

DECLARATION OF COVENANTS,
RESTRICTIONS AND CONDITIONS
FOR PADS 1-35 OF
THE CONDOMINIUM PLAT OF CAPITOL HEIGHTS HOMES,
FITCHBURG, DANE COUNTY, WISCONSIN

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DECLARATION OF COVENANTS, RESTRICTIONS AND CONDITIONS

FOR PADS 1-35 OF

THE PLAT OF CAPITOL HEIGHTS,

FITCHBURG, DANE COUNTY, WISCONSIN

WITNESSETH:

WHEREAS, COMMUNITY CONDOMINIUM DEVELOPMENT CORP. (which together with its Successors and assigns are referred to herein as the “Declarant”) are the owners of certain property located in the Fitchburg, Dane County, Wisconsin, and more particularly described and depicted on Exhibit A attached hereto (the “Property”); and

WHEREAS, the Property has been subdivided and platted as the Condominium Plat of “Capitol Heights” (the “Plat”), having 35 Pads (individually a “Pad” and collectively the “Pads”); and

WHEREAS, the Declarant desires to subject the Plat and each Pad to the conditions, covenants, restrictions, reservations, agreements and easements hereinafter set forth (hereinafter sometimes referred to as “Covenants”), all of which are binding upon the Plat and each Pad and each Owner of record thereof (the “Owner”) and every other party having any interest therein, and shall pass with the Plat and each Pad.

NOW THEREFORE, the Declarant hereby subjects the Plat and each Pad to the following Covenants:

ARTICLE I

STATEMENT OF PURPOSE

The general purpose of this Declaration is to ensure the most appropriate development and improvement of each Pad; to guard against the erection thereon of poorly designed or proportioned structures; to obtain harmonious improvements and use of material and color schemes; to protect the investment made by Owners; to protect against improper uses; and to encourage and secure the construction of “Green” built residential structures thereon.

ARTICLE II

CAPITOL HEIGHTS ASSOCIATION

2.1 Membership. The Owner of a Pad shall automatically become a member of the Capitol Heights Home Owners Association, Inc., a non-profit, non-stock corporation organized under the laws of the State of Wisconsin (the "Association"). By acceptance of the deed or other instrument of conveyance, the Owner(s) of each Pad consents to such Owner's membership in the Association. Membership in the Association is appurtenant to each Pad. Each Owner of a Pad shall automatically be entitled to the benefits and subject to the burdens relating to such membership in the Association. Membership in the Association shall be limited to the fee simple Owners of the Pads, except that in case of a land contract, the vendee, and not the vendor, shall be a member.

2.2 Voting of Owners. Subject to the terms, conditions and limitations contained in the Articles of Incorporation and Bylaws of the Association, the Owner(s) of each Pad shall be entitled to one vote as members of the Association for each such Pad owned. Where more than one person is an Owner of one Pad, all such persons shall be members of the Association, but they shall be cumulatively entitled to only one vote per such Pad, and they may cast their total one vote in proportion to their Ownership of such Pad.

2.3 Articles of Incorporation and Bylaws. The purposes and powers of the Association and the rights and obligations with respect to the members thereof shall be governed by the Articles of Incorporation and Bylaws of the Association; provided that, however, such Articles of Incorporation and Bylaws shall be subject to, and shall not contravene, the terms, conditions, benefits and burdens set forth in this Declaration.

2.4. Rulemaking Authority. Subject to the notice requirements set out in this Article, the Association may adopt new Rules and modify or rescind existing Rules. The Association Board of Directors (the "Association Board") shall send notice to all Owners concerning any proposed Rule change at least five (5) business days prior to the meeting of the Association Board at which such action is to be considered. This notice requirement does not apply to administrative and operating policies that the Association Board may adopt relating to the Common Areas. A Rule change adopted under this Section shall take effect thirty (30) days after the date on which written notice of the Rule change is given to Owners. A copy of the current Rules are available from the Association upon request. The Association may charge a reasonable fee to cover its reproduction cost. Notwithstanding anything contained in this Declaration to the contrary, the Declarant shall have exclusive authority to review and approve or reject any addition, modification or deletion of Rules so long as Declarant has title to any Pad subject to these covenants.

ARTICLE III

ARCHITECTURAL CONTROL COMMITTEE

3.1 Composition. The Architectural Control Committee ("ACC") shall initially consist of three (3) members serving a term of two (2) years. So long as Declarant has title to any Pad subject to these Covenants, the ACC shall consist of three members appointed in writing by Declarant. All members of the ACC shall serve at the pleasure of the Declarant. The Declarant may elect to surrender the selection of the members of the ACC to the Association; or, if there is no such Association and Declarant no longer has title to any Pad within said Plat, the members of the ACC shall be elected by majority vote of the then Owners of the Pads within the Plat with one vote for each Pad.

3.2 Liability. No member of the ACC shall be legally liable to the Declarant, Association, or any Pad Owner for any act or omission relative to the good-faith performance of duties performed under these Covenants.

ARTICLE IV

ARCHITECTURAL REVIEW PROCEDURE

4.1 Approval. No improvement shall be erected, placed, altered, maintained or permitted to remain on any real property located in the Plat until approved in writing by the ACC. Nothing herein contained shall require approval by the ACC of normal maintenance or alterations to the interior of any existing structure unless the modifications affect the existing exterior appearance as approved by the ACC.

