

Document No.

**DAYBREAK VALLEY  
FIRST AMENDMENT TO DECLARATION  
OF PROTECTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS**

**TOWN OF MIDDLETON,  
DANE COUNTY, WI.**

**PREAMBLE**

KRISTI CHLEBOWSKI  
DANE COUNTY  
REGISTER OF DEEDS

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Return to:  
Angie Christensen  
Veridian Homes  
6801 South Towne Drive  
Madison, WI 53713

See Exhibit B  
(Parcel Identification Numbers)

This is the First Amendment (the "Amendment") to that certain Declaration of Protective Covenants, Conditions and Restrictions for Daybreak Valley, which Declaration was dated September 12, 2017, recorded October 30, 2017 in the Office of the Dane County, Wisconsin Register of Deeds as Document No. 5368107 (the "Declaration"). This Amendment is made by Veridian Homes AB, LLC, a Wisconsin Limited Liability Company (hereinafter referred to as the "Declarant") and/or its successors and assigns. Declarant hereby amends the Declaration as follows:

- 1) **Defined Terms.** Terms not otherwise defined herein shall be as defined in the Declaration.
- 2) **Legal Description.** The legal description of the real property subject to this Amendment is contained in Exhibit "A", attached hereto and incorporated herein by reference, and is collectively referred to herein as "Property", the "Subdivision" or "Daybreak Valley".
- 3) Section B-2)F is hereby added and shall read as follows:
  - "1) *Lease Requirements.* An Owner may rent its dwelling by written Lease (a "Lease"), provided that
    - a) The term of any such Lease shall not be less than six (6) months;
    - b) The Owner has obtained the prior written approval of the Association to the proposed tenant and the terms of the proposed Lease, and the written approval for any proposed extension of the Lease; and

- c) The Lease contains a statement obligating all tenants to abide by this Declaration, the Articles, the Bylaws, and the Rules and Regulations, providing that the Lease is subject and subordinate to those instruments; and
- d) The Lease provides that any default arising out of the tenant's failure to abide by the Declaration, the Articles, the Bylaws, and the Rules and Regulations shall be enforceable by the Association as a third-party beneficiary to the Lease and that the Association shall have, in addition to all rights and remedies provided under the Declaration, the Articles, the Bylaws and the Rules and Regulations, the right to evict the tenant and/or terminate the Lease should any such violation continue for a period of ten (10) days following delivery of written notice to the Owner and the tenant specifying the violation.

2) *Standard for Approval of Lease and Tenant.* The Association may withhold approval on any reasonable basis, including, but not limited to: the failure of the Lease terms to comply with all provisions of this Declaration, the Articles, the Bylaws, and the Rules and Regulations; the past failure of the Owner, the tenant or tenant's guests to abide by all provisions of this Declaration, the Articles, the Bylaws, and the Rules and Regulations; and the past use by Owner, the tenant or its invitees or guests of any part of the Lot in a manner offensive or objectionable to the Association or other occupants of the Property by reason of noise, odors, vibrations, or nuisance.

3) *Violations / Remedies.*

a) During the term of any Lease of all or any part of a Lot, each Owner of such Lot shall remain liable for the compliance of the Lot, such Owner and all tenants of the Lot with all provisions of this Declaration, the Bylaws, and the Rules and Regulations of the Association, and shall be responsible for securing such compliance from the tenants of the Lot. The Association may require that a copy of each Lease of all or any part of a Lot be filed with the Association.

b) In the event that an Owner leases out its dwelling or any portion of its Lot in violation of this provision, the Association may impose a daily fine up to the greater of (i) an amount equal to the daily rental amount being charged by Owner to its tenant and (ii) \$100 (this daily fine shall be adjusted up every five years by 5%).

In addition to any fines imposed under this Section, the Owner shall reimburse the Association for all costs incurred by the Association, including attorneys' fees, incurred to enforce this Section, any action the Association takes under this Section B-2)F) against Owner or Owner's tenant, and to collect any outstanding amounts owed by Owner to the Association."

4) **Association Management.** The Association is required to retain a professional property management company with the experience necessary to perform the duties of the Association (the "**Management Company**"). The Association shall enter into a management contract (the "**Management Contract**") with the Management Company on such terms and conditions as the Association and the Management Company shall agree. The initial Management Company is DSI Real Estate Group, Inc., a Wisconsin Corporation, which is affiliated with the Declarant by reason of common ownership. The Management Contract between DSI Real Estate Group, Inc. and the Association has not been negotiated on an arm's length basis.

5) **General Fund.** As used herein, the term "**Surplus**" shall mean the amount by which assessments collected by the Management Company on behalf of the Association to pay for common expenses relating to the Property exceed the common expenses for the fiscal year in question. The Management Company shall deposit and hold any Surplus in the Association's

operating account maintained by the Management Company. The Surplus, in the discretion of the Association working in conjunction with the Management Company, may be applied to future Association expenses as they become due, but there shall be no obligation on either the Association's or the Management Company's part to return the Surplus to lot owners.

6) **Effect of Amendment.** This Amendment amends and supersedes all conflicting provisions in the Declaration. Except as amended herein, all terms, covenants and conditions of the Declaration shall remain unchanged.

[signatures on next page]



**MORTGAGEE'S CONSENT**

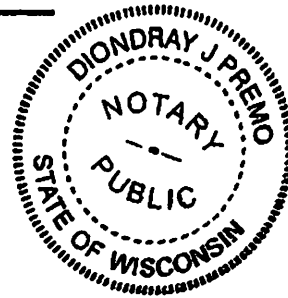
The undersigned, The Park Bank, a Wisconsin Banking Corporation, hereby consents to the forgoing First Amendment to Declaration of Conditions, Covenants and Restrictions for the Plat of Daybreak Valley. This consent does not limit, restrict or affect in any way Mortgagee's rights, interest and remedies regarding Mortgagee's interest in the Property.

Dated at Madison, Wisconsin this 7<sup>th</sup> day of April, 2020.

**The Park Bank, a Wisconsin Banking Corporation**

BY: Michael Johnston

Michael D. Johnston  
First Vice President



**ACKNOWLEDGMENT**

STATE OF Wisconsin  
COUNTY OF Dane ) ss

Personally came before me on this 7<sup>th</sup> day of April, 2020, the above named Michael Johnston as the FVP, Business Bank of The Park Bank, to me known to be the person who executed the foregoing instrument and acknowledge the same in such capacity.

Diondray J. Premo  
Notary Public Dane County, Wisconsin

My commission expires: 10/9/20

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF LOTS AND OUTLOTS**

**DAYBREAK VALLEY**

Lots 1 – 41 and Outlots 1 – 5 of the Daybreak Valley Plat, Town of Middleton, Dane County, Wisconsin.

**Exhibit "B"**

<b>Lot #</b>	<b>Tax ID Number</b>	
1	038	0708-052-4001-0
2	038	0708-052-4012-0
3	038	0708-052-4023-0
4	038	0708-052-4034-0
5	038	0708-052-4045-0
6	038	0708-052-4056-0
7	038	0708-052-4067-0
8	038	0708-052-4078-0
9	038	0708-052-2009-0
10	038	0708-052-2020-0
11	038	0708-052-2031-0
12	038	0708-052-2042-0
13	038	0708-052-2053-0
14	038	0708-052-2064-0
15	038	0708-052-2075-0
16	038	0708-052-2086-0
17	038	0708-052-2097-0
18	038	0708-052-2108-0
19	038	0708-052-2119-0
20	038	0708-052-2130-0
21	038	0708-052-2141-0
22	038	0708-052-2152-0
23	038	0708-052-2163-0

<b>Lot #</b>	<b>Tax ID Number</b>	
24	038	0708-052-2174-0
25	038	0708-052-2185-0
26	038	0708-052-2196-0
27	038	0708-052-2207-0
28	038	0708-052-2218-0
29	038	0708-052-2229-0
30	038	0708-052-2240-0
31	038	0708-052-2251-0
32	038	0708-052-2262-0
33	038	0708-052-2273-0
34	038	0708-052-2284-0
35	038	0708-052-4095-0
36	038	0708-052-4106-0
37	038	0708-052-4117-0
38	038	0708-052-4128-0
39	038	0708-052-4139-0
40	038	0708-052-4150-0
41	038	0708-052-4161-0
Outlot 1	038	0708-052-4200-0
Outlot 2	038	0708-052-2325-0
Outlot 3	038	0708-052-2350-0
Outlot 4	038	0708-052-4225-0
Outlot 5	038	0708-052-2375-0



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**KRISTI CHLEBOWSKI  
DANE COUNTY  
REGISTER OF DEEDS**

**DOCUMENT #  
5368107**

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Document No.

**DAYBREAK VALLEY  
DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS**

**TOWN OF MIDDLETON, DANE COUNTY, WI.**

Drafted by and return to:  
**Angie Christensen  
Veridian Homes  
6801 South Towne Drive  
Madison, WI 53713**

**PREAMBLE**

See Exhibit B  
(Parcel Identification Numbers)

Declaration made this 12 day of September, 2017, by Veridian Homes AB, LLC, a Wisconsin limited liability company (hereinafter referred to as the "**Declarant**") and/or its successors and assigns.

**WHEREAS**, Declarant is the owner of real property legally described as the Plat of Daybreak Valley (the "**Plat**") located in the Town of Middleton, Dane County, Wisconsin, more particularly described in Exhibit A attached hereto and incorporated herein by reference, and desires to build thereon a planned development with housing units and shared common property (the "**Development**"); and

**WHEREAS**, Declarant desires to provide for the maintenance and enhancement of property values and amenities in said Development, and for the preservation of the properties and improvements thereon, as well as for the preservation of said Development's distinctive style, and to prevent the erection, or maintenance of poorly designed or constructed improvements; and

**WHEREAS**, to the above end, Declarant desires to subject said real property, to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

**WHEREAS**, Declarant has thought it desirable for the efficient maintenance and preservation of the values of said Development to create an Association to which should be delegated and assigned the powers of owning, maintaining and administering the Common Property and facilities, as set forth below, and administering and enforcing the covenants and restrictions, and collecting and disbursing the

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Assessments and charges as hereinafter or in the future created or established, and promoting the health, welfare and recreation of the Development's residents. Declarant has incorporated the Daybreak Valley Homeowners Association, Inc. a non-profit, non-stock corporation, under the laws of the State of Wisconsin (the "**Association**") for such purposes; and

**NOW, THEREFORE**, the Declarant declares that the real property legally described and depicted in Exhibit "A", attached hereto and incorporated herein by reference, will and shall be sold, transferred and conveyed subject to the easements, covenants, restrictions, assessments, charges and liens hereinafter set forth.

**PART A**  
**ASSOCIATION MATTERS**

**A-1) Definitions.**

**A)** "**Association**" shall mean and refer to Daybreak Valley Homeowners Association, Inc., and its successors and assigns.

