

**DECLARATION REGARDING  
COVENANTS, RESTRICTIONS  
AND EASEMENTS FOR  
PIONEER POINTE**

NAME AND RETURN ADDRESS

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**THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS** (“Declaration”) is made as of [ \_\_\_\_\_, 2020] by JEKY LLC, a Wisconsin limited liability company (“Declarant”).

WHEREAS, Declarant is the owner of Lots 2 through 92 and Outlots 1 through 5, Pioneer Pointe, in the Town of Middleton, Dane County, Wisconsin as more particularly shown on the attached Exhibit A (the “Plat”);

WHEREAS, Declarant will convey to Golf Club Owner Lot 2, Lot 39, and Outlots 1 through 5, Pioneer Pointe, in the Town of Middleton, Dane County, Wisconsin as more particularly shown on the Plat, which the Golf Club Owner intends to develop as the Golf Club (hereinafter defined);

WHEREAS, Watts Family Trust (“Watts”) is the owner of Lot 1, Pioneer Pointe, in the Town of Middleton, Dane County, Wisconsin as more particularly shown on the Plat;

WHEREAS, Declarant desires to establish by this Declaration for itself, its successors and assigns, and the present and future Owners of Lots and Outlots depicted on the Plat, and their respective tenants, subtenants, licensees, contractors, concessionaires, suppliers, agents, employees, customers, and invitees, certain easements, rights, privileges and restrictions, and to

provide for timely and proper maintenance and repair of the various facilities serving the Lots and Outlots;

WHEREAS, Declarant, Golf Club Owner, and Watts desire to consent to, and agree that their respective Lots and Outlots be bound by and subject to, this Declaration;

NOW, THEREFORE, Declarant declares the Lots and Outlots be owned, held and occupied subject to the following covenants, conditions, restrictions and easements:

## **ARTICLE I DEFINITIONS**

The following definitions shall apply to this Declaration:

**“Association”** shall mean the Pioneer Pointe Homeowners Association, Inc., and its successors and assigns.

**“Board”** shall mean the Board of Directors of the Association.

**“Declarant”** shall mean JEKY LLC, and its representatives, successors and assigns.

**“Declaration”** shall mean this declaration, as amended and supplemented from time to time.

**“Golf Club”** shall mean a golf course and any related facilities (including by way of example and without limitation, an associated clubhouse, dining facility, bar, parking lot, driving range, putting green, pool and pool clubhouse, tennis courts, pickleball courts, and playground, all or some of which may be lit for night use, subject to Town approval) to the extent the same may be operated from time to time on all or part of the Golf Club Property.

**“Golf Club Owner”** shall mean JEKY Golf LLC, a Wisconsin limited liability company, and its representatives, successors and assigns as owner of the Golf Club Property.

**“Golf Club Property”** shall mean Lot 2, Lot 39, and Outlots 1 through 5 within the Subdivision.

**“Lot” or “Lots”** shall mean the platted lots within the Subdivision.

**“Outlot” or “Outlots”** shall mean the platted outlots within the Subdivision.

**“Owner”** shall mean the person or persons owning the fee simple title to a Lot or Outlot, except that if a Lot or Outlot has been sold on land contract, the Owner shall be the person or persons named as purchaser in the land contract.

**“Plat”** shall mean the Plat of Pioneer Pointe, as may be amended.

**“Residential Lot” or “Residential Lots”** shall mean Lots 3 through 38, inclusive, and Lots 40 through 92, inclusive, within the Subdivision. For the avoidance of doubt, the Residential Lots specifically exclude: (i) Lot 1; and (ii) the Outlots; and (iii) Lot 2 and Lot 39.

**“Subdivision”** shall mean all Lots and Outlots in Pioneer Pointe, in the Town of Middleton, Dane County, Wisconsin.

**“Town”** shall mean the Town of Middleton, Dane County, Wisconsin.

## **ARTICLE II RECITALS**

**2.1** Declarant intends that the Lots and Outlots be subject to this Declaration, and that the Lots be held, sold, occupied and conveyed subject to this Declaration.

**2.2** Golf Club Owner and Watts join in the execution of this Declaration, for the purpose of subjecting their respective Lots and Outlots to the terms, conditions, and provisions contained in this Declaration.

## **ARTICLE III STATEMENT OF PURPOSE**

**3.1** **Purpose.** The general purpose of this Declaration is to help ensure that the Subdivision will become and remain an attractive community; to preserve and maintain the natural beauty of the Subdivision; to ensure the most appropriate development and improvement of each Residential Lot, including construction of attractive and harmonious residential structures; and to ensure the highest and best residential development of the Subdivision.

## **ARTICLE IV ARCHITECTURAL CONTROL**

### **4.1** **Architectural Control Committee.**

(a) The Declarant shall initially be the sole member of the Architectural Control Committee (the “ACC”).

(b) Declarant shall have the right at any time to resign as the sole member of the ACC and direct that the Board elect three new members to the ACC to replace Declarant. The Board shall have the right to remove and replace any members of the ACC elected by the Board.

(c) Whenever the ACC has more than one member, the ACC shall act by the vote of a majority in number of the members.

(d) After the Board elects the first three individuals who will be members of the ACC to replace Declarant, the Board and the Association shall have the right to designate the method for the appointment, election and removal of their replacements.

(e) Declarant shall have the power, in its discretion, to terminate the ACC and its functions effective upon the resignation of the Declarant from the ACC. If the Declarant elects to do so, Declarant shall record a statement so stating with the Dane County Register of Deeds.

**4.2 Necessity of ACC Approval.**

(a) **Original Construction.** All plans for buildings, landscaping, fences, walls, or other structures or improvements to be constructed on any Residential Lot, along with all site plans, including elevations and well, shall be approved prior to construction in writing by the ACC. The ACC shall not approve an Owner's plans if the proposed elevations and finished grades shown on the plans are not compatible with the street elevation and the finished grade of adjacent structures Lots, and Outlots.

(b) **Alterations.** All proposed alterations in the exterior appearance of any buildings erected or placed on any Residential Lot, including, but not limited to, exterior remodeling, exterior repainting in different colors from those previously approved, and the construction of patios, decks, tennis courts, basketball equipment, pickleball courts, exterior lighting, flag poles, swimming pools and other improvements on Residential Lots, shall be approved prior to construction, in writing, by the ACC.

**4.3 Required Submissions.** In addition to any other information which the ACC may reasonably request, each Owner shall submit the following to the ACC in conjunction with any request for approval of any construction or improvements on any Residential Lot:

(a) Two sets of drawings and written specifications of the proposed structures showing at a minimum floor plans, elevations of all views of the structure, exterior finishes, roofing type, driveway location, structure locations, description of exterior materials and colors, fence and wall details, satellite dishes, wells, outdoor recreational and playground equipment (including without limitation, basketball courts and pickleball courts), and any other amenities to be constructed or installed on the Residential Lot.