4.2 Submissions. In addition to such other information which the ACC may reasonably request, each Owner shall submit the following to the ACC in conjunction with any requested approval of any improvement upon any Pad:

- (a) 2 copies of drawings of the proposed structures showing, at a minimum, floor plans, elevations or all views of the structure, driveway location, outbuildings, auxiliary structures, wall details, satellite dishes, structure locations, fences, wells, outdoor recreational equipment, and playground equipment;
- (b) Descriptions of exterior finishes, roofing types and lighting materials, and upon request of the ACC, samples of such materials;
- (c) 2 copies of landscape plans for the Pad identifying proposed grades, areas of woods, lawn, garden areas and narrative summary of landscape maintenance;
- (d) Architectural specifications for the above;
- (e) 2 copies of soil erosion control plan;

- (f) 2 copies of storm water management plan; and
- (g) Application Fee.

All plans must be in writing and include:

- (a) Name, address and telephone number of the Applicant and/or Owner;
- (b) Date of preparation and any revisions;
- (c) Scale and north arrow; and
- (d) Pad number(s).

4.3 Standards. The ACC shall have the right to reject any plans and specifications or pad plans which, in the judgment and sole opinion of a majority of its members, or the representative of the ACC:

- (a) are not in conformity with the restrictions in this Declaration; or
- (b) are not desirable for aesthetic reasons; or
- (c) are not in harmony with buildings located on the surrounding Pads; or
- (d) have exterior lighting, exterior signs, exterior television or satellite antennae, fencing or landscaping which are not desirable for aesthetic reasons; or
- (e) are not in conformity with the general purposes of this Declaration.

4.3.1 Green Building Standard. All structures erected shall comply with the minimum Bronze level certification of the National Association of Home Builders™ (NAHB) Green Building Program, 2008 ICC-700 ANSI approved Green Building Standard. Home builders may choose to construct to a higher certification level than the required minimum Bronze tier (e.g. Silver, Gold, Emerald), which is at the discretion of the eco-friendly builder or home owner. Further, NAHB, Green Building Verification is to be provided by an approved Third Party Verifier to the NAHB Green Building Standard. A reduced rate for green certification has been negotiated with TECO (Timberco, Inc.) of Sun Prairie.

4.3.2 Energy Star Certification. All residential dwellings must be Energy Star Certified. A reduced rate for Energy Star certification has been negotiated with TECO (Timberco, Inc.) of Sun Prairie.

4.4 Architectural Review Fees. The ACC shall have the right to establish and charge reasonable plan review fees to cover the cost of plan review by the ACC and any consultants utilized by the ACC.

4.5 Timing. The ACC shall render its decision within thirty (30) days. However, it is foreseen that in most cases the decision will be made within two weeks.

4.6 Plan Review Process. A submission will not be complete, and the thirty (30)-day approval time set forth above shall not commence until all documents required in this Section 4.2 have been submitted. All such submissions shall be made to the Declarant or to such other address that the ACC may designate. Declarant shall then call a meeting of the ACC to consider such plans and specifications. Action of the ACC shall be by majority vote of members present at such meeting and entitled to vote upon the matter under consideration. A tie vote on any issue shall be deemed equivalent to rejection. The ACC, with the unanimous written consent of all of its members entitled to vote on any issue, may take action without a meeting. The ACC may approve, disapprove, or approve subject to stated conditions the preliminary and final development plans.

If the ACC conditionally approves either the preliminary or final development plans, then the applicant shall be entitled to resubmit such plans. The ACC's decision shall be in writing, signed by two or more ACC members.

4.7 Result of Inaction. If the ACC fails either to approve, conditionally approve, or disapprove the plans within thirty (30) days of their submission, or upon any resubmitted plans within twenty-one (21) days of their resubmission, then it shall be conclusively presumed that the ACC has approved said plans; provided, however, that if within the said thirty (30) day period or twenty-one (21) day period, as applicable, the ACC requests an extension up to thirty (30) days for the approval of such plans, there shall be no presumption that the same are approved until the expiration of the time period as set forth in said notice.

4.8 Modifications After Approval. The Owner must make all improvements in conformity with approved plans and specifications. No change or deviation from any such plans or specifications that would affect the exterior appearance of any building, improvement, or Pad, including landscaping and storm water control, may be made without the express written approval of the ACC. Modifications must be submitted to the ACC in the same manner as the original plans.

4.9 Appeals. Owner may appeal any disapproval by the ACC to the Association Board by written request within fifteen (15) days following the ACC's decision including: (a) a copy of the original application; (b) the notification of disapproval; and (c) a response to any specific reasons for disapproval presented by the ACC. The Association Board shall render a decision within thirty (30) days following receipt of the complete request for appeal. During any appeal, the Owner shall not commence any work requiring approval.

4.10 No Waiver. No approval of plans by the ACC shall constitute a waiver of the right to withhold approval as to future plans.

4.11 Preliminary Sketches. Owners are encouraged to submit preliminary sketches and descriptions for informal comment prior to submittal of the information required for final approval.

4.12 Hold Harmless. The ACC shall exercise its approval authority and discretion in good faith and each Owner, by acceptance of a deed to, or any other interest in, a Pad, agrees to hold the ACC harmless for any perceived discrepancies in the ACC's good-faith performance of its duties. Refusal of approval of plans and specifications by the ACC may be based on any grounds, including purely aesthetic grounds, which in the sole discretion of the ACC shall be deemed sufficient.

4.13 Liability of Architectural Control Committee. The ACC and its individual members shall not be liable under any circumstances for any damage, loss or prejudice suffered or claimed on account of:

- (a) The approval, conditional approval or disapproval of any plans and specifications, whether or not defective;
- (b) The construction or performance of any work, whether or not pursuant to approved plan and specifications; or
- (c) The development of any property within the Plat.