**B)** "**Common Property**" or "**Outlots**" includes all those areas located in the Development which are not contained within a Lot and which are intended for common use or are necessary or convenient to the existence, maintenance or safety of the Development. Common Property or Outlots may also include any additions thereto designated by the Declarant or the Association in any subsequent amendment to this Declaration, and all improvements located on said property, which are intended to be devoted to the common use and enjoyment of members, Owners and Occupants. Common Property shall further include all Public Recreational Trails (except for the Public Recreational Trails on lots 15, 16 and 28), stormwater management facilities located on Outlots 1, 2 and 5, entrance signs, public park and plantings on Outlots. Declarant shall be responsible for the installation of the Park and the Public Recreational Trails. Declarant may, by subsequent amendment or easement, designate parts of certain private lands within the Development as Common Property, rendering the Association responsible for maintenance thereof, without subjecting the same to the ownership provisions contained in Section A-3, below.

**C)** "**Declarant**" shall mean and refer to Veridian Homes AB, LLC, Wisconsin limited liability companies and/or their successors and assigns.

**D)** "**Lot**" shall mean and refer to all of the Lots in the Plat, except for Outlots 1-5. All Lots are subject to assessment by the Association.

**E)** The term "**Property**" or "**Properties**" shall mean and refer to the lands described in Exhibit A, now owned by Declarant, but which Declarant in the future intends to convey to purchasers who shall thereupon become members of the Association, except for Outlots 1-5, which Declarant shall convey Outlots 1-5 to the Association pursuant to the Declaration.

**F)** "**Owner**" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any of the Properties described in Exhibit A, except an Outlot. A purchaser of any of said Properties by land contract shall be referred to as "**Owner**" instead of the land contract vendor.

G) “**Occupant**” shall mean and refer to the occupant of any of the Properties who shall either be an Owner or a lessee who holds a written lease having an initial term of twelve months or more.

H) “**Subdivision**” shall refer to the lands described in Exhibit A. The term “Subdivision” is synonymous with the term “**Development**”.

I) “**Committee**” shall mean and refer to the Architectural Control Committee.

J) **Development Documents.** This document is the Declaration. Any person interested in owning any Lot in the Development should review and become familiar with the requirements of this Declaration and the Plat, each of which sets forth certain rights, obligations and restrictions with regard to the Lots and the Development, and which may be collectively referred to as the “**Development Documents**”.

**A-2) Membership and Voting Rights.**

A) **Members.** Declarant will incorporate the Association. Each Owner of a Lot shall automatically become a member of the Association. By acceptance of the Deed or other instrument of conveyance, the Owner(s) of each Lot consent to such Owner’s membership in the Association whether or not specified on the deed to the Owner. Membership in the Association is appurtenant to each Lot. Each Owner of a Lot shall automatically be entitled to the benefits and subject to the burdens relating to such membership in the Association. The Association shall have authority to manage the Common Property. Persons or entities, including a land contract vendor, who hold an interest merely as security for the performance of an obligation, shall not be members of the Association. Tenants of Properties who are not Owners shall not be members of the Association. To the extent that Declarant owns any Lot, Declarant shall be a member of the Association until such ownership terminates.

**B) Voting Rights.**

1) Each member shall be entitled to one vote for each Lot owned except as set forth in A-2(B) (2) below.

2) When there is more than one Owner of a Lot, said Owners shall only be entitled to one collective vote for each Lot. There shall be no fractional votes or voting. When there is more than one Owner of any Lot, the vote attributable to such ownership must be cast unanimously by all the Owners of that Lot, or it shall not be considered for any purpose.

C) **Proxies.** Any Member may vote by proxy. All proxies shall be in writing and signed by the Owner or in cases where there is more than one Owner, by all Owners of the Lot.

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

E) **Operating Expenses.** Commencing on the date established for the payment of assessments under Section A-4(B)(1), Declarant shall pay to the Association an amount equal to the balance of estimated operating expenses of the Association for a period of one (1) year, less assessments on

Lots owned by Declarant actually paid to the Association for the one (1) year period of time. Prior to said date, Declarant shall be solely responsible for payment of all maintenance expenses.

**A-3) Description.**

A) **Responsibility for Assessments.** Declarant shall turn over to the Association, at the time control is turned over to the Members, any surplus received by the Association of income over expenses. The following table describes the number of assessment units (an “**Assessment Unit**”), which are assigned to various Lots in the Development based upon their intended use at the present time. The number of Assessment Units for a particular Lot will be divided by the total number of Assessment Units in the Development to arrive at a particular Lot’s percentage share (“**Percentage Interest**”) of assessments for common area maintenance and other expenses, which the Association is permitted to assess to members under this Declaration. The Declarant shall be responsible for payment of assessments attributable to all Lots owned by Declarant. For the purposes of the following table, a single family residence shall be deemed a Dwelling Unit.

	<b>Use</b>	<b>Number of Assessment Units</b>
1	Single Family:	One (1) per Dwelling Unit.

B) **Percentage Interest for Condemnation or Insurance Proceeds.** For the purposes of establishing an Owner's percentage of insurance proceeds or condemnation awards in the event any portion of the Common Property is completely destroyed or taken by eminent domain and is not reconstructed, each Owner shall have a percentage interest in the insurance or condemnation proceeds equal to the Percentage Interest of such Owner in the Common Property.

C) **Conveyance, Lease or Encumbrance of Percentage Interest.** Any deed, mortgage, lease or other instrument purporting to convey, encumber or lease for a period of time in excess of one (1) year (a “**Lease**”) any Lot shall be deemed to include the Owner's Percentage Interest in the Common Property and in the insurance proceeds or condemnation awards even though such interest is not expressly described or referred to therein. The conveyance, encumbrance or Lease of an Owner’s Percentage Interest in the Common Property independent of the appurtenant Lot and the conveyance, encumbrance or Lease of an appurtenant Lot independent of the Owner’s Percentage Interest in the Common Property shall be prohibited.

**D) Ownership.**

1) The Common Property shall be initially owned by the Declarant until conveyed as provided below.

2) At the time of purchase, legal title to a percentage interest in the Common Property shall be deemed conveyed with each lot to an Owner, whether or not specified on the deed to the Owner. Legal title to the percentage interest in the Common Property shall be deemed conveyed with any subsequent conveyance of a Lot whether or not specifically stated. Taxes, assessments or other charges on the Common Property may be divided according to each Owner’s Percentage Interest by the taxing authority or may be an assessment by the Association against each of the Lots in an amount equal to the Percentage Interest attributable to such Lot.

3) The Common Property shall be conveyed to the Association by the Declarant for Outlots 1-5. The Association shall be responsible for the payment of any and all present and future general taxes, assessments or other charges against any portion of the Common Property owned by the Association. General property taxes, assessments and other charges shall be prorated between the Declarant and the Association based on the date of conveyance by the Declarant to the Association.

E) **Damage or Destruction of Common Property by Owner.** In the event any Common Property is damaged or destroyed by an Owner or any of his guests, lessees, tenants, licensees, agents or member(s) of his family, including pets, said Owner does hereby irrevocably authorize the Association to repair said damage. The Association shall repair and restore any damaged area to its former condition. The amount necessary for said repair shall become a special assessment upon the Property of said Owner.

**A-4) Maintenance of Common Property**

**A) Maintenance Requirements.**

1) **Responsible Party.** Declarant shall initially provide for the care, operation, management, maintenance and repair of the Common Property, until the Common Property is conveyed as provided herein. After such time, the Association shall provide for the care, operation, management, maintenance and repair of the Common Property and shall keep the Common Property maintained in good and safe condition.

2) **General Responsibilities.** Maintenance shall include, but not be limited to, responsibility for landscaping and lawn care, snow shoveling. Improvements to common areas, upkeep of stormwater management facilities includes detention basins and drainage swales, common property lighting and/or other common property utility charges.

3) Maintenance Provisions.

a) Detention Basin

- i. Association shall visually inspect the detention basin and outlet structure, at a minimum annually. The inspections shall include checking for potential problems such as: subsidence, erosion, tree growth in and around the embankment and outfall structure, sediment accumulations, clogging of outfall structure and damage to the emergency spillway. Problems identified by the inspections shall be repaired as soon as practicable.
- ii. Sediment accumulations shall be removed by dredging when two (2) foot of siltation has occurred or as directed by the Town of Middleton or Dane County. The dredged material shall be removed and disposed of in accordance with NR 347.
- iii. The detention basin shall be mowed a minimum of twice per year. Mowing shall maintain a minimum grass height of 6 to 8 inches. Areas of sparse vegetation shall be reseeded.

Additional fertilizer shall be applied as needed, per the results of a soil test.

- iv. Separate and distinct records shall be maintained by the owner to record the specific activities and costs thereof for the maintenance plan implementation. The records shall include the dates of maintenance visits and the specific work performed. Records shall be kept as required by local, state or federal law.

b) Infiltration Basin

- i. Visual inspection of the infiltration basin shall be performed, at a minimum, annually.
- ii. Maintenance shall be required when system shows standing water beyond 24 hours of rain event. Cleaning shall consist of removal of sediment, two (2) foot undercut, undercut replacement with material consisting of 15-30% compost and 70-85% sand and restoration in-kind.
- iii. Restoration of plan material shall be with native plugs or seed mixture tolerant of fluctuating water conditions. If a seed mixture is used steps shall be taken to assure vegetation establishes.

c) Outside Stormwater Facilities

- i. Drainage swales within Outlots shall be visually inspected at least a minimum annually. The inspection shall include checking for erosion and tree growth in the swales. Problems identified by the inspections shall be repaired as soon as practicable.
- ii. Areas of Outlots outside of stormwater basins shall be left in a natural state. They shall be mowed a minimum of twice per year. Mowing shall maintain a minimum grass height of 6 to 8 inches. Areas of sparse vegetation shall be reseeded. Additional fertilizer shall be applied as needed, per the results of a soil test.

4) The Homeowner's Association is required to meet the Town of Middleton's biennial stormwater management facility inspection and maintenance requirements as per the Town of Middleton's Code of Ordinances. The Homeowner's Association is responsible for all inspection and reporting costs. Additionally, the Homeowner's Association is responsible for any required maintenance costs as described on the inspection report submitted by a licensed professional engineer or as determined by the Town of Middleton. Inspection reports shall be submitted by November 1 of each odd calendar year or the Homeowner's Association will be subject to a penalty per the Town Fee Schedule plus engineering costs to complete the inspection.

5) In order to carry out its maintenance obligations, the Association may enter into a long-term contract with a reputable property management company (the “**Management Company**”), pursuant to which contract the Management Company shall assume the maintenance obligations of the Association as provided herein.

6) Any and all expenses incurred by the Management Company, on behalf of and pursuant to its contract with the Association, in connection with the management and maintenance of the Common Property and administration of the Association shall be deemed to be common expenses (“**Common Expenses**”), including, without limitation, expenses incurred for: landscaping and lawn care; snow shoveling and plowing; entrance signs; improvements to the Common Property; common grounds lighting; municipal utility services for Common Property enforcement of this Declaration (including attorneys’ fees); and maintenance and management salaries and wages.