(b) Two sets of landscape and site plans for the Residential Lot identifying proposed grades and landscaping, and the location of existing woods, including a narrative description of how the Owner will comply with the landscaping requirements set forth in Article VI.

(c) A completed architectural review sheet on form to be provided by the ACC.

(d) Address for mailing the determination of the ACC.

A submission shall not be complete, and the thirty (30) day approval time set forth in Section 4.4 shall not commence, until all required documents have been submitted.

**4.4 ACC Approval.** The ACC shall approve or disapprove a submission within thirty (30) days of its receipt of all materials required by Sections 4.2 and 4.3. The ACC's decision shall be in writing. If the ACC fails to mail its decision within the time limit, approval shall be deemed to have been given and the applicable covenants and restrictions in this Declaration shall be deemed to be met. If a submission is approved, all material changes to the approved submission must be resubmitted to, and approved by, the ACC. If the submission consists of building plans and specifications for construction or improvements on any Residential Lot within the Subdivision, the Owner, upon receiving approval of those building plans and specifications

from the ACC, shall submit a copy of evidence of that approval to the Town Building Inspector for the Inspector's use. However, the Town Building Inspector is not obligated to enforce the covenants or conditions of approval. In addition to obtaining the approval of the ACC, the Owner shall obtain any required approvals from the Town and Dane County.

**4.5 Construction Covenants; Discretion of ACC.** The ACC shall have the right to reject any submission which, in the opinion of the ACC, is not in conformity with the provisions and purposes of this Declaration. The ACC shall exercise its approval authority and discretion in good faith. Each Owner, by acceptance of a deed to the Owner's Lot, shall and hereby does release the ACC and the Declarant from any liability based upon the good faith exercise of their duties under this Declaration. Refusal of approval of submissions by the ACC may be based on any grounds, including purely aesthetic grounds, which the ACC in its sole and good faith discretion deems sufficient.

The following covenants shall apply to all Residential Lots:

- (a) The exterior walls of each building shall be constructed of brick, stone, wood, hardi plank or similar product, stucco, or any combination of the foregoing materials. Unfaced concrete block, structural concrete, prefabricated metal, aluminum, vinyl or "Texture 1-11" siding shall not be permitted. All siding must be stained or painted.
- (b) All chimneys and exterior flues shall be enclosed.
- (c) The submission shall specify quality of the materials to be used.
- (d) Soffits may be either aluminum or wood.
- (e) Fascias shall be cedar, redwood or hardi plank, and have a minimum depth of 10 inches. Aluminum fascia will not be permitted.
- (f) Roofing shall be architectural type shingle similar to Celotex Dimensional IV, wood shakes, tile or slate, unless prior written approval from the ACC, in its sole discretion, is obtained. Standard three-in-one shingles are not permitted. Additionally, Owners must obtain prior written approval from the ACC as to the color of shingles to be used.
- (g) All buildings shall have a minimum roof pitch of 6 to 12, unless the ACC, in its sole discretion, gives prior written approval to a different pitch, such as, for example, roofs for prairie style homes.
- (h) The colors of trim, siding and roofing shall be coordinated to achieve an aesthetic combination for the house.
- (i) Desired color schemes shall be submitted to the ACC for approval. The ACC will generally discourage the use of solid reds and dark browns, but will consider other colors on an individual basis.

(j) The ACC shall have the right to require brick, stone, shutters, corner boards and other similar items which it deems desirable for a particular submission.

(k) Each building on a Residential Lot shall be set back in any accordance with any set back restrictions noted on the Plat and as otherwise may be required by the Town.

(l) Each residential structure shall have a minimum of the following floor area of finished living space:

i. Single-story houses shall have not less than the following square feet excluding the garage:

- With respect to Lots 11-38, Lots 40-52, and Lots 71-92, inclusive: 2,000 square feet.
- With respect to Lots 3-10 and Lots 53-70, inclusive: 1,800 square feet.

ii. Split-level and bi-level houses shall have not less than a total of the following square feet on the two main living areas excluding the garage:

- With respect to Lots 11-38, Lots 40-52, and Lots 71-92, inclusive: 2,000 square feet.
- With respect to Lots 3-10 and Lots 53-70, inclusive: 1,800 square feet.

iii. Raised ranch houses shall have not less than a total of the following square feet on the main level excluding the garage:

- With respect to Lots 11-38, Lots 40-52, and Lots 71-92, inclusive: 2,000 square feet.
- With respect to Lots 3-10 and Lots 53-70, inclusive: 1,800 square feet.

iv. With respect to Lots 11-38, Lots 40-52, and Lots 71-92, inclusive, two-story houses shall have not less than a total of 2,400 square feet on the first and second floor areas of the house excluding the garage; and not less than 1,600 square feet on the first floor area, excluding the garage. With respect to Lots 3-10 and Lots 53-70, inclusive, two-story houses shall have not less than a total of 2,200 square feet on the first and second floor areas of the house excluding the garage; and not less than 1,300 square feet on the first floor area, excluding the garage.

v. For the purpose of determining floor area, stair openings shall be included but open porches, screened porches, attached garages, and basements, even if finished for recreational use, shall be excluded.

vi. The ACC shall have the power in its discretion to waive these minimum areas where the architecture and quality of the proposed house represents an appearance compatible with other houses in the Subdivision.

**4.6 Variances.** The ACC shall have the right, in its sole discretion, to grant a variance to any of the covenants and restrictions in this Declaration, provided that the Town also approves the variance if such variance applies to Sections 5.1, 5.2, 5.3, 5.6, 5.7, 5.8, 5.9, 5.10, 5.11, 5.16, 5.17, 5.18, 5.19, 5.20, 5.21, 5.22, 6.3(a), 6.4, 6.5, 6.6, 7.1, 7.2, the last sentence of 7.3, or Sections 7.4(a), 8.4, 9.1, 9.2, 9.5, 9.6, 10.2, 10.3, 10.4, 10.6, 10.7, 10.8 or 11.6 of this Declaration.

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

**4.8 Liability of the Declarant, ACC and its Members.** The Declarant, the ACC, and its members shall not be liable under any circumstances for any damage, loss or prejudice suffered or claimed on account of the approval or disapproval of any submissions or on account of the development of any property within the Subdivision.

## ARTICLE V ARCHITECTURAL RESTRICTIONS

All Residential Lots and their improvements shall be subject to the following architectural restrictions:

**5.1 Building Sites.** All buildings constructed on Residential Lots shall have front, side and back yards which, at a minimum, conform to applicable zoning ordinances and any restrictions set forth on the Plat (including, without limitation, setbacks set forth on the Plat relating to any public recreational trail easement). The ACC shall have the right to grant variances from such setback requirements from time to time, in its sole discretion, provided that any variances are in conformity with all applicable zoning ordinances. Any variance from such setback must be approved by the Town. As depicted on the Plat, the following Lots contain building setback lines which are more restrictive than allowed under Dane County zoning requirements but are required by the Town of Middleton:

40' Building Setback Line: Lots 11-20, 22-28, 32-37, 40-52, 72-80, and 82-92

60' Building Setback Line: Lots 59-61

The following Lots contain a 20' building setback from the Public Recreational Trail easement, as depicted on the Plat: Lots 12 through 19, inclusive, Lot 20 (rear set back only), Lot 22, Lot 33, Lot 34 and Lot 39.