ARTICLE V

LAND USE AND BUILDING TYPES

5.1 Land Use. Only designated uses for Pads shall be permitted. No Pad shall be used except for single-family, residential purposes. No building shall be erected, altered, placed or permitted to remain on any Pad other than one detached, single-family dwelling, not exceeding more than two stories in height and an attached private garage for not more than three cars plus, and other outbuildings incidental to residential use of the Pad.

5.2 Building Location. All buildings in the Plat shall be located in compliance with all side yard or setback lines established in any applicable laws, ordinances, rules or regulation of the Fitchburg and Dane County. No Pad or Pads as platted shall be re-subdivided except as authorized in writing by the ACC. Such authorization does not relieve the Pad owner from complying with applicable laws, regulations, rules and ordinances or from obtaining any required approval of the Fitchburg or other governmental agency. This covenant shall not be construed to prevent the use of more than one Pad as one building site. The site plan of all buildings must be approved by the ACC.

ARTICLE VI

CONSTRUCTION

6.1 Compliance with Plans. If Applicant's plans are approved or deemed approved as provided herein, then the Owner shall construct the improvements strictly in accordance with the approved plans.

6.2 Duties During Construction. During construction, each Owner shall control site access and keep the construction site clear of unsightly accumulation of rubbish and scrap materials on the Pad and prevent the deposit of these materials on any other Pad. The Owner shall be responsible for the clean up of any of these materials if they are deposited on any other Pad. Diversion from landfill of rubbish and scrap materials by means of recycling (i.e., scrap wood, plastics, cardboard, Styrofoam, etc.) or innovative disposal techniques is highly encouraged in keeping the site clean.

If, after fifteen (15) days following written notice from the Declarant, ACC or Association, as applicable, of violations related to this Section, the Owner fails to cure the stated violations, then the Declarant, ACC or Association, as applicable, shall have the right and authority to perform maintenance and clean up as it deems necessary and bill the Owner actual costs plus twenty-five percent (25%). Payment must be made within thirty (30) days or the Declarant or Association, as applicable, may prosecute any and all remedies permitted them at law or equity.

6.3 Time Limit for Construction. Each Owner shall promptly begin construction of its improvements on its Pad in accordance with the applicable Covenants and approval received from the Committee. Completion of improvements and the issuance of an occupancy permit by the Fitchburg shall be issued within two (2) years from the date of closing, except for delays in completion due to inability to obtain building materials, strike, war or acts of God. Extensions of time due to other reasons may be permitted by the ACC due to extraordinary circumstances.

ARTICLE VII

ARCHITECTURAL RESTRICTIONS

All Pads and all improvements thereon shall be subject to the following architectural restrictions:

7.1 Single-Family Houses. Only single-family houses based upon various styles shall be permitted. Aesthetic considerations will be of primary importance and will take precedence over objective criteria. The ACC shall be the sole judge whether submitted plans conform to this restriction. The submission of preliminary plans and elevations is encouraged.

7.2 Single-Story Houses. Single-story houses shall have not less than 1,000 square feet on the main level, excluding the garage. The main level is defined as the level totally above finished grade.

7.3 Split-Level or Raised Ranch Houses. Split-level or raised ranch houses shall have not less than 1,000 square feet on the main levels excluding the garage and 1,300 square feet including the garage so that if the garage. The main levels are defined as those levels totally above the exterior finished grade. If the garage is in the basement, the minimum square footage of the main levels shall not be less than 1,000 square feet.

7.4 Two-Story Houses. Two-story houses shall have not less than a total of 1,400 square feet of finished area excluding the garage.

7.5 Reduction of Minimum Floor Requirements. It is understood that Green building certification allocates higher points for reducing the square footage of a structure. It is for this reason that the above minimum floor area requirements may be reduced by the Declarant or its subsequent agent, in the event the proposed architectural design and quality of the house is such that it presents an appearance comparable or superior to the appearance of other houses built in the Plat development which conform to the above requirements.

7.6 Computation of Square Footage. Porches, screened porches, breezeways, attached garages and basements shall not be considered in determining square footage requirements.

7.7 Impervious Surface. A maximum of 100% of the area of the Pad may be covered by Impervious Surface. For the purpose of the calculation of Impervious Surface in this Section 7.7, the following shall constitute Impervious Surface. It is understood that Green building certification allocates higher points for reducing the square footage of a structure.

- i. Area of the Dwelling as measured by the outside walls.
- ii. That portion of the horizontal area of the roof eaves which exceeds 24 inches from the outside wall of the Dwelling (e.g. eaves of less than 24 inches do not count as Impervious Surface).
- iii. Horizontal area of all of the patios, covered porches, driveways and walkways within the unit (unless constructed of pervious materials). The portion of any driveway and walkway connecting the Pad to a public or private street serving such Pad are Limited Common Elements appurtenant to such Pad, but are not included as Impervious Surface.

7.7.1 Pervious Surface. Pervious materials are encouraged for sidewalks and patios.

7.8 Garages. All houses shall have attached two (2) car garages (of a minimum of 500 square feet). Larger or smaller garages may be permitted upon approval of the ACC. Garage doors will not face Targhee Street. Green building practices encourage the use of ventilated garages to prevent vehicle fumes and emissions from entering the living space.

