

**Declaration of Condominium of  
Prairie Park at Swan Creek  
Condominium**

DANE COUNTY  
REGISTER OF DEEDS

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PRAIRIE PARK AT SWAN CREEK CONDOMINIUM

DECLARATION OF CONDOMINIUM

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**DECLARATION OF CONDOMINIUM**  
**OF**  
**PRAIRIE PARK AT SWAN CREEK CONDOMINIUM**

**THIS DECLARATION** is made under and pursuant to the Wisconsin Condominium Ownership Act of the State of Wisconsin (hereinafter "**Act**"), Chapter 703, Wisconsin Statutes, by Capitol Housing, LLC, a Wisconsin limited liability company (hereinafter the "**Declarant**").

**ARTICLE I**  
**STATEMENT OF PURPOSE**

The purpose of this Declaration is to subject the property hereinafter described and the improvements to be erected thereon (hereinafter collectively "**Condominium**") to the condominium form of ownership in the manner provided by the Act. It is intended that all provisions contained herein shall be deemed to run with the land and shall constitute benefits and burdens to the Declarant and to its successors in interest.

**ARTICLE II**  
**DESCRIPTION, NAME, RESTRICTIONS AND DEFINITIONS**

2.1 **Legal Description.** The real estate subject to this Declaration is described as the real property owned by the Declarant and more particularly legally described in Exhibit "A", which Exhibit "A" is attached hereto and made a part hereof by reference as though fully set forth herein (the "**Property**").

2.2 **Name and Address.** The name of the Condominium is Prairie Park at Swan Creek Condominium and has as its address 5192, 5194, 5196 and 5198 Sassafras Drive, all in the City of Fitchburg, Wisconsin 53711.

2.3 **Covenants, Conditions, Restrictions, and Easements.** The Condominium shall be, on the date this Declaration is recorded, subject to:

- A. General taxes and special assessments not yet due and payable.
- B. Easements and rights in favor of gas, electric, telephone, water, sewer, cable television and other utilities and utility providers.
- C. All encroachments, easements, covenants and restrictions affecting the Condominium, whether or not such encroachments are shown on the Condominium Plat of Prairie Park at Swan Creek Condominium, as such Condominium Plat may be amended from time-to-time.

D. All other easements, covenants, declarations and restrictions of record.

E. All municipal, zoning, and building ordinances, including but not limited to the Planned Development District-General Implementation Plan and Specific Implementation Plan approved by the City of Fitchburg for the Condominium, as amended from time-to-time.

F. All other governmental laws and regulations applicable to the Condominium.

2.4 Definitions. Except as modified herein, the definitions contained in the Act shall govern in the interpretation of this Declaration. The term "Declarant", however, shall be broadly defined to mean, in addition, to the defined Declarant above, any successor-in-title to Declarant's interest in the Property described in Exhibit "A" and any other assignee or successor of Declarant, including, without limitation, (i) an assignee of Declarant's rights and obligations under Section 703.09(4) of the Act and (ii) following a foreclosure or deed in lieu of foreclosure, any mortgagee to whom Declarant's rights and interests hereunder have been pledged; provided, however, that such successor-in-title or such other assignee or successor, by instrument of assignment, acceptance and assumption executed by Declarant and recorded in the Office of the Register of Deeds of Dane County, Wisconsin (i) accepts the assignment therein made by the Declarant of those rights and powers of Declarant contained in this Declaration, and (ii) assumes and agrees to be bound by and perform those obligations of Declarant contained in this Declaration with respect to all or such of those Units within the Condominium as may be legally described in any such instrument or assignment, acceptance, and assumption; provided, however, the agreement by the assignee to assume and be bound by the obligations of the Declarant may be prospective only, and limited to the obligations of Declarant arising on or after the date the assignee records its assignment, acceptance and assumption agreement. If, for any reason, the Declarant ceases to exist as a legal entity, then the powers, rights, duties, and obligations of such Declarant, as provided in this Declaration, shall be exercised and discharged by such Declarant's member(s), or designee(s).

2.5 General Description of Condominium. The Condominium shall consist of four (4) buildings of three (3) levels, each of which building is constructed atop one (1) underground parking garage of one (1) level, all of which is located on the Property. The Condominium shall contain (i) one hundred twenty-eight (128) residential condominium units (hereinafter "**Residential Units**"); (ii) one hundred forty-four (144) parking stalls (hereinafter "**Parking Stalls**"), which Parking Stalls shall be Limited Common Elements; and (iii) one hundred seventy-six (176) storage areas (hereinafter "**Storage Areas**"), which Storage Areas shall be Limited Common Elements, together with drive lanes, all Common Elements and the Property. The Residential Units may also be referred to herein as the "**Units**". A survey plan of the Property and building is attached hereto as Exhibit "B" and incorporated herein by reference ("**Condominium Plat**"). The partitioning, fixtures, attachments, and decorations within each Unit will be determined from time to time by each Unit Owner, subject to restrictions contained in this Declaration and

contained in the by-laws and any rules and regulations adopted by the Prairie Park at Swan Creek Unit Owners Association, Inc., a Wisconsin non-stock corporation (the "Association") from time to time, and in any and all amendments and modifications thereto as adopted by the Association from time to time.

### ARTICLE III UNITS

3.1 Definition. "Unit" shall mean a part of the Condominium intended for any type of independent use, including one or more cubicles of air at one or more levels of space or one or more rooms of enclosed space located on one or more floors (or parts thereof) in a building, some of which spaces may be non-contiguous, as more particularly described and depicted in the Condominium Plat.

3.2 Boundaries of Residential Units. A Residential Unit in the Condominium shall include one (1) or more contiguous or non-contiguous cubicles of air, including the perpetual right of ingress thereto and egress there from located within the boundaries described below (except as otherwise expressly provided herein):

A. The exterior boundaries of the cubicles that constitute Residential Units shall be the vertical or horizontal planes, the elevations of which coincide with and include the following: (i) for the walls, the innermost plane of the unfinished drywall, plaster, or other material affixed to the masonry or stud walls, but including the finished surface of the drywall, plaster or other material affixed to the masonry or stud walls; (ii) for the floor, the uppermost plane of the concrete floor or wood subfloor; and (iii) for the ceiling, the lowermost plane of the drywall, plaster or other material that constitutes the unfinished structural ceiling, excluding the drywall, plaster or other material affixed to the structural portion of the ceiling. The foregoing boundaries extended to the intersection with each other shall constitute the Residential Units as shown on Exhibit "B". It is intended that the surface of each plane described above (be it tiled, papered, paneled, painted, carpeted or otherwise covered) is included as a part of each defined Residential Unit. However, the studs and drywall of Unit boundary walls are not a part of each defined Residential Unit. Included within the Residential Unit shall be all doors, with the exception of exterior doors and the doors to common hallways, which shall be Limited Common Elements as defined below. Included within each Residential Unit shall be all interior partition walls (including the studs and drywall for such interior partition walls) not shared with any other Unit and interior doors. The Residential Units may be designated simply as a "Unit" or as "Units" on the Condominium Plat.

B. In addition, a Residential Unit shall include any and all appliances and other fixtures contained within or serving each Residential Unit, whether they are inside or outside the defined cubicle of air, including, without limitation:

- 1) Interior lights and light fixtures, including the wiring therefore.
- 2) Cabinets.

3) All floor, wall, baseboard, or ceiling electrical outlets and switches, all wiring, conduit and the junction boxes serving them.

4) All telephone, telefax, cable television, computer, internet, stereo or other sound system, if any, including all wiring, outlets, switches, hardware and other appurtenances serving them.

5) All plumbing fixtures, hot water heaters, water softeners, if any, and the piping, valves, and other connecting and controlling mechanisms and devices lying between the fixtures and the water or sewage lines serving more than one (1) Unit.

6) The heating, ventilating and air conditioning system, including the control mechanisms, all vents and related appurtenances from the Residential Unit to the exterior of the Condominium, including vents for the furnace, clothes dryer, range hood, all other exhaust fans, and such other vents appurtenant to each Residential Unit, condensers and all connections thereto serving each Residential Unit.

Specifically not included as part of the Residential Unit, even if located within the cubicle or cubicles of air comprising the Residential Unit, are (i) windows and skylights; (ii) structural components of each building; and (iii) any portion of the plumbing, electrical or mechanical systems of the buildings serving more than one (1) Unit.

3.3 Legal Description. Units shall be identified by the number or other designation as specified on the Condominium Plat, which Condominium Plat shall be recorded contemporaneously with this Declaration. A copy of the Condominium Plat is attached hereto as Exhibit "B".

## **ARTICLE IV** **COMMON ELEMENTS**

4.1 Definition. "Common Elements" shall mean all of the Condominium except the Units.

4.2 Description. The Condominium Common Elements are the following:

A. The Property described in Exhibit "A".

B. The foundations, columns, pilasters, girders, beams, supports, main walls (which shall be defined as exterior walls and surfaces, structural walls and walls common to two (2) or more Units), roof trusses, roofs, drive aisles, halls, corridors, lobbies, stairs, entrances, and exits of the building, and any other improvement not included within the definition of Unit as set forth in Article III above.

C. The underground parking levels, as depicted on the Condominium Plat, including all garage doors, garage door operating mechanisms, drive aisles, but

specifically excluding those portions of the underground parking levels designated on the Condominium Plat as Parking Stalls or Storage Areas, which Parking Stalls and Storage Areas are Limited Common Elements as described in Article V, below.

D. The areas identified on the Condominium Plat as "Common Element," "Mechanical Room," "Mechanical and Storage Room," "Trash Room," "Lobby", "Community Room", "Parking Stalls" and "Private Drive."

E. Any mechanical or utility mechanism, connection or service that serves more than one (1) Unit such as power, gas, hot and cold water, heat, water softeners, water heaters, security systems, telecommunication systems, elevators and elevator operating mechanisms.