**5.2 Surface Elevation.**

(a) Except as provided in Section 5.2(b), the elevation of any Residential Lot shall not be changed so as to materially affect the surface elevation, grade or drainage

patterns to the surrounding Lots or Outlots, nor shall the elevation of any structure on a Lot deviate from the minimum low opening elevations identified on the Plat, which are set forth in Exhibit B. Declarant may construct certain drainage swales and roadside ditches in the land comprising the Subdivision and that land may contain certain natural drainage ways. Such swales, ditches and ways, including the established grades within the entire stormwater easement areas, will be called the "Drainage System" and shall be subject to the provisions of any public stormwater drainage easements. As part of the Drainage System, Lots 1, 2, 11, 19, 20, 26, 27, 59, 60, and Outlots 2, 3, and 5 are subject to stormwater drainage easements as shown on the Plat, and as described in the following sentence. Lots 1 and 2 are subject to a 40' stormwater drainage easement; Lots 11, 26, and 27 are subject to a 20' stormwater drainage easement; Lots 19 and 20 are subject to a 10' stormwater drainage easement; Lots 59 and 60 are subject to stormwater drainage easement as more particularly depicted on the Plat; and Outlots 2, 3, and 5 are subject to the stormwater drainage easement as more particularly depicted on the Plat. No Owner shall alter the Drainage System without the prior written consent of Declarant and the Town. Each Owner shall maintain and repair all parts of the Drainage System (including, without limitation, any swales) located within the Owner's Lot. Any Owner who violates these covenants shall be required to restore the Drainage System or restore the surface elevation, grade or drainage patterns to the surrounding Lots and Outlots at the Owner's sole expense. If an Owner violates the grading, site or landscaping plans submitted by the Owner to the ACC, the ACC or any affected Owner shall have a cause of action against the violating Owner for both damages and injunctive relief.

(b) Notwithstanding the restriction in Section 5.2(a), the Declarant shall have the right at any time to grade or regrade the Lots and Outlots to accommodate, alter or establish drainage flows. The Declarant shall not be liable to any Owner for any such grading or regrading, except that if the grading or regrading occurs after the Owner has either seeded or installed sod on the Owner's Lot or Outlot, and if the grading or regrading damages the Owner's grass or sod, the Declarant shall be obligated to reasonably restore the grass or sod to its condition prior to the grading or regrading.

**5.3 Drainage.** To the extent possible, the Owner of each Lot shall direct stormwater from downspouts, driveways and other impervious areas located on the Lot to pervious surfaces.

**5.4 Construction Deadline.** Construction of any house on a Residential Lot shall be completed within one year after issuance of a building permit for the house. Landscaping (including grading, sodding and seeding) and paving of any driveway on any Residential Lot shall be completed within forty-five (45) days after completion of construction of a house on the Residential Lot, or within forty-five (45) days after occupancy of that house, whichever occurs first, provided weather conditions so allow. If construction or landscaping is delayed due to matters beyond the control of the Owner, the time for completion shall be extended by the period of the delay.

**5.5 Garages.** The house constructed on any Residential Lot shall have an attached garage that contains not less than two nor more than four automobile garage stalls.

**5.6 Driveways.** Driveways may be constructed with concrete or brick. However, if a driveway is constructed prior to the surface layer of asphalt being placed on the abutting street, a minimum of five feet of the driveway (measured from the roadway pavement edge), must be constructed with cold patch asphalt, hot mix asphalt, or crushed stone. Under current Town policy, Declarant must install the binder course of asphalt for the public streets and then wait a minimum of one calendar year before installing the surface course of asphalt. Each Owner who constructs a driveway before the surface course is placed on the public street adjoining the Owner's Lot shall construct the driveway to match the elevation of the surface course except for the last five feet which shall be sloped down to match the binder course elevation. At the time the surface course is placed, the last five feet of asphalt pavement shall be removed and replaced to match the surface asphalt elevation at Owner's expense.

For concrete or brick driveways built after the surface asphalt is placed, the concrete or brick may extend to the edge of the street pavement and must match the surface asphalt elevation. Concrete driveways built at this time and extended to the street pavement edge shall be built with a control joint five feet from the asphalt roadway edge.

Whether a driveway is constructed before or after the surface asphalt is placed, the driveway must be built in such a manner that when in its final state (after surface asphalt is placed), the driveway conforms to all requirements of the Town's Driveway Ordinance including the requirement that the driveway slope down and away from the street pavement edge.

It is the responsibility of the Owner to confirm whether or not the surface course has been placed when the Owner constructs the driveway. The Owner can contact the Town of Middleton for this information.

Any Owner who does not comply with these requirements may be required by the Town to remove and correct the Owner's driveway at the Owner's expense. Before the surface course is placed on a public street, the Town's snow plows may damage driveways which have been placed above the elevation of the binder course of asphalt. The Town will not be liable for the repair of any such damage. Any such damage shall be repaired at the sole expense of the Owner.

Each Owner shall install the Owner's driveway within thirty days after completion of construction of the Owner's house, unless not permitted by weather conditions. If weather conditions delay completion of a driveway, the driveway shall be completed as soon as weather permits.

Each Owner shall comply with any driveway ordinance of the Town from time to time in effect, and shall obtain from the Town any driveway permit required by such an ordinance before any driveway is constructed or any culvert placed.

**5.7 Signs.** No signs of any type shall be displayed on any Residential Lot without prior written approval of the ACC, except lawn signs of not more than seven square feet advertising a home or Lot for sale or signs of any size displayed by the Declarant as part of the Declarant's marketing of the Lots. The Declarant may also erect permanent signs within easements shown on the Plat on Outlots 3 and 4 identifying the Subdivision and/or Golf Club. Any sign and associated landscaping and/or lighting placed at the entrances to the Subdivision

require Town approval and Dane County zoning approval before installation, and shall be maintained by the Association.

**5.8 Utilities.** All utilities in the Subdivision shall be installed underground. An Owner shall not change the elevation of any utility easement without the permission of the applicable electric, gas and other utilities using such easement. The Owner shall be responsible for any damages caused to underground utilities based on any changes in grade.

**5.9 Resubdivision.** No Lot shall be resubdivided, except with the prior written approval of the ACC. This section shall not be construed to prevent the use of one Lot and part or all of another Lot or Lots as one building site.

**5.10 Existing or Prefabricated Buildings.** No buildings previously erected elsewhere may be moved onto any Residential Lot.

