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**DECLARATION OF COVENANTS, RESTRICTIONS,  
CONDITIONS AND EASEMENTS FOR LOTS 1-60 AND 62-  
112 OF THE PLAT OF ARBORETUM VILLAGE, VILLAGE  
OF WAUNAKEE, DANE COUNTY, WISCONSIN**

KRISTI CHLEBOWSKI  
DANE COUNTY  
REGISTER OF DEEDS

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**DECLARATION OF COVENANTS, RESTRICTIONS, CONDITIONS AND  
EASEMENTS FOR LOTS 1-60 AND 62-112 OF THE PLAT OF ARBORETUM  
VILLAGE, VILLAGE OF WAUNAKEE, DANE COUNTY, WISCONSIN**

Arboretum Village, LLC, a Wisconsin limited liability company ("Developer"), being the owner of Lots 1-60 and 62-112 of the Plat of Arboretum Village (the "Property"), hereby declare that Lots 1-60 and 62-112 within the Property are subject to the following restrictions, covenants, conditions and easements, and that all of such lots are and shall be held, sold, occupied, conveyed and transferred subject to the covenants, restrictions, conditions and easements set forth herein:

**ARTICLE 1**

**Definitions**

For purposes of all Articles within these Covenants, Restrictions, Conditions and Easements, the following terms shall be defined in the following manner:

1.1 "Developer" shall refer to Arboretum Village, LLC, and their successors and assigns.

1.2 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to a platted lot within the Property, except that as to any such lot which is the subject of a land contract wherein the purchaser is in possession, the term "Owner" shall refer to such person instead of the vendor, and as to any such lot which is the subject of a condominium plat, the term "Owner" shall refer to the owner (or land contract vendee in possession) of each condominium unit within such lot. For purposes of Articles 3 and 4 hereof, where more than one person holds an ownership interest in any lot, the consent or agreement of a majority of the owners of any such lot shall be deemed to be the consent or agreement of the owner of any such lot, and any such lot shall have only one vote on any matter provided for in Articles 3 and 4 hereof, except that in the case of a lot that is subject to a condominium plat, each unit shall be treated separately and each such unit shall be a member and have one vote.

1.3 "Property" shall mean and refer to the real estate described as Lots 1-60 and 62-112 within the Plat of Arboretum Village, Village of Waunakee, Dane County, Wisconsin.

## **ARTICLE 2**

### **Property Subject to This Declaration**

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the Village of Waunakee, Dane County, Wisconsin, and is known as Lots 1-60 and 62-112, Arboretum Village, Village of Waunakee, Dane County, Wisconsin. Lot 61, Arboretum Village, Village of Waunakee, Dane County, Wisconsin, and the outlots within the plat of Arboretum Village, are not subject to this Declaration.

## **ARTICLE 3**

### **Architectural Control and Protective Covenants and Restrictions**

3.1. For all buildings or other improvements of any kind or nature to be constructed, erected or placed on any lot subject to this Declaration, the plans, specifications, site, grading and landscaping plans for all such buildings must be submitted to the Developer or the Design Review Committee, whichever is then applicable, for written approval as to appearance, the quality of workmanship and materials, attractiveness and harmony of exterior design, including exterior colors, size, location with respect to topography and finish grade elevation, height of improvements, site layout, roof pitch, location of improvements and amount, quality and nature of landscaping, and design and construction of the substructure of any structure, prior to commencement of any construction on any lot. No buildings or other improvements may be constructed, erected or placed on any lot other than in accordance with the approved documents. No buildings or other improvements to any lots shall be approved unless such buildings or other improvements comply with the terms of Exhibit A attached hereto and made a part hereof. For purposes of this Declaration, the term "improvements" shall include, but not be limited to, play structures, fences, patios, decks and swimming pools. All buildings (other than an in-ground pool accessory building approved under section 3.11 below) shall conform to the following architectural requirements, provided however, that exceptions to these requirements may be granted by the Developer or the Design Review Committee, whichever is then applicable, if in their sole discretion, the Developer or Committee determines that the exception is reasonable and is consistent with the standards in section 3.31 of this Declaration:

- (A) The building shall have a minimum roof pitch of not less than 8/12 pitch, side to side, as viewed from any adjoining street and not less than a 6/12 pitch, front to back, as viewed from any adjoining street, except that the 8/12 pitch requirement may be reduced, in the judgment of the Developer or the Committee, in cases in which the house is of a "prairie architecture" design.**
- (B) Roofs shall receive dimensional architectural shingles. Plumbing, HVAC and roof vents, unless continuous ridge vents, shall be placed in locations that are not visible from the street adjoining the front yard.**
- (C) Building trim shall consist of finished natural wood, cementitious fiber, wood fiber, molded millwork or shall be wood clad in prefinished vinyl or .025 or heavier aluminum, provided it has the same visual effect as natural materials, but nothing herein shall be interpreted to prohibit the use of vinyl siding or aluminum fascia in areas of the home that call for siding or fascia, but this shall not be a substitute for the use of brick or stone where otherwise required.**
- (D) Building fascia trim shall be a minimum of 10" in nominal width and shall be applied over a 2" x 8" nominal subfascia, which gives the effect of a recessed soffit, but nothing herein shall be interpreted to prohibit the use of vinyl siding or aluminum fascia to meet these requirements, but this shall not be a substitute for the use of brick or stone where otherwise required.**
- (E) Trim shall be placed around all exterior doors and windows and shall be a minimum of 4" in nominal width. Trim shall be placed above garage doors and on the corners of the building and shall be a minimum of 6" in nominal width.**
- (F) 10" nominal band-board trim shall be placed at the floor line to divide stories where vertical alignment of building elements between such stories is not achieved.**
- (G) All chimneys shall be fully enclosed with brick or stone from grade to within 6" of the bottom of the chimney cap. Direct vent fireplace enclosures may not be placed on the exterior of the building unless the enclosure terminates under an uninterrupted soffit, is placed on the rear of the building or is located behind an offset in the building so as not to be visible from the front yard.**