F. The fire sprinkler system and its associated piping and operating mechanisms.

G. Any exterior surface parking stalls.

H. Any other portion of the improvements to the Property described in Exhibit "A".

4.3 Use. Except as otherwise provided herein, and subject to the by-laws of the Association, as hereinafter defined, and subject to any rules and regulations adopted by the Association, the Common Elements may be used by the Unit Owners for the purposes for which they were intended. The necessary work of decoration, maintenance, repair and replacement of the Common Elements and the making of any additions or improvements thereto shall be carried out only as provided in this Declaration, the by-laws of the Association and rules and regulations adopted pursuant thereto.

4.4 Ownership. There shall be appurtenant to the Units an undivided interest in the Common Elements as set forth in Exhibit "C" attached hereto.

## **ARTICLE V** **LIMITED COMMON ELEMENTS**

5.1 Definition. "Limited Common Elements" shall mean those Common Elements identified in this Declaration as reserved for the exclusive use of one or more of the Units.

5.2 Description. The Condominium Limited Common Elements are the following:

A. Patios and balconies attached to, leading directly to or from, or adjacent to a Residential Unit and designated as Limited Common Elements on the Condominium Plat, including any water repelling membranes appurtenant to such patios and balconies.

- B. The door leading to or from each Unit.
- C. All windows and skylights serving each Unit.
- D. The mailbox serving, and reserved for the exclusive use of, each Unit.

E. The Storage Areas identified on the Condominium Plat as ST1 to ST176, inclusive, including the door leading to or from each Storage Area. The following provisions shall apply to the Storage Areas:

1) Boundaries of Storage Areas. The boundaries of each Storage Area shall be the vertical or horizontal planes, the elevations of which coincide with the interior planes of the ceiling, floor and walls of each Storage Area extended to the intersection with each other, but excluding such wall, floor or ceiling. It is intended that the surface of each plane described above (be it tiled, papered, paneled, painted, carpeted or otherwise covered) is included as part of each defined Storage Area. Any and all appliances and other fixtures contained within and serving each Storage Area whether they are inside or outside the defined cubicle of air, including, without limitation, the interior lights and light fixtures and all floor, wall, baseboard, or ceiling electrical outlets, switches and junction boxes serving a Storage Area, if any, are made a part of the Storage Area. Specifically not included as part of the Storage Area are those structural components of the building and any portion of the plumbing, electrical, or mechanical systems of the Condominium serving more than one (1) Unit or more than one (1) Storage Area, even if located within the cubicle or cubicles of air comprising the Storage Area.

2) Easements for Certain Storage Areas Adjacent to Parking Stalls. The sole access to certain Storage Areas in the Condominium, as shown on the Condominium Plat, is over and across an adjacent Parking Stall. A permanent, non-exclusive easement is reserved over and across all Parking Stalls adjacent to any such Storage Area to permit the Declarant, Association and owner or occupant of such Storage Area to obtain access to such Storage Area. Any Storage Area may be assigned or conveyed independent of a Parking Stall.

3) Assignment of Storage Areas By Declarant and Unit Owners and the Association. The Declarant reserves the right, in the use of Declarant's sole discretion, to assign the exclusive right to use any one or more of the Storage Areas to any Unit Owner or to the Association, upon terms and conditions dictated by the Declarant in the use of the Declarant's sole opinion and discretion. After any such assignment by the Declarant, which assignment shall be made in writing, and which assignment may be recorded with the Dane County Register of Deeds Office, the Unit Owner or the Association, as applicable, to which such Storage Area is assigned, shall have the exclusive right to the use and occupancy of such Storage Area, including a perpetual access easement over and across any adjacent Parking Stall as described in Section 5.2(E)(2), above. Thereafter, the Unit Owner or the Association, as applicable, that has

received an assignment of a Storage Area hereunder, shall have the right, in such Unit Owners' or the Associations', as applicable, sole opinion or discretion, to assign the exclusive right to the use and occupancy of such Storage Area to any other Unit Owner in the Condominium, to the Association or to the purchaser of a Unit Owner's interest in a Unit in the Condominium, which subsequent assignment shall be in writing, and which subsequent assignment may be recorded in the Dane County Register of Deeds Office. That is, ownership and use of Storage Areas is limited to Unit Owners and the Association. In the event the Declarant conveys any Storage Areas to the Association hereunder, then for so long as such Storage Areas are owned by the Association, all such Storage Areas so conveyed to the Association shall be treated as if they are Common Elements as described in Article IV above. The Association shall maintain and keep a current record of the Unit Owner (or Association, if applicable) having the exclusive right to the use and occupancy of each Storage Area in the Condominium.

F. Parking Stalls. The Parking Stalls identified on the Condominium Plat as P1 to P144, inclusive. The following provisions shall apply to the Parking Stalls:

1) Boundaries of Parking Stalls. The boundaries of each Parking Stall shall be the horizontal or vertical planes, the elevations of which coincide with and include the following: (i) for the lower boundary, the uppermost plane of the finished paved surface, but excluding such finished paved surface; (ii) for the upper boundary, the lowermost plane of the structural ceiling, excluding said structural ceiling; (iii) for the side boundaries, either the center of the painted markings, as shown on the Condominium Plat, or the interior plane of the immediately adjacent wall, but excluding such immediately adjacent wall, as the case may be, extended perpendicularly between the lower boundary and upper boundary; and (iv) for the front and back, the straight lines connecting the ends of the painted markings or the immediately adjacent wall of each side boundary, as the case may be, where said side boundaries terminate and such vertical lines extended perpendicularly between the lower boundary and upper boundary to the intersection with each other.

2) Reservation of Rights. Unit Owners and the Association are hereby advised that due to the structural design of the Condominium and its mechanical systems, the dimensions (including the height) of Parking Stalls may vary considerably from Parking Stall to Parking Stall. The Declarant and the Association reserve the right to place mechanical systems within the boundaries of a Parking Stall (including an easement for access thereto), if the Declarant, or the Association, determine, in the use of their sole discretion, that the placement of such mechanical systems within the Parking Stall is necessary or appropriate to serve the Condominium, and provided the placement of such mechanical systems does not prohibit the parking of a vehicle in such Parking Stall.

3) Disabled-Accessible Parking Stalls.

a. "Disabled-Accessible Parking Stall" means any one or more of Parking Stalls P117, P118, P119 and P120 which are designated as handicapped accessible parking stalls on the Condominium Plat.

b. "Disabled Driver" means one of the following persons:

i) A person: (i) who owns or leases any motor vehicle that such person is permitted to park in a Parking Stall in the Condominium pursuant to terms and conditions of this Declaration, the Association's by-laws or rules and regulations and all applicable laws, codes, statutes, rules, regulations, ordinances and orders and who parks or plans to park regularly in the underground parking garage of the Condominium; (ii) whose current license plates on such motor vehicle are the plates of a special design issued under the Wisconsin Statutes to a veteran or other person with a disability that limits or impairs the ability to walk; and (iii) whose disability that qualified him or her for such special plates is expected to be permanent by any of the persons qualified to provide the certified statement required under the Wisconsin Statutes to obtain or renew such special plates.

ii) A licensed driver: (i) who owns or leases any motor vehicle that such licensed driver is permitted to park in a Parking Stall in the Condominium pursuant to terms and conditions of this Declaration, the Association's By-Laws or rules and regulations and all applicable laws, codes, statutes, rules, regulations, ordinances and orders and who parks or plans to park regularly in the underground parking garage of the Condominium; and (ii) whose current license plates on such motor vehicle are the plates of a special design issued under the Wisconsin Statutes to a licensed driver on whom a person with a disability that limits or impairs the ability to walk is regularly dependent for transportation. Notwithstanding the foregoing, such licensed driver shall only be a "Disabled Driver" if the person whose disability qualified the licensed driver for such special plates has a disability that is expected to be permanent by any of the persons qualified to provide the certified statement required to obtain or renew the plates of a special design under the Wisconsin Statutes.

c. If: (i) one or more Residential Unit Owners have the exclusive use and occupancy of a Disabled-Accessible Parking Stall and (ii) none of such Residential Unit Owners and none of the tenants or occupants of the Residential Unit owned by such Residential Unit Owner is a Disabled Driver, then the Unit Owners of a Disabled-Accessible Parking Stall shall, within ten (10) days of the delivery of Declarant's or the Association's notice, relinquish and forfeit the Disabled-Accessible Parking Stall by warranty assignment or warranty deed to Declarant, the Association or to any third party specified by Declarant or the Association in the notice, free and clear of all liens and encumbrances except for those present at the time of assignment or conveyance of the Disabled-Accessible Parking Stall to such Unit Owners. Notwithstanding the foregoing, such Unit Owners shall not be required to assign or convey the Disabled-Accessible Parking Stall to the Declarant, the Association or such third party until the Declarant, the Association or such third party is prepared to assign or convey by warranty assignment or warranty deed to the Unit Owners a fee interest in

another Parking Stall, the location of which shall be determined by Declarant or the Association after taking into account the wishes of the Unit Owners. Neither the Declarant, the Association nor the Unit Owners shall be required to provide any additional consideration for any Parking Stall assigned or conveyed to such party hereunder.

d. The Declarant or the Association may cause the assignment or conveyance of only one (1) Disabled-Accessible Parking Stall per Disabled Driver who is or will be purchasing, leasing or occupying all or any part of a Residential Unit. Nothing in this Declaration shall, however, require Declarant or the Association to provide more handicapped or accessible stalls than the number of Disabled-Accessible Parking Stalls designated on the Condominium Plat as originally recorded. Nothing in this Declaration shall require Declarant or the Association to provide a Disabled-Accessible Parking Stall at a location other than those locations designated on the Condominium Plat as originally recorded as a Disabled-Accessible Parking Stall.

e. Following the assignment or conveyance of the Disabled-Accessible Parking Stall to Declarant, the Association or the third party specified by the Declarant or the Association, the Association shall paint and install signs within the Disabled-Accessible Parking Stall and the underground parking garage as may be required by any applicable law, code, regulation, ordinance or order of any governmental authority having jurisdiction, or as may be necessary or appropriate, to designate the Disabled-Accessible Parking Stall for handicapped use.