7) In the event the Association shall fail to maintain the Common Property in the manner provided in this Declaration, or as required under Town of Middleton or Dane County Ordinances, the Town may, after thirty (30) days written notice and the opportunity to maintain has been given to the Association, take over maintenance of the Common Property and assess the cost of maintenance to the Association. If the Association shall fail to pay the same on or before thirty (30) days after written demand, then the Town may assess each of the Lots in the Plat an equal share of such maintenance costs. Notwithstanding the foregoing or anything else set forth herein, if any maintenance, repair or replacement of Common Property is required by reason of the intentional or negligent act of an Owner, then the cost thereof shall be assessed against said Owner whose negligent or intentional act gave rise to the maintenance, repair or replacement, and the provisions herein relating to assessment of such costs against an Owner shall be applicable to the same. The Town of Middleton shall not be limited in its authority to assess any sums for maintenance and repairs if the Association shall fail to manage, maintain and preserve the Common Property in the manner described in this Declaration or contrary to any Town of Middleton or Dane County Ordinance. OWNERS AND THE ASSOCIATION HEREBY WAIVE NOTICE AND PROTEST OF ANY TAXES, ASSESSMENTS OR SPECIAL CHARGES LEVIED BY THE TOWN AGAINST LOTS PURSUANT TO THIS DECLARATION.

**B) Assessments.**

1) The Association, or the Management Company, on its behalf, shall levy annual general assessments (“**General Assessments**”) against each Lot beginning January 1, 2017 for the purpose of maintaining a fund from which Common Expenses may be paid. The General Assessments against each Lot shall be assessed according to their Percentage Interests in the Common Property. General Assessments shall be due in advance on the first day of each year, or in such other manner as the Association may set forth in the Bylaws. Any General Assessment not paid when due shall bear annual interest at a rate of ten percent (10%) until paid and, together with interest, collection costs, and reasonable attorneys’ fees, shall constitute a lien on the Lot on which it is assessed.

2) The Association, or the Management Company, on behalf of and pursuant to its contract with the Association, may, whenever necessary or appropriate, levy special assessments (“**Special Assessments**”) against the Lots for deficiencies in the case of destruction or condemnation, for defraying the cost of improvements to the Common Property or for any other purpose for which the Association and/or the Management Company may determine a Special Assessment is necessary or appropriate for the improvement or benefit of the Subdivision. Special Assessments shall be paid at such time and in such manner as the Association or the Management Company may determine. Any Special Assessment or installment not paid when due shall bear annual interest at a rate of ten percent (10%) until

paid and, together with the interest, collection costs and reasonable attorneys' fees, shall constitute a lien on the Lot on which it is assessed.

3) The Association, or the Management Company, on behalf of and pursuant to its contract with the Association, shall have the right to collect all General and Special Assessments and such sums shall constitute a lien on such Lot. The Owner of a Lot, or any portion thereof, shall be personally obligated to pay such charges which were assessed or accrued upon the land owned during the period of Ownership. The Association or the Management Company, on behalf of and pursuant to its contract with the Association, may commence an action against any Owner personally obligated to pay the charges or to foreclose the lien for such charge against any Lots. Any such foreclosure action may be brought at the Association election, either in the same manner as an action to foreclose a real estate mortgage, or as a proceeding to enforce a statutory maintenance lien as provided in Section 779.70, Wis. Stats., to the extent said Section is applicable. Any lien in favor of the Association/Management Company securing unpaid charges arising by virtue of this Declaration shall be subject and subordinate to the lien of any prior mortgage.

C) **Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Property shall not release the assessment lien. However, the sale or transfer of any Property pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessment(s) as to payments which become due prior to such sale or transfer. No sale or transfer pursuant to foreclosure or proceedings in lieu thereof shall relieve such Property from liability from any assessments thereafter becoming due or from the lien thereof.

D) **Joint and Several Liability of Grantor and Grantee.** Upon a voluntary conveyance, the grantee of a Property shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor as provided in this Declaration up to the time of conveyance, without prejudice to the grantee's right to recover from the grantor the amount paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the Association setting forth the amount of such unpaid assessment and any such grantee shall not be liable for, nor shall the Property conveyed be subject to a lien for, any unpaid assessments against the grantor pursuant to this Declaration in excess of the amount therein set forth.

## PART B

### **Conditions, Covenants and Restrictions**

B-1) **Applicability.** The following provisions in this Part B shall apply to all Lots and Outlots, as described in Section B-2, and such other Lots or Outlots as may, in the future, be subjected to this Declaration, as the same may be amended from time to time, by Declarant in the sole exercise of Declarant's discretion and is subject to Town approval.

B-2) **Land Use, Building Type and Minimum House Sizes.** Only the following designated uses for Lots and Outlots shall be permitted:

A) Lots 1-41 shall be used for single family residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single family dwelling unit not to exceed two and one-half stories in height. Each dwelling unit shall have an attached or detached garage of a size to be approved by the Committee, as that term is defined below.

The size of a dwelling unit to be constructed on specific Lots shall not be less than the minimum size to be established hereinafter.

**B)** Outlots 1-5 shall not be used for residential home construction. No building construction of any type will be allowed in the Outlots, except as may be necessary by the Town in connection to Park and Public Recreational Trail development. Any building constructed on an Outlot by the Town shall be maintained by the Town. The Town of Middleton, as the beneficiary of the Public Recreational Trail and Public Park Easements, shall have the right to improve, repair, maintain, and allow public use of the Public Park and Public Recreational Trail within the Public Recreational Trail and Public Park Easements shown on the Plat and located within Lots 15, 16 and 28 and Outlots 1 and 2.

**1)** Outlots 1-5 shall be owned and maintained by the Association and shall be a part of the Common Property, as that term is defined in the Declaration, of which the Association is obligated to maintain under Section (A) of the Declaration. The cost of maintenance of said Common Property shall be an assessment against all of the Property in the subdivision in accordance with the Declaration for so long as such maintenance is required or necessary.

**2)** Outlots 1 and 2 are private open space and are subject to Public Stormwater Management/Drainage Easements and Public Recreational Trail Easements over their entirety. Outlot 2 is also subject to a Public Park easement. The cost of maintenance of said Common Property shall be an assessment against all of the Property in the Subdivision in accordance with the Declaration, for so long as such maintenance is necessary or required. Town of Middleton shall be responsible for maintenance of the Public Recreational Trails and Public Park at its cost. The Association at its cost shall be responsible for the Common Property the Town will be responsible for maintaining the trail throughout the Plat. Everything outside the trail in the Outlot will be the responsibility of the Association.

**3)** Outlots 3 and 4 are private open space. The cost of maintenance of said Common Property shall be an assessment against all of the Property in the Subdivision in accordance with the Declaration, for so long as such maintenance is necessary or required.

**4)** Outlot 4 is private open space. Along the southern edge of Outlot 4 there is a recorded Declaration of Driveway Easement for the benefit of Lot 1, CSM 5577 and Lot 3, CSM 2243.

**5)** Outlot 5 is private open space and is subject to a Public Stormwater Management/Drainage Easement over its entirety. The cost of maintenance of said Common Property shall be an assessment against all of the Property in the Subdivision in accordance with the Declaration, for so long as such maintenance is necessary or required.

**6)** Septic systems and private wells or piping from wells are not allowed in the Outlots.

**7)** Except as otherwise provided herein, no building other than signs or other structures incidental to the use of any Outlot shall be constructed on an Outlot and only then with the prior approval of the Committee and the Town of Middleton. Uses for Outlots cannot be changed without the written consent of the Committee. No structures other than structures located within park easement related to the Public Park usage and within Public Recreational Trail easements related to Public Recreational Trail usage are permitted on the Outlots.

**Maintenance and Repair.** The Association, at its expense, shall maintain and repair Outlots 1-5, except as otherwise stated in the Declaration.

**Rules.** The Association shall have the right to issue and enforce rules imposing further restriction on the uses of Outlots 1-5, except as otherwise stated in the Declaration, provided, however, that such additional rules shall not lessen any of the restrictions set forth in this Declaration. The Town will set and enforce rules as they pertain to Public Recreational Trails and Park in Easements located in Outlots and Lots.

**C) Further Land Divisions.** No Lot or Outlot as platted shall be resubdivided, except with the approval of the Developer or the Committee, whichever is applicable, and the Town of Middleton. No boundary line within the Property shall be changed, except with the approval of the Developer or the Committee, whichever is applicable, and the Town of Middleton. 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 and the Town of Middleton.

**D) Minimum house sizes.** All Lots within the Plat (other than Outlots) shall be used only for single family residential purposes, except that Declarant may continue to use lands owned by Declarant for present agricultural purposes and uses until all street and stormwater infrastructure improvements have been accepted by the Town. Agricultural uses does not include the keeping of animals during this time period.

The following minimum floor area requirements shall apply to all single family residential buildings erected on any Lots subject to this Declaration.

- (1) No single story building shall have less than 1900 square feet on the main level, excluding garage and porches. The main level is defined as the level totally above the exterior finished grade.
- (2) No two-story building shall have less than 2600 square of finished area excluding the basement, garage and porches.
- (3) No split level shall have less than 2000 square feet on the main levels, excluding the garage and porches. The main levels are defined as those levels totally above the exterior finished grade.

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

The above minimum requirements may be waived by the Declarant or the Committee, whichever is applicable, in the event the proposed architecture and quality of the house is such as to present an appearance compatible with other houses within the Plat.

Uses, other than the uses set forth in this section B-2, shall not be permitted on the Lots, as applicable, without the prior written approval of the Declarant and Committee (defined in Section B-3 below), as appropriate. After Declarant control of the Association has terminated, approval from the Association and the Committee shall be required.

Except as otherwise provided herein, no building other than signs or other structures incidental to the use of any Outlot, which have been approved in advance by the Committee, may be constructed on any Outlot. All signs or other structures incidental to the use of the Outlots should not be installed without the written consent of the Town of Middleton.

All rights-of-way noted on the Plat shall be dedicated as permanent public streets and rights-of-way and shall be improved in accordance with agreements entered into between the Declarant and the Town of Middleton.

**E) Setbacks and Zoning.** No building or any part thereof shall be located closer than thirty (30) feet from the front lot line or fifty (50) feet from the rear lot line for lots 6-21 and 31-41; forty (40) feet from the front lot line or fifty (50) feet from the rear lot line for lot 4; thirty-five (35) feet from the front lot line or fifty (50) feet from the rear lot line for lot 5; fifty (50) feet from the front lot line or fifty (50) feet from the rear lot line for lots 1-3, 22-28 and 29-30. No building or any part thereof shall be located closer than ten (10) feet minimum from the side line of any lot, and when measured together with both side yards of the same lot, all lots shall have a combined side yard of at least twenty-five (25) feet total. The site plan showing such setbacks shall be approved by the Developer or the Committee. All buildings constructed on any lots subject to this Declaration shall also conform to all governmental zoning requirements and all side-yard and setback requirements imposed by local ordinance. The Developer or the Committee, whichever is then applicable, shall have the right to change the front yard, side yard and other setback requirements for new construction within the Property from time-to-time, in their sole discretion, provided that such changes comply with local ordinances, if the enforcement of the requirements herein would cause practical difficulties or unreasonable hardship for the owner of the lot, and the proposed modification will not adversely affect adjoining lots in the Plat. However, any change to the front yard setback as shown on the plat shall be approved by the Town of Middleton.

**B-3) Architectural Control.** No building shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure have been approved by a majority of the Architectural Control Committee (the “Committee”) as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. There shall be a variation in building elevations on adjacent Lots. Approval shall be as provided below.