- (H) Brick or stone veneer is required to be placed on the exposed portions of the foundations on the front. Brick and stone shall turn front corners. In the case of houses on corner lots, brick and stone veneer shall be required to be placed on the whole side of the foundation in addition to the front.**
- (I) Windows, except transom windows, shall have a vertical sash dimension equal to or greater than the horizontal sash dimension. Windows and patio doors shall have and maintain window grills with a pattern consistent with the architectural style of the building.**
- (J) All exterior doors, including garage doors and entrance doors, shall be of a raised panel or carriage style design. Garage doors shall receive windows if oriented towards a street, provided however, that windows shall not be required in garage doors if a substitute for windows in the garage doors is approved in the judgment of the Developer or Committee.**
- (K) Deck and screened porch posts shall be a nominal 6"x6" minimum (or trimmed to such a dimension) and receive cap and base trim of at least 4" and 6" nominal width, respectively, along with an additional 1" x 8" nominal width trim board at the top and bottom of the support deck posts where required in judgment of the Developer or Committee. Posts must be painted or wrapped with hard surface material. Deck railings shall be attached to newell posts and shall not be continuous spindle supported rail systems.**

**3.2. After the Developer and its successors and assigns cease to have any title to any lot subject to this Declaration, the plans, specifications, site, grading and landscaping plans, and all other matters to be submitted to the Developer under these Covenants, Conditions, Restrictions and Easements, must be submitted to the Design Review Committee ("Committee") for approval in writing by a majority of the members of said Committee.**

**. The Committee shall consist of three persons, elected by the Board of Directors of the Arboretum Village Homeowners Association, Inc., ("Association") in accordance with the By-Laws of such Association, for terms of one (1) year each. In the event of the failure of the Association to elect a Committee in any year, the most recently elected members shall continue to serve until successors are duly elected.**

**3.3. For each building constructed, erected or placed on any lot, the prime contractor or builder responsible for construction of such building shall be approved in writing by the Developer or the Committee, whichever is then applicable, prior to commencement of construction. The approval of the Developer or the Committee shall not be unreasonably withheld. Such approval may be withheld for reasons such as the proposed prime contractor's or builder's experience, financial status, business history and prospects, building reputation or any other reason which would be similarly relied upon by a reasonably prudent businessman then developing a neighborhood of quality single-family residences.**

**3.4. No alteration in the exterior appearance, design, exterior color, size, location with respect to topography and finish grade elevation, height of improvements, site layout, roof pitch, location of improvements and amount, quality and nature of landscaping, and design and construction of the subsurface of any existing buildings or improvements, including but not limited to, any exterior remodeling and the construction of patios, decks, and in-ground swimming pools, shall be made without the prior written approval of the Developer or the Committee, whichever is then applicable. No alteration of any lots shall be approved unless such buildings or other improvements comply with the terms of Exhibit A attached hereto and made a part hereof.**

**3.5. The existing vegetation of each lot subject to this Declaration, including trees of a diameter of three (3) inches or greater, shall not be destroyed or removed except as approved in writing by the Developer or the Committee, whichever is then applicable. In the event such vegetation is removed or destroyed without approval, the Developer or Committee may require the replanting or replacement of same, the cost thereof to be borne by the Owner.**

**3.6. The elevation of a lot shall not be changed so as to materially affect the surface elevation or grade of the surrounding lots. Violations of the approved site, grading or landscaping plans shall give either the Developer or Committee, whichever is then applicable, or any adjacent lot owner within the Property, a cause of action against the person violating such site, grading or landscaping plan for injunctive relief or damages as appropriate. No earth, rock, gravel, or clay shall be excavated or removed from any lot within the Property without the approval of the Developer or the Committee, whichever is then applicable.**

**3.7. All lots within the Property shall be used only for detached single-family residential purposes, except that (a) Lots 45, 49-50 and 93-99,**

may be used for duplex residential condominium units, and (b) Developer may continue to use any lands owned or leased by Developer for present agricultural purposes and uses. For the avoidance of doubt, and unless preempted by valid state or federal law, the rental of bedrooms or other housing to transient persons on a daily or weekly basis within the Property, including but not limited to, the operation of tourist rooming houses or boarding facilities, e.g., but not limited to, rental through AirBnB-type internet sites, shall not be considered "single-family residential purposes" under this section and shall be deemed prohibited, unless the person renting or boarding is a member of the family of the owner of or tenant on the lot.

The following minimum floor area requirements shall apply to all detached single-family residential buildings and to individual units in any duplex condominium building erected on any lots subject to this Declaration:

- (a) No single-story building shall have less than 1,200 square feet.
- (b) No two-story building shall have less than 1,600 square feet.
- (c) No raised ranch, bi-level, or tri-level building shall have less than 1,200 square feet on the main level.

For the purposes of determining floor area, stair openings shall be included, but open porches, screened porches, attached garages, and basements, even if the basements are finished, shall be excluded.

The above minimum floor area requirements may be waived by the Developer or the Committee, whichever is then applicable, in the event the proposed architecture and quality of the house is such as to present an attractive appearance compatible with other houses within the Property, in the judgment of the Developer or the Committee.

3.8. All detached, single-family residential buildings and individual condominium units must have an attached garage, and such garage must contain not less than two (2) nor more than three (3) automobile garage stalls.

3.9. No building previously erected elsewhere may be moved onto any lot subject to this Declaration, except new prefabricated construction or historically significant structures, which shall be approved by the Developer or the Committee, whichever is then applicable, in their discretion.