4) Declarant's Right to Assign Certain Parking Stalls to the Association. The Declarant reserves the right, in the use of the Declarant's sole discretion, to assign all of its right, title and interest in and to one (1) or more Parking Stalls to the Association, title to which Parking Stalls the Association shall be required to accept. Any such conveyance shall be made by the Declarant by quit claim assignment or quit claim deed. The Declarant shall pay all recording fees associated with the consummation of such transfer. Said Parking Stalls may be deed restricted by the Declarant as Declarant deems appropriate, including, but not limited to, designating or restricting such Parking Stalls for parking for guests of Unit Owners. The Declarant's right hereunder shall be at the option of the Declarant and under no circumstances shall the Declarant be required or obligated to assign or convey any Parking Stalls to the Association. In the event Declarant assigns or conveys any such Parking Stalls to the Association hereunder, then all such Parking Stalls so assigned or conveyed to the Association shall be treated as Common Elements as described in Article IV above, and the cost and expense for the maintenance of such Parking Stalls, including the payment of real estate taxes shall be a common expense of the Association.

5) Easement for Access to Storage Areas. All Parking Stalls are subject to a perpetual easement, as described in Section 5.02(E)(2), above, to permit the Declarant, Association and the owners and occupants of adjacent Storage Areas to access such Storage Areas over and across any adjacent Parking Stalls.

5.3 Use and Maintenance. Except as otherwise provided herein, the manner of use of the Limited Common Elements shall be determined solely by the Unit Owner who has the exclusive use of such Limited Common Elements, except that no use may occur which could damage the structure of any building, violate the terms and conditions of the approved zoning text for the Condominium or otherwise cause harm to the Condominium or violate the rules and regulations of the Condominium, as adopted or amended from time-to-time. In addition, maintenance, repair and replacement of the Limited Common Elements shall be the responsibility of the Unit Owner to whose use the Limited Common Element is limited, except for that portion of the Limited Common Elements that are a part of the exterior of the structure comprising the Condominium or otherwise visible to other Unit Owners or the general public (including (i) all exterior doors and doors leading to common hallways; (ii) all patios and balconies, including all water repelling membranes and pavers on any patio or balcony located in the Condominium; (iii) windows and skylights serving each Unit; (iv) the mailbox serving, and reserved for the exclusive use of, each Unit; and (v) the Parking Stalls), repair, replacement and exterior cleaning of which (including the choice of material, color and finish on all surfaces exposed to the general public or other Unit Owners) shall be the responsibility of the Association and the cost of which shall be a Common Expense as set forth in Article XIV below. Improvements to Limited Common Elements, as contemplated by Section 703.13(5m) of the Act, are hereby prohibited, and any improvements to the Limited Common Elements shall be governed strictly by the terms and conditions of this Declaration.

## **ARTICLE VI** **USES**

6.1 General. The Units, Limited Common Elements, and Common Elements of the Condominium shall be used for residential occupancy, vehicular driving and parking purposes and pedestrian use only, as appropriate, and shall not be used for any other purpose.

6.2 Zoning Text. Occupancy of the Residential Units shall be governed by the zoning text approved by the City of Fitchburg for the Condominium, which, in general, provides for residential occupancy.

6.3 Municipal Ordinances and Rules and Regulations. The use of the Units, Limited Common Elements, and Common Elements shall comply with the City of Fitchburg General Ordinances, any other applicable municipal or governmental rules, regulations or ordinances, and any other restrictions as contained in the Association's Articles of Incorporation, by-laws and any rules and regulations adopted by the Association from time-to-time and as such may be amended from time to time.

6.4 Use and Enjoyment, Storage of Materials, Insurance Rates and Nuisance. No use may unreasonably interfere with the use and enjoyment of the Common Elements or other Units by the other Unit Owners. There shall be no storage of material, and there shall be no conduct of any activity, which would materially increase the insurance rates of

the Condominium, create or otherwise constitute a material risk of harm to other Unit Owners or constitute a nuisance.

6.5 Parking Stalls and Storage Areas. The Parking Stalls may be used only for motor vehicular parking and the parking of accessory vehicles such as bicycles, motorcycles, boats and trailers. No Parking Stall or Storage Area shall be owned or occupied by anyone other than the Declarant, a Unit Owner or the Association (pursuant to Section 5.2(F)(4) and Section 5.2(E)(3), above).

6.6 Violations. Any and all attorney's fees and other expenses incurred by the Association in the enforcement of this Article VI shall be reimbursed by the Unit Owner in violation thereof and may be assessed against such Unit Owner's Unit.

## **ARTICLE VII** **UNIT OWNER**

"Unit Owner" shall mean a person, combination of persons, partnership, limited partnership, limited liability partnership, limited liability company, corporation or other entity, who or which holds legal title to a Unit; provided, however, that in the event equitable ownership has been conveyed in the Unit by means of a land contract or other similar document, "Unit Owner" shall mean the land contract purchaser.

## **ARTICLE VIII** **ASSOCIATION**

8.1 Definition. "Association" as used herein shall mean Prairie Park at Swan Creek Unit Owners Association, Inc., a Wisconsin non-stock corporation.

8.2 Duties and Obligations. All Unit Owners shall be members of the Association and subject to its Articles of Incorporation, By-Laws, and rules and regulations adopted by it from time to time for the use and management of the Condominium.

8.3 Voting. Each Residential Unit Owner shall be entitled to one (1) vote in the Association, subject however, to suspension as provided herein. Even if a Unit is owned by more than one (1) person, the Unit must cast its vote or votes as a whole. No fractional voting will be allowed or considered. As provided in Article VII hereof, one who holds a land contract purchaser's interest or any other such equitable interest in a Unit shall be considered the Unit Owner. However, for purposes of being eligible to vote as a member of the Association, the land contract or other document establishing the equitable interest, or an instrument providing constructive notice of such interest, must be recorded in the Dane County Register of Deeds office. Parking Stalls and Storage Areas shall not have a vote separate from the vote of the Residential Unit Owner who owns such Parking Stall or Storage Area. That is, there are no votes in the Association appurtenant to any Parking Stall or Storage Area.

8.4 Declarant Control. Except as otherwise provided in Section 703.15(2)(d) of the Act, or as amended, Declarant reserves the right to appoint and remove officers of the Association or to exercise the powers and responsibilities otherwise assigned by the Declaration or the Act to the Association or its officers (hereinafter "**Declarant Control**"). The period of Declarant Control shall continue until the earlier of either of the following to occur: (i) the expiration of three (3) years from the date the first unit is conveyed to a person other than Declarant; or (ii) the expiration of thirty (30) days after the conveyance of seventy-five (75%) percent of the Common Element interest, as set forth in Exhibit "C", to purchasers. During this period, Declarant shall have the full and exclusive right to take all action on behalf of the Association, including but not limited to, the right to (a) enter into leases of Units, (b) make contracts and agreements on behalf of the Association for the maintenance, operation, and management of the Condominium, (c) determine, levy, and collect assessments, (d) grant and receive easements, and (e) enact and enforce rules and regulations for the use of the Condominium. Any contracts or agreements entered into by the Declarant on behalf of the Association with Declarant or an affiliate of Declarant shall not extend for a period exceeding one (1) year; provided, however, that such contracts or agreements may be automatically renewable if a reasonable period for giving notice of termination is provided at the end of each term. Furthermore, any such contracts or agreements shall provide for termination by either party without cause and without payment of a termination fee or other penalty upon at least ninety (90) days' prior written notice. Notwithstanding the foregoing, this provision shall not apply to any lease or easement, the termination of which would terminate the Condominium.

8.5 Termination of Control. Upon termination of the above-specified period of Declarant Control, or upon the earlier, voluntary relinquishment of control by Declarant, control of the Association shall be turned over to the Unit Owners; provided, however, Declarant reserves the right to name one member, who need not be a Unit Owner, of the Board until all Units have been conveyed to Unit Owners (other than Declarant) in fee simple. Notwithstanding any provision to the contrary, Declarant reserves the following rights: (i) to continue any unfinished development work on any unsold Unit and on the Limited Common Elements and Common Elements (including obtaining any necessary easements therefore); (ii) to conduct promotional and sales activities using unsold Units and both Limited Common Elements and Common Elements, which activities shall include but need not be limited to maintaining sales and management offices, model Units, parking areas, and advertising signs; and (iii) to do all other acts Declarant shall deem reasonably necessary in connection with the development and sale of the remaining Units. However, any such acts shall not violate the rights of the Unit Owners or their Mortgagees or unreasonably interfere with the use and enjoyment of the Units, Limited Common Elements, or Common Elements. In addition, Declarant shall repair or restore any and all damages to any Unit, Common Element or Limited Common Element caused by Declarant's actions under this Section 8.5. Declarant shall also have the right during the period of Declarant Control to grant easements over, through, or under any part of the Condominium for the benefit of the Condominium as a whole or any part or Unit thereof.

8.6 Declarant Responsibilities for Records. During the period of Declarant Control, the Declarant shall be responsible, at the cost and expense of the Association, for

creating and maintaining the financial and operational records of the Association and shall turn the records over to the Association's Board upon termination of the period of Declarant Control. During the period of Declarant Control, and for one (1) year thereafter, upon written request to the Association by at least three (3) Unit Owners, not including Units owned by the Declarant, the Association shall arrange for an independent audit of the Association's financial records at the Association's expense. The cost of any audit requested within thirty-six (36) months after the completion of a previous audit shall be paid for by the requesting Unit Owners.

8.7 No Warranty on Termination of Declarant Control. When Declarant Control terminates as set forth in Section 8.5, no warranties or representations, expressed or implied, including, but not limited to, the implied warranty of fitness for a particular purpose and merchantability, are made to the Unit Owners or the Association, regarding the past or future performance or quality of the Common Elements and the Limited Common Elements. Also, any implied warranty of workmanlike performance and that the building or other Common Elements, or the Limited Common Elements, will be reasonably adequate for use and occupancy, created by WI Stat § 706.10(7), which statutory section creates the above-stated implied warranties, for the conveyance of a newly constructed home or condominium, is hereby expressly disclaimed and excluded. Any other implied warranties created by common law, including but not limited to Declarant's duty to perform all work in a good and sufficient workmanlike manner, are also disclaimed and excluded.