**B-4) Dwellings, Landscaping and Driveways.** The landscaping to be installed on all Lots must meet or exceed the minimum number of points for foundation planting and cumulative total landscaping points, including foundation planting points as set forth hereafter as described in Exhibit C, attached hereto and incorporated herein by reference. The number of points attributable to various elements of the landscaping to be installed shall be determined by reference to Exhibit D, attached hereto and incorporated herein by reference. Each Owner shall plant three (3) large evergreen spruce trees in the front yard area. All landscaping elements shall comply with applicable Town ordinances and preference shall be given to any landscaping elements recommended by the Town. The structure and the minimum landscaping requirements shall be completed within nine (9) months after issuance of a building permit. All driveways shall be of concrete or asphalt and shall be installed within nine (9) months after substantial completion of the structure. No outbuilding or accessory building of any nature shall be erected on any Lot with the exception of detached garages approved by the Committee in advance of construction. No above-ground swimming pools shall be permitted. All Lot areas not used as a building site, or under cultivation as a family garden, shall be planted with grass seed or shall be sodded, and shall be maintained on a regular seasonal basis, including mowing of a frequency of not less

than once every 14 days during the lawn growing season. Maintenance of all improvements on a Lot shall be performed by the Owner. Maintenance shall include, but not be limited to, watering, pruning and routine fertilizing and mulching of all plantings and plant beds, replacement of dead, dying and/or diseased trees and shrubs, prompt removal of weeds, trash and debris from plant beds and areas adjacent to shrubs and trees so as to keep said landscaping in a healthy, attractive and neat condition.

If the Owner of any Lot, after reasonable notice, fails or refuses to install landscaping as described herein, or maintain it as required above, the Committee, through its duly authorized agents or employees, shall have the right to enter upon said Lot at reasonable hours to perform said landscaping and/or maintenance. The costs of the materials and labor to perform such landscaping and/or maintenance shall be assessed against said Lot in accordance with the terms of Section A-4 (B)(2) above, which assessment may be foreclosed or collected in accordance with the terms hereof or collected as provided herein.

**Driveways.** Driveways may be constructed with concrete, brick, asphalt or crushed stone. However, if the driveway is constructed prior to the surface layer of asphalt being placed, a minimum of 5 feet of the driveway (measured from the roadway pavement edge) must be constructed with cold patch asphalt, hot mix asphalt, or crushed stone. Under current Town policy, Declarant must install the binder course of asphalt for the public streets and then wait a minimum of one calendar year before installing the surface course of asphalt. Each Owner who constructs a driveway before the surface course is placed on the public street adjoining the Owner's Lot shall construct the driveway to match the elevation of the surface course except for the last five feet which shall be sloped down to match the binder course elevation. At the time the surface course is placed, the last five feet of asphalt pavement shall be removed and replaced to match the surface asphalt elevation at the or Owner's expense or that of the Declarant if Lot is owned by Declarant.

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

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

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

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

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

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

**B-5) Vehicle and/or Equipment Storage.** No inoperable, dilapidated or junk vehicles of any nature may be kept upon any Lot except in a fully enclosed garage. The exterior storage of boats, trailers, travel trailers, campers, motorcycles, recreational vehicles, automobiles or trucks (collectively, without limitation by reason of enumeration "**Equipment**"), of any nature is prohibited whether or not screened from public view. No Equipment shall be parked or stored on lawns. The temporary storage of vehicles in a drive area for the purpose of loading or unloading for a period not to exceed twelve (12) hours is permitted. No commercial vehicles, including trucks, semi-trailers or trailers, may be stored or parked overnight on or in front of said Lots except in an enclosed garage.

**B-6) Easements.**

A) No structure, planting, or other materials shall be placed or permitted to remain within any easement of record (an "**Easement**") if any, which may damage or interfere with the installation and maintenance of utilities, or which may change, obstruct or retard the flow of water or the direction of such flow through the Easement or through such other drainage channels or swales that may have been created by the Plat or otherwise. The Easements located on each Lot and all improvements therein shall be maintained continuously by the owner of the Lot, except for those improvements for which a public authority or utility company is responsible. The Intra-block drainage Easement shall be graded with the construction of each principal structure in accordance with the approved Stormwater Drainage Plan on file with the Town Engineer and the Zoning Administration, as amended in accordance with the General Ordinances.

1) American Transmission Company (ATC), LLC will be located in Outlots 2, 3 and 4 along Bronner Road. There will be two poles in close proximity to the plat. We advise all property owners to familiarize themselves with the poles and voltage by reviewing information at [www.atcllc.com](http://www.atcllc.com).

B) No structure of any kind shall be permitted within a vision triangle which exceeds a height of 2 ½ feet above the surface created by connecting the three (3) corners of the vision triangle as noted on the plat except for necessary highway and traffic signs, approved public utility lines and open fences through which there is a clear vision, nor shall any plant material except grasses and similar turf be permitted which obstructs safe vision of the approaches to the intersection.

C) Public Stormwater Management Easements. The Stormwater Management Plan includes several stormwater basins, drainage swales\drainageways. Outlots 1, 2 and 5 shall be subject to this easement. Lots 15, 16, 18, 19, 27, 28, 31 and 32 contain Public Stormwater Management Easements.

Use of the Public Stormwater Management easements of this Subdivision shall be restricted as follows:

1) All Public Stormwater Management Easements noted on the Plat shall be conveyed to the public for stormwater management purposes upon recording of the Plat. Public Stormwater Management Easements shall be maintained as set forth in paragraph 2 below, and may not be used for any purposes (including, without limitation, agricultural purposes) except as provided herein. The use of the Public Stormwater Management Easements may not be materially changed except with the consent of the Town of Middleton.

2) Maintenance and Town Remedies for Default. The Association shall provide for and pay the costs of the care, operation, management, maintenance and repair of the Public Stormwater Management Easements as detailed in that certain Declaration of Conditions and Restrictions for maintenance of stormwater management measures pertaining to the Outlots and Easements and recorded with the Dane County Register of Deeds, a copy of which is attached as Exhibit G (the Stormwater Measures) and as detailed in this document. In the event the Association fails to maintain the Public Stormwater Management Easements, or portions thereof, in the manner provided in this Declaration, the Stormwater Measures or Town of Middleton or Dane County ordinance, the Town of Middleton may, after thirty (30) days' written notice and the opportunity to maintain has been given to the Association, may take over maintenance of such Public Stormwater Management easements and assess the cost of maintenance against the Association. Such maintenance charges shall be a lien upon the Association.

The Homeowner's Association is required to meet the Town of Middleton's biennial stormwater management facility inspection and maintenance requirements as per the Town of Middleton's Code of Ordinances. The Homeowner's Association is responsible for all inspection and reporting costs. Additionally, the Homeowner's Association is responsible for any required maintenance costs as described on the inspection report submitted by a licensed professional engineer or as determined by the Town of Middleton. Inspection reports shall be submitted by November 1 of each odd calendar year or the Homeowner's Association will be subject to a penalty per the Town Fee Schedule plus engineering costs to complete the inspection.

In such event, such assessments shall be included in the tax bill for each Lot in the Association. The Town of Middleton shall not be limited in its authority to assess any sums for maintenance and repairs if the Association fails to manage, maintain and preserve the Public Stormwater Management Easements, or any portions thereof, in the manner described in this Declaration, the Stormwater Measurements, or Town of Middleton or Dane County ordinance. ALL OWNERS OF THE AFFECTED LOTS HEREBY WAIVE NOTICE AND PROTECT OF ANY TAX ASSESSMENTS OR SPECIAL CHARGES LEVIED BY THE TOWN OF MIDDLETON AGAINST SUCH LOTS PURSUANT TO THIS DECLARATION.

**B-7) Slope and Swale Areas.**

A) The graded slopes and swales as established by Declarant shall remain as permanent. Within these slopes and swales, no structure, planting or other material shall be placed or permitted to remain, or other activities undertaken which may damage or interfere with established slope and swale ratios, create erosion or sliding problems or which may change the direction of flow of drainage channels or obstruct or retard the flow of water through drainage channels. The slopes and swales of each Lot and all improvements in them shall be maintained continuously by the Owner of a Lot, at the Owner's sole expense, except for those improvements for which a public authority or utility company is responsible.

B) In order to control run off, all down spouts and down spout extenders are to drain into a permeable area such as grass or a planting bed.

C) Declarant and the Town of Middleton have agreed to a certain Storm Water Management Plan. In the event of conflict between any plans and such Storm Water Management Plan, the Storm Water Management Plan shall control. Declarant and the Association shall each have the right to enter upon any Lot at any time for the purpose of inspection, maintenance or correction of any drainage condition and the Lot Owner shall be responsible for the cost thereof.

D) Any disputes relating to drainage swales, drainage or other surface water issues, shall be resolved by the Board of Directors of the Association, which may seek the advice of the Town Engineer of the Town of Middleton. The Town may wish to have the Town Engineer review drainage issues if they are in the public easements. However, it is unlikely that the Town will intercede in drainage disputes between Lot Owners. The Association shall establish procedures by which such decisions can be heard by the Board of Directors and decided by said Board.

E) The elevation of any Lot shall not be changed so as to materially affect the surface elevation, grade or drainage patterns to the surrounding Lots, nor shall the elevation of any structure on a Lot deviate from the minimum low opening elevations identified on the Plat. Declarant will construct certain drainage swales and roadside ditches in the land comprising the Subdivision and that land may contain certain natural drainage ways. Such swales, ditches and ways will be called the “Drainage System” and shall be subject to the provisions of any public stormwater drainage easements. As part of the Drainage System, Lots 15 and 16, 18 and 19, 27 and 28, 31 and 32 are subject to 10 foot wide drainage easement as noted on the Plat. No Owner shall alter the Drainage System without the prior written consent of the Declarant and the Town. Each Owner shall maintain and repair all parts of the Drainage System located within the Owner’s Lot. Any Owner who violates these covenants shall be required to restore the Drainage System or restore the surface elevation, grade or drainage patterns to the surrounding Lots at the Owner’s sole expense. If an Owner violates the grading, site or landscaping plans submitted by the Owner to the Committee, the Committee or any affected Owner shall have a cause of action against the violating Owner for both damages and injunctive relief.

F) **Minimum Unprotected Foundation Opening Elevation.** The following Lots are subject to a minimum open elevation as designated on the final recorded plat:

Lot	Minimum Opening Elevation	Lot	Minimum Opening Elevation	Lot	Minimum Opening Elevation
1	1080.92	16	1038.00	30	1028.55
2	1074.61	17	1029.69	31	1036.00
3	1067.73	18	1029.69	32	1036.00
4	1063.71	19	1029.69	33	1037.50
5	1060.31	20	1029.69	34	1042.00
6	1057.49	21	1038.68	35	1044.00
7	1054.00	28	1048.00		
8	1052.00	29	1033.30		

**B-8) Nuisances.** No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood or which may have a detrimental effect on the value of other Lots and/or improvements.

**B-9) Temporary Structures.** No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

**B-10) Signs.** No sign of any kind shall be displayed to the public view on any Lot except, one professional sign of not more than one square foot, one sign of not more than six square feet advertising the property for sale or rent or signs without regard to size used by the Declarant, a builder or licensed real estate broker to advertise the property during the construction and sales period or to identify the subdivision and/or its Declarant. No signs will be located in the Outlots, except those that the Town may place in conjunction with Public Recreational Trail and Park development and use.