**3.10. All driveways and alleys must be paved with concrete, provided however, that the Developer or the Committee, whichever is then applicable, may waive this requirement to permit the use of brick pavers, or materials that will have the same appearance and effect as concrete or brick pavers, where appropriate in the opinion of the Developer or Committee. No more than two (2) domestic animals may be kept on any lot subject to this Declaration, except that this limitation shall apply on a per unit basis for any lot containing condominium units. No fowl, including chickens, hens or roosters, may be kept outside of the dwelling unit on any lot. No pit bulls, rottweilers, Doberman Pinchers or their close mixes or wolf hybrids may be kept on any lot. Commercial animal boarding, kenneling or treatment is expressly prohibited, whether for free or not, within the Property.**

**3.11. Accessory buildings or structures, including, but not limited to, storage sheds, detached garages and above ground swimming pools, are expressly prohibited within the Property, except that in the case of an in-ground swimming pool, a visually suitable accessory building or structure ancillary to such in-ground pool may be approved in writing in advance by the Developer or Committee, whichever is then applicable, in their sole discretion, limited to such pool-related use. Notwithstanding any limitations above in this section, Lots 1 and 3-14 within the Property may have a garden structure located in the rear of such lots within the "Landscaping Easement and Garden Structure Area" noted on the plat for each such lot, but the architecture, design, height, color, dimensions, materials, roof line, roofing and other attributes of any such garden structure shall be subject to the approval of the Developer, or the Committee, whichever is then applicable, and all such garden structures shall be constructed and maintained in a workmanlike manner in accordance with the approved plans at all times Notwithstanding any limitations above, pergolas are permitted.**

**3.12. Where public sidewalks exist, it is the responsibility of the abutting lot owner to maintain same in a safe and passable condition, reasonably free from snow, ice or obstruction.**

**3.13. No trailer, basement, tent, shack, garage, barn, or any part thereof, shall ever be used as a residence, temporary or permanent, nor shall any residence be of a temporary character.**

**3.14. Parking of commercial or service vehicles owned or operated by residents within the Property, whether on lots or in the public street with the Property, is prohibited unless such vehicles are kept in a garage. Storage of boats, travel trailers, mobile homes, campers, and other recreational vehicles within the Property is prohibited unless kept inside garages. This section**



shall not prohibit the temporary parking or storage of such vehicles for the sole purpose of loading or unloading such vehicles at the lot at which parked, for a period not to exceed forty-eight (48) hours. No cars, boats or other vehicles shall be parked on lawns or yards at any time.

3.15. All areas of 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 such areas free from noxious weeds, to the extent permitted by law. All lots, and all buildings and other improvements thereon, shall be kept in good order and repair and free of debris, including, but not limited to, the mowing of all lawns, 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. This paragraph shall not be construed to prevent a family garden or orchard, provided that all family gardens and orchards shall be located in the back yards and shall not exceed 35% of the total area of the lot, exclusive of the footprint of all buildings and the driveway.

3.16. On any lot conveyed by land contract or deed from the Developer, construction shall be commenced within one (1) year from the date of such land contract or deed. Upon violation of this restriction, the Developer shall have the option, exercisable by written notice to the lot owner within ninety (90) days after the expiration of such one (1) year period, to have said lot conveyed to the Developer at the original sales price, free and clear of any liens and encumbrances created by act or default of the Owner of such lot, with taxes and installments on assessments for the year in which conveyance occurs being prorated as of the date of such conveyance. Developer may waive its rights under this section in writing, in its discretion.

3.17. Construction of all buildings shall be completed within eight (8) months after issuance of a building permit for the respective building. Landscaping (including grading, sodding, and seeding) and paving of driveway shall be completed within one hundred eighty (180) days of completion of construction, provided weather conditions so allow. If such construction or landscaping is delayed due to matters beyond the control of the lot owner, the time for completion shall be extended by the period of such delay.

3.18. Except to the extent that this prohibition is limited by federal law or regulations, no exterior antennas, satellite dishes, solar panels, wind mills, walls or fences of any kind shall be permitted within the Property unless approved in writing in advance by the Developer or the Committee,

whichever is then applicable, including approval of the location, material, height, size and color thereof. **NO CHAINLINK, VINYL, PLASTIC OR SHADOWBOX FENCES SHALL BE ALLOWED AT ANYTIME.** All fences require written approval from the Developer or the Committee, and the only fences that will be approved are ornamental metal fences or wrought iron fences, black in color. This paragraph shall not apply to any fence which may be erected by the Developer along the lot line between the northern boundary of the Property and the lands to the north, including, but not limited to, Lots 1 and 3-14.

**3.19.** No noxious or offensive trade or activity shall be carried on within the Property, nor shall anything be done which may be or will become a nuisance to the neighborhood. This section shall not be construed to prevent a family garden or orchard, provided that all family gardens and orchards shall be located in back yards and do not exceed the area described in section 3.15 above, nor to limit the installation of plat entrance signs on any outlots, the agricultural use of any lots by Developer, or the creation of trails and paths and other features on any outlots.

**3.20.** The elevation of any utility easement within the Property may not be changed in excess of six (6) inches without the permission of all of the applicable utilities, and any party making such change shall be responsible for any damages caused to underground utilities based on any changes in grade of more than six (6) inches. No retaining walls, fences, decks, or other similar structures shall encroach upon easement rights granted for the operation and maintenance of Village of Waunakee municipal utilities.

**3.21.** No lot or outlot as platted shall be resubdivided, except with the approval of the Developer or the Committee, whichever is applicable. No boundary line within the Property shall be changed, except with the approval of the Developer or the Committee, whichever is then applicable. 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, unless a replat or certified survey map is required to either divide, adjust the boundaries of or combine lots. Replatting or the use of certified survey maps to either divide, adjust the boundaries of or combine any lots within the Property shall require the approval of the Developer or the Committee. This section shall not apply to any re-division of Lots 45, 49-50 and 93-99 by means of a condominium plat.

**3.22.** No signs of any type shall be displayed to public view on any lot (including outlots) without the prior written consent of the Developer or the Committee, whichever is then applicable, except for (a) lawn signs of not more than six (6) square feet in size advertising the property where located

for sale, (b) signs erected by Developer advertising lots within the Property for sale, or (c) plat entrance signs on any outlots, to the extent such signs are permitted by the Village of Waunakee.