7.9 Exterior Walls. Recommended materials for the exterior walls of each building include brick, stone, fiber board, cement board, or wood that is certified or locally obtained and/or manufactured within a 500 mile radius of the building site, or any combination thereof. The ACC encourages they use of locally harvested and manufactured brick, stone, fiber board siding, cement board, or any certified wood product (i.e., Forest Stewardship Council™ (FSC), Sustainable Forest Initiative™ (SFI), or any other product programs mutually recognized by the Program for Endorsement of Forest Certification Systems (PEFC). The ACC encourages the use of brick or stone. Materials specifically not permitted include unfaced concrete block, structural concrete, prefabricated metal, “Texture 1-11” siding.

7.10 Color of Exterior Surfaces. It is the intent of the ACC to coordinate trim, siding and roofing colors to provide the most aesthetic combination for a particular house as well as for the Plat development. The overall color schemes must be submitted with the building plans for approval.

7.11 Chimneys. All chimneys and all exterior flues shall be enclosed. Direct vent fireplaces will be permitted.

7.12 Fascia. Recommended materials include fiber cement, cedar or redwood. Aluminum wrapped fascia will be permitted. Materials not permitted specifically include any fascia containing Polyvinylchloride “PVC Vinyl”. Fascia must be six (6) inches minimum height.

7.13 Soffits. Recommended materials include aluminum, or wood. Materials not permitted specifically include any soffit containing Polyvinylchloride “PVC Vinyl”.

7.14 Roofing. Roofing must be architectural type, textured fiberglass or asphalt shingles, wood shakes, tile or slate. Standard three-in-one shingles are not permitted.

7.15 Roof Pitch. Roof pitch shall be 6/12 (6 inches vertical to 12 inches horizontal) or steeper unless otherwise approved by the ACC.

7.16 Fences. No fences or walls shall be erected without prior approval of the ACC.

7.17 Temporary Dwellings. No trailer, basement, tent, shack, garage, barn, or outbuilding or any part thereof, erected on any Pad shall at any time be used as a residence temporarily or permanently.

7.18 Driveways. All driveways from the garage to the public street shall be paved with a hard, compacted, strong surface (i.e., pervious concrete, concrete) within one week from the date of issuance of an occupancy permit.

7.19 Mailboxes. Each home owner, at his expense, shall install a Mailbox approved by the ACC in a location determined by the Declarant. Mailboxes will be maintained by each Owner in accordance with applicable postal regulations.

7.20 Landscaping. Each Owner shall install foundation and other plantings such that the overall appearance of home and land is in harmony with its setting.

7.21 Lighting. Exterior lighting on each Pad shall be of such focus and intensity so as the residents of adjacent Pads shall not be disturbed. Each homeowner, at his expense, shall install a post light. The post lights will be specified by the ACC, identical in appearance and located at the street side of the Pad. The exact location will be determined by the Declarant & Owner. Each light shall use only a direct wire and shall be controlled by a photo cell. The Pad owner shall maintain the fixture and light bulb.

7.22 General. All buildings, dwellings, garages, out buildings, satellite dishes, fences, walls, basketball hoops, lawn ornaments, tennis courts, swimming pools or other structures constructed or erected on any Pad shall be approved prior to construction, in writing, by the ACC, as to placement, landscaping, materials, colors and design. Satellite dishes, if approved by the ACC, shall be limited in size and must be properly screened from view.

7.23 Variances. No changes or deviations in or from such plans and specifications as approved shall be made without the prior written consent of the ACC. However, the ACC is authorized to grant variances from any provision of this Article VII or this Declaration where such variance would assist in carrying out the spirit and interest of this Declaration, where strict application of the provision would result in the hardship to the person seeking the variance.

ARTICLE VIII

USE RESTRICTIONS

8.1 General Restrictions. No use or activity shall be conducted on or within the Plat that is prohibited by any applicable laws, ordinances, statutes, rules and regulations, provisions of any deed, lease or other agreement between Declarant and Owner, or constitutes a nuisance or an environmental hazard.

8.2 Leasing. Owner may not lease the property for a term shorter than six (6) months. Owner must provide notice to the Association identifying the Tenant. All leases shall be in writing and shall disclose that the tenants and all occupants of the leased unit are bound by and obligated to comply with this Declaration and the applicable Covenants; provided, however, that this Declaration and the applicable Covenants shall apply regardless of whether such a provision is set forth in the lease.

8.3 Parking. Parking of service vehicles, tractors, lawn tractors, trailers, boats, travel trailers, mobile homes, campers, and other recreational vehicles is prohibited unless kept in garages. Semi-tractors and trucks of over one ton capacity shall not be temporarily or permanently kept on any Pad except in conjunction with providing services of a temporary nature to the Owner of such Pad. There shall be no outdoor parking along the private drives other than in approved driveways. A minimum of 18' from the garage door to the back of the curb is required to be able to park a vehicle in front of the garage door. No part of any vehicle may extend beyond the back of the curb into the private drive. No parking is allowed on Oak Park Way or Wood Haven Way. This shall not prohibit temporary parking of such vehicles for loading and unloading. The Home Owner's Association reserves the right to tow inappropriately parked vehicles at the owner's expense. No vehicle maintenance shall be performed on vehicles parked on any driveway.

8.4 Appearance. Each Owner shall be responsible for maintaining the Pad and dwelling structures approved by the ACC in neat appearance.

8.5 Trash. Trash containers must be stored inside the garage and may be placed upon the curb only on days of trash collections. No garbage or refuse shall be placed on any Pad unless in a suitable container. No trash, yard waste, rocks or earth may be deposited on any Pad. Discretely located compost bins are permitted subject to approval by the ACC.