**B-11) Entrance Sign.** It is contemplated there will be an entrance monument sign in Outlot 2 and/or Outlot 4 of the said Plat. The entrance monument sign will not be located within a vision corner easement, drainage swales\drainageways or Public Park and Public Recreational Trail and/or easement. The entrance monument sign will not include lighting and if lighting is installed it is subject to Town approval. The Association will be responsible for the maintenance of said sign to include watering, mowing and basic landscape requirements. However, at such time, that the Declarant transfers the Association responsibilities to the neighborhood, it will be the neighborhoods responsibility to determine that said sign shall remain in place and assess all owners in the neighborhood of any future replacement cost.

**B-12) Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that up to three (3) domesticated pets (dogs, cats or other household pets) may be kept, provided that they are not kept, bred or maintained for any commercial purpose. No animal enclosure, house, pen or fences or similar device shall be placed on any Lot without the prior written approval of the Committee which may require special landscaping and screening.

**B-13) Garbage and Refuse Disposal.** No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. No incinerators shall be permitted. Other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No trash, building materials, debris, leaves, lawn clippings, rocks or earth shall be placed in any Outlot.

**B-14) Sight Distance at Intersections.** Vision corner easements are shown on the final plat at the at the intersections of Sunset Ridge Drive and Bronner Road in Outlots 2 and 4, Bronner Road and Koch Road in Outlot 3, Koch Road and Vosen Road in Outlots 2 and 5. No fence, wall, hedge or shrub planting which obstructs sight lines within said vision.

**B-15) Notices to Owners.** The following information is being put of record in order to give record notice to all Owners, mortgagees and other persons and entities having an interest in the Property:

A) At closing, the deed for each Lot will include an Exhibit "A" deed attachment evidencing Owners waiver of objection to land uses as described within the Declaration. By acceptance of a deed to a Lot, Owners accept such uses and waive any objections to the same.

B) Plantings, flower beds, and entry signs (including utility installations connected therewith) constructed and installed by Declarant, if any, shall be deemed a part of the Common Area. The Association is obligated to maintain any entry feature; maintenance shall include electrical charges (if any), sign repair and maintenance of the landscaping including mowing of all lawns and grass areas. The cost of maintenance of said Common Property shall be an assessment against all of the Property in the subdivision in accordance with the Declaration, for so long as such maintenance is necessary or required adversely affects the natural flow of surface or underground waters within the area permitted.

C) Conventional Septic Systems / Mound Septic Systems: Certain Lots within the Plat will have either conventional septic system or mound septic system.

D) Shared Wells and Joint Well Agreements. Certain Lots within the Plat may be subject to shared well or joint well agreements. Wells or piping from wells are not allowed in the Outlots or in Public Right-of-ways.

E) Sale of Lots. Buyer acknowledges that a significant number of Lots may be sold to a third party builder. A number of homes built in the Development will not be built by Veridian Homes.

**B-16) Improvements Within Easements**. Any improvements (for example, fences, dog kennels, landscaping) located within any part of a Lot which is subject to a utility easement is subject to removal at the Owner's expense for utility maintenance and other reasons as determined by the party benefitted by the easement. Reinstallation of any improvement would be at the Owner's cost and would also be subject to the discretion of the party benefitted by the easement and is subject to terms and conditions as set forth on the final plat.

## PART C ARCHITECTURAL CONTROL COMMITTEE

**C-1) Membership**. Declarant shall establish an Architectural Control Committee ("Committee") consisting of three (3) members. So long as Declarant has title to any Lot subject to this Declaration, the Committee shall be appointed by Declarant. After Declarant no longer has title to any Lot within the Development or at such earlier time as determined by the Declarant, the initial members of the Committee shall resign and the Association shall elect three (3) Owners to serve on the Committee. At any time, Declarant may elect to surrender the selection of the members of the Committee to the Association.

A majority of the Committee may designate a representative to act for it. In the event of the death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor.

The Committee appointed hereunder shall serve for the time period specified in paragraph C-10, below. Any Committee member may resign prior to said date. Such resignation shall be effective upon receipt. If a resignation shall occur, prior to turning over control of the Committee, then the remaining members of the Committee may appoint a replacement.

**C-2) Architectural Control**. No structure, whether residence, accessory building, tennis court, swimming pool, decks, patios, antenna (whether located on a structure or on a Lot), flag pole, wall, landscaping or other improvements, including exterior colors and materials to be applied to said

improvements, shall be constructed, maintained or performed upon any Lot and no alteration or repainting of the exterior of a structure shall be made unless complete Architectural Review Application (“**Application**”). Plans, specification and plot plans therefore shall have been submitted to and approved in writing by a majority of the Committee. Approval shall also be required for location of improvements with respect to topography and finish grade elevation. Said Application, plans, specifications and plot plans shall show the exterior design, height, building materials and color scheme thereof, the location of the structure plotted horizontally and vertically, the location and size of driveways, the plans for required landscaping, and the grading plan. A copy of such Application, plan specifications and plot plans as finally approved shall be deposited with the Committee. The Application can be found on the Veridian Homes website [www.veridianhomes.com](http://www.veridianhomes.com). Select Homeowner Resources (located on the top toolbar, select Architectural Control Committee and select the appropriate application for your request.

**C-3) Plan Review.** The Committee shall review said Application, plans and specifications as to quality of workmanship and materials, harmony of external design with existing or proposed structures and as to location with respect to topography and finish grade elevation. The Development will be the subject of a comprehensive, written set of Design Guidelines as set forth herein at Part D. The Committee shall use the guidelines set forth in this Declaration as an aid in exercising its architectural control responsibilities hereunder, but nothing contained herein or therein shall limit the Committee’s discretion to grant variances from or make changes to, the guidelines, as they shall determine in the sole exercise of their discretion.

**C-4) Procedure.**

**A)** Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant for the initial approval of a residential structure. Thereafter, said Committee may charge a “request for action” or “approval” fee not to exceed \$50.00 for each such request or approval. The Committee’s approval or disapproval, as required in these Covenants, shall be in writing. In the event the Committee fails to approve or disapprove within thirty (30) days after application, plans and specifications or any other matters requiring approval have been submitted to it, the request shall be deemed denied. **Note:** A copy of evidence of approval by the Committee is to be given to the Town Building Inspector for their use. However, the Town Building Inspector is not obligated to enforce the covenants or conditions of approval.

**B)** A submission will not be complete, and the thirty (30)-day approval time, as applicable, set forth above shall not commence until all documents required herein have been submitted. All such submissions shall be made to the Committee at the address in this Declaration or to such other address that the Committee may designate.

**C)** The Committee shall have the sole right to reject any application and plans which, in the judgment and sole opinion of a majority of its members are not in conformity with this Declaration; or are not desirable for aesthetic reasons; or are not in harmony with buildings located on the surrounding Lots; or are not in conformity with the general purposes of this Declaration.

**D)** The Committee shall exercise its sole approval authority and discretion in good faith and each Owner, by acceptance of a deed to, or any other interest in, a Lot, agrees to hold the Committee harmless from any perceived discrepancies in the Committee’s good-faith performance of its duties. Refusal of approval of plans by the Committee may be based on any grounds, including purely aesthetic grounds, which in the sole discretion of the Committee shall be deemed sufficient.

E) The Committee may set its own operating procedures consistent with this Declaration and any limitations hereafter imposed by the Association. The costs of operating the Committee shall be assessed by the Association as Common Property expenses, except as permitted below. The Committee may engage consultants (e.g., architects, engineers or attorneys) either on a general or on a case-by-case basis, and the costs thereof may be charged to an applicant. The members of the Committee shall not draw any compensation for serving thereon but may be reimbursed for expenses incurred in performing their duties. All funds relating to the Committee shall be handled by the Association.

**C-5) Separate Town and County Approval.** Matters which require approval of the Committee may also require approval of the Town of Middleton and Dane County. Obtaining approval from the Committee, the Town of Middleton and Dane County is solely the responsibility of the Owner desiring approval. Approval of Plans by the Committee shall not be deemed approval by the Town of Middleton or Dane County and approval by the Town of Middleton or Dane County shall not be deemed approval by the Committee.

**C-6) Records.** Until such time as a replacement Committee is designated, all plans, applications and requests shall be submitted to said Committee at the following address:

Daybreak Valley Homeowners Association, Inc.  
Architectural Control Committee  
6801 South Towne Drive  
Madison, Wisconsin 53713  
[acc@veridianhomes.com](mailto:acc@veridianhomes.com)

**C-7) Committee Liability.** Neither the Committee nor any member thereof shall be liable for damages to any person submitting request for approval or to any Owner of any Lot by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove with regard to such requests. The Committee is not responsible for ensuring that the application and plans submitted by an Owner are in compliance with applicable laws, rules, regulations, ordinances or customary and typical building practices. The Committee does not review plans for structural design.

**C-8) Indemnification.** Each member or former member of the Committee, together with the personal representatives and heirs of each such person, shall be indemnified by the Association against all loss, costs, damages and expenses, including reasonable attorney's fees, asserted against, incurred by or imposed in connection with or resulting from any claim, action, suit or proceeding, including criminal proceedings, to which such person is made or threatened to be made a party by reason of service as a member thereof, except as to matters resulting in a final determination of gross negligence or willful misconduct on the part of such member. In the event of settlement of such proceeding, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Association is advised by counsel that the person to be indemnified has not been guilty of gross negligence or willful misconduct in the performance of such person as a member in the matter involved. This right of indemnification shall be in addition to all other rights and defenses. All liabilities, losses, damages, costs and expenses incurred or suffered by the Association in connection with this indemnification shall be a Common Property expense. Nothing in this Section C-8 shall be deemed an indemnification of such person with respect to such person's status as an Owner, occupant or otherwise.

**C-9) Variance.** The Committee shall have the power and absolute discretion to authorize a variance from any of the requirements of this Declaration if it finds that the strict application thereof would, in its sole discretion and opinion, result in difficulties or undue hardship to the Lot owner or in the event the architecture of the proposed Lot improvement is such as to present, in its opinion, a particularly pleasing appearance compatible with other houses in the development. The exception being is that sections A-1, A-4, B-2, B-4, B-6, B-7, B-11, B-12, B-14, B15, B-16, C-9, E-1, E-2, E-5, E-7 and E-8 will require written approval from Town of Middleton.

**C-10) Successor to Committee.** Declarant may turn over control of the Committee to the Members of the Association at any time, and shall turn over control when Declarant no longer has any ownership interest in the Property. At such time as Declarant turns over Committee control, the Association's Board of Directors shall designate not less than three (3) or more than five (5) Members of the Association to serve and act as the Committee for all purposes hereunder.