**3.23.** All buildings and other improvements constructed on any lots subject to this Declaration shall conform to all governmental zoning requirements and all side yard, rear yard, setback and other requirements imposed under the General Development Plan for the plat, as heretofore approved by the Village of Waunakee, and as amended from time-to-time hereafter, and the Specific Implementation Plan for the applicable lot or lots (including outlots), as approved by the Village of Waunakee heretofore or hereafter, and as amended from time-to-time.

**3.24.** No swale, drainage way, or stormwater detention area within the Property, whether established by easement or not, which is in existence at the time of development on any lot or outlot on the Property, shall be re-graded or obstructed, so as to impede the flow of surface water across such swale or drainage way, or interfere with the proper functioning of any such swale, drainage way or stormwater detention area, and no structure, planting or other materials shall be placed or permitted to remain within any such swale, drainage way or stormwater detention area.

**3.25.** The following landscaping requirements apply to all lots within the Property:

- (a) Front and side yards must be sodded, including street terraces, except that the Developer or the Committee, whichever is then applicable, may permit the front yard and side yard to be seeded where weather conditions permit and appropriate alternative materials and practices are employed, in their discretion. Notwithstanding the provisions of the preceding sentence, the compost blanket seeding method for terrace, front yards and side yards is acceptable.
- (b) Rear yard areas which are not sodded must be seeded.
- (c) Landscape plantings and maintenance of the premises and adjoining street terrace shall be the responsibility of the lot or outlot owner(s). Complete visual screening of the front side of any lot or outlot is prohibited without approval of the Developer or the Committee, whichever is then applicable, except in the case of the rear yards of Lots 1 and 3-14, and 50-60 which shall be governed by the provisions of paragraph (e) below with

respect to screening of the rear yards of such lots. Lawn trees shall be planted within 45 days of occupancy of the residence, or upon completion of construction, whichever occurs first, except that trees are not required to be planted during the winter months when the ground is frozen, but shall be planted as soon as weather conditions permit.

- (d) The landscaping plan for each lot shall achieve a minimum of 700 landscaping points as determined by the following point schedule:

<u>Landscaping Element</u>	<u>Point Value</u>
Canopy Tree (2"-3" caliper at least 18 inches)	125
Canopy Tree (3"-4" caliper at least 18 inches)	150
Canopy Tree (greater than 4" at 18 inches)	200
Canopy Tree or Small Tree (1"-1-½" caliper at 18 inches, i.e., Crab, Hawthorn)	100
Evergreen Tree (4 to 6 feet in height)	100
Large Deciduous Shrub (3-yr. transplant, 36" min.)	20
Small Deciduous Shrub (3-yr. transplant, 18" min.)	10
Decorative Wall (per face foot)	5

- (e) Developer intends to construct a fence and/or landscaping, in its sole judgment and discretion, along the northerly property line of Lots 1 and 3-14 of the Plat adjoining the lands north of the Property, within the "Landscaping Easement and Garden Structure Area" on the plat, to provide a buffer for such lots from the business park to the north, and along the easterly property line of Lots 50-60 of the Plat adjoining Hogan Road, within the "Landscaping Easement" on the plat, to provide a buffer for such lots from Hogan Road. Developer will determine the design of such fence and/or landscaping, the fence color and materials, and the height, location, materials and/or plantings of the fence and/or landscaping, and all other matters relating to such fence and/or landscaping, and Developer shall be responsible for the initial cost thereof, if installed by Developer. Developer shall maintain such fence and/or landscaping and keep it in workmanlike condition, so long as Developer owns all of Lots 1, 3-14 and 50-60 within the Property, at Developer's expense, but Developer shall not be responsible for any mowing, lawn or grounds maintenance or weed control on or around such fence and/or landscaping at any time and such work shall be the

responsibility of each lot owner. At such time as Developer is no longer the owner of all of Lots 1, 3-14 and 51-60 within the Property, the maintenance of such fence and/or landscaping shall thereafter become the obligation of each owner of Lots 1, 3-14 and 50-60 to maintain the portion of such fence and/or landscaping located on each owner's lot in a workmanlike manner so long as these covenants are in effect. With respect to the landscaping buffer along Hogan Road at Lots 50-60, each owner shall maintain a year-round visual buffer at least 6 feet in height to and from Hogan Road along the entire length of the Landscaping Easement consisting of fencing and/or landscaping. Developer shall have an easement on a portion of the rear lot area of each of Lots 1, 3-14 and 50-60 designated on the plat as a "Landscaping Easement" or "Landscaping Easement and Garden Structure Area" on the Plat during the period in which Developer is responsible for maintenance of such fence and/or landscaping to obtain access to such fence and/or landscaping for the purpose of maintaining such fence and/or landscaping, including bringing equipment and materials to the site to conduct such maintenance work. The Association shall have no obligation to perform any maintenance on the fence and/or landscaping.

3.26. The Developer, after a period of ten (10) years from the date of recording the final Plat or after seventy-five (75%) of the lots within the Property (other than outlots) have been sold, whichever occurs first, may elect to assign all of the Developer's rights to approve all of the items set forth in Article 3 hereof to the Committee.

3.27. Article 3 hereof shall run with the land and shall be binding upon and inure to the benefit of all persons having an interest in the Property for a period of thirty (30) years after the Plat is recorded, after which time Article 3 of this Declaration shall automatically stand renewed for successive five (5) year periods unless the same is canceled as provided in Section 3.28 below. If any person, or his heirs, successors or assigns, shall violate or attempt to violate any of the covenants and restrictions contained in Article 3 hereof while Article 3 hereof is effective, the Developer, the Committee or any person or persons owning any lot or lots within the Property, and in the case of Sections 3.21, 3.24, 3.25(c), (d) or (e), 3.33, 3.34 and 3.36 hereof, the Village of Waunakee shall have standing to bring proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants or restrictions, and the prevailing party shall be awarded reasonable actual attorney fees and costs, and any person violating any of

these covenants or restrictions shall be liable for all costs of removing any such violation. The Village of Waunakee shall not be required to take any action hereunder.