**5.11 Temporary Dwellings; Outbuildings.** No trailer, unfinished basement, tent, shack, garage, barn, or any part, shall ever be used as a residence, temporary or permanent, on any Residential Lot. No residence shall be of a temporary character. No outbuildings or accessory buildings, including storage sheds, shall be permitted on any Residential Lot without prior written approval of the ACC.

**5.12 Dog Houses.** No dog house may be erected on a Residential Lot without the prior written consent of the ACC. Any dog house shall be contiguous to the house or garage constructed on the Residential Lot. An Owner desiring to construct a dog house shall submit to the ACC for its approval all plans for the dog house, including elevations, materials, color and site plan. The ACC may require the Owner to obtain written approval of the plans from the Owners of adjoining Lots. The Owner shall provide landscaping or fencing to screen the dog house from adjoining Lots as required by the ACC. When the final landscaping plan is submitted for ACC approval, it shall show planting for screening of the fencing relating to the dog house/dog run, which shall be not less than 75% of the height of such fencing.

**5.13 Drying of Clothes.** No clothes lines or other apparatus for the drying of clothes shall be permitted in the yard of any Residential Lot on a permanent basis.

**5.14 Exterior Lighting.** Any exterior lighting installed on a Residential Lot shall either be indirect or of such controlled focus and intensity that the lighting will not disturb the owners of adjacent Lots. The light posts for any exterior yard lighting of a Residential Lot shall be of a design which is harmonious with the style and architecture of the building on the Lot. The Owner of the Residential Lot shall promptly replace burned out bulbs.

**5.15 Miscellaneous.**

(a) No wind-powered electric generators, exterior television or radio receiving or transmission antenna or satellite signal receiving station or dish shall be placed or maintained upon any portion of a Residential Lot or building without prior written approval of the ACC. None of such which are visible shall exceed 36 inches in diameter. Satellite dishes of 36 inches or less shall be permitted only on the back of a building in the most unobtrusive location, as approved in writing by the ACC.

(b) No firewood or wood pile shall be kept outside a structure unless it is neatly stacked, placed in a side yard not adjacent to a street, and screened from street view by plantings or a fence approved by the ACC.

(c) No active solar collector or apparatus may be installed on any Residential Lot unless such installation is first approved in writing by the ACC, who shall consider the aesthetic and sun reflection effects on neighboring structures. Solar collectors or apparatus installed flat or parallel to the plane of the roof are preferred but still must be approved by the ACC.

(d) No building material of any kind or character shall be stored upon any Residential Lot except in connection with construction approved by the ACC. Construction shall be promptly commenced and be diligently pursued as soon as any building materials are placed on any Residential Lot.

(e) Front yard decorations, including wildlife reproductions, other than approved lighting, mailboxes, or seasonal decorations are prohibited on Residential Lots.

**5.16 Basketball Equipment.** No basketball backboard, hoop, post and any other related equipment, whether portable or permanently affixed, shall be placed on any Residential Lot except in such location as may be approved in writing by the ACC. No such equipment shall ever be placed, whether permanently or temporarily, adjacent to the street, in the unpaved portion of the street, in the front yard of any Residential Lot, in any public street right of way, in any public drainage easement area, or in any public recreational trail easement area.

**5.17 Mailboxes.** Mailbox and post placement are subject to any applicable regulations of the U.S. Postal Service or the Town, including without limitation any requirements for a centralized mode of delivery using cluster mailbox units ("CBUs"). The Association shall be responsible for the maintenance of any CBUs serving the Subdivision, including snow removal between the street pavement and front of the CBU for a distance of 15' to each side of the CBU in accordance with Town ordinances.

**5.18 Play Equipment and Structures.** No swing set or other play equipment or structure shall be installed on any Residential Lot without the prior written approval of the ACC. Any such structure or equipment shall be set back at least 10 feet from each property line of the Residential Lot. No such equipment shall ever be placed, whether permanently or temporarily, adjacent to the street, in the unpaved portion of the street, in the front yard of any Residential Lot, in any public street right of way, or in any public drainage easement area.

**5.19 Wells.** Any well located on a Residential Lot shall be set back at least 40 feet from each property line of the Residential Lot. During construction of a well, the Owner and the Owner's contractor shall not discharge any drilling mud or cuttings into any roadside ditch or other improved drainageway. If any such discharge occurs, the Owner at the Owner's sole expense shall promptly restore the roadside ditch or the improved drainageway to its original condition.

**5.20 Wastewater Treatment Systems.** The Town has entered into a service agreement with the City of Madison to provide municipal sanitary sewer service to the

Subdivision. All buildings used for human habitation on any Lot shall connect to the Madison sewer system and the Owner of each Lot shall be solely responsible for maintenance, repairs and replacements to service laterals, grinder pumps and other sewer facilities between the City mains and the building(s) on such Owner's Lot and for compliance with all applicable rules and regulations of the Madison Sewer Utility. The Madison Sewer Utility is the sole authority providing sanitary sewer service to the Subdivision, and is solely responsible for operation, maintenance and customer billing for such customers and neither the Town nor the Association has any responsibility for any part of the sanitary sewer system or the provision of sanitary sewer service. Prior to connection of any building to the Madison sewer system, and throughout the time a Lot or Outlot is served by the Madison Sewer Utility, the Owner of such Lot shall:

- (a) install a water meter and other equipment as may be required from time to time by the Madison Sewer utility, or permit the Madison Water or Sewer utility to install the same;
- (b) install and maintain a whole house back flow prevention valve;
- (c) assure that any sewer lateral installation includes marker balls supplied by the City above the lateral in accordance with City Standards; and
- (d) assure that no building foundation drain is connected to the sanitary sewer system.

The requirements of subsections (a)-(d) shall be enforceable by the City of Madison. Declarant shall be responsible for the installation of any system repeater that may be required by the water utility to serve the Subdivision.

**5.21 Fire Arms and Hunting.** No fire arms shall be discharged within the Subdivision. No hunting shall be allowed within the Subdivision.

**5.22 Swales.** No Lot Owner shall alter any drainage swales, roadside ditches or natural drainage ways located within the Owner's Lot.

**5.23 Construction Fencing.** Prior to the commencement of construction on any Residential Lot adjacent to an Outlot, the Owner or the Owner's builder shall erect on said Residential Lot a temporary construction fence at least five (5) feet from the property line of the Outlot. The temporary construction fence shall be at least four (4) feet high, and shall be sufficient to stop construction materials from encroaching onto the Outlot. The temporary construction fence shall be in addition to any soil erosion fencing required by law. The temporary construction fence shall remain in place until construction of the house on the Residential Lot is substantially complete.

