

**DECLARATION OF COVENANTS,  
RESTRICTIONS AND CONDITIONS  
FOR THE PLAT OF  
FOX KNOLL, CITY OF MADISON,  
DANE COUNTY,  
WISCONSIN**

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Re: Lots 1 through 74 and Outlots 1 and  
2, Plat of Fox Knoll, City of Madison,  
Dane County, Wisconsin

WITNESSETH:

WHEREAS, Fox Knoll, LLC (who together with its successors and assigns, is referred to herein collectively as the "Declarant" and/or "Developer") is the owner of the real property identified as Lots 1-74 and Outlots 1-2 of the Subdivision Plat of Fox Knoll ("Property"); and

WHEREAS, the Property is to be subdivided and platted as "Fox Knoll" (the "Subdivision"), having seventy-four (74) Lots (individually a "Lot" and collectively the "Lots") and two (2) outlots (individually the "Outlot" and collectively the "Outlots"); references to "Plat" in this Declaration shall be deemed to refer to the Plat of the Subdivision; and

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

WHEREAS, the Developer desires to control the purpose for which the Lots are used, to maintain a high standard of quality with respect to the development and maintenance of the Lots and the structures constructed thereon, and to facilitate the same, to obligate the Owners of the Lots or any part thereof to

KRISTI CHLEBOWSKI  
DANE COUNTY  
REGISTER OF DEEDS

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Return To:  
Hawthorn & Stone Construction, Inc.  
7601 Ganser Way, Suite 200  
Madison, WI 53719

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Parcel I.D. Nos.  
See attached Exhibit A

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be bound by certain conditions, restrictions, reservations and easements for the benefit of each and every Lot Owner;

NOW, THEREFORE, the Declarant hereby declares and provides that the Subdivision and each and all of the Lots are hereby subject to the following restrictions, covenants, conditions and easements:

## **ARTICLE I**

### **STATEMENT OF PURPOSE**

1.1 General Purpose. The general purpose of this Declaration is to help ensure that Fox Knoll will become and remain an attractive community; to ensure the most appropriate development and improvement of each Lot; to guard against the erection thereon of poorly designed or proportioned structures; to obtain harmonious improvements and use of material and color schemes; to insure the highest and best residential development of Fox Knoll; and to encourage and secure the construction of attractive residential structures thereon.

## **ARTICLE II**

### **NO ADDITIONAL LOTS**

2.1 Additional Lots. No Lot shall be subdivided so as to create additional building parcels. This Covenant shall not be construed to prevent the use of one Lot and part of another Lot, as a building parcel, so long as no additional Lot or building parcel is created thereby.

## **ARTICLE III**

### **ARCHITECTURAL REVIEW COMMITTEE**

3.1 Composition. The Architectural Review Committee shall initially consist of the Developer, and two other members to be named by the Developer. All members of the Architectural Review Committee shall serve at the pleasure of the Declarant. 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. At such time as they deem appropriate, the Architectural Review Committee may direct that a new Architectural Review Committee be elected by the Fox Knoll Homeowners Association, described hereinafter, as established in the Bylaws of Fox Knoll Homeowners Association, Inc.

3.2 Liability. No member of the Architectural Review Committee shall be legally liable to the Declarant, Association, or any Lot Owner for any act or omission relative to the good-faith performance of duties performed under this Declaration as more fully set forth in Sections 4.5 and 4.6 of this Declaration. Notwithstanding any of the foregoing, the Fox Knoll Homeowners Association, Inc. shall indemnify and hold harmless the members of the Architectural Review Committee except for their gross negligence or willful misconduct.

## ARTICLE IV

### ARCHITECTURAL REVIEW PROCEDURE

No building shall be erected, placed or altered on any Lot until the construction plans, specifications, landscaping plan and site plan showing the building location and elevation, the elevation of adjacent structures and the Lot topography have been approved in writing by a majority of the Architectural Review Committee. No approval shall be granted if the proposed elevations and finished grades are not compatible with the street elevation and the finished grade adjacent structures and Lots, if such adjacent structures have previously been approved or unless such grades are compatible with what the Committee deems to be the reasonably desirable grade level for the Lot in question. The following standards shall be adhered to in all design and construction. The Architectural Review Committee shall reserve the right to make such exceptions as it in its discretion deems necessary and proper.