3.28. Article 3 hereof, or any part thereof, may be canceled, released, amended, or waived in writing as to some or all of the lots subject to this Declaration by an instrument signed by the Developer, or if the Developer's rights under Article 3 of this Declaration have been assigned to or assumed by the Committee, then by an instrument in writing signed by the Owners of a majority of the lots (and condominium units, where applicable) subject to this Declaration, but no provisions of Sections 3.21, 3.24, 3.25(c), (d) or (e), 3.33, 3.34 and 3.36 hereof may be canceled, released, amended or waived without the written consent of the Village of Waunakee. Notwithstanding the provisions above in this section, after the Developer no longer owns any lots within the Property, the provisions of section 3.25(e) above may also be cancelled, released, amended or waived in writing by all of the owners of Lots 1 and 3-14, or Lots 50-60, as the case may be, by an instrument signed by the applicable owners and by the Village of Waunakee, without the consent of the Association or other Owners within the Property.

3.29. Invalidity 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 provisions, which shall remain in full force and effect, and the provision so invalidated shall be deemed reformed to the extent possible to cure any such default.

3.30. In the event the Committee does not affirmatively approve or reject the plans, specifications and site, grading and landscaping plans, the prime contractor or builder, alterations, or any other matters which must be submitted to the Developer or Committee, within thirty (30) days after the same have been submitted to the approving authority in writing, then such approval shall be deemed granted in such instance. No such time limit shall apply to the Developer. The Developer or the Committee may condition any such approval upon the owner reimbursing the Developer or the Committee for the actual, reasonable costs incurred by the Developer or the Committee for architectural or engineering services which were required to review any proposal before the Developer or the Committee.

3.31. In exercising any authority under Article 3 of this Declaration, the Developer or Committee, as appropriate, shall act in accordance with the following standards:

- (a) to assure the most appropriate development and improvement of the Property;**
- (b) to protect each Owner of a lot against improper uses by other lot owners;**
- (c) to preserve the beauty of the Property;**
- (d) to guard against the erection of poorly designed or poorly proportioned structures, or structures built of improper or unsuitable material;**
- (e) to encourage and secure the erection of attractive, adequate sized homes, which are attractive, and conform and harmonize in external design with other structures within the Property, and which are properly located upon the lot in accordance with its topography and finished grade elevation; and**
- (f) to provide for high quality improvements which will protect the investments of purchasers of lots.**

**3.32. The Developer and the Committee shall not be liable for any loss suffered by any person on the basis of the approval or disapproval of any proposed use, plans, specifications, site, grading or landscaping plan or other matter, including any loss arising out of the negligence of the Developer or Committee.**

**3.33. If any Owner shall violate or attempt to violate any covenant or restriction with regard to drainage swales, drainage ways or stormwater detention areas, the Developer, the Committee, the Village of Waunakee, or any affected lot owner, shall have standing to bring proceedings at law or in equity against the person or persons violating or attempting to violate such covenant or restriction or failing to perform such duties, and shall be awarded appropriate relief, including reasonable, actual attorney fees and costs, to remedy said violation. The Village of Waunakee shall not be required to take any action hereunder.**

**3.34. The Owner of any lot within the Property which abuts upon or is adjacent to land used for farming or grazing purposes (other than lands used by Developer or his tenant or successor for such purpose) shall erect and maintain, if requested by the adjacent property owner, a partition fence, satisfying the requirements of the Wisconsin Statutes for a legal and sufficient fence, between the Owner's lot and the adjacent land, without cost**

to the adjoining property owner, so long as the adjoining land is used for farming or grazing purposes. The Developer, the Committee or the Village of Waunakee, as the case may be, shall have standing to bring proceedings at law or in equity against the Owner of such lot, and shall be awarded appropriate relief, including reasonable, actual attorney fees and costs, in the event of any violation hereof. The Village of Waunakee shall not be required to take any action hereunder.

3.35. While the Developer retains ownership of any lots within the Property, the Developer reserves the right to submit some or all of said lots and related outlots as a site for the Parade of Homes of the Madison Area Builders Association. In the event some or all of said lots and related outlots are selected as a site for the Parade of Homes by the Madison Area Builders Association, this Declaration of Covenants, Restrictions and Conditions shall, as to the lots and outlots enrolled in the Parade of Homes, for the limited period of time commencing 48 hours prior to the commencement of the Parade of Homes and ending 48 hours after the conclusion of said Parade of Homes, be deemed temporarily altered and modified, to the extent necessary, to permit the Madison Area Builders Association to hold its Parade of Homes in the Property, pursuant to the then current Parade of Homes Rules and Developer's Checklist of the Madison Area Builders Association. All purchasers of lots within the Property, and their successors and assigns, shall take title subject to this specific reservation by the Developer and shall waive all rights to object to violations of this Declaration by Developer, the Madison Area Builders Association, or any of the builders or participants in such Parade of Homes during the period of such Parade(s) as set forth above.

3.36. In order to reduce runoff and protect water quality, all downspouts and downspout extenders are to drain into a permeable area such as grass or a planting bed within each respective lot. Individual lots within the Property are required to infiltrate the first 1-inch of the runoff created within such lot from its buildings, rooftops and impervious surfaces. The Lot Owner shall deep till or chisel-plow all disturbed areas beyond the street and building footprints to promote infiltration of stormwater, prior to the installation of landscaping, with the use of appropriate compost where necessary. During the construction of a dwelling unit on any lot, the Owner shall cause all silt and debris in the street, whether public or private, to be cleaned up and removed on a daily basis at the end of each day to prevent runoff of silt and debris from the lot into the stormwater management system.