The reason no warranties and representations, expressed or implied, are given upon termination of Declarant Control is because the Declarant will provide a limited one year warranty to the Unit Owner for defects in the Unit, and will also provide a limited warranty to the Unit Owner and Association, for defects in the Common Elements and the Limited Common Elements, at such time as title to the individual Unit is conveyed to the Unit Owner. The reason both warranties are given to the Unit Owner at the closing for the individual Unit, is because the Unit Owner also receives a proportionate share of the Common Elements at the time of the closing of the Unit. Therefore, Declarant's termination of Declarant Control does not result in any conveyance (i.e. a transfer of any real property rights). All that occurs at the point that Declarant Control terminates is that Declarant removes its Board members from the Association, which Board members are replaced by Board members elected by the Unit Owners. No change in ownership of the Common Elements or Limited Common Elements occurs upon termination of Declarant Control.

## **ARTICLE IX** **REPAIRS AND MAINTENANCE**

9.1 Units. Each Unit Owner shall be responsible for the decoration, furnishing, housekeeping, maintenance and repair and replacement of his, her, its or their Unit.

9.2 Limited Common Elements. With the exception of that portion of the Limited Common Elements that are a part of the exterior of the structure comprising the Condominium or otherwise visible to other Unit Owners or the general public (including (i)

all exterior doors and doors leading to common hallways; (ii) all patios and balconies, including all water repelling membranes and pavers on any patio or balcony located in the Condominium; (iii) windows and skylights serving each Unit; (iv) the mailbox serving, and reserved for the exclusive use of, each Unit; and (v) the Parking Stalls), each Unit Owner shall be responsible for the decoration, furnishing, housekeeping, maintenance, repair, replacement, general cleanliness, and presentability of the Limited Common Elements which use is reserved to the Unit or Units.

9.3 Common Elements. Except as provided in Section 9.2 hereof, the Association shall be responsible for the maintenance, repair, replacement, general cleanliness and presentability of the Common Elements.

9.4 Entry by Association. Provided that twenty-four (24) hours prior notice is given, duly authorized officials or agents of the Association may enter any Unit or Limited Common Element(s) or both at reasonable times and under reasonable conditions when, in the opinion of the said authorized officials or agents, entry is necessary in connection with any maintenance, construction, or repair of public utilities and for any other matter for which the Association is responsible. The entry shall be made with as little inconvenience to the Unit Owner, his, her, its or their tenants, as possible under the circumstances, and during normal business hours, if possible. Any damage caused thereby shall be repaired by the Association and shall be treated as a "Common Expense", as hereinafter defined. Notwithstanding the foregoing, in the event of an emergency, the twenty-four (24) hour notice requirement shall not apply, although, prior notice to the Unit Owner shall be attempted.

## **ARTICLE X** **UNIT ALTERATIONS**

### 10.1 Within Unit.

A. A Unit Owner may make improvements or alterations within his, her, its or their Unit; provided, however, that (i) such improvements or alterations shall not impair the structural soundness or integrity or lessen the structural support of any portion of the Condominium; (ii) such improvements or alterations shall not impair any easement; (iii) such improvements or alterations shall be made pursuant to plans and specifications, approved in writing by the Association, which written approval the Association shall not unreasonably withhold (the Association shall have the power and authority to make rules and regulations setting forth standards for the improvement or alteration of a Unit); and (iv) such improvements or alterations shall not create a nuisance substantially affecting the use and enjoyment of other Units in the Condominium or the Common Elements. In the event plans and specifications for improvements and alterations within a Unit are provided to the Association as required by this Section 10.1(A), and such plans and specifications comply with terms and conditions of Sections 10.1(A)(i), 10.1(A)(ii) and 10.1(A)(iv) hereof, and the Association fails to approve or disapprove such plans and specifications within forty-five (45) days of receipt thereof, such plans and specifications shall be deemed approved, and the Unit Owner shall be permitted to undertake and complete the

improvements or alterations contemplated by such plans and specifications. In the event the Association withholds approval of a proposed improvement or alteration of Unit, such disapproval shall be in writing and shall state, with specificity, the exact reasons the Association disapproved such plans and specifications. A Unit Owner may not change the dimensions of or the exterior appearance of a Unit or any portion of the Common Elements (including Limited Common Elements) without obtaining the prior written permission of the Association's Board of Directors ("**Board**"), which permission may be denied in the sole discretion of the Board. Any approved improvement or alteration which changes the exterior dimensions of a Unit must be evidenced by the recording of a modification to the Condominium Declaration and Condominium Plat before it shall be effective and must comply with the then-legal requirements for such amendment or addendum. Furthermore, any approved improvements or alterations must be accomplished in accordance with applicable laws and regulations, must not unreasonably interfere with the use and enjoyment of the other Units and Limited Common Elements or the Common Elements, and must not be in violation of any underlying mortgage, land contact, or similar security interest.

B. A Unit Owner acquiring an adjoining part of another Unit may remove all or any part of any intervening partition wall or create doorways or other apertures therein. This may be done even if the partition wall may in whole or in part be a Common Element, provided that those acts do not impair the structural integrity or lessen the support of any portion of the Condominium, do not reduce the value of the Condominium, and do not impair any easement. The creation of doorways or other apertures is not deemed an alteration of boundaries.

#### 10.2 Relocation of Boundaries.

A. If the Unit Owners of adjoining Units desire to relocate their mutual boundary, the affected Unit Owners shall prepare and execute appropriate instruments, as required by Section 703.13(6) of the Act.

B. An amendment to the Declaration and an addendum to the Condominium Plat shall identify the Units and shall state that the boundaries between those Units are being relocated by agreement of the Unit Owners thereof. The amendment shall contain words of conveyance between those Unit Owners, and when recorded shall also be indexed in the name of the grantor and grantee, if applicable. The amendment to the Declaration shall also state the reallocation of the aggregate undivided interest in the Common Elements appertaining to the Units. If not stated, the prior allocation shall govern, until such time as the Unit Owners shall record an amendment to that effect in the Dane County Register of Deeds Office.

C. Plats and plans showing the altered boundaries and the dimensions thereof between adjoining Units, and their identifying numbers or letters, shall be prepared. The plats and plans shall be certified as to their accuracy and compliance with Subsection 703.13(6) of the Act, by a civil engineer, architect, or licensed land surveyor authorized to practice his or her profession in the State of Wisconsin.

D. After appropriate instruments have been prepared and executed, those instruments shall become effective when the adjoining Unit Owners and the Association have executed them and they have been recorded in the Dane County Register of Deeds Office. The recording thereof shall be conclusive evidence that the relocation of boundaries did not violate the Condominium instruments.

### 10.3 Separation of Units.

A. A Unit may be separated into two (2) or more Units upon compliance with the provisions of Section 703.13(7) of the Act and this Section 10.3, provided that the Board of the Association approves (which approval may be denied in the sole discretion of the Board). The Association's President, upon written application of a Unit Owner proposing the separation of a Unit (hereinafter the "**Separator**") and after thirty (30) days' written notice to the other Unit Owners shall promptly present the matter to the Association's Board. If approved, the President of the Association shall promptly prepare and execute appropriate instruments under this section. An amendment or addendum to the Condominium instruments shall assign a new identifying number to each new Unit created by the separation of a Unit, shall allocate to those Units, on a reasonable basis acceptable to the Separator and the other Unit Owners, all of the undivided interest in the Common Elements and rights to use the Limited Common Elements. The vote in the Association formerly appertaining to the separated Unit will be allocated among the resulting Units. For this purpose, a fractional vote shall be permitted. The amendment shall reflect a proportionate allocation to the new Unit(s) of the liability for Common Expenses and right to common surpluses formally appertaining to the subdivided Unit.

B. Plats and plans showing the boundaries and dimensions separating the new Units together with their new boundaries and their new identifying numbers shall be prepared. The plat and plans shall be certified as to their accuracy and compliance with Subsection 703.13(7) of the Act, by a civil engineer, architect, or licensed land surveyor authorized to practice his or her profession in the State of Wisconsin.

C. After appropriate instruments have been prepared and executed, they shall be delivered promptly to the Separator upon payment by him, her or it of all reasonable costs for their preparation. Those instruments are effective when the Separator has executed them and they are recorded in the Dane County Register of Deeds Office. The recording of the instruments shall be conclusive evidence that the separation did not violate any restrictions or limitations specified by the Condominium instruments and that any reallocations were reasonable.

### 10.4 Merger of Units.

A. Two (2) or more Units may be merged into one (1) Unit upon compliance with the provisions of Section 703.13(8) of the Act and this Section 10.4, provided that the Board of the Association approves (which approval shall not be unreasonably withheld by the Board). The Association's President, upon written application of a Unit Owner

proposing the merger of a Unit (hereinafter the "**Merger**") and after thirty (30) days' written notice to the other Unit Owners shall promptly present the matter to the Association's Board. If approved, the President of the Association shall promptly prepare and execute appropriate instruments under this section. An amendment or addendum to the Condominium instruments shall assign a new identifying number to the merged Unit created hereby, shall allocate to the merged Unit, on a reasonable basis acceptable to the Merger and the other Unit Owners, all of the undivided interest in the Common Elements and rights to use the Limited Common Elements. The vote in the Association formerly appertaining to the merged Units will be consolidated in the resulting merged Unit. The amendment shall reflect a proportionate allocation to the new Unit of the liability for Common Expenses and right to common surpluses formally appertaining to the merged Units.

B. Plats and plans showing the boundaries and dimensions merging the Units together with their new boundaries and their new identifying numbers shall be prepared. The plat and plans shall be certified as to their accuracy and compliance with Subsection 703.13(8) of the Act, by a civil engineer, architect, or licensed land surveyor authorized to practice his or her profession in the State of Wisconsin.