4.1 Submissions. In addition to such other information which the Architectural Review Committee may reasonably request, each Owner shall submit the following to the Architectural Review Committee in conjunction with any requested approval of any improvement upon any Lot:

- (a) Drawings of the proposed structures showing, at a minimum, floor plans, elevations or all views of the structure, driveway location, wall details, structure locations, fences, kennels/runs, antennae or satellite dish placement, solar collector and outdoor recreational equipment.
- (b) Descriptions of exterior finishes, roofing types and lighting materials, and upon request of the Architectural Review Committee, samples of such materials;
- (c) Landscape plans for the Lot identifying proposed grades, areas of lawn, garden areas;
- (d) Architectural specifications for the above; and

(e) Address for mailing the determination of the Architectural Review Committee.

(f) For any request for approval of a residential structure, a review fee of fifty (50) dollars per request, which amount may be adjusted annually by the Committee, is to be paid to the Homeowners Association upon submission.

If the Architectural Review Committee fails to render its decision on the preliminary or final development plans within thirty (30) days of their submission, or upon any resubmitted preliminary or final development plans within fifteen (15) days of their resubmission, approval will be deemed to have been obtained and the applicable covenants, conditions and restrictions in this Declaration shall be deemed to have been complied with. If such plans are not rejected, then the Owner shall construct the improvements materially in accordance with the submitted documents. All material changes to such plans must be resubmitted to, and approved by, the Architectural Review Committee.

A submission will not be complete, and the thirty (30)-day approval time set forth above shall not commence until all documents required in this Section 4.1 have been received. All such submissions shall be made to the Declarant or to such other address that the Architectural Review Committee may designate. Declarant shall then call a meeting of the Architectural Review Committee to consider such plans and specifications. Action of the Architectural Review Committee shall be by majority vote of members present at such meeting and entitled to vote upon the matter under consideration. A tie vote on any issue shall be deemed equivalent to rejection. The Architectural Review Committee, with the unanimous written consent of all of its members entitled to vote on any issue, may take action without a meeting. The Architectural Review Committee may approve, disapprove, or approve subject to stated conditions the preliminary and final development plans. If the Architectural Review Committee conditionally approves either the preliminary or final development plans, then the applicant shall be entitled to resubmit such plans. The Architectural Review Committee's decision shall be in writing, signed by two or more Architectural Review Committee members.

4.2 Standards. The Architectural Review Committee shall have the right to reject any plans and specifications or plot plans which, in the judgment and sole opinion of a majority of its members, or the representative of the Architectural Review Committee:

(a) are not in conformity with the restrictions in this Declaration; or

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

4.3 Occupancy. No building or other improvement shall be occupied unless it has been approved by the Architectural Review Committee pursuant to Section 4.1.

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

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

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

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

## ARTICLE V

### ARCHITECTURAL RESTRICTIONS

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

5.1 Single Family Houses. Only single family houses based upon classical, cottage, colonial, craftsmen, four square, farmhouse, prairie, shingle, southern traditional, transitional, traditional and victorian styles shall be permitted. The Architectural Review Committee shall be the sole judge whether submitted plans conform to this restriction. Aesthetic considerations will be of primary importance and will take precedence over objective criteria. The overall character of the community will be created so as to assure architectural styles are compatible creating a varied but integrated community. The submission of preliminary plans and elevations is encouraged.

5.2 Single Story. All shall have not less than 1800 square feet, excluding the garage. The main level is defined as the level totally above finished grade.

5.3 Split Level or Raised Ranch Houses. Split level or raised ranch houses shall have not less than 1800 square feet on the main levels excluding the garage. The main levels are defined as those levels totally above the exterior finished grade.

5.4 Two-Story Houses. Two-story houses shall have not less than 1,200 square feet on the first floor area and a total of 1800 square feet of finished area excluding the garage.

5.5 Reduction of Minimum Floor Requirements. The above minimum floor area requirements may be reduced by the Declarant or its subsequent agent, in the event the proposed architectural design and quality of the house is such that it presents an appearance comparable or superior to the appearance of other houses built in the Fox Knoll development which conform to the above requirements.