## **ARTICLE VI LANDSCAPING REQUIREMENTS AND RESTRICTIONS**

All Owners of Residential Lots shall comply with the following landscaping requirements and restrictions:

**6.1 Completion.** All landscaping required for a Residential Lot by this Article VI shall be completed within 45 days after completion of construction of a house on the Residential

Lot, or within 45 days after occupancy of that house, whichever occurs first. If weather conditions delay completion of landscaping, the Owner shall complete the landscaping as soon as weather permits.

**6.2 Lawns.** Front yards shall generally be sodded. Side and back yards may be seeded. Front yards may be seeded provided the Owner complies with both of the following requirements:

- (a) The Owner fertilizes and mulches the seeded front yard.
- (b) Prior to such seeding, fertilizing and mulching, the Owner installs, through the services of an independent landscaper or other professional, independent vendor, either an above-ground irrigation system which covers the entire front yard of the Owner's Residential Lot, or an in-ground irrigation system.

**6.3 Additional Landscaping Requirements.**

(a) **Conifers.** Each Owner shall plant three conifers ranging in size from 4 to 6 feet in height in the front lawn area, chosen from the following varieties: Colorado Blue or Green Spruce, Black Hills Spruce, Scotch Pine, Austrian Pine or Douglas Fir. All landscaping elements shall comply with applicable Town ordinances and preference shall be given to any landscaping elements recommended by the Town. The landscaping points required in Section 6.3(b) shall be in addition to this requirement. No points shall be received for fulfilling the requirement in this Section 6.3(a).

(b) **Landscaping Points.** In addition to the requirement in Section 6.3(a), the landscaping plan for each Residential Lot shall achieve a minimum of 800 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)	50
Evergreen Tree (4 to 6 feet in height)	50
Large Deciduous Shrub (3-year transplant - 36" min.)	10
Small Deciduous Shrub (3-year transplant - 18" min.)	5
Evergreen Shrub (3-year transplant - 24" min.)	5

**6.4 Ongoing Maintenance.** Each Owner shall be responsible for the ongoing landscaping maintenance of the Owner's Residential Lot and any landscaped portion of the adjoining public street right-of-way. During the growing season, each Owner shall mow the vacant portion of the Owner's Residential Lot at least once every three weeks to a height not

exceeding six inches. All areas of a Residential Lot not used as a building site or an approved landscaped area or under cultivation as a family garden shall be sodded or seeded, as applicable, and be kept free of noxious weeds.

**6.5 Fencing; Screening.** Owners shall not install any fence or wall of any kind, including a partition fence described in Section 6.6, without prior written approval from the ACC. An Owner, however, may construct a fence not exceeding four feet in height around a swimming pool approved by the ACC, provided that the ACC approves the style and material of the swimming pool fence. The ACC may require that the Owner of a Residential Lot who wants to construct an in-ground swimming pool or erect a fence obtain the written approval of the plans from the Owners of adjoining Lots. Owners shall not cause a complete visual screening of the front, rear and side boundaries of any Residential Lot by use of landscape plantings or other means, without prior written approval from the ACC. No fence or wall constructed by an Owner shall encroach upon any public stormwater drainage easement or public recreational trail easement. The ACC may require that fencing located on Residential Lots adjacent to the Outlots be of a uniform type, and/or of higher quality than what is otherwise permitted by the ACC in the Subdivision.

**6.6 Partition Fences.** For any Lot which abuts upon or is adjacent to land used for agriculture, farming or grazing purposes, the Lot Owner at its expense shall erect, keep and maintain a partition fence or markers, satisfying the requirements of the Wisconsin Statutes, if applicable, for a legal and sufficient fence or marker between such land and the Lot.

## **ARTICLE VII USE RESTRICTIONS**

**7.1 Use.** Residential Lots shall be used exclusively for single-family residences.

**7.2 Pets.** No more than three domestic animals may be kept on any Residential Lot, provided those domestic animals are not kept, bred or maintained for any commercial purpose. All animals shall be housed in the house or garage or an approved dog house. No free-standing kennels shall be allowed, except for approved dog houses as provided in Section 5.12. Commercial animal boarding, kenneling or treatment shall be prohibited, whether or not for a fee. No Owner may keep a dog whose barking creates a nuisance to neighbors. No animals having vicious propensities shall be kept on a Residential Lot. Except as expressly provided in the preceding paragraph, no animals, livestock, reptiles, birds or poultry of any kind shall be raised, bred or kept on any Residential Lot.

**7.3 Parking.** Parking of commercial or service vehicles, including lawn tractors, owned or operated by residents within the Subdivision shall be prohibited unless kept inside garages. Storage of boats, travel trailers, mobile homes, campers, and other recreational vehicles on any Residential Lots shall be prohibited except in garages. This section shall not prohibit the temporary parking of any vehicles for the purpose of loading or unloading at the Residential Lot at which parked, for a period not to exceed twenty-four (24) hours. No cars or other vehicles shall be parked on lawns or yards within the Subdivision at any time.

Any cars or comparable motor vehicles owned or operated by residents of a Residential Lot shall also be kept inside garages, except that the residents may park in driveways such vehicles which are in regular, daily use. For this purpose, a vehicle shall be considered in regular, daily use if the resident uses the vehicle for travel to and from the Residential Lot at least once every 72 hours.

Unless otherwise approved by the Town, parking on both sides of Manistee Way from approximately the midpoint of Lot 69 to the west edge of Lot 70 shall be posted "No Parking" and parking in such area shall be prohibited.

**7.4 Appearance.** Each Owner shall be responsible for maintaining the Residential Lot and all its buildings in a neat appearance at all times. This covenant shall apply to all Residential Lots from the date of purchase, regardless of whether a building has been or is in the process of construction. The Owner's obligation shall include, but is not limited to the following:

(a) **Noxious Weeds.** All areas of Residential Lots not used as a building site or lawn or under cultivation as a garden shall have a cover crop or be so cultivated or tended as to keep the areas free from noxious weeds. All lawns shall be free from noxious weeds.

(b) **General Upkeep.** The Owner shall keep the Owner's Residential Lot and its buildings and other improvements in good order and repair and free of debris, including, but not limited to, the pruning of all trees and shrubbery, and the painting or other external care of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management.

(c) **Trash.** Trash and recycling containers shall be kept inside of garages or visually screened from adjoining Lots and may be placed upon the curb only on days of trash collection. No garbage, refuse or cuttings shall be placed upon the curb unless in a suitable container. Leaves placed at the street for collection need not be bagged unless the Town so requires. No garbage or refuse shall be placed on any Residential Lot unless stored in a suitable container. No trash, cuttings, leaves, rocks or earth shall be deposited on any Residential Lot or Outlot, except an Owner may maintain a screened composting facility, but only with the prior written approval of the ACC.

**7.5 Activities.** No noxious or offensive trade or activity may be carried out on a Residential Lot which will become a nuisance to the neighborhood or any other Lot within the Subdivision. This shall not be construed to prevent a family garden or orchard, provided that all vegetable gardens and orchards shall be located in back or side yards, and shall be reviewed and approved by the ACC.