C. After appropriate instruments have been prepared and executed, they shall be delivered promptly to the Merger upon payment by him, her or it of all reasonable costs for their preparation. Those instruments are effective when the Merger has executed them and they are recorded in the Dane County Register of Deeds Office. The recording of the instruments shall be conclusive evidence that the merger did not violate any restrictions or limitations specified by the Condominium instruments and that any reallocations were reasonable.

10.5 Expenses. All expenses involved in any improvements, separations, mergers or alterations approved by the Association or permitted under this Article, whether or not completed, including all expenses to the Association, shall be borne by the Unit Owner or Unit Owners involved and may be charged as a special assessment to the affected Unit or Units.

## **ARTICLE XI** **INSURANCE**

11.1 Property Insurance. The Association shall obtain and maintain insurance for the Units, Limited Common Elements and Common Elements, on an "all risk basis" for an amount not less than the full replacement value of the insured property. For purposes of this paragraph, "insured property" shall include all elements of the buildings constituting the Condominium, including without limitation, all interior finishes, built-in cabinets, plumbing fixtures, heating, ventilating and air conditioning equipment, partition walls and floor coverings, existing as of the most recent date of completion of a Unit ("**Completion Date**"). That is, the Completion Date shall be continually updated to the date coinciding with the completion of the most recent Unit since the Condominium is under construction. The final Completion Date shall occur once all Units have been completed. The

Association shall be the named insured with Unit Owners and the Mortgagees of Units as additional insureds. For purposes of this provision and for the Declaration, "Mortgagee" shall mean the holder of any recorded mortgage encumbering one or more Units or a land contract seller.

11.2 Liability Insurance. The Association shall maintain general liability insurance, together with umbrella coverage, against all claims commonly insured against and in such amounts as the Association shall deem suitable. The policies may, at the discretion of the Board of the Association, include standard coverage for the errors and omissions of Association directors and officers. The Association shall be the named insured with Unit Owners and the Mortgagees of Units as additional insureds. Such policies shall also contain a "severability of interest" endorsement, which shall preclude the insurer from denying the claim of a Unit Owner because of negligence on the part of the Association or any Unit Owners, their tenants or visitors.

11.3 Fidelity Insurance. If the Board of the Association affirmatively elects, the Association shall maintain fidelity coverage against dishonest acts by any person responsible for handling the funds belonging to or administered by the Association. The Association shall be the named insured, and the insurance shall be in an amount of not less than fifty (50%) percent of the Association's annual operating expenses and reserves.

11.4 Administration. Any and all premiums associated with the insurance purchased by the Association shall be a Common Expense. The Association shall act as the trustee for the purpose of obtaining insurance coverage and for the receipt, application, and disbursement of proceeds. All insurance shall be obtained from insurance carriers licensed or permitted to do business in the State of Wisconsin.

11.5 Unit Owner's Insurance. Each Unit Owner shall maintain property insurance for the contents, additions and alterations contained within his, her, its or their Unit on an all-risk basis for an amount not less than the full replacement value of the insured property. For the purpose of this paragraph, "insured property" shall mean additions and alterations made to the interior of a Unit by a Unit Owner after the Completion Date, as well as contents that each Unit Owner may elect to insure. The Unit Owner shall be the named insured and the Association shall be named as an additional insured. Each Unit Owner shall also maintain comprehensive general liability coverage at a single limit of not less than Three Hundred Thousand (\$300,000.00) Dollars per incident or such other limits as the Board may, from time to time, prescribe. Unit Owners shall, upon request, provide the Association with certificates of insurance evidencing the required coverage. All policies must be issued by insurance carriers acceptable to the Association and licensed to do business in the State of Wisconsin. The Association's approval shall not be unreasonably withheld.

11.6 Disbursement. Insurance proceeds shall first be disbursed by the Association for the repair or restoration of the damaged Units, Limited Common Elements, and Common Elements, and the Unit Owners and their Mortgagees shall not be entitled to receive payment of any portion of the insurance proceeds unless the Association has

determined not to rebuild, or a court of law has ordered partition of the Condominium property, and the same can be legally accomplished under the City of Fitchburg General Ordinances, or there is a surplus of insurance proceeds after the Common Elements, Limited Common Elements, and Units, have been completely repaired or restored.

11.7 Commencement. Except as provided in Section 11.5, all insurance required by this Declaration shall be purchased and maintained by the Association commencing on or before the date of the closing of the sale of the first Unit.

## **ARTICLE XII** **REPAIR OR RECONSTRUCTION**

In the event the Condominium is damaged or destroyed, in whole or in part, the Association shall promptly undertake to repair or reconstruct the damaged portion of the Condominium to its former condition unless, by the affirmative vote of Unit Owners representing at least seventy-five (75%) percent of the votes in the Association as set forth in the third column of Exhibit "C" as amended from time to time and their first Mortgagees, a contrary decision is made. Upon reconstruction, the Association may vary the design, plan, and specifications of the Condominium from that of the original; provided, however, the number of square feet for any Unit may not vary by more than five (5%) percent from the number of square feet for such Unit existing immediately prior to the damage or destruction (unless Unit Owners owning at least seventy-five (75%) percent of the Units agree otherwise); and provided, further, the location and floor plan of the buildings and Units therein shall be substantially the same as they were prior to the damage. In the event of any variance, an amendment to the Declaration and an addendum to the Condominium Plat shall be recorded. In the event insurance proceeds are insufficient to pay the estimated or actual costs of reconstruction, the shortage shall be considered a Common Expense, and the Association shall have the responsibility and the right to levy assessments against the Unit Owners as provided herein.

## **ARTICLE XIII** **EMINENT DOMAIN**

In the event of a taking of all or any portion of the Common Elements under the power of eminent domain, the provisions of Sections 703.19 and 703.195, of the Act, shall control; provided, however, the affirmative vote of at least fifty-one (51%) percent of the first Mortgagees, calculated on a per-Unit basis, shall also be required in order to partition the Condominium; and provided, further, if Common or Limited Common Elements are taken, the same shall be reconstructed by the Association if practical to do so.

## **ARTICLE XIV** **COMMON EXPENSES**

14.1 Liability of Unit Owners, Annual Budget and Statutory Reserve Account.

A. Liability of Unit Owners. Each Unit Owner, including the Declarant, shall be liable for the share of expenses of the Association assessed against such Owner's Unit, including an assessment coming due during the pendency of any claim by a Unit Owner against the Association or during any period in which the Unit is not occupied by the Unit Owner or in which the Unit is leased or rented to another person. These expenses ("**Common Expenses**") shall be allocated among the Units in the percentages specified in Exhibit "C" attached hereto, except that charges may be specifically allocated to particular Units by the Board of the Association, or by separate agreement among the Unit Owners, based on the benefit to the Unit Owner of the cost or expense involved or on the usage, fault or negligence or other factors affecting the deterioration or damage of or to Units, Common Elements, or Limited Common Elements as to which the Association may have responsibility. During the period of Declarant Control, the Board of the Association may not make any allocation or assessment under this Section 14.1 that would (i) have the effect of benefiting the Declarant at the expense of Unit Owners other than the Declarant or (ii) not be in compliance with the terms and conditions of Section 703.16(2)(b) of the Act.

B. Statutory Reserve Account. Pursuant to the authority granted to the Declarant under Section 703.163(3)(c) of the Act, the Declarant hereby elects not to establish a statutory reserve account ("**Statutory Reserve Account**"), as the term "Statutory Reserve Account" is defined in Section 703.163(1)(b) of the Act. The Declarant is hereby authorized to execute and record a Statutory Reserve Account Statement, as required by Section 703.163(11) of the Act. Nothing herein shall prohibit the Declarant, or the Association, from making a later determination to establish a Statutory Reserve Account pursuant to the procedures set forth in Section 703.163 of the Act.

C. Annual Budget. The Association, annually, shall adopt and distribute to all Unit Owners, an annual budget setting forth the following:

- 1) All anticipated Common Expenses and any amounts to be allocated to the Statutory Reserve Account, if any and to any other funds for future expenditures.
- 2) The amount and purpose of any other anticipated Association expenditure.
- 3) The amount of any Statutory Reserve Account, if any, or any other funds held for future expenditures.
- 4) Any common surpluses.
- 5) The amount and source of any income, other than assessments of the Unit Owners.
- 6) The aggregate amount of any assessment to be levied against Unit Owners and the purpose of the assessments.

D. Definition of Assessments. For purposes of this Declaration, the term "**Assessments**" shall mean regular and special assessments for Common Expenses and charges, fines or assessments against specific Units or Unit Owners for damages to the Condominium or for penalties for violations of the Act, this Declaration or the Association's by-laws or rules and regulations, as adopted or amended from time-to-time.

14.2 Enforcement. The assessments for Common Expenses, together with such interest as the Association may impose pursuant to the By-Laws for delinquencies and the costs of collection and reasonable attorneys' fees, constitute a lien on the Units against which they are assessed, except as otherwise provided in Section 14.5 below. Attachment, filing, effectiveness, priority, and enforcement of the lien shall be as provided in Section 703.165 of the Act.

14.3 Suspension of Voting Rights. If any assessment of Common Expenses is delinquent and a "Statement of Condominium Lien" as described in Section 703.165 of the Act, has been filed against a Unit, the Association may, upon notice to the Unit Owner, suspend the voting rights of the delinquent Unit Owner.

14.4 Unit Sale; Reserve Fund. Except as otherwise provided herein, unpaid Common Expenses assessed against a Unit shall be a joint and several liability of the seller and purchaser in a voluntary transfer of the Unit if a Statement of Condominium Lien covering the delinquency shall have been recorded prior to the transfer. The Association may establish a reserve fund to be used by the Association for capital improvements, repairs or extraordinary expenses, as the Board shall determine.