**3.37. Nothing in this Declaration shall prohibit the Developer or any bona fide builder, or their successors or assigns, from recording additional covenants with respect to specified lots within the Property owned by such party which are more restrictive than the provisions of this instrument, but in no event may this instrument be modified, waived, amended or cancelled other than in accordance with the provisions of this instrument.**

**3.38. THE OWNERS OF LOTS 81 AND 92 WITHIN THE PROPERTY ARE HEREBY NOTIFIED THAT THE LANDS ABUTTING SUCH LOTS TO THE NORTH IN OUTLOT 13 WILL BE A PUBLIC PARK OWNED BY THE VILLAGE OF WAUNAKEE. THE OWNER OF LOT 60 WITHIN THE PROPERTY IS HEREBY NOTIFIED THAT THE LANDS ABUTTING SUCH LOT TO THE NORTH IN OUTLOT 9 WILL BE THE LOCATION FOR A PLAT ENTRANCE SIGN OWNED BY THE DEVELOPER OR THE HOMEOWNERS ASSOCIATION. THE OWNERS OF LOTS 1 AND 33-35 WITHIN THE PROPERTY ARE HEREBY NOTIFIED THAT LANDS ABUTTING SUCH LOTS WILL BE THE LOCATION OF A COMMUNITY MAIL BOX AS REQUIRED BY THE US POSTAL SERVICE AND WILL BE OWNED AND MANAGED BY THE HOMEOWNERS ASSOCIATION.**

**3.39. ALL OWNERS OF LOTS 1 AND 3-14 WITHIN THE PROPERTY ARE HEREBY NOTIFIED THAT THE LANDS ABUTTING SUCH LOTS TO THE NORTH ARE LOCATED WITHIN AN ACTIVE BUSINESS PARK IN THE VILLAGE OF WAUNAKEE. A BUSINESS PARK AT THIS LOCATION MAY INCLUDE OPERATIONS WHICH PRODUCE NOISE, VIBRATIONS, LIGHT, TRUCK TRAFFIC, ODORS, NIGHT OPERATIONS, OUTDOOR STORAGE OF MATERIALS AND OTHER ACTIVITIES WHICH ARE COMMONLY ASSOCIATED WITH A BUSINESS PARK, AND WHICH ARE LEGALLY PERMITTED ACTIVITIES UNDER THE ZONING CLASSIFICATION, COVENANTS AND OTHER REGULATIONS THAT APPLY TO A BUSINESS PARK. NEITHER THE DEVELOPER OF THE PROPERTY, NOR THE VILLAGE OF WAUNAKEE, ARE RESPONSIBLE FOR SUCH ACTIVITIES WITHIN THE BUSINESS PARK, AND NEITHER THE DEVELOPER OF THE PROPERTY NOR THE VILLAGE OF WAUNAKEE WILL HAVE ANY OBLIGATION TO STOP OR OTHERWISE REGULATE SUCH ACTIVITIES WITHIN THE BUSINESS PARK.**

#### **ARTICLE 4**

**Arboretum Village Homeowners Association, Inc.**

#### **Definitions**

For purposes of Article 4 of these Covenants, Restrictions, Conditions and Easements, the following terms shall be defined in the following manner:

4.1. "Association" shall mean and refer to Arboretum Village Homeowners Association, Inc., its successors and assigns.

4.2. "Board" shall mean and refer to the Board of Directors of the Association.

4.3. "Declaration" shall mean the Declaration of Covenants, Restrictions, Conditions and Easements for Lots 1-60 and 62-110 of the Plat of Arboretum Village, as they may from time-to-time be amended.

#### Association Membership and Board of Directors

4.4. Members. The Owner of Lots 1-60 and 62-110 within the Plat of Arboretum Village, Village of Waunakee, Dane County, Wisconsin, as defined in Sec. 1.2 hereof, shall be a member of the Association, except that as to any such lot which is the subject of a condominium plat, the term "Owner" shall refer to the owner (or land contract vendee in possession) of each condominium unit within such lot. Each such platted lot shall have one (1) vote only in the affairs of the Association, except that in the case of a lot that is subject to a condominium plat, each owner of a condominium unit shall be a member of the Association and shall have one (1) vote. Where more than one person holds an ownership interest in any lot or condominium unit, all persons holding such interest shall be members, but such lot (or condominium unit) shall have only one (1) vote. The members shall have such rights as are set forth herein, in the Articles and By-Laws of the Association, as amended from time-to-time, and as may be provided by the laws of the State of Wisconsin.

4.5. Board of Directors. The affairs of the Association shall be managed by the Board. The Board shall be selected in the manner, and shall have such duties, powers and responsibilities as are set forth herein, in the Articles and By-laws of the Association, as amended from time-to-time, and as may be provided by the laws of the State of Wisconsin, subject to the rights of Developer as set forth in such instruments. The By-Laws of the Association shall provide that in the event that Developer and its successor as developer, if any, no longer owns any interest in any lots within the Property, then Developer shall transfer control of the Association to the owners of the lots within the Property, who shall proceed to elect a Board of Directors of the Association. The Board of Directors shall elect the members

of the Design Review Committee under the circumstances described in Sections 3.2 and 3.26 hereof.

**Common Areas; Entrance Sign; Design Review Committee**

**4.6. Acquisition of Common Areas.** The Association may take title from time to time to real property within the Property or outside of the Property for the purpose of providing common areas for the use and benefit of the members. The Association shall have the right to exclusive management and control of all such common areas and all improvements thereon. The Association shall take title to Outlots 9 and 10 within the Property for use as a plat entrance sign and Outlots 1, 3-4, 6, 8, 12 and 15 within the Property for community mail/parcel delivery and mail/parcel pick-up locations under this section, and the cost of the operation, maintenance, replacement and use of said Outlots 1, 3-4, 6, 8, 12 and 15, including any facilities or equipment located thereon, shall be the responsibility of the Association and such costs shall be recovered by the Association through the assessments under sections 4.11 and 4.12 hereof.

**4.7. Obligations of Association.** The Association shall have the duty to maintain common areas in good, clean, attractive and sanitary condition, order and repair, and to make such improvements and perform such maintenance as shall further the interests of the members.