5.6 Computation of Square Footage. For the purpose of determining floor area, stair openings shall be included but porches, screened porches, breezeways, attached garages and basements shall not be considered in determining square footage requirements.

5.7 Garages. Unless otherwise approved by the Architectural Review Committee, all houses shall have a minimum attached two car garage 20' x 20'.

Tandem, split or side entry garages are encouraged for three (3) or four (4) car garages. For three (3) car front entry garages, the third stall must have a minimum setback of two (2) feet from the two-car garage line. The maximum garage width exposed on the front elevation shall be no greater than fifty percent (50%) of the overall building width. Larger garages may be permitted upon approval of the Architectural Review Committee. Overall garage width must comply with zoning and design guidelines.

5.8 Accessory Buildings. Accessory buildings are expressly prohibited with the exception of a detached garage that is the only garage on the lot and is approved by the Architectural Review Committee. Secondary units (granny flats) above detached garages may be allowed with prior written approval from the Architectural Review Committee and where allowed by the City of Madison.

5.9 Exterior Wall Surfaces. Siding material shall be premium vinyl or composite material, brick, stone, wood or any combination thereof. Unfaced concrete block, structural concrete, prefabricated metal siding and the like shall not be permitted without the prior written approval of the Architectural Review Committee. Use of brick or stone on exterior wall surfaces is strongly encouraged.

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

5.11 Chimneys. All chimneys and all exterior flues shall be enclosed using brick, stone, stucco or siding material.

5.12 Facia. Facia shall be 6" minimum aluminum. Wood or composite material may be used when appropriate to the architectural style.

5.13 Soffits. Soffits may be aluminum or wood and shall match facia color.

5.14 Roofing. Roofing must be architectural type, textured, fiberglass or asphalt shingles, wood shakes, tile or slate. Fiberglass shingles shall be 220 pound weight or greater. Standard three-in-one shingles are not permitted.

5.15 Roof Pitch. A roof pitch must be no less than 4 inches in every 12 inches. The above minimum Roof Pitch Requirement may be reduced by the Declarant, or its subsequent agent, in the event the proposed architectural design



and quality of the house is such that it presents an appearance comparable with or superior to the appearance of other houses built in the Fox Knoll development which conform to the above requirements.

5.16 Relocation of Existing Structures Prohibited. No building previously erected elsewhere, shall be moved upon any Lot, except new prefabricated construction which has been approved by the Architectural Review Committee.

5.17 Fences. All fencing must receive prior written approval from the Architectural Review Committee. Zoning approval and/or building permit from the City of Madison may be required to construct fencing. All fencing shall be erected finish side out. No chain link fencing shall be permitted other than for Kennels/Runs conforming to section 5.20 of this Declaration. Fencing shall be limited to the rear and side yards only and may not project past the front face of home or garage. Fencing on corner lots shall be placed a minimum of 6 inches from the property line (approximately 1 foot from sidewalk). Fencing shall not be placed in freestanding segments. Fencing shall not interfere with utility equipment. Utility companies shall be consulted regarding placement of fencing. Committee approval does not supersede the need for any municipal approvals or permits.

5.18 Decks. All decks must receive prior written approval from the Architectural Review Committee. A zoning approval or building permit may be required from the City of Madison. Committee approval does not supersede the need for any municipal approvals or permits. Decks shall be proportionate in size to the home. Decks shall not project into the rear or side yard setbacks. Decks on corner lots may not project past the corner of the home or garage for that side facing the street. No decks permitted in front yard. No freestanding decks. Decks must be stained or painted or of prefabricated material.

5.19 Signs. Except for Lots owned by the Declarant, no signs except real estate "For Sale" signs, contractor construction signage during the period of construction or political advocacy/candidate signs during election periods shall be permitted. Said signage shall be limited to one (1) professional sign of not more than three (3) square feet. Signs advertising property for sale or rent shall be limited to one (1) sign of not more than six (6) square feet. Signs without regard to size may be used by the Declarant or licensed real estate broker to advertise the property during the construction and sales period or to identify the development and/or the Declarant.

5.20 Mailboxes. The United States Postal Service requires centralized cluster mailbox units for mail delivery, which will be installed by the Developer. At closing of the initial sale of each lot, each initial purchaser of a lot from the

Developer shall reimburse the