8.6 Nuisances. No activity that is or may become a nuisance shall be permitted on any Pad, Limited Common Area or Common Area. No odors, noise or light shall be permitted to arise from any Pad or Common Area so as to render any Pad or portion thereof unsanitary, unsightly, offensive or detrimental to any of the property in the vicinity thereof or to its occupants. Nuisances shall be defined to include any unsightly, unsanitary, offensive or detrimental conditions existing on a Pad as determined by the ACC.

8.7 Pets. Not more than three (3) domestic animals may be permanently kept on any Pad. Households wishing to keep more than three (3) domestic animals must obtain approval from the Association. All animals must be housed within the principal structure and no external kennels will be allowed unless approved in writing by the ACC. Commercial animal boarding, kenneling or treatment is expressly prohibited whether for fee or not. No Owner may keep a dog whose barking creates a nuisance to neighbors. When outside the principal residence, dogs must be on leash or under voice control.

No animal having vicious propensities shall be kept or maintained either inside or outside the principal dwelling. No unattended or unleashed pets are allowed in any common areas of the Plat.

8.8 Activities. No noxious or offensive trade, hobby or any activity may be carried out on property that will become a nuisance to the Plat. No loud or unreasonable noise will be permitted. The operation of any motorbike, go-cart, or other motorized device unless approved in advance by the Association, within the Plat shall be deemed a nuisance if the sound generated therefrom is an annoyance to neighbors. The operation of snowmobiles on Pad, Limited Common Area or other Common Areas is prohibited.

8.9 Yards. The ACC reserves the right to approve clotheslines or other clothes-drying apparatus, whether permanent or temporary, installed upon any Pad, Limited Common Area or Common Area. Wind-powered electric generators, exterior television or radio receiving or transmitting antennae or satellite receiving dish shall be placed only upon approval of the ACC. Seasonal decorations are permitted; however, other yard decorations and sculptures, including wildlife reproductions, are prohibited without approval of ACC.

8.10 Firearms and Hunting. No firearms shall be discharged within the Plat. No hunting will be allowed within the Plat.

8.11 Signs. No sign of any kind shall be displayed to the public view on any Pad except one (1) professional sign of not more than six (6) square feet advertising the property for sale. During the initial construction period, up to three (3) signs of not more than six (6) square feet each may be displayed related to the construction, financing or sale of the property. The Declarant may place monument, marketing or other types of signs, identifying the Declarant and Declarant's sales agent and office, the Plat or financing source. The Declarant or Association, as applicable, may remove any non-conforming signs upon 24 hours notice to the Owner.

8.12 Drainage. No Owner shall alter or obstruct the established drainage over any Pad, between any Pads, or over the Storm water Management Easement areas. Any alteration of established drainage shall comply with all governmental regulations and shall be compatible with the storm water retention plans and facilities approved for the recorded plat. The owner of any pad upon which a Storm Water Management Easement is located shall comply with all governmental regulations with respect to the maintenance of such area.

ARTICLE IX

UTILITY SYSTEMS

9.1 Access, Easements and Rights-of-Way. No Owner may grant any access, easement, right-of-way, or sell lands or use other means to give adjacent lands access to any Pad or Pads.

9.2 Utilities. Except for temporary service during construction, all electrical, telephone, natural gas and other utility lines within the Plat shall be constructed underground. To the extent practical, such utility lines and utility easements shall be adjacent to driveways.

ARTICLE X

LANDSCAPING RESTRICTIONS

The following are the minimum landscaping requirements:

10.1 Landscaping in Easements. No structure, planting or other materials shall be placed or permitted to remain within any easement of record which may damage or interfere with the installation and maintenance of utilities or which may change the direction or impede the flow or surface water in drainage channels in the easement. The easement area of each Pad and all improvements therein shall be maintained continuously by the Owner of the Pad, except for those improvements for which a public authority or utility company is responsible. The Pad Owner shall not change the finished grade on a utility easement by more than 6 inches without the consent of the utility company.

10.2 Lawn Trees. Lawn trees shall be planted within 30 days of occupancy of the Dwelling or upon completion of construction, whichever occurs first except that trees are not required to be planted during winter months when the ground is frozen, but rather shall be planted as soon as weather conditions permit.

10.3 Conifers. Each Pad owner shall plant one conifer ranging in size from 6 to 8 feet in height in the lawn area, chosen from the following varieties — Colorado Blue or Green Spruce, Black Hills Spruce, Scotch Pine, Austrian Pine or Douglas Fir. The landscaping points required in Section 10.4 below shall be in addition to this requirement such that no points shall be received for fulfilling this requirement.

10.4 Landscaping Points. In addition to the requirement in Section 10.3 above, the landscaping plan for each Pad shall achieve a minimum of 750 landscaping points as determined by the following point schedule. Credit up to a maximum of 200 points will be given for existing canopy trees.