**4.8. Easement of Enjoyment.** Subject to the provisions of this Declaration, all common areas shall be held by the Association for the benefit of the members. Each of said members shall have an equal, undivided right to use and enjoyment of such common areas, subject to the right of the Association to establish reasonable rules for the use of such common areas.

**4.9. Entrance Sign.** The Association shall maintain in good order and repair any entrance sign(s) to the Property, including lighting thereof, and any pump, electrical equipment, piping and wiring associated therewith, and shall provide water and electrical power therefor, at the expense of the Association.

**4.10 Design Review Committee.** The Association, with the approval of the Board of Directors, may provide financial assistance to the Design Review Committee to enable it to carry out its activities, including the hiring of planners, architects, engineers and legal counsel, and the payment of the costs and expenses, including attorney fees, incurred by the Design Review Committee in enforcing any part of the Covenants, Restrictions, Conditions and Easements.

## Assessments

**4.11. Creation of Lien and Personal Obligation of Assessments.** The Developer hereby covenants, and each Owner of any lot within the Property by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all assessments in the amount and manner hereinafter provided. All such assessments, together with interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and a continuing lien upon the lot (but not any outlot) against which each such assessment is made, except that in the case of a lot on which a condominium plat has been recorded, the per lot assessment shall be applied to and enforced against each condominium unit. Each such assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the person who was the Owner of such lot (or each condominium unit where applicable) at the time when the assessment became due and payable.

**4.12. Creation of Assessments.** Assessments shall be determined, established and collected, in the following manner:

- (a) **Budget.** In December of each year starting in December 2020, the Board shall determine a budget for the ensuing calendar year, which shall include the costs to be incurred by the Association in connection with the maintenance, improvement and operation of common areas and plat signs, payment of taxes and insurance, and other costs connected therewith, including a reasonable reserve for depreciation and any financial assistance to be provided to the Design Review Committee under Section 4.10 above. Such budget shall be approved by a vote of two-thirds (2/3) of the Board on or before the last day of December each year.
- (b) **Limitation on Assessments.** The maximum annual assessment which may be authorized under this Article shall be \$250 for each lot to which the Association has the power to make assessments hereunder (excluding outlots), until the actual annual costs of maintenance, improvement and operation of common areas and payment of taxes, insurance and other costs associated therewith, including a reasonable reserve for depreciation and any financial assistance to be provided to the Design Review Committee, shall exceed the annual revenue generated by an assessment of \$250 per lot, in which event the maximum

assessment per lot shall be such actual costs of maintenance, improvement and operation of common areas and payment of taxes, insurance and other costs associated therewith, including a reasonable reserve for depreciation and any financial assistance to be provided to the Design Review Committee, divided equally among all lots as to which the Association has the power to make assessments hereunder (excluding outlots). All assessments shall be apportioned equally among the lots within the Property. No assessment shall be made to any Lots owned by Developer until such time as such lot is either conveyed to a third party by Developer or a building permit is issued for such lot by the Village of Waunakee, whichever comes first.

- (c) **Declaration of Assessments.** The Board shall declare assessments so levied due and payable thirty (30) days from the date of such levy, except for assessments made pursuant to the last sentence of subsection (b) above which shall be due and payable from the purchaser at the time of closing. The Board shall notify each Owner of the action taken by the Board, the amount of the assessment against the lot owned by such Owner and the date such assessment becomes due and payable. Such notice shall be mailed to the Owner at the last known post office address by United States mail, with postage prepaid, or be personally delivered to the Owner.
- (d) **Collection of Assessments.** In the event any assessment levied against any lot remains unpaid for a period of sixty (60) days from the date of the levy, the Board may, in its discretion, file a claim for a maintenance lien against the lot for which payment is not made, and upon compliance with the provisions of Section 779.70, Wisconsin Statutes, or other applicable authority, such claim shall be and become a lien against such lot. The claim shall thereafter accrue interest at the rate of interest payable upon legal judgments in the State of Wisconsin, and the Board may exercise such remedies to collect such claim as may be afforded by law. The Owner of the subject lot shall be responsible for all costs of collection incurred by the Association in connection therewith. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of any common areas or abandonment of his lot.

- (e) **Joint and Several Liability of Grantor and Grantee.** Upon a voluntary conveyance, the grantee of a lot shall be jointly and severally liable with the grantor for all unpaid assessments as provided in this Article up to the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amount paid by the grantee therefore. However, any such grantee shall be entitled to a statement from the Association setting forth the amount of such unpaid assessments and any such grantee shall not be liable for, nor shall the lot conveyed be subject to a lien for, any unpaid assessment against the grantor pursuant to this Article in excess of the amount therein set forth. If the Association does not provide such a statement within ten (10) business days after the grantee's request, it is barred from claiming any lien which is not filed prior to the request for assessments owed by the grantor.

**4.13. Term.** Article 4 hereof shall run with the land and shall be binding upon and inure to the benefit of all persons having an interest in the Property for a period of thirty (30) years after the Plat of Arboretum Village is recorded, after which Article 4 of this Declaration shall automatically stand renewed for successive five (5) year periods unless the same is canceled as provided in Section 4.14 below.

**4.14. Cancellation, Release, Amendment or Waiver.** Article 4 hereof, or any part thereof, may be canceled, released, amended or waived in writing as to some or all of the lots subject to this Declaration by an instrument signed by the Developer, or if the Developer's rights under Article 3 of this Declaration have been assigned to or assumed by the Design Review Committee, then by an instrument in writing signed by both (a) the Owners of a majority of the lots (other than outlots) subject to this Declaration (including the unit owners of any condominium units who are members of the Association), and (b) a majority of the Board of the Association.

**4.15. Severability.** 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 provisions, which shall remain in full force and effect, and the provision so invalidated shall be deemed reformed to the extent possible to cure any such defect.

IN WITNESS WHEREOF, the undersigned have executed this instrument on this 25<sup>th</sup> day of September, 2020.