**PART D  
DESIGN GUIDELINES**

**D-1) Single Family Dwelling Units.**

**A) Architectural Character.** Architecture within the Development will be developed with a variety of American vernacular architectural styles in mind. These architectural styles, while not a comprehensive list, will offer a unique mixture of styles for the development, and will be applied with proportions and character in mind. The overall character of the development will be created so that the architectural styles are compatible and the overall cohesion of styles will help foster a unique setting without stifling the architectural creativity on the individual building level, creating a varied but integrated community. Identical floor plans with the same elevation style shall not be located within 7 sites to assure this variety. The following are examples of styles permitted:

Cottage	Craftsman	Four Square	Farmhouse	Southern Traditional
Prairie	Classical	Traditional	Victorian	

The requirements as itemized in the following section will be used as applicable to the context of the specific architectural style. Declarant reserves the right to grant variances in its sole discretion. Where Dane County Zoning is more restrictive, such requirements will govern.

**B) Front Porch.** Usable front porches are encouraged as both visual and functional design elements. Configuration shall be consistent with architectural style.

1) A usable open front porch is defined as having a minimum depth of 6'-0", and a minimum width of 8'-0".

2) Porch post style should be consistent with the overall architectural style of the home. Minimum standard porch design details include the following; porch posts or alternate per plan, porch balustrades, when provided, of nominal 2" x 2" square wood at a maximum of six inches (6") on center; and newel posts that are of the same design as the base of the column posts. Porch columns and railings shall be painted to match the trim color of the house.

**C) Garage.**

1) There shall be a minimum of a two (2) car, 20' x 20' garage per dwelling unit.

2) The maximum garage width exposed on the front elevation shall be no greater than fifty percent (50%) of the overall building width.

3) Side entry or front entry garage. For three (3) car garages, the third stall must have a minimum setback of the greater of two feet (2') from the two-car garage face unless three (3) single width doors are used or as required by compatible roof design. Overall garage width must comply with zoning and design guideline standards. For two (2) car garages, the face must be set back a minimum of 2'-0' from the front elevation unless applicable zoning classification requirements require a greater setback.

4) The garage door shall be a raised panel design compatible with architectural style painted to match the siding on the home. The use of windows in the door, appropriate to the architectural style, is encouraged. The maximum single garage door size is 8' x 18'.

5) Garage doors shall be painted to match the siding color to minimize impact overall building composition.

**D) Ornamental Design Elements.**

1) Ornamental design elements, such as dormers, shutters, window wrap window grids, gable vents, pilasters, pediments, etc., shall be used in a manner consistent with the overall architectural style of the home and with emphasis on elevations exposed to public space.

2) Window grids and shutters or wrap trim are required on all elevations. Gable vents, 5" horizontal trim, and/or eyebrow roofs are required on front elevation gables greater than 10'-0" in width and are encouraged on other gables as deemed appropriate by the Architectural Control Committee.

3) Shutters shall be wood or polystyrene with colors as outlined in the Color Chart established by Declarant for the Development or of other material or color as deemed acceptable by the Architectural Control Committee. Panel or louver design shutters shall be used as appropriate to home materials & style.

4) All trim shall be cedar, hardboard or cement board.

5) Gable vents shall be Fypon or NuWood triangle or peaked series or equivalent for the front elevation, and side elevations facing a public street, or other design approval by the Architectural Control Committee. Other gable ornamentation as appropriate to architectural style may be allowed or required by the Architectural Control Committee.

**E) Roof/Facias/Soffits/Eaves.**

1. Roof Standards:

a) Roof design must be consistent with the overall architectural style of the home. Roof forms and pitches as established on individual styles may not be altered without approval by the Architectural Control Committee. Typically 6/12 main roof and 8/12 gables are minimums

b) Roof material shall be a minimum Owens Corning Oakridge 30

architectural shingle or equal as approved by the Committee. The use of cedar shakes, tile or slate is encouraged.

c) Use of an eyebrow roof or projecting gable is required at brick walls not extending into a gable are encouraged, as appropriate, at double gable returns and porch column caps.

d) Hip roof design, porches or other elements deemed appropriate by the Architectural Control Committee may be used in lieu of specific gable requirements.

2. Fascia, Soffit and Eave Standards:

a) Fascia shall be 6" minimum aluminum or vinyl.

b) Soffit shall be wood or aluminum with color to match fascia.

c) A minimum twelve-inch (12") overhang is required at typical eaves and gable ends. However, six inches (6") is allowable with projections less than 6'-0" in width, such as the fireplace chase and a small bay window, and beyond structure line at open porches. Additional overhang may be required based on architectural style.

**F) Exterior Wall Surfaces.**

1) Lap siding and shake siding shall be vinyl, cedar or cement board as approved by the Committee. Exposure shall be as appropriate to style.

2) Windows may be vinyl, vinyl clad, and aluminum clad or wood.

3) Variation of wall planes on primary elevations is encouraged as proportion to overall building style and massing.

4) Any elevations facing public streets or spaces shall have a minimum of three (3) windows with wrap trim or shutters and window grills as appropriate and one (1) gable vent.

5) The use of brick or stone is required as appropriate to architectural style. When brick is used, it shall be on full wall surfaces from foundation to eaves or on a two-story elevation at least to the second floor windowsill line. When brick is used, a soldier course window heads and rowlock sills are required. Additional details (i.e. projecting belt course and projecting corner accents) are encouraged as appropriate. Stone may be used as full wall surfaces or as a base course to first floor sill line. Brick or stone facing must return a minimum of 2'-4" when terminated at an outside corner.

6) Stucco or synthetic stucco may be used as appropriate to architectural style.

**G) Colors.** The Declarant or the Architectural Control committee, whichever is then applicable shall approve the trim, siding and roofing colors to assure the most aesthetic combination for a particular house as well as for the Daybreak Valley Plat. Any subsequent changes in such colors shall be approved by the Declarant or Committee, whichever is then applicable.

**H) Chimneys, facia and soffits.** All chimneys and exterior flues shall be enclosed using brick, stone, stucco or lap siding material. No cantilevered chimney will be allowed, all must be on foundations.

**I) Mailbox and Post.** Mailboxes and posts serving homes in the neighborhood, whether individual or multi-gang, will be provided by Declarant at Declarant's sole cost and expense. Damaged or missing mailboxes and post shall be replaced with a mailbox and post identical in all respects with that originally provided, at the sole cost and expense of the Owner(s). Mailbox and post placement are further subject to any applicable regulations of the U.S. Postal Service or Town of Middleton.

**D-2) Other Improvements.**

**A) Fences.** All fencing must receive prior written approval of the Committee and shall comply with any requirements set out below. The Committee may also require the installation and maintenance of landscape materials for screening and aesthetic purposes. All fence material shall be constructed of vinyl. Zoning approval and/or a building permit from the Town of Middleton may be required to construct fencing. Committee approval does not supersede the need for any municipal approvals or permits.

**1)** Fencing must consist of vinyl. The fence style permitted is the PlyGem Stratford Vinyl, Exhibit E.

**a)** All fencing shall be erected finish side out ( i.e. pickets on the outside of the rail facing the street or neighboring lot).

**b)** Posts shall be spaced a minimum of 72" and a maximum of 96" on center. Rails shall be discontinuous and abut into the posts.

**c)** Gates are permitted and shall be consistent with the fencing style. All gates shall open into the lot. Gates may be required for access to utility easements.

**d)** Fencing color by PlyGem Fence/Railing of Sandstone is the only color permitted.

**2)** Appropriate uses of fencing:

**a)** Fencing shall be limited to rear and side yards only.

**b)** Fencing shall meet up with the corners of the home or garage and may not project past the front face of home or garage.

**c)** Only one fence is permitted along adjoining properties. Corners of adjoining properties fencing shall intersect at common corners.

**d)** Fencing at side yards of corner lots shall be placed a minimum of 6 inches from the property line (approximately 1 foot from sidewalk) for all zoning classifications.

- 3) Inappropriate use of fencing:
  - a) Fencing in front yards shall not be permitted.
  - b) Fencing shall not occur in freestanding segments or be placed arbitrarily.
  - c) Fencing shall not meet porch or deck corners.
  - d) Fencing shall not interfere with utility equipment. Your utility companies shall be consulted for current requirements and the most restrictive shall apply.

**B) Decks.** All decks must receive prior written approval of the Committee and shall comply with any requirements set out below. The Committee may also require the installation and maintenance of landscape materials for screening and aesthetic purposes. Zoning approval and/or a building permit from the Town of Middleton may be required to construct a deck. Committee approval does not supersede the need for any municipal approvals or permits. All decks shall be constructed of Cedar wood or a maintenance free composite material.

- 1) Appropriate deck design shall incorporate the following criteria:
  - a) Deck(s) shall be proportionate in size to the footprint of the dwelling
  - b) Deck(s) shall be proportionate in length and width
  - c) Deck(s) shall not project past the rear or side yard setbacks
  - d) Deck(s) at side yards of corner lots may not project past the corner of the home or garage for that side facing the street.
  - e) Deck(s) must be stained or painted
- 2) Inappropriate deck design:
  - a) Deck(s) in front yards shall not be permitted.
  - b) Deck(s) shall not occur in freestanding segments or be placed arbitrarily on the lot.
  - c) Deck(s) shall not interfere with utility equipment. Your utility companies shall be consulted for current requirements and the most restrictive shall apply.

**C) Kennels/Runs.** All dog kennels or dog runs must receive prior written approval of the Committee and shall comply with any requirements set out below. The Committee may also require the installation and maintenance of landscape materials for screening and aesthetic purposes. Zoning approval and/or a building permit from the Town of Middleton may be required to construct kennels/runs and fencing. Committee approval does not supersede the need for any municipal approvals or permits.

- 1) Fencing surrounding kennel or run must consist of vinyl. The fence style

permitted is the PlyGem Stratford Vinyl, Exhibit E.

- a) All fencing shall be erected finish side out, i.e. pickets on the outside of the rail facing the street or neighboring lot.
  - b) Posts shall be spaced a minimum of 72" and a maximum of 96" on center. Rails shall be discontinuous and abut into the posts.
  - c) Gates are permitted and shall be consistent with the fencing style. All gates shall open out from the kennel or run. Gates may be required for access to utility casements.
  - d) Fencing color by Ply Gem Fence/Railing of Sandstone is the only color permitted.
- 2) Appropriate placement of kennels or runs:
- a) Kennel or run shall be limited to rear yard only and shall be adjacent to the home.
  - b) Kennel or run shall meet up with the corners of the home or garage and may not project past the face of home or garage.
  - c) Only one kennel or run is permitted per Lot.
  - d) Kennels must be oriented with the long side parallel to home.
- 3) Inappropriate placement of kennels or runs:
- a) Kennel or run in front or side yards shall not be permitted.
  - b) Kennel or run shall not occur in freestanding segments or be placed arbitrarily on the lot.
  - c) Kennel or run shall not meet porch or deck corners.
  - d) Fencing shall not interfere with utility equipment. Your utility companies shall be consulted for current requirements and the most restrictive shall apply.

**D) Outbuildings.** No outbuilding, shed or accessory building of any nature shall be erected on any Lot, with the exception of a detached garage that is the only garage on the lot and is approved by the Committee prior to construction.

**E) Antennae/Wind Powered Electric Generators.** No wind powered electric generators, exterior television, radio receiving or transmission antennae, satellite signal receiving station or dish shall be placed or maintained upon any portion of a Lot without prior written approval of the Committee.