## **ARTICLE VIII ASSOCIATION**

**8.1 Membership.** Every Owner of a Residential Lot shall be a member of the Association. By acquiring a Residential Lot, every Owner shall be conclusively deemed to have consented to membership.

**8.2 Rights and Duties of Members.** The articles of incorporation and the bylaws of the Association are incorporated by reference. Among other matters, the articles and bylaws restrict the voting rights of certain members, and obligate all members except for Declarant to pay regular and special assessments to the Association for its operations. The members shall have the rights and duties set forth in this Declaration, the articles of incorporation and bylaws of the Association, all as amended from time to time, and as provided by applicable law. Any authority of the Association and its members shall be subject to the authority given to the Declarant and the ACC in this Declaration.

**8.3 Management of the Association.** The affairs of the Association shall be managed by the Board. The Board shall be selected in the manner, and shall have the duties, powers and responsibilities, set forth in this Declaration and in the articles of incorporation and bylaws of the Association, as amended from time to time, and as may be provided by the laws of the State of Wisconsin.

**8.4 Obligations of the Association.** The Association, subject to the rights of the Declarant set forth in this Declaration and subject further to the enforcement rights provided in Section 9.5, shall be responsible for enforcing this Declaration.

**8.5 Assessments.** Each Owner of a Residential Lot shall pay regular and special assessments that are assessed by the Association pursuant to its bylaws. The expenses to be assessed to the Owners of Residential Lots shall include all of the reasonable and necessary expenses incurred by the Association in performing its obligations, including utilities, insurance, acquisition of tools and equipment, salaries and wages, reserves deemed necessary or advisable in connection with any municipal sanitary sewer agreement, real estate taxes and special assessments and a reasonable amount of working capital. Nothing in this section shall affect the right of the Town to make regular or special assessments pursuant to its authority under Chapter 66 of the Wisconsin Statutes and applicable Town Ordinances or the obligation of any Owner, the Declarant, or the Association to pay such assessments pursuant to the requirements of those provisions.

**8.6 Collection of Assessments.** The Association shall levy and collect assessments as provided in its bylaws. Any person considering the purchase of a Residential Lot should investigate the then current initial assessment, if applicable, and the then current annual assessment.

## **ARTICLE IX GENERAL PROVISIONS**

**9.1 Term.** This Declaration shall run with the land and shall be binding upon and inure to the benefit of all persons having an interest in any of the Lots for a period of 30 years after this Declaration is recorded, after which time this Declaration shall automatically stand renewed for successive five year periods unless terminated as provided in Section 9.2.

**9.2 Amendment.**

(a) While the Declarant owns any Lot, the Declarant by its sole act shall have the right to terminate or amend this Declaration by an instrument signed by the Declarant

and recorded with the Dane County Register of Deeds, provided that the Town also approves such amendment if it applies to Sections 5.1, 5.2, 5.3, 5.6, 5.7, 5.8, 5.9, 5.10, 5.11, 5.16, 5.17, 5.18, 5.19, 5.20, 5.21, 5.22, 6.3(a), 6.4, 6.5, 6.6, 7.1, 7.2, the last sentence of 7.3, Sections 7.4(a), 8.4, 9.1, 9.2, 9.5, 9.6, 10.2, 10.3, 10.4, 10.6, 10.7, 10.8 or 11.6 of this Declaration.

(b) After the Declarant ceases to own any Lot, the Owners, by the vote or consent of Owners owning two-thirds or more of the Lots, shall have the right to amend or terminate this Declaration by an instrument recorded with the Dane County Register of Deeds, provided that the Town also approves such amendment if it applies to Sections 5.1, 5.2, 5.3, 5.6, 5.7, 5.8, 5.9, 5.10, 5.11, 5.16, 5.17, 5.18, 5.19, 5.20, 5.21, 5.22, 6.3(a), 6.4, 6.5, 6.6, 7.1, 7.2, the last sentence of 7.3, Sections 7.4(a), 8.4, 9.1, 9.2, 9.5, 9.6, 10.2, 10.3, 10.4, 10.6, 10.7, 10.8 or 11.6 of this Declaration. The instrument shall either be signed by the described number of Owners, or shall contain a certification that the required number of the Owners approved the amendment or termination at a meeting of the Association duly called and held.

**9.3 Invalidation.** Invalidation of any one of these covenants or any severable part of any covenant by judgment or court order shall not affect any of the other covenants, which shall remain in full force and effect.

**9.4 Exculpation.** The ACC shall not be liable for damages to any person submitting a request for approval, or to any Owner, tenant, or mortgagee of any of the Lots or anyone else by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such requests. The ACC's review of plans does not include review for structural soundness or compliance with any applicable building codes and practices. The ACC is not representing that any home or site plan meets any state, federal, county, or local setback requirements, statutes, building codes, or ordinances. The Owner of the Residential Lot and the Owner's builder shall have the sole responsibility to ensure compliance with all such requirements. Neither the Declarant nor the ACC shall be liable for any such matters.

**9.5 Enforcement Actions.**

(a) The Declarant, the Association, the ACC, and any Owner shall have the right to sue for and obtain a prohibitive or mandatory injunction or any equitable remedy to prevent the breach of, or to enforce the observance of, this Declaration, in addition to the right to bring a legal action for damages. The Association, however, shall have the exclusive right to collect assessments that are assessed pursuant to the Association's bylaws. The Town shall have the right to enforce the observance of Sections 5.1, 5.2, 5.3, 5.6, 5.7, 5.8, 5.9, 5.10, 5.11, 5.16, 5.17, 5.18, 5.19, 5.20, 5.21, 5.22, 6.3(a), 6.4, 6.5, 6.6, 7.1, 7.2, the last sentence of 7.3, Sections 7.4(a), 8.4, 9.1, 9.2, 9.5, 9.6, 10.2, 10.3, 10.4, 10.6, 10.7, 10.8 or 11.6 of this Declaration.

(b) Any Owner who violates a provision of this Declaration shall be liable for reasonable attorney fees and court costs incurred by the enforcing party in any action brought under Section 9.5(a). Any person violating any of these covenants or restrictions shall be liable for all costs of curing the violation.

**9.6 Zoning.** All Lots are further subject to, and shall fully comply with, the applicable zoning laws, ordinances and building codes.

**9.7 Notice.** Any notice given in connection with this agreement shall be in writing and may be given in any one of the following ways:

- (a) By personal delivery,
- (b) By delivery by an express mail service,
- (c) By mailing via the first class United States mail, postage prepaid, addressed to the last known address of the recipient, or
- (d) By facsimile transmission, electronic mail or other comparable means.

Notice by mailing in the first class United States mail as described shall be deemed given three days after mailing. All other forms of notice shall be effective when given.