14.5 Lien for Non-Payment. The Association shall have a lien, from the date an assessment is made, upon any Unit for assessments made against that Unit, which assessments remain unpaid. Such lien shall be subordinate to any first (1st) priority mortgage, as described in Section 708.09 of the Act. The lien shall secure payment of the assessment, interest, and costs of collection, including reasonable attorney's fees. The lien may be recorded in the Dane County Clerk of Court's office by an instrument executed by the Association and may be foreclosed. The Unit Owner shall be personally liable for all unpaid assessments, interest, and costs of collection. This liability shall not terminate upon transfer of ownership or upon abandonment by the Unit Owner by disclaiming use of the Common Elements. When any lien is foreclosed, if the Unit Owner remains in possession of the Unit, the Unit Owner shall pay the reasonable rental value of the Unit. The Association shall be entitled to the appointment of a receiver of the Unit, as a matter of strict right. Assessments shall be paid without offset or deduction. No Unit Owner may withhold payment of any assessment or any part thereof because of any dispute that may exist among or between Unit Owners, the Association, the Declarant, or combination thereof. Rather, the Unit Owner shall timely pay all assessments pending resolution of any dispute.

14.6 Installment Payment. Except for items such as insurance premiums which must be prepaid, assessments shall be paid in advance, in the form of a monthly maintenance fee determined by a budget of Common Expenses prepared by the Board, which budget shall include a reserve fund for capital improvements, repairs, and extraordinary maintenance and replacement items. Special assessments for items not provided for in the budget shall be paid at such time or times, in a lump sum, or in such installments, as the Board may determine.

14.7 Negligence of Unit Owner. If, due to the negligent or intentional act or omission of a Unit Owner, or a member of a Unit Owner's family or household pet, or of or to a guest or other authorized occupant or visitor of such Unit Owner, damage shall be caused to the Common Elements or to a Unit or Units owned by others, or maintenance, repairs or replacements shall be required which would otherwise be a Common Expense, then such Unit Owner shall pay for such damage and such maintenance, repairs and replacements as may be determined by the Board, subject to the rules, regulations and By-Laws of the Association.

## **ARTICLE XV** **AMENDMENTS**

Except as otherwise provided herein, this Declaration may only be amended with the written consent of at least two-thirds of the aggregate of the votes established and set forth in Section 8.3 hereof; provided, however, no such amendment may substantially impair the security of any mortgagee. A Unit Owner's written consent is not effective unless it is approved in writing by the first mortgagee of the Unit, or the holder of an equivalent security interest, if any. Approval from the first mortgage lender, or equivalent security holder, or the person servicing the first mortgage loan or its equivalent, on a Unit, constitutes approval of the first mortgagee or equivalent security interest holder, for purposes hereof. No amendment to this Declaration shall be effective until an instrument containing the amendment and stating that the required consents and approvals were duly obtained and received, signed on behalf of the Association, and duly acknowledged or authenticated, is recorded with the Dane County Register of Deeds Office as required by statute. In addition to the foregoing described procedure for amending this Declaration, this Declaration may also be amended by the Association, pursuant to the alternative amendment procedure contained in Section 703.093 of the Act. Notwithstanding anything else stated in this Declaration, the Declarant reserves the right, in the use of the Declarant's sole discretion, to amend this Declaration and the Condominium Plat, without the consent of any Unit Owner, the mortgagee or land contract vendor of any Unit, or the Association, for the sole purpose of documenting any changes in the Condominium or any Units, Common Elements or Limited Common Elements as actually constructed, from that described in this Declaration and in the Condominium Plat. To the extent the consent of any such party is required by law or otherwise, all such parties, by accepting title to a Unit in the Condominium, or taking a security interest therein (including a mortgage or a land contract), hereby appoint the Declarant as such party's attorney in fact to execute any such amendment to this Declaration and the Condominium Plat.

## **ARTICLE XVI** **NOTICES**

The person to receive service of process for the Condominium or the Association shall be John Sveum, 1249 Williamson Street, Madison, Wisconsin 53703 or such other person as may be designated from time to time by the Association, which designation shall be filed with the Wisconsin Department of Financial Institutions.

## **ARTICLE XVII** **REMEDIES**

If any Unit Owner fails to comply with all provisions of the Act, this Declaration, the Association's By-Laws, the Articles of Incorporation or with any rules and regulations promulgated by the Association, the Unit Owner may be sued for damages caused by such failure or for injunctive relief, or both, by the Association or by any other Unit Owner. In the event no damages are capable of being accurately determined, liquidated damages of One Hundred and no/100ths (\$100.00) may be assessed for each violation. Each day of violation shall constitute a separate violation for purposes of this Article. Any and all reasonable attorneys' fees and other expenses incurred by the Association in enforcing this provision shall be reimbursed by the Unit Owner in violation and may be assessed against such Owner's Unit. Individual Unit Owners shall have similar rights of action, but not reimbursement, against the Association.

## **ARTICLE XVIII** **EASEMENTS**

Easements are reserved over, through, across and underneath the Units, Limited Common Elements and Common Elements for ingress and egress and for the presence, installation, maintenance, repair and replacement of present and future utility services, including but not limited to, easements for water pipes, sanitary sewer pipes, emergency sewer lines, storm water drainage pipes, electrical wires, television wires, computer cables, telephone and internet access wires or cables, security wires, street lights, traffic signals and signs, appurtenances thereto and the like, whether or not shown on the exhibits attached hereto. Easements for such utility services are reserved to the Declarant, the Association and the Unit Owners and their contractors or agents. Easements for ingress and egress are reserved to the Declarant, the Association and Unit Owners in, over, across and under the Units, Common Elements and Limited Common Elements, their ceilings, floors, and walls for the purpose of making any installations, repairs and replacements, which are the obligation of the Declarant, Association or Unit Owner hereunder. In addition, easements are reserved to the Association and the Declarant, over and across all of the Parking Stalls and Storage Areas for the purpose of gaining access to any mechanical area or other area of the Condominium to permit the Declarant or the Association to make future installations and to maintain, repair and replace any existing or future installation of any mechanical or utility system located within the Condominium, that the Declarant or the Association may deem necessary. The

Association or Unit Owner, as the case may be, shall be responsible for any damage resulting from the use of such easements. Any Unit Owner who owns a Unit adjacent to another Unit or Units shall have an easement for access to such adjacent Unit or Units for the purposes of installing, maintaining, placing, plumbing, electrical and other utility services serving such Unit. Easements for decoration are reserved to Unit Owners over and into the surfaces of the Common Elements, provided such use does not impair the structural integrity of the Condominium. All Parking Stalls are subject to a perpetual easement, as described in Section 5.02(E)(2), above, to permit the Declarant, Association and the owners and occupants of adjacent Storage Areas to access such Storage Areas over and across any adjacent Parking Stalls.

## **ARTICLE XIX**

[Intentionally Omitted.]

## **ARTICLE XX** **GENERAL**

20.1 Utilities. Each Unit Owner shall pay for his, her or its cable television, telephone, Internet access, electrical, gas, and other utility services, which are separately metered or billed, to each Unit Owner by the respective utility company provider. Utilities (including, but not limited to, any bulk arrangements negotiated by the Association), which are not separately metered or billed, shall be treated as part of the Common Expenses except as may be otherwise provided under Section 14.1 hereof.

20.2 Encroachments. If any portion of a Unit, Limited Common Element, or Common Element encroaches upon another, an easement for the encroachment and for its maintenance shall exist. In the event all or a portion of the Condominium is damaged and subsequently reconstructed, the Unit Owners shall allow encroachments on to the Units, Limited Common Elements, or Common Elements during construction, and easements for such encroachments and their maintenance shall exist.

20.3 Pet Rules and Regulations. Pets shall be permitted, but shall be strictly subject to rules and regulations adopted by the Board from time-to-time, in the use of the Board's sole discretion. Variances may be granted by the Board pursuant to procedures adopted by the Board. In addition, the Board shall have the authority to order an otherwise permitted pet to be removed from the Condominium, if such pet constitutes or becomes a nuisance to other Unit Owners, as determined by the Board in the use of its sole discretion.

20.4 Invalidity of a Provision. If any of the provisions of this Declaration, the Association's Articles of Incorporation, the Association's By-Laws, or of any rules and regulations adopted by the Association, or any portion thereof, shall be determined to be invalid by a court of competent jurisdiction, the remaining provisions and portions thereof shall not be affected thereby.

20.5 Conflict in Condominium Documents. In the event a conflict exists among any provision of this Declaration, the Articles of Incorporation, the By-Laws, or any rules and regulations, or between or among any of them, this Declaration shall be considered the controlling document.

20.6 Lease of Units.

A. Definitions. The following terms, as used in this Section 20.6, shall have the following definitions:

1) "Condominium Instruments" means this Declaration, the Condominium Plat and the Association's Articles of Incorporation, by-laws and any rules and regulations adopted by the Association, from time to time.

2) "Occupancy Agreement" means any lease or other agreement for the use or other occupancy of a Unit by and between a Unit Owner and a person (whether one or more) or entity, which person or entity is not a Unit Owner.

3) "Occupant" means any person or entity that uses or occupies a Unit pursuant to an Occupancy Agreement.

B. Statement of Purpose. The Condominium is intended to be an owner-occupied condominium community. A Unit Owner shall be permitted to enter into an Occupancy Agreement for all or a portion of the Unit Owner's Unit, provided the Unit Owner and Occupant (i) comply with all of the terms and conditions of this Section 20.6. In order to promote owner-occupancy of Units in the Condominium and to preserve preferred financing options for Unit Owners, the Association shall have the power and authority to make rules and regulations limiting the total number of Units in the Condominium that may be leased pursuant to Occupancy Agreements or otherwise.

C. Occupancy Agreements Must Be In Writing. All Occupancy Agreements must, without exception, be in writing.

D. Compliance with Condominium Instruments. All Occupancy Agreements shall provide that by entering into an Occupancy Agreement for a Unit in the Condominium, the Occupant acknowledges receipt of, and agrees to be bound by and observe, all of the terms and conditions of the Condominium Instruments.

E. Term Limits. The term of the Occupancy Agreement may not exceed twelve (12) months in duration, unless a term of greater than twelve (12) months is approved, in writing, by the Board of the Association.

F. Use Restrictions. Use of the Unit by the Occupant shall comply with all of the terms, conditions and restrictions of the Condominium Instruments.