- 1) Appropriate antennae or satellite dish placement:
  - a) Only one antennae or satellite dish shall be allowed per lot.
  - b) The location of the satellite dish can be any of the following and shall not be visible from the curb directly in front of the home:
    - i. On a pole in the backyard and located close to the home.
    - ii. Attached to the deck.
    - iii. On the rear roof line of the home.
      1. A satellite dish shall not project past the uppermost roof ridgeline. This method is not recommended by the Committee as you may have water infiltration issues if the dish is not properly installed and roof repairs may not be covered under the applicable roof warranty.
- 2) Inappropriate antennae or satellite dish placement:
  - a) Antennae or satellite dish in front or side yards shall not be permitted.
  - b) Antennae or satellite dish shall not interfere with utility equipment.

**F) Firewood Storage.** No firewood or woodpile shall be kept on any lot unless it is neatly stacked, placed in the rear yard and screened from street view by plantings or a fence first approved in writing by the Committee.

**G) Solar Collectors.** No active solar collector or apparatus may be installed on any Lot unless such installation is first approved in writing by the Committee, which shall consider the aesthetic and sun reflection effects on neighboring structures. Solar collectors or apparatus installed flat against or parallel to the plane of the roof shall be preferred.

**H) Lighting.** Exterior lighting installed on any Lot shall either by indirect or of such controlled focus and intensity that such lighting will not disturb the residents of adjacent Lots. Exterior post lights and posts shall be selected from pre-specified designs.

**I) Landscaping Requirements.** Pursuant to Section B-4 of the Declaration of Conditions, Covenants and Restrictions, Developer hereby imposes upon all Lots described in Exhibit A, attached hereto and incorporated herein by reference, the requirement that the Owners thereof install landscaping on such Lots which meets or exceeds the minimum number of points for landscaping set forth in Exhibit C. The number of points attributable to various elements of the landscaping to be installed shall be determined by reference to Exhibit D attached hereto and incorporated herein by reference. All terms, covenants and conditions of Section B-4 of the Declaration of Conditions, Covenants and Restrictions, as amended herein, shall be applicable to the landscaping to be installed pursuant to the terms of this paragraph.

**PART E**  
**GENERAL PROVISIONS**

**E-1) Term.** This Declaration shall run with the Property and Common Property, and shall be binding on Declarant and all Members and their successors and assigns, and all persons claiming under them for a period of twenty-five (25) years from the date recorded, after which time said Declaration shall be extended automatically for successive periods of five (5) years each unless an instrument signed by a majority of the Members, and written approval has been obtained from the Town agreeing to change said Covenants in whole or in part or to terminate the same.

**E-2) Enforcement.** The Declarant (or either one of them if more than one), Architectural Control Committee or any Owner shall have the right to enforce by any proceedings at law or in equity all restrictions, conditions and covenants created or imposed herein, against any person or persons violating or attempting to violate any covenant, by any action to either restrain violation or to recover damages, or both including reasonable attorney fees. Failure to enforce any covenant, condition or restriction herein shall in no event be deemed a waiver of the right to do so thereafter. In the event of a violation of this Declaration the Committee shall have the right to assess and collect from the violating party a fine for such violation equal to the greater of (i) the actual damages suffered on account of the violation, or (ii) the sum of \$100.00 per day for each day the violation remains outstanding plus (iii) all costs of collection and enforcement, including actual attorney fees. The exception being is that sections A- 1, A-4, B-2, B-4, B-6, B-7, B-11, B-12, B-14, B-15, B-16, C-9, E-1, E-2, E-5, E-7, and E-8 where the Town has the authority to enforce.

**E-3) Severability.** Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

**E-4) Model Homes.** So long as Declarant shall own any Lot in the Development, Declarant shall be permitted to maintain model homes in the Development, including therein a sales office for the purpose of sales and marketing of its homes.

**E-5) Parade of Homes.** So long as Declarant shall own any Lots located within the Development, Declarant reserves the right to submit some or all of said Lots as a site for the Parade of Home of the Madison Area Builders Association (the "Parade"). In the event that some or all of said Lots are selected as a site for a Parade, this Declaration of Protective Covenants, Conditions and Restrictions shall, as to the Lots enrolled in the Parade, for a limited period of time ending 48 hours after the conclusion of the Parade, be deemed temporarily altered and modified, to the extent necessary, to permit the Madison Area Builders Association to hold its Parade in this Development pursuant to the then current Parade Rules and Checklist of the Madison Area Builders Association. All purchasers of Lots, and/or their successors and assigns, shall take title subject to this specific reservation by the Declarant and shall waive all rights to object to violations of this Declaration of Protective Covenants, Conditions and Restrictions by the Declarant, the Madison Area Builders Association, or any of the builders or participants in the Parade for the period of the Parade as set forth above, including the closing of any public or private streets in the Parade area. All Lot owners appoint the Declarant their attorney-in-fact to execute all necessary petitions; applications and consents to facilitate said street closings for the Parade. Declarant will be required to obtain Town plan approval for Parade of Homes parking and traffic.

**E-6) Governing Law.** This Declaration shall be construed and enforced in accordance with the terms of the laws of the State of Wisconsin. The terms of this Declaration are not intended to replace or affect any applicable laws, ordinances, rules or regulations of the Town of Middleton.

**E-7) Notices.**

A) Notices to Declarant shall be given to Declarant at the following address: 6801 South Towne Drive, Madison, WI 53713.

B) Notices to an Owner of any Lot within the Development shall be given in care of the street address of the Lot noted on the tax bill for each Lot.

C) Any party may change its address by written notice given to the other parties. Either party, its successors and/or assigns, may change said addresses by notice properly given hereunder.

**E-8) Amendment and Release.** At any time until Declarant conveys all of the Lots which comprise the entire Property, or turns control of the Association over to its Members, whichever occurs first, Declarant may modify, amend, alter and grant variances to this Declaration without the consent of any Member, Owner or Occupant, their Mortgagees or any other party, including the Association and its Board of Directors. These restrictions or any part thereof may be cancelled, released or amended in writing as to the entire Plat or any part thereof by the Declarant at any time until Declarant conveys all of the Lots or until the Declarant turns over control to the Committee, whichever comes first. After the Declarant has sold all of the Lots or otherwise released or assigned his right to enforce the Declaration, then this Declaration or any part thereof may be released, cancelled, amended or waived hereof. Notwithstanding the foregoing or anything else set forth herein, amendments to the following sections of this Declaration shall also require the written approval of the Town of Middleton as restrictions for public benefit pursuant to §236.293 Wis. Stats., in order to be effective: A- 1, A-4, B-2, B-4, B-6, B-7, B-11, B-12, B-14, B-15, B-16, C-9, E-1, E-2, E-5, E-7, and E-8.

**E-9) No Waiver.** Whenever a waiver, consent or approval is required or permitted herein, it must be express and in writing; no waiver, consent or approval shall be implied. Failure to enforce any provision of this Declaration shall not operate as a waiver of any such provision or any other provision of this Declaration.

**E-10) Number and Gender.** Whenever used herein, unless the context shall otherwise provide, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

**E-11) Including.** Whenever used herein, the term “including” preceding a list of one or more items shall indicate that the list contains examples of a general principle and is not intended as an exhaustive listing.

**E-12) Captions.** The captions and article and section headings in this Declaration are intended for convenience and reference only and in no way define or limit the scope or intent of the various provisions hereof.

**E-13) Remedies.** All remedies herein are cumulative.







**EXHIBIT A**

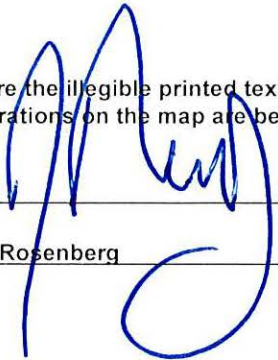
**LEGAL DESCRIPTION OF LOTS AND OUTLOTS**

**DAYBREAK VALLEY**

Lots 1 -- 41 and Outlots 1 – 5 of the Daybreak Valley Plat, Town of Middleton, Dane County, Wisconsin.

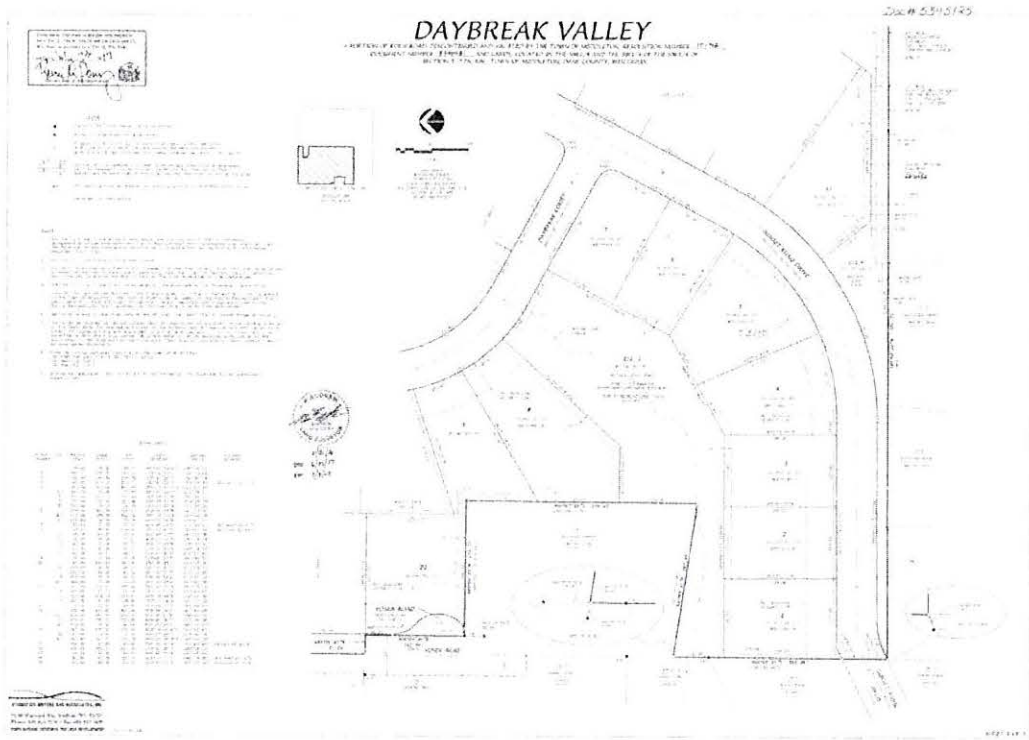
**A copy of the Plat is attached hereto.**

NOTE: Please be advised that the undersigned hereby directs viewers to ignore the illegible printed text material on the map attached to his Exhibit "A". Only the spatial relationships of the illustrations on the map are being presented for your information.