**9.8 Prior Use as a Golf Course.** Notice is hereby given that portions of the Subdivision have been previously used as a golf course, and as such, certain pesticides, herbicides, fungicides or other compounds may have been applied to portions of the Property comprising the Subdivision. By acceptance of a deed to an Owner's Lot, each such Owner releases the Declarant and its members, employees, agents, and affiliates from any liability associated therewith.

**9.9 Notice Regarding Nitrates.** Notice is hereby given that there is a potential concern with high nitrates in the area in an around the Subdivision. It is recommended that Owners perform annual testing for nitrates.

## ARTICLE X EASEMENTS AND RESTRICTIONS

**10.1 Intent.** The intent of this article is to generally describe easements and restrictions which are depicted on the Plat. The Plat is incorporated by reference. This article and the Plat shall be reviewed together.

**10.2 Stormwater Management and Drainage Easements.** Lots 1, 2, 11, 19, 20, 26, 27, 59, 60, and Outlots 2, 3, and 5 are subject to stormwater drainage easements as shown on the Plat. Lots 1 and 2 are subject to a 40' stormwater drainage easement; Lots 11, 26, and 27 are subject to a 20' stormwater drainage easement; Lots 19 and 20 are subject to a 10' stormwater drainage easement; Lots 59 and 60 are subject to a stormwater drainage easement as more particularly depicted on the Plat; and Outlots 2, 3, and 5 are subject to the stormwater drainage easement as more particularly depicted on the Plat.

**10.3 Public Recreational Trail Easements.** The 30-foot Public Recreational Trail easement located on Lot 1, Lot 2, Lots 12 through 22, inclusive, Lot 39, and Outlot 1 and Outlot 2, and the 15-foot Public Recreational Trail easements on Lot 20, Lot 21, Lot 33, Lot 34, and Outlot 2 (the "Public Recreational Trail Easements") are and shall remain permanent open space

and shall be subject to an easement in favor of the Town for open space and Public Recreational Trails. The Owner of any Lot or Outlot containing a Public Recreational Trail Easement shall not install or allow the installation of any plantings or above-ground improvements, nor any soil absorption system for waste disposal, within or above the easement without written permission from the Town. The Town shall not have any responsibility or liability for damage to, or destruction of, any improvements made within the easement areas resulting from the intended use of the easement by the Town or the public, or from any maintenance activities performed on any trail improvements constructed by the Town. The use of snowmobiles, motorcycles, golf carts, and other motorized vehicles within the Public Recreational Trail Easements areas shall be prohibited, except to the extent the Town allows their use on established Public Recreational Trails or as may be necessary to accomplish repairs and maintenance of the Public Recreational Trail Easements areas. The Town of Middleton, as beneficiary of the Public Recreational Trail Easements, shall have the right to improve, repair, maintain, and allow public use of the Public Recreational Trails within the Public Recreational Trail Easements areas shown on the Plat, as the Town from time to time determines.

**10.4 Landscape Buffer Easement.** Lots 36 through 39, inclusive, and Outlot 2 are subject to a landscaping easement as depicted on the Plat. The Association shall be responsible for the installation and maintenance of landscaping within such easement areas in accordance with Section 15.13 of the Town Code, and as approved by the Town Engineer and Town Board. The Association shall be responsible for the removal of noxious weeds, periodic mowing, and upkeep of such easement areas, including the removal and replacement of dead or dying trees and shrubs.

**10.5 Cart Path Easement.** Lots 3, 4, 12, 13, 22, 39, 52, 57-62, 69, 70-72, and 92 are hereby made subject to a perpetual and permanent easement and right of way over and across the 15-foot Cart Path Easement area as depicted on the Plat (the "Cart Path Easement") in favor of the Golf Club Owner and its members, employees, agents, customers, guests, contractors, and invitees (the "Authorized Users"). Such Cart Path Easement shall be for the purposes of improving, constructing, maintaining, repairing, replacing and using and operating a path for pedestrian, golf cart and golf equipment use (including without limitation the placement of irrigation piping and related equipment), access, ingress and egress. None of the Owners of the Lots subject to the Cart Path Easement shall permit any interference with, or obstruction of, the use and enjoyment of the Cart Path Easement by the Authorized Users. The Town shall have access to the portion of the cart path located between Lots 80 and 81 for the purpose of obtaining access to Outlot 5 as and when required by the Town.

**10.6 Vision Corner Easements.** Lots 3, 4, 12, 13, 21, 22, 52, 53, 69, 70, 71, 72, 80, 81, 92, Outlot 2, and Outlot 3 are each subject to a vision corner easement as depicted on the Plat. No structure, berm or vegetation of any kind which exceeds a height of 2.5 feet above the average elevation of the roadway and driveway within such vision corner, except for necessary highway and safety signs or approved public utility lines, shall be permitted within said vision corner easement area. No plant material which obscures safe vision of the approaches to the intersection shall be permitted; grasses and similar vegetation within the height limitation specified above are acceptable.

**10.7 Landscaping within Easements.** No trees, shrubs, structures or other improvements, other than grass or similar ground cover, shall be placed within any sanitary sewer, Public Recreational Trail, stormwater, or vision corner easement, except as provided in Section 10.3 or otherwise approved in writing by the Town.

**10.8 Notice Regarding Trees Along Pioneer Road.** Notice is hereby given that existing trees along the right of way of Pioneer Road may be removed by the Town or the City of Madison to accommodate future construction or expansion of Pioneer Road. The Town of Middleton and the City of Madison are hereby granted a temporary easement by the Association to remove trees and modify grades within the first ten (10) feet of the Landscape Buffer adjacent to the Pioneer Road right-of-way.

## **ARTICLE XI SPECIAL PROVISIONS RELATED TO GOLF COURSE**

**11.1 No Entry.** Owners and occupants of Lots may not enter the Outlots except in connection with the play of the golf course pursuant to the Golf Club rules. Owners and occupants of Lots are cautioned that it may be dangerous to do so.

**11.2. No Easements.** While the golf course located on the Outlots has been designed to minimize the errant flight of golf balls from the golf course to the Lots, Owners and occupants of Lots acknowledge the possibility of such occurrence and assume all such risk. No easement is reserved for golfers to enter Lots to retrieve golf balls. The Golf Club Owner has no duty to enforce the provisions of this Section and shall have no liability for repairs necessitated by or damages caused by any errant golf balls or entry by golfers. Notwithstanding the foregoing, the Golf Club Owner shall include in golf course rules that golfers may not enter Lots, and reasonable physical demarcations shall be placed on the golf course noting that all such areas are out of bounds for the golf course.

**11.3 No Rights in Golf Course.** Ownership of a Lot does not create a property right in the existence of a Golf Club or the maintenance of the Golf Club once constructed.

**11.4 Golf Course Maintenance.** Golf course maintenance on the Golf Club Property may occur at any time of day or night on any day of the year. The Golf Club Owner may use certain pesticides, herbicides, fungicides or other compounds in the ordinary course of maintenance.