Landscaping Element Point Value

Canopy Tree (2" - 3" caliper at 18 inches) 75

Canopy Tree (3" - 4" caliper at 18 inches) 100

Canopy Tree (greater than 4" at 18 inches) 150

Canopy Tree or Small Tree (1-1 1/2" caliper at 18 inches, i.e., Crag, Hawthorn, etc.) 50

Evergreen Tree (4 to 6 feet in height) 50

Evergreen Tree (6 to 8 feet in height) 75

Large Deciduous Shrub (3-year transplant - 36" min.) 10

Small Deciduous Shrub (3-year transplant - 18" min.) 5

Foundation plantings & 1 gallon perennials 5

Evergreen Shrub (3-year transplant - 24" min.) 5

10.5 Lawns. All yards shall be fertilized and sodded, or fertilized, seeded and mulched. The use of Organic and natural fertilizers is encouraged by the ACC. This requirement includes any area of yard within the street right of way. The Owner shall be responsible for the proper maintenance of sodded, fertilized, seeded and mulched areas of their Pad. If, after fifteen (15) days following written notice from the Declarant, ACC or Association, as applicable, of violations related to this Section, the Owner fails to cure the stated violations, then the Declarant, ACC or Association, as applicable, shall have the right and authority to perform lawn maintenance and repairs as it deems necessary and bill the Owner actual costs plus twenty-five percent (25%). Payment must be made within thirty (30) days or the Declarant or Association, as applicable, may prosecute any and all remedies permitted them at law or equity.

10.6 Maintenance of Landscaping. The maintenance of the plantings and yard areas is the responsibility of the Pad owner. Any trees or shrubs which die shall be removed by the Pad owner and replaced with a like variety of the same size as the original plant at the time of planting so as to maintain the original landscaping elements. The use of plantings in excess of the requirement above is encouraged. However, the complete screening of the front yard area is prohibited.

ARTICLE XI

COMMON AREAS

11.1 Common Areas. The Declarant has or will create common areas for the benefit of the Plat (the "Common Areas"). The intent of the Common Areas is to enhance the visual appeal of the Plat and provide a common linkage throughout. The Association shall be responsible for the maintenance, budgeting and assessment for expenses for the Common Areas.

11.2 Maintenance. The Association shall provide for the care, operation, management, maintenance and repair of the Common Areas. The Association shall maintain the Common Areas in a good and safe condition, including, without limitation, performing lawn care and snow removal, and assess the cost of maintenance of the Common Areas as provided herein. Each Owner shall reimburse the Association for the cost of repair or replacement of any portion of the Common Areas or improvements thereon damaged through the fault or negligence of such Owner or such Owner's family, guests, invitees or tenants.

11.3 Assessments. The Association shall levy annual general assessments ("General Assessments") against each Pad for the purpose of maintaining a fund from which any and all expenses incurred in connection with the management and maintenance of the Common Areas and administration of the Association ("Common Expenses") may be paid. Common Expenses include, but are not limited to, expenses incurred for: landscaping and lawn care; snow shoveling and plowing; improvements to Common Areas; insurance; enforcement of this Declaration; maintenance and management salaries and wages, and debt service.

The General Assessments shall be assessed pro rata based on the ratio of the number of Pads owned by each Owner to the total Pads in the Plat. General Assessments shall be due in advance on the first day of each year, or in such other manner as the Association may determine. Any General Assessment not paid when due shall bear interest at a rate of ten percent (10%) per annum until paid and, together with interest, collection costs and reasonable attorneys' fees, shall constitute a lien on the Pad on which it is assessed.

The Association, may, whenever necessary or appropriate, levy special assessments ("Special Assessments") against the Pads for deficiencies in the case of destruction or condemnation, for defraying the cost of improvements to the Common Areas or for any other purpose for which the Association may determine a Special Assessment is necessary or appropriate for the improvement or benefit of the Plat.

The Special Assessments shall be assessed in the same manner as General Assessments. Special Assessments shall be paid at such time and in such manner as the Association may determine. Any Special Assessment or installment not paid when due shall bear interest at a rate of ten percent (10%) until paid and, together with the interest, collection costs and reasonable attorneys' fees, shall constitute a lien on the Pad on which it is assessed. The Association shall have the right to collect all General and Special Assessments and such sums shall constitute a lien on such Pad. The Owner of a Pad, or any portion thereof, shall be personally obligated to pay such charges that were assessed or accrued upon the Pad owned during the period of ownership. The Association may commence an action against any Owner personally obligated to pay the charges or to foreclose the lien for such charge against any Pad.

Any such foreclosure action may be brought at the Association's election, either in the same manner as an action to foreclose a real estate mortgage, or as a proceeding to enforce a statutory maintenance lien as provided in Section 779.70, Wis. Stats., to the extent said Section is applicable. Any lien in favor of the Association securing unpaid charges arising by virtue of this Declaration shall be subject and subordinate to the lien of any mortgage whether the mortgage is executed or recorded prior to or after the creation of such lien.

So long as the Declarant owns any Pads subject to these covenants, the Declarant shall be liable for assessments on any Pads it owns, whether developed or not, that are subject to assessment under this Section; provided, however, the Declarant may satisfy its obligation to pay assessments either by paying such assessments in the same manner as any other Owner, or by paying any shortfall under the Common Expense budget resulting from events other than failure of other Owners to pay their assessments. Any of the Declarant's financial obligations to the Association may be satisfied in cash or by "in kind" contributions of services or materials, or by a combination of these.

11.4 Association Insurance.

The Association shall obtain and maintain Association Insurance. Association Insurance proceeds for casualty loss shall be for the benefit of the Association in order to finance reconstruction of damaged Common Areas. Liability coverage and other insurance proceeds shall be applied as the Association directs. All premiums for Association Insurance shall be a Common Expense, except that any increase in the rating or premium charged for any such insurance caused by the character or use of a particular Pad shall be allocated solely to its Owner. No Owner shall commit or permit any violation of covenants or agreements contained in any of the Association Insurance, or do or permit anything to be done, or keep or permit anything to be kept, or permit any condition to exist, which might (1) result in termination of any such policies, (2) adversely affect the right of recovery thereunder, (3) result in reputable insurance companies refusing to provide such insurance or (4) result in an increase in the insurance rate or premium over the premium which would have been charged in the absence of such violation or condition, unless, in the case of such increase, the Owner responsible for such increase shall pay the same. The Association reimbursement right is without prejudice to any other Association remedy, and may be enforced by special assessment against the particular Pad involved.