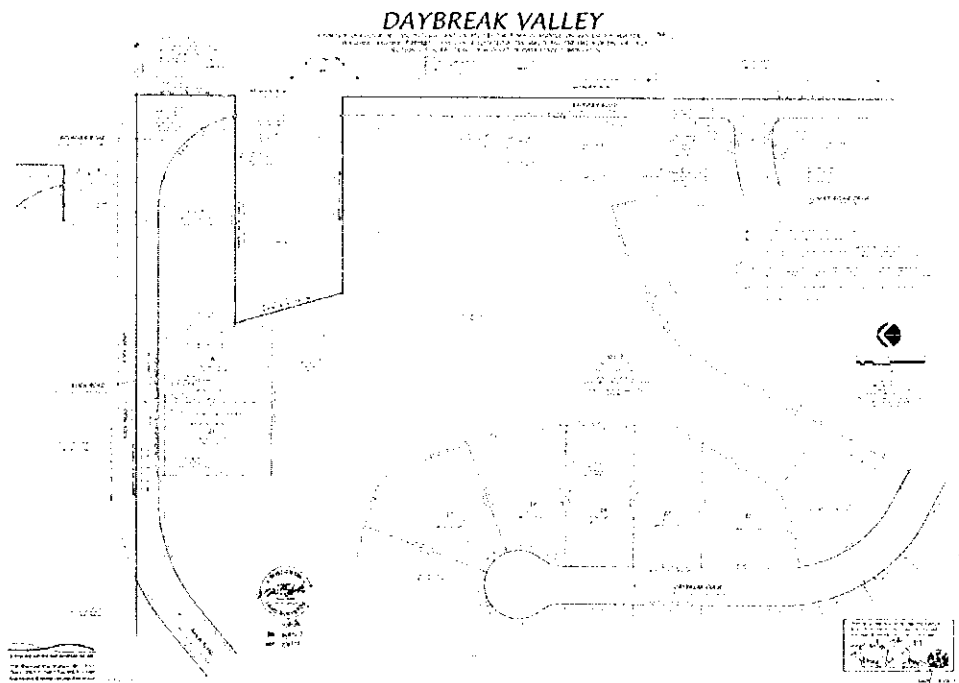
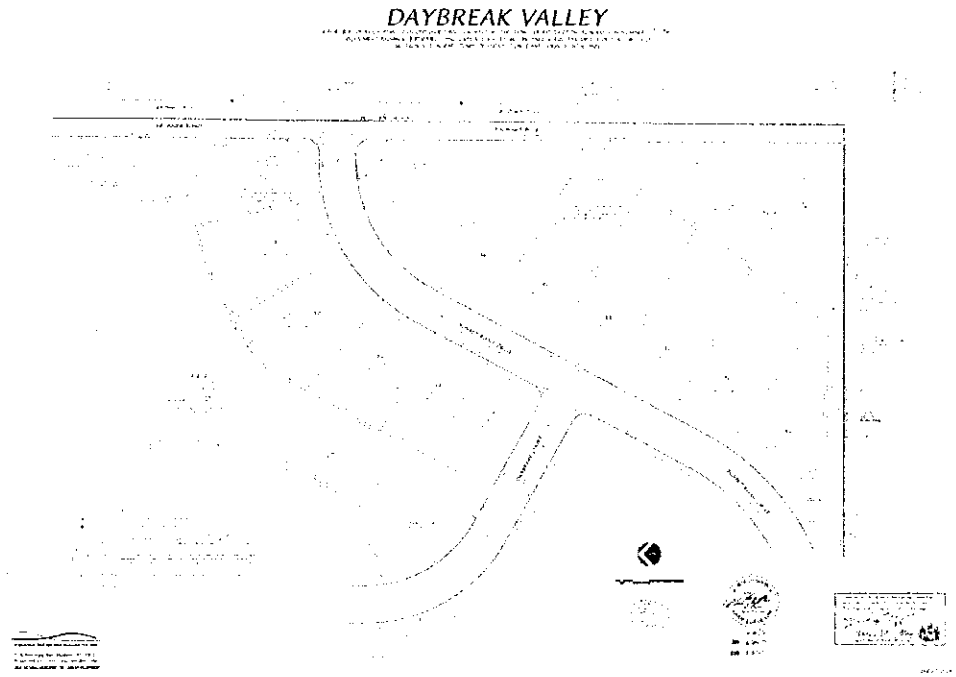


Print Name: Jeff Rosenberg

**EXHIBIT A**



Viewers are advised to ignore the illegible text on this map. It is presented to show spatial relationships only.



**Exhibit "B"**

Lot #	Tax ID Number	
1	038	0708-052-4001-0
2	038	0708-052-4012-0
3	038	0708-052-4023-0
4	038	0708-052-4034-0
5	038	0708-052-4045-0
6	038	0708-052-4056-0
7	038	0708-052-4067-0
8	038	0708-052-4078-0
9	038	0708-052-2009-0
10	038	0708-052-2020-0
11	038	0708-052-2031-0
12	038	0708-052-2042-0
13	038	0708-052-2053-0
14	038	0708-052-2064-0
15	038	0708-052-2075-0
16	038	0708-052-2086-0
17	038	0708-052-2097-0
18	038	0708-052-2108-0
19	038	0708-052-2119-0
20	038	0708-052-2130-0
21	038	0708-052-2141-0
22	038	0708-052-2152-0
23	038	0708-052-2163-0

Lot #	Tax ID Number	
24	038	0708-052-2174-0
25	038	0708-052-2185-0
26	038	0708-052-2196-0
27	038	0708-052-2207-0
28	038	0708-052-2218-0
29	038	0708-052-2229-0
30	038	0708-052-2240-0
31	038	0708-052-2251-0
32	038	0708-052-2262-0
33	038	0708-052-2273-0
34	038	0708-052-2284-0
35	038	0708-052-4095-0
36	038	0708-052-4106-0
37	038	0708-052-4117-0
38	038	0708-052-4128-0
39	038	0708-052-4139-0
40	038	0708-052-4150-0
41	038	0708-052-4161-0
Outlot 1	038	0708-052-4200-0
Outlot 2	038	0708-052-2325-0
Outlot 3	038	0708-052-2350-0
Outlot 4	038	0708-052-4225-0
Outlot 5	038	0708-052-2375-0

**EXHIBIT C**

**Total Minimum Points for Landscaping**

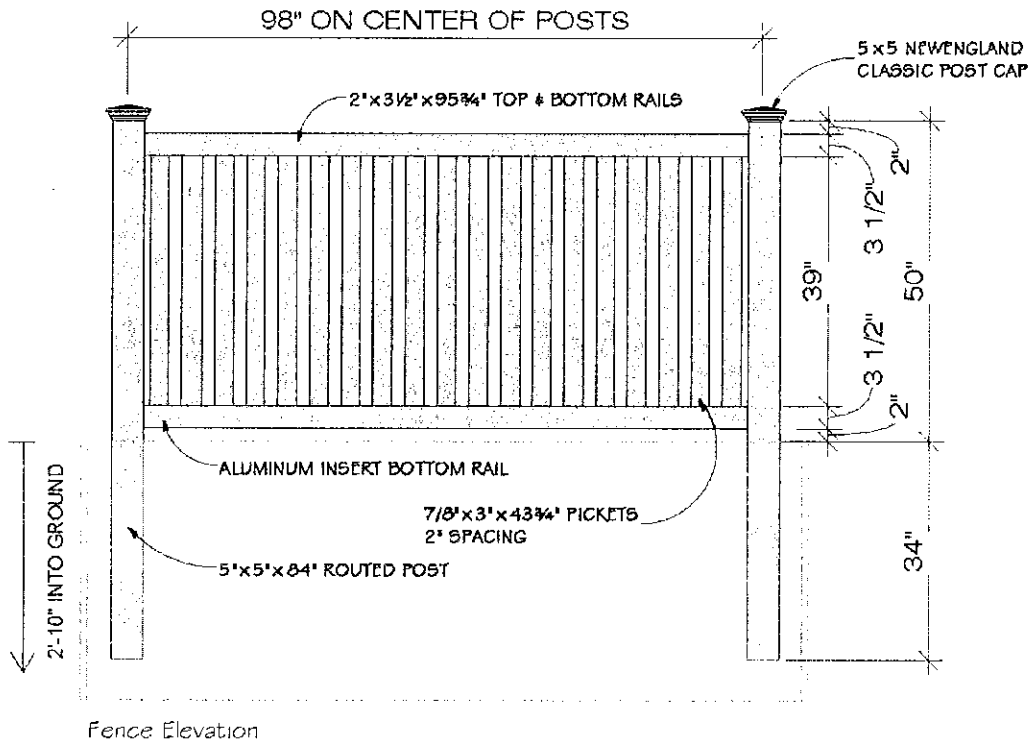
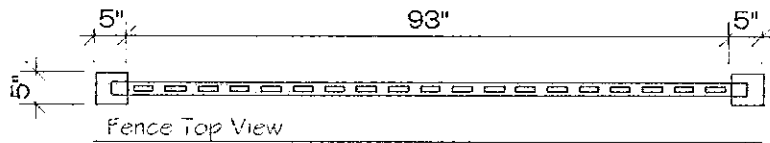
<b>Lot(s)</b>	<b>Minimum Points for Foundation Plantings</b>	<b>Total Minimum Points for Landscaping</b>
1-41	750	2000

**EXHIBIT D**  
**Landscaping Elements**

<b>Elements</b>	<b>Point Schedule</b>
A) <i>Small Shade Trees (balled and burlaped)</i> ..... (1.5"-2" caliper at 6" from the roots)	50
B) <i>Medium Shade Trees (balled and burlaped)</i> ..... (2"-3" caliper at 6" from the roots)	100
C) <i>Large Shade Trees (balled and burlaped)</i> ..... (3"-4" caliper at 6" from the roots)	150
D) <i>Extra-Large Shade Trees (balled and burlaped)</i> ..... (4" – caliper at 6" from the roots)	200
E) <i>Ornamental Trees (balled and burlaped)</i> ..... (1.5"-2" caliper at 6" from the roots)	50
F) <i>Small Evergreen Trees</i> ..... (3' to 4.5' when planted)	25
G) <i>Medium Evergree Trees</i> ..... (5' to 6.5' when planted)	50
H) <i>Large Evergreen Trees</i> ..... (7' + when planted)	100
I) <i>Evergreen Shrubs</i> ..... (18" minimum diameter)	20
J) <i>Small Deciduous Shrubs</i> ..... (18" to 35" in diameter)	10
K) <i>Medium Deciduous Shrubs</i> ..... (35" to 60" in diameter)	15
L) <i>Large Deciduous Shrubs (balled and burlaped)</i> ..... (60" or greater in diameter)	25
M) <i>Decorative Retaining Walls</i> ..... (Points are per face foot. Boulders, timbers, and stones only – no concrete walls included.)	10
N) <i>Paver Stone Walks, Paths or Patios</i> ..... (Points per square foot – no driveways included.)	1
O) <i>Planting Beds</i> ..... (Points per square foot – must be decorative stone or mulch.)	1

The final point totals must consist of a balanced variety of the listed elements acceptable to the Architectural Control Committee. Existing vegetation, trees and shrubs may be included in the point totals if they are properly protected and maintained during the construction process and located as such on the landscape plans submitted to the Architectural Control Committee for approval.

# EXHIBIT E



**NOTE:**

MANDATORY REQUIREMENTS (NO VARIANCE WILL BE ALLOWED)

- FENCE MUST BE VINYL
- VINYL COLOR: "SANDSTONE"
- FENCE STYLE IS A PLYGEM PRODUCT (STRATFORD)

• CUSTOM BUILT ON THE JOBSITE

• INSTALLED WITH METAL BRACKETS THAT ATTACH TO POST AND SCREW INTO STRINGERS



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