed conveyed free from outstanding general, special or working capital assessments and no such letter shall be required or given as to such property.

3.5 Common Expenses and Surpluses. Common expenses and surpluses shall be allocated in the same manner as general assessments are allocated. All common surpluses for each fiscal year shall be retained for common expenses for the next succeeding fiscal year.