**11.5 Golf Carts.** The use of the paths on the Golf Club Property will be regulated by the Golf Club rules. No golf carts shall be operated on Golf Club Property without the express prior written consent of the Golf Club Owner, which may be refused for any reason or no reason.

**11.6 Stormwater Management.** The Owner of the Outlots shall repair and maintain the Outlots pursuant to the requirements of the Stormwater Management Agreement to be executed in connection with the Plat, a copy of which is attached hereto as Exhibit C, as the same may be amended (the "Stormwater Management Agreement"), including but not limited to the removal of noxious weeds, periodic mowing, and upkeep of stormwater management facilities (including, without limitation, any swales). Furthermore, the Owner of the Lot shall be

responsible to maintain any drainage swales located within easement areas on such Owner's Lot. If the responsible party fails to maintain any areas required in this section, the Town shall have the right, after providing the respective Owner of the Outlots or the Lot, as applicable, with written notice of the maintenance issue and thirty (30) days to comply with the Town's maintenance request, to enter the property at issue in order to conduct the work specified in the notice. The Town shall conduct such work in accordance with all applicable laws and shall not unreasonably interfere with the Outlot Owner's or Lot Owner's use of the property. All costs and expenses incurred by the Town in conducting such maintenance may be charged to the respective Outlot Owner or Lot Owner, as applicable, by placing the amount on the tax roll as a special assessment in accordance with Section 66.0703, Wis. Stats., and applicable Town Ordinances. The Outlot Owner and each Lot Owner hereby waive notice and protest of any special assessment made by the Town pursuant to this section. The Golf Club Owner shall be responsible for completing and submitting the biennial report to the Town on all stormwater facilities within the Plat as required under the Stormwater Management Agreement.

**11.7 Gate Valve.** The Golf Club Owner shall be responsible to maintain, repair, replace and operate as necessary, the shutoff gate valve located within Outlot 2. In accordance with the approved Stormwater Maintenance Agreement, the gate valve shall remain closed except as otherwise authorized and directed by the Town.

**11.8. Irrigation System.** The Golf Club Owner may install irrigation piping and related equipment for use in connection with the Golf Club (the "Irrigation System"). Portions of the Irrigation System may be located within the Cart Path Easement area as described in Section 10.5, above, and in public road rights-of-way. With respect to any portion of the Irrigation System located within a public right-of-way or within any publicly-dedicated easement area:

(a) the Town may require the relocation of components of the Irrigation System at the Golf Club Owner's cost and expense should the Town determine such relocation is necessary or appropriate for the use or maintenance of such right-of-way or publicly-dedicated easement area;

(b) the Golf Club Owner shall hold the Town harmless for any liability or cost associated with damage to the Irrigation System resulting from the Town's use or maintenance of the public rights-of-way or publicly-dedicated easement areas, except to the extent such damage results from the Town's reckless or intentional misconduct for which the Town would be liable under applicable law;

(c) the Golf Club Owner shall provide "as built" plans for the Irrigation System to the Town, and shall locate underground piping upon request by the Town;

(d) Golf Club Owner shall restore any portion of the public right-of-way or publicly-dedicated easement area damaged as a result of the use, maintenance, repair or replacement of components of the Irrigation System to pre-work condition to the extent practicable; and

(e) any portion of the Irrigation System installed within public right-of-way or within any publicly-dedicated easement area shall be installed in conduits with a minimum of three (3) feet of cover.

[signatures on following pages]

This Declaration is made effective as of the date set forth above.

**DECLARANT:**

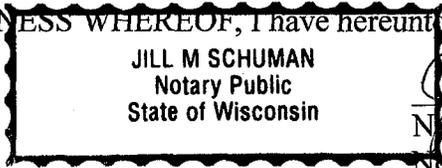
**JEKY LLC**

By: \_\_\_\_\_

Jeffrey J. Haen, Manager

STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF DANE )

On September 30, 2020 before me personally appeared Jeffrey J. Haen, as the Manager of JEKY LLC, who is personally known to me to be the same person who executed the within instrument, in the stated capacity, on behalf of the company, and who duly acknowledged the execution of the same to be his free act and deed, duly authorized by the company. IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Jill M. Schuman  
Name: Jill M. Schuman  
Notary Public, State of Wisconsin  
My commission (is permanent) (expires: 7-30-23)

**CONSENT OF LOT 1 OWNER**

The undersigned, as Owner of Lot 1, hereby joins in the execution of this Declaration for the purpose of agreeing that Lot 1 is bound by, and subject to, this Declaration.

**WATTS FAMILY TRUST**

By: \_\_\_\_\_  
Marc R. Watts, Trustee

STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF DANE )

On Oct 5, 2020, before me personally appeared Marc R. Watts, who is personally known to me to be the same person who executed the within instrument as Trustee of the Watts Family Trust, and who duly acknowledged the execution of the same to be his free act and deed. IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Julie Teter  
Name: Julie Teter  
Notary Public, State of Wisconsin  
My commission (is permanent) (expires: 10-5-24)

[SIGNATURE PAGE OF DECLARATION]





**CONSENT OF MORTGAGEE**

The undersigned, as mortgagee, consent to the execution and recording of this Declaration.

Dated 10-5, 2020.

**TUMBLEDOWN TRAILS GOLF COURSE, LLC**

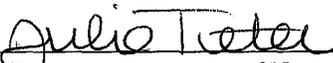
By: 

Marc R. Watts, Managing Member

**ACKNOWLEDGEMENT**

STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF DANE )

On Oct 5, 2020, before me personally appeared Marc R. Watts, as Managing Member of Tumbledown Trails Golf Course, LLC, who is personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same as the free and voluntary act for the uses and purposes mentioned in the instrument. IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

  
(Print or type name of Notary) Julie Teter  
Notary Public, State of Wisconsin  
My commission expires: 10-5-24

This document drafted by:  
Paul J. Dombrowski, Esq.  
Husch Blackwell LLP  
P.O. Box 1379  
Madison, WI 53701-1379



[SIGNATURE PAGE OF DECLARATION]

**EXHIBIT A**

**[Copy of Subdivision Plat]**

**EXHIBIT B**

**Minimum Opening Elevations**

Lot 2 and Lot 3: 1071.00

Lots 10-11: 1067.75

Lots 24-29: 1054.60

Lots 30-34: 1054.60

Lots 36-38: 1051.15

Lot 39: 1054.50

Lot 40: 1052.00

Lots 49-51: 1064.75

Lot 59 and Lot 60: 1071.00

Lot 61: 1071.50

Lot 62: 1072.00

Lots 72-79: 1060.80

Lots 82-89: 1058.90

Lot 90: 1060.60

Lot 91 and Lot 92: 1060.80

Minimum Opening Elevations are based on the North American Vertical Datum of 1988  
(NAVD 88).

**EXHIBIT C**

**Stormwater Management Agreement**