ARBORETUM VILLAGE, LLC

By: Donald C. Tierney  
Donald C. Tierney, Manager

By: Joanne K. Tierney  
Joanne K. Tierney, Manager

STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF DANE )

On this 25th day of September, 2020, before me, a Notary Public, personally appeared Donald C. Tierney and Joanne K. Tierney to me known, who being by me duly sworn, did depose and say that they executed such document.

Causes

**Signature of Notary Public**

Caitlin Stone

**Print name of Notary Public**

**Notary Public, State of Wisconsin**

**My Commission:** 07/18/2022

**Wisconsin River Bank, a Wisconsin banking corporation, consents to and subordinates its mortgagee interest to this instrument with respect to any lands within the plat of Arboretum Village, Village of Waunakee, Dane County, Wisconsin, which are part of the Property described in sec. 1.3 above.**



## WISCONSIN RIVER BANK

By: Richard T. Arason  
Richard T. Arason, President

STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF DANE )

23



  
\_\_\_\_\_  
**Signature of Notary Public**

Amy Schlenger  
\_\_\_\_\_  
**Print name of Notary Public**

**Notary Public, State of Wisconsin**  
**My Commission:** expires 6-4-2024.

***This instrument drafted by:***  
**Michael J. Lawton**

## **EXHIBIT A**

### **ARCHITECTURAL AND DESIGN STANDARDS FOR LOTS 1-60, 62-92 AND 100-112, ARBORETUM VILLAGE**

The following architectural and design standards shall be deemed incorporated by reference into Section 3.1 and 3.4 of the attached Declaration as if set out in full therein, and shall apply to any improvements constructed within Lots 1-60, 62-92 and 100-112, inclusive, in the Plat of Arboretum Village:

#### **1. YARD REQUIREMENTS**

The distance from the lot line to the improvements on the lot for setback purposes shall be measured in the same manner for purposes hereof as provided in Sec. 106-18 of the Waunakee Zoning Ordinance in effect on the date of adoption hereof.

##### **Primary Buildings:**

For purposes of the entirety of this Exhibit A, the Primary Building includes the dwelling unit(s) and the attached garage(s), and both the dwelling unit(s) and the attached garage(s) shall comply with all of the Primary Building requirements herein.

##### **Front Yard**

- There shall be a 15' minimum setback distance measured from front yard lot line.
- Open porches, with open or closed rail systems, may encroach the front yard setback by 5' maximum (10' setback from the front lot line).

##### **Side Yard**

- There shall be a 6' minimum setback distance measured from the side yard lot line (other than a lot line adjoining a street).
- There shall be a 15' minimum setback distance measured from the side yard lot line with an adjoining street.

##### **Rear Yard**

- There shall be a 20' minimum setback distance measured from the rear yard lot line.

##### **Secondary Buildings:**

- Accessory buildings are not permitted, except that in the case of an in-ground swimming pool, a visually complementary accessory

building or structure ancillary to such in-ground pool, and limited to such pool-related use, and which shall be subject to the setback requirements for Primary Buildings, may be approved in writing in advance by the Developer or Committee, whichever is then applicable, in their sole judgment and discretion. Detached garages are not permitted.

Notwithstanding the foregoing limitations regarding accessory buildings, Lots 1 and 3-14 may have a detached garden structure located within the "Landscaping Easement and Garden Structure Area" on such lots as shown on the plat, but the location, architecture, design, height, color, dimensions, materials, roof line, roofing and other attributes of any such garden structure shall be subject to the approval of the Developer, or the Committee, whichever is then applicable, and all such garden structures shall be constructed and maintained in a workmanlike manner in accordance with the approved plans at all times. No detached garden structure may be located on or over any utility easement shown on the plat at any time.

## **2. HEIGHT RESTRICTION**

The height of any building shall be measured in the same manner for purposes hereof as provided in the Waunakee Zoning Code in effect on the date hereof.

- The Primary Building shall not exceed 35' in total height.

## **3. DESIGN STANDARDS**

**General Standards:**

- All plans for building and site improvements, including, but not limited to, fences, shall be subject to review and approval by the Developer or the Design Review Committee, in accordance with the Declaration of Covenants, Restrictions, Conditions and Easements for the Plat. No lot owner shall apply for a building permit from the Village of Waunakee and no work may commence without such approval having been given in writing.
- Total Primary Building coverage of the lot shall not exceed 50% of the total lot area. At least 30% of the lot area shall remain as green space, not covered by driveway, walkways, patios or structures, including decks. The restrictions in the two preceding sentences shall not apply to duplex condominium lots.

- All primary entryways or porches shall be oriented toward the street.
- Window, door and other architectural design elements are required on facades facing all public or private streets.
- All driveways shall have a width, excluding flares, at the public street right-of-way of not less than 12' and not more than 24'. Only one (1) driveway entrance shall be permitted per lot (except for duplex condominium lots which may have two driveways), unless this requirement is waived by the Director of Public Works for the Village of Waunakee.

#### **Garages:**

- Detached garages are not permitted.
- No portion of a garage with vehicular entrances that face a street shall exceed 45% for 2-story homes, or 50% for single story homes, of the total front façade of the Primary Structure that faces and is exposed to the street. The restrictions in the preceding sentence shall not apply to side entry garages or duplex condominium lots.

Attached garages shall meet the Primary Building setbacks set forth above, except that all vehicular entrance doors shall have a 20' minimum setback distance from any adjoining lot line, including street lot lines as measured perpendicularly to such vehicular entrance doors.

#### **4. GENERAL**

- The establishment of the foregoing standards shall not prohibit the Developer or the Design Review Committee from establishing other or stricter requirements or rejecting any plans, as the foregoing are minimum requirements only.
- The Developer may modify the foregoing standards in writing on a case-by-case basis, in the sole judgement and discretion of the Developer, if such modification will allow the construction of a Primary Building and its related site plan on the parcel in question in which the proposed architecture and quality of the dwelling will present an attractive appearance compatible with other dwellings within the Property.