11.5 Budget for Common Areas. At least sixty (60) days prior to the beginning of each fiscal year, the Association shall prepare a budget of the estimated Common Expenses for the coming year. The Association shall send a copy of each applicable budget and a notice of assessment to be levied to each Owner at least thirty (30) days prior to the beginning of each fiscal year. The budget shall automatically become effective unless disapproved by Owners representing at least seventy-five percent (75%) of the total Pads in the Plat at a meeting called within ten (10) days following delivery of the budget. If any proposed budget is disapproved or the Association fails to prepare a budget for any year, the budget most recently in effect shall continue in effect until a new budget is prepared, at which time the Association can retroactively assess any shortfall. The Association may revise the budget and adjust assessments anytime during the year, subject to the same rights of Owners to disapprove as provided herein.

11.6. Condemnation of Common Areas. If a governmental authority takes any part of the Common Areas, the Association shall provide notice to Owners and shall be entitled to the proceeds received from such condemnation.

11.7 Damage to Common Areas. In the event of damage to the Common Areas, the Association shall repair or reconstruct damaged Common Area improvements within sixty (60) days after the loss.

ARTICLE XII

EASEMENTS

12.1 Easement in Favor of Owners. Each Owner is hereby granted a nonexclusive easement for use of and access to the Common Areas, subject to applicable restrictions, covenants, Rules and regulations. Such easement extends to the Owners' family, invitees and lessees.

12.2 Easement in Favor of Association. The Association is hereby granted a nonexclusive easement over the Plat to permit the Association to enforce the Declaration.

ARTICLE XIII

DISCLOSURES TO OWNERS

13.1 Right to Change Development. So long as the Declarant owns any Pad, Declarant shall have the right to make changes in the uses or density of property within the Plat, or add land to the Plat, and Owners agree that neither they nor the Association shall challenge or protest such changes or additions. Any land added to the Plat shall be subject to this Declaration and this Declaration shall be amended to reflect as much.

13.2 View Impairment. Neither the Declarant nor the Association guarantee or represent that any view will be preserved without impairment. Owners shall have no easements for view purposes or for light or air.

13.3 Use of Common Areas. Owners shall assume the risk of injury resulting from use of the Common Areas. Declarant and Association may impose Rules and restrictions regarding the use and the protection of the Common Areas.

13.4 Adjacent Properties Used for Recreational Purposes. Property located within, adjacent or in close proximity to the Plat may be used for recreational purposes. In the course of such use, sights, odors and noises may emanate from such property. Such noise is likely to be performed early in the daylight hours. Declarant and Association shall have no obligation to take action to abate any sights, odors or noises associated with adjacent properties used for agricultural purposes nor shall they be liable for any claim of damages or injury arising out of or related to such sights, odors and noises resulting from such agricultural activities.

13.5 Exclusive Rights to Use Name of Development. No Person shall use the name “Capitol Heights” or any derivative of such name in any logo or depiction associated with the Plat, in any printed or promotional material or in the name or product of any business without the Declarant’s prior written consent. However, Owners may use the name “Capitol Heights” in printed or promotional matter where such term is used solely to specify that particular property is located within the Plat, and the Association shall be entitled to use the word “Capitol Heights” in its name.

ARTICLE XIV

DURATION, MODIFICATION AND REPEAL

14.1 Duration of Declaration. This Declaration shall continue and remain in full force and effect at all times with respect to all property, and each part thereof, now or hereafter made subject thereto (subject, however, to the right to terminate, extend, modify or amend as provided herein) for a period of thirty (30) years from the date this Declaration is Recorded. The Declaration as in effect immediately prior to the expiration date shall be continued automatically for an additional ten (10) years and thereafter for successive ten (10) year periods unless the Declaration is terminated as set forth herein.

14.2 Termination and Modification. This Declaration, or any provision thereof, or any covenant, condition or restriction contained herein, may be terminated, extended, modified or amended, as to the whole of said property or any portion thereof, with the written consent of the Owners of seventy-five percent (75%) of the Pads subject to the Declaration. Notwithstanding anything to the contrary contained herein, during the period Declarant owns any Pad or for a period of fifteen (15) years from the date this Declaration is recorded, whichever period is longer, Declarant may unilaterally terminate, extend, modify or amend this Declaration. No such termination, extension, modification or amendment shall be effective until a proper instrument in writing has been executed, acknowledged, and recorded.

ARTICLE XV

ENFORCEMENT

15.1 Remedies for Breach. Violation or breach of any restriction herein contained shall entitle the Association the right to enter upon the property with respect to which said violation or breach exists and summarily to remove at the expense of the Owner, any structure, thing or condition that may be or exist thereon contrary to this Declaration and may, in addition thereto, prosecute a proceeding in any court of competent jurisdiction against the person or persons who have violated or are attempting or threatening to violate any of this Declaration and may enjoin any such violation or breach, and may prosecute any and all remedies permitted them at law or in equity. In addition, in the event of a violation of this Declaration, the Association shall have the right to assess and collect from the violating party a fine for such violation equal to the greater of (i) the actual damages suffered on account of the violation, or (ii) the sum of \$100.00 per day for each day the violation remains outstanding plus (iii) all costs of collection and enforcement, including reasonable attorneys' fees and costs which shall constitute a lien upon the violator's Pad.