G. Automatic Default and Eviction By Association. A violation of any term or condition of the Condominium Instruments by the Occupant shall constitute a violation of the Occupancy Agreement, and the Unit Owner is required to take appropriate action for a violation of the Condominium Instruments or Occupancy Agreement, including, without limitation, termination of the Occupant's Occupancy Agreement and eviction of the Occupant. If, in the determination of the Association, the Unit Owner does not take appropriate action in response to an Occupant's violation of the Condominium Instruments or Occupancy Agreement, the Association shall have the right to do so, as the Unit Owner's attorney-in-fact, including the right to evict the Occupant, with all costs associated with such action assessed against the Unit Owner.

H. Agreement Must Be Approved By and Filed With the Association. An Occupancy Agreement is not valid or binding on the Unit Owner, Occupant or the Association, until such time as the Occupancy Agreement is approved, in writing, by the Association. The Association's approval shall be based upon the Occupancy Agreement's compliance with the terms and conditions of the Condominium Instruments. A copy of the Occupancy Agreement, executed by the Unit Owner and Occupant, must be filed with the Association within five (5) business days after written approval thereof by the Association.

I. Liability for Violation by Occupant. If an Occupant commits any violation of the Condominium Instruments or Occupancy Agreement, which violation results in an Assessment imposed by the Association, the Occupant shall be directly liable to the Association for such Assessment. Any such Assessment shall be paid by the Occupant to the Association within ten (10) days of the date of such Assessment. The Association shall provide concurrent written notice to the Unit Owner, of any notice to the Occupant hereunder. The Unit Owner acknowledges and agrees that the Unit Owner shall be responsible for the payment of any Assessment imposed by the Association against the Occupant, which the Occupant does not pay within such ten (10) day period. The Unit Owner shall pay such Assessment to the Association, within five (5) days after the date the Unit Owner receives notice from the Association that the Occupant has not paid such Assessment within the time allotted to the Occupant hereunder.

J. Notifications to Unit Owner or Occupant. Any and all notices given by the Association to the Unit Owner and Occupant pursuant to this Section 20.6 shall be deemed received by the Unit Owner and Occupant, if delivered by the Association, certified mail, return receipt requested, to the Unit in the Condominium covered by the Occupancy Agreement. If the Unit Owner or Occupant desires the Association to use a different address for notice purposes, written notice must be given by the Unit Owner or Occupant to the Association, of such alternate address.

K. Parking Stalls and Storage Areas. A Unit Owner of a Parking Stall or Storage Area may lease such Parking Stall or Storage Area only to a Unit Owner or an Occupant of a Residential Unit. An Occupancy Agreement for a Parking Stall or Storage Area shall be subject to all of the terms and conditions of the Condominium

Instruments. The intent of the restrictions on leasing Parking Stalls and Storage Area is to ensure that only Unit Owners or Occupants of Residential Units have access to the Condominium.

L. Exceptions to Leasing Restrictions. The restrictions and limitations on the leasing of Units described in the Condominium Instruments shall not apply to the Declarant. The Declarant shall have the right, unrestricted by any leasing restrictions and limitations set forth in this Section 20.6 or elsewhere in the Condominium Instruments, to lease unsold Units (including Parking Stalls and Storage Areas under Article VIII of the Declaration), which Declarant's right to lease shall continue for so long as Declarant owns any Units in the Condominium.

20.7 Limitation on Enforcement of Some Conditions. No covenant, condition or restriction set forth in this Declaration and no by-law, rule or regulation adopted by the Association pursuant to the authority granted to the Association pursuant to this Declaration or the Association's Articles of Incorporation, By-Laws or rules and regulations may be applied to discriminate against any individual in any manner described in Section 106.50, et. seq., of the Act, or as described in any other local, state or federal statutes, ordinances, regulations and rules.

20.8 Window Coverings. It is the intent of the Declarant that all window coverings be designed (including, but not limited to, choice of color) and installed in a manner that achieves a uniform appearance from the Condominium's exterior.

20.9 Prohibition on Smoking. Smoking shall be expressly prohibited in, on or around the Common Elements of the Condominium.

20.10 Acoustical Privacy. In order to maximize acoustical privacy for all residents and occupants of the Condominium, all Unit Owners shall install any and all sound generating devices, including but not limited to televisions and stereos, in a manner that isolates such sound generating devices from the surface of any floor, demising wall or ceiling of a Unit. That is, any and all sound generating devices shall be installed and placed in such a manner so that is not directly placed upon or attached to any ceiling, demising wall or floor surface of a Unit without an isolation pad.

**{Remainder of Page Intentionally Left Blank}**

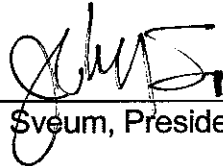
**{Signatures on Following Pages}**

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and seals this 6th day of June, 2006.

**\* DECLARANT \***

**CAPITOL HOUSING, LLC**

By: Yahara Builders, Inc., Member

By:  \_\_\_\_\_  
John Sveum, President

STATE OF WISCONSIN )  
  )ss.  
COUNTY OF DANE        )

Personally came before me this 6th day of June, 2006, John Sveum, in his capacities as President of Yahara Builders, Inc., a member of Capitol Housing, LLC, to me known to be the person who executed the foregoing instrument and acknowledged the same in the capacity and for the purposes therein intended.

 \_\_\_\_\_

John W. Van Note  
Notary Public, State of Wisconsin  
My Commission is permanent

**JOHN W. VAN NOTE  
NOTARY PUBLIC  
STATE OF WISCONSIN**

**ACKNOWLEDGMENT AND CONSENT  
OF MORTGAGEE**

M&I Marshal & Ilsley Bank, as a Mortgagee of the property described in Exhibit "A", hereby acknowledges the foregoing Declaration of Condominium and expressly consents to said Declaration of Condominium and its recording in the Dane County Register of Deeds Office.

Executed this 6th day of June, 2006.

M&I Marshal & Ilsley Bank

By: *Debra J. Wetzel*  
Print Name: Debra J. Wetzel  
Print Title: ASST. Vice President

STATE OF WISCONSIN    )  
  )ss.  
COUNTY OF DANE        )

Personally came before me this 6th day of June, 2006,  
DEBRA J. WETZEL, to me known to be the person who  
executed the foregoing instrument and acknowledged the same in the capacity and for the  
purposes therein intended.

*[Signature]*  
John W. Van Note  
Notary Public, State of Wisconsin  
My Commission is Permanent

JOHN W. VAN NOTE  
NOTARY PUBLIC  
STATE OF WISCONSIN

THIS DOCUMENT DRAFTED BY:  
Attorney John W. Van Note  
MOHS, MACDONALD, WIDDER & PARADISE  
20 North Carroll Street  
Madison, WI 53703

## EXHIBIT "A"

### LEGAL DESCRIPTION OF PROPERTY SUBJECT TO DECLARATION

Lots 112, 113, 115, 116 of First Addition To Swan Creek Of Nine Springs, lying in the SE 1/4 of the NW 1/4, and the NE 1/4 of the SW 1/4 of Section 11, T06N, R09E, City of Fitchburg, Dane County, Wisconsin more fully described as follows:

Commencing at the Northwest corner of said lot 113;  
Thence S 90°00'00" E, 338.81 feet along the North line of said lots 113 and 115;  
Thence continuing the North line of said lot 115, being the arc of a curve to the left, having a radius of 62.50 feet and a chord that bears N 81°35'58" E, 18.26 feet;  
Thence continuing along said North line, N 73°11'56" E, 36.52 feet;  
Thence continuing along said North line being the arc of a curve to the right, having a radius of 37.50 feet and a chord that bears N 81°35'58" E, 10.96 feet;  
Thence continuing along said North line, S 90°00'00" E, 197.12 feet to the Northeast corner of said lot 115;  
Thence S 02°23'39" W, 53.25 feet along the East line of said lot 115;  
Thence continuing along said East line, S 34°38'44" E, 43.84 feet;  
Thence continuing along said East line, S 01°20'20" W, 127.24 feet;  
Thence S 00°00'00" E, 217.79 feet along the East line of said lots 115 and 116, to the Southeast corner of said lot 116;  
Thence N 89°59'40" W, 604.56 feet along the South line of said lots 112 and 116 and the North right-of-way of Sassafras Drive;  
Thence along the arc of a curve to the right, having a radius of 15 feet and a chord that bears N 44°59'40" W, 21.21 feet to the East right-of-way of Crinkle Root Drive;  
Thence along said East right-of-way and the West line of said lots 112 and 113, N 00°00'20" E, 404.39 feet to the point of beginning of this description;

**EXHIBIT "B"**

**Condominium Plat**

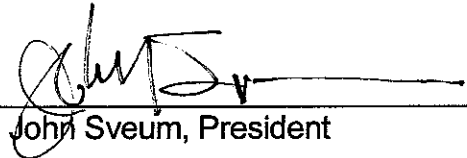
[Attached]

NOTE: Please be advised that the Declarant, Capitol Housing, LLC, hereby directs viewers to ignore the printed text material on the maps and floor plans attached to this Exhibit "B." Only the spatial relationships of the illustrations on the maps and floor plans are being presented for your information. Dated as of the 6<sup>th</sup> day of June, 2006.