15.2 Deed to Constitute a Nuisance. The result of every action or omission whereby any restriction herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance and every remedy allowed by law or equity against an Owner, either public or private, shall be applicable against every such result and may be exercised by the Association.

15.3 Attorneys' Fees. In any legal or equitable proceeding for the enforcement or to restrain the violation of this Declaration or any provision hereof, the losing party or parties shall pay the attorneys' fees of the prevailing party or parties in such amount as may be fixed by the court in any such proceedings. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

15.4 Failure to Enforce Not a Waiver of Rights. The failure of the Association to enforce any restriction herein contained shall in no event be deemed to be a waiver of the rights.

15.5 Enforcement of Declaration. The Association shall have the power to impose sanctions for any violation of this Declaration. The Association Board shall comply with the procedures in (a)-(d) below prior to imposition of sanctions.

The Association Board or its delegate shall serve the alleged violator with written notice describing: (i) the nature of the alleged violation; (ii) the proposed sanction to be imposed; (iii) that the alleged violator shall have fourteen (14) days to present a written request for a hearing before the Association Board; and (iv) a statement that the proposed sanction may be imposed as contained in the notice unless a hearing is requested within fourteen (14) days of the notice. The alleged violator shall respond to the notice of the alleged violation in writing within such fourteen (14)-day period, regardless of whether the alleged violator is challenging the imposition of the proposed sanction. If the alleged violator cures the alleged violation and notifies the Association Board in writing within such fourteen (14)-day period the Association Board may, but shall not be obligated to, waive the sanction.

Such waiver shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any person. If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; provided the Association Board may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the fourteen (14)-day period.

Prior to the effectiveness of sanctions imposed pursuant to this Section, proof of proper notice shall be placed in the minutes of the Association Board. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative requests and appears at the hearing. If a hearing is requested within the allotted fourteen (14)-day period, the hearing shall be held before the Association Board. The alleged violator shall be afforded a reasonable opportunity to be heard. The minutes of the meetings of the Association Board shall contain a written statement of the results of the hearing (i.e., the Association Board's decision) and the sanction, if any, to be imposed.

ARTICLE XVI

MISCELLANEOUS

16.1 Successors and Assigns. The covenants and agreements set forth in this Declaration, and the easements granted hereunder, shall be perpetual, shall bind Declarant and the Association and their successors and assigns, and shall run with the land.

16.2 Assignment of Rights and Duties. Any and all of the rights, powers and reservations of Declarant herein contained may be assigned to any person, corporation or association which will assume the duties of Declarant pertaining to the particular rights, powers and reservations assigned, and upon any such person, corporation or association evidencing its consent in writing to accept such assignment and assume such duties, he, she or it shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. The term Declarant as used herein includes all such assignees and their heirs, successors and assigns. If at any time Declarant ceases to exist and has not made such an assignment, a successor Declarant may be appointed in the same manner as this Declaration may be terminated, extended, modified or amended under Article XIV.

16.3 Rights of Mortgagees. All restrictions and other provisions herein contained shall be deemed subject and subordinate to all mortgages now or hereafter executed upon land subject to this Declaration, and none of said Declaration shall supersede or in any way reduce the security or affect the validity of any such mortgage; provided, however, that if any portion of said property is sold under a foreclosure of any mortgage or strictly foreclosed, any purchaser of such sale and his, her or its successors and assigns, or the mortgagee as the case may be shall hold any and all property so purchased or strictly foreclosed subject to all of the restrictions and other provisions of this Declaration, and shall be liable for any applicable assessments pending or imposed hereunder.

16.4 Paragraph Headings. Paragraph headings, where used herein, are inserted for convenience only and are not intended to be part of this Declaration or in any way to define, limit or describe the scope and intent of the particular paragraphs to which they refer.

16.5 Governing Law; Partial Invalidity. This Declaration shall be construed and enforced in accordance with the terms of the laws of the State of Wisconsin. If any term of this Declaration shall to any extent be held invalid or unenforceable, the remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

16.6 Notices. Notices to the Developer shall be given to the Declarant at the following address: 5511 McGann Ln. #108 Madison, WI 53711. Notices to one owner of any Pad within the Plat shall be given care of the street address of the Pad. Any party may change its address by written notice given to the other parties. Either party, their successors or assigns, may change said addresses by notice properly given hereunder.

16.7 Private Right of Action. The ACC shall not be legally responsible for inspecting any construction to ensure compliance with the approved plans, but any Pad owner, including the Declarant, shall have the right to bring legal action to enjoin any noncompliance or violation as set forth herein.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the ____ day of December, 2009.

COMMUNITY CONDOMINIUM DEVELOPMENT CORP.

By: William Schiel – President

ACKNOWLEDGMENT

STATE OF WISCONSIN)

) ss.

COUNTY OF DANE)

Personally came before me this ____ day of December 2009, William Schiel, the President of COMMUNITY CONDOMINIUM DEVELOPMENT CORP., a Wisconsin corporation, known to me to be who executed the above Declaration and acknowledged the same.

Name:

Notary Public, State of Wisconsin

My Commission: _____

This document was drafted by and should be returned to Atty. Robert W. Kuehling

EXHIBIT A