**\* DECLARANT \***

**CAPITOL HOUSING, LLC**

By: Yahara Builders, Inc., Member

By:  \_\_\_\_\_  
John Sveum, President

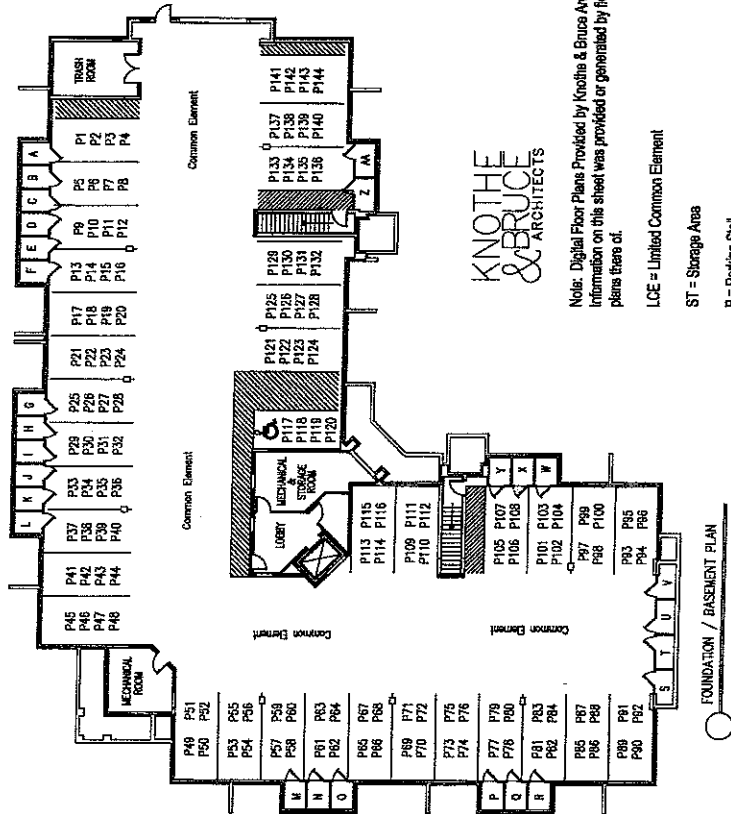


A = ST1  
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 D = ST4  
 E = ST5  
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Note: Digital Floor Plans Provided by Knothe & Bruce Architects.  
 Information on this sheet was provided or generated by floor  
 plans files of.

LCE = Limited Common Element

ST = Storage Area

P = Parking Stall

Prepared For:  
 Capitol Housing LLC - John Sveum  
 1249 Williamson St  
 Madison, WI 53703

# Prairie Park at Swan Creek Condominium

## A Dane County Condominium Plat

Being Lots 112, 113, 115 and 116 of the plat of First Addition to Swan Creek of  
 Nine Springs, lying in the Northeast 1/4 of the Southwest 1/4 of Section 11,  
 Township 06 North, Range 09 East, City of Fitchburg, Dane County, Wisconsin

Prepared by Arden T. Sandness Professional Land Surveyor S-0812

Knothe & Bruce  
 Engineering, Inc.  
 Madison, Wisconsin

Office Map Number 15516-L

Sheet 2 of 5 Sheets

# Prairie Park at Swan Creek Condominium

## A Dane County Condominium Plat

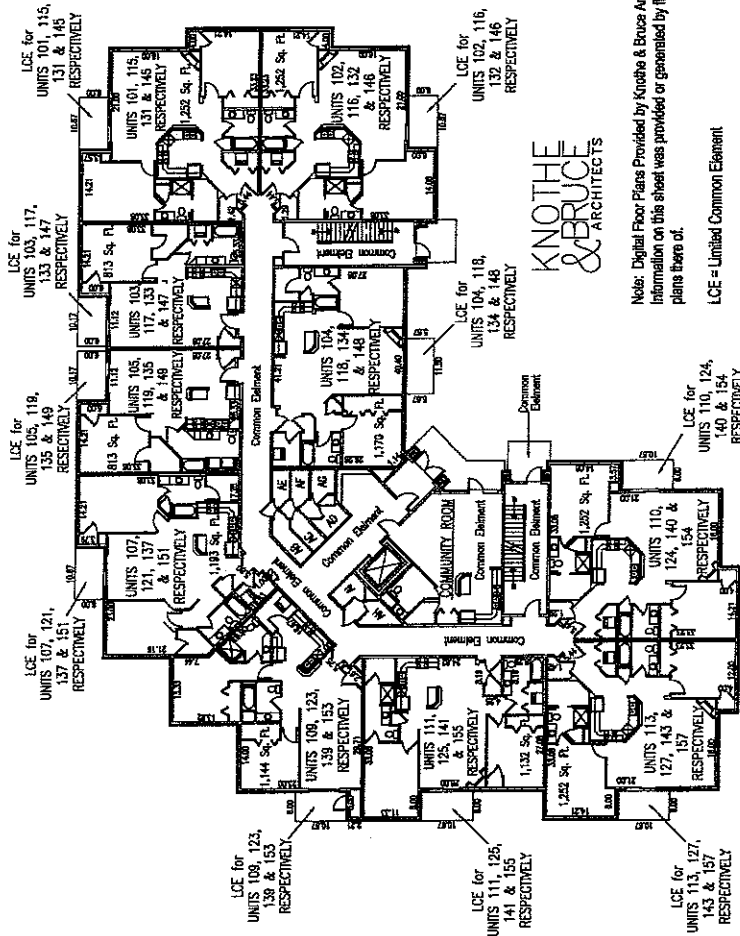
Being Lots 112, 113, 115 and 116 of the plat of First Addition to Swan Creek of  
Nine Springs, lying in the Northeast 1/4 of the Southwest 1/4 of Section 11,  
Township 06 North, Range 09 East, City of Fitchburg, Dane County, Wisconsin

Prepared by Arden T. Sandness Professional Land Surveyor S-0812

Boyd & Co. Engineering Inc.  
Madison, Wisconsin

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- AB = ST109
- AC = ST110
- AD = ST111
- AE = ST112
- AF = ST113
- AG = ST114
- AH = ST115
- A = ST116



**KNOTHE  
& BRUCE  
ARCHITECTS**

Note: Digital Floor Plans Provided by Knothe & Bruce Architects.  
Information on this sheet was provided or generated by floor  
plans there of.

LCE = Limited Common Element  
ST = Storage Area

Prepared For:  
Capitol Housing LLC - John Sveum  
1249 Williamson St.  
Madison, WI 53703





## EXHIBIT "C"

### Percentage Interest in Common Elements and Votes in Association

Residential Unit Number	Unit Square Footage	Percentage Interest in Common Elements	Vote(s) in Association
101	1,252	0.86%	1
102	1,252	0.86%	1
103	813	0.56%	1
104	1,170	0.80%	1
105	813	0.56%	1
107	1,193	0.82%	1
109	1,144	0.78%	1
110	1,252	0.86%	1
111	1,132	0.77%	1
113	1,252	0.86%	1
115	1,252	0.86%	1
116	1,252	0.86%	1
117	813	0.56%	1
118	1,170	0.80%	1
119	813	0.56%	1
121	1,193	0.82%	1
123	1,144	0.78%	1
124	1,252	0.86%	1
125	1,132	0.77%	1
127	1,252	0.86%	1
132	1,252	0.86%	1
131	1,252	0.86%	1
133	813	0.56%	1
135	813	0.56%	1
137	1,193	0.82%	1
139	1,144	0.78%	1
140	1,252	0.86%	1
141	1,132	0.77%	1
134	1,170	0.80%	1
143	1,252	0.86%	1
146	1,252	0.86%	1
145	1,252	0.86%	1
147	813	0.56%	1
148	1,170	0.80%	1
149	813	0.56%	1
151	1,193	0.82%	1
153	1,144	0.78%	1
154	1,252	0.86%	1
155	1,132	0.77%	1
157	1,252	0.86%	1
201	1,300	0.89%	1
202	1,300	0.89%	1
203	813	0.56%	1
204	1,170	0.80%	1
205	813	0.56%	1
207	1,241	0.85%	1
208	956	0.65%	1
209	1,187	0.81%	1

Residential Unit Number	Unit Square Footage	Percentage Interest In Common Elements	Vote(s) In Association
210	1,300	0.89%	1
211	1,132	0.77%	1
213	1,300	0.89%	1
215	1,300	0.89%	1
216	1,300	0.89%	1
217	813	0.56%	1
218	1,170	0.80%	1
219	813	0.56%	1
221	1,241	0.85%	1
222	956	0.65%	1
223	1,187	0.81%	1
224	1,300	0.89%	1
225	1,132	0.77%	1
227	1,300	0.89%	1
231	1,300	0.89%	1
232	1,300	0.89%	1
233	813	0.56%	1
234	1,170	0.80%	1
235	813	0.56%	1
237	1,241	0.85%	1
238	956	0.65%	1
239	1,187	0.81%	1
240	1,300	0.89%	1
241	1,132	0.77%	1
243	1,300	0.89%	1
245	1,300	0.89%	1
246	1,300	0.89%	1
247	813	0.56%	1
248	1,170	0.80%	1
249	813	0.56%	1
251	1,241	0.85%	1
252	956	0.65%	1
253	1,187	0.81%	1
254	1,300	0.89%	1
255	1,132	0.77%	1
257	1,300	0.89%	1
301	1,300	0.89%	1
302	1,381	0.94%	1
303	813	0.56%	1
304	1,215	0.83%	1
305	813	0.56%	1
307	1,241	0.85%	1
308	956	0.65%	1
309	1,187	0.81%	1
310	1,428	0.98%	1
311	1,132	0.77%	1
313	1,300	0.89%	1
315	1,300	0.89%	1
316	1,381	0.94%	1
317	813	0.56%	1
318	1,215	0.83%	1

Residential Unit Number	Unit Square Footage	Percentage Interest In Common Elements	Vote(s) in Association
319	813	0.56%	1
321	1,241	0.85%	1
322	956	0.65%	1
323	1,187	0.81%	1
324	1,428	0.98%	1
325	1,132	0.77%	1
327	1,300	0.89%	1
331	1,300	0.89%	1
332	1,381	0.94%	1
333	813	0.56%	1
334	1,215	0.83%	1
335	813	0.56%	1
337	1,241	0.85%	1
338	956	0.65%	1
339	1,187	0.81%	1
340	1,428	0.98%	1
341	1,132	0.77%	1
343	1,300	0.89%	1
345	1,300	0.89%	1
346	1,381	0.94%	1
347	813	0.56%	1
348	1,215	0.83%	1
349	813	0.56%	1
351	1,241	0.85%	1
353	956	0.65%	1
352	1,187	0.81%	1
354	1,428	0.98%	1
355	1,132	0.77%	1
357	1,300	0.89%	1
	<b>146,204</b>	<b>100%</b>	<b>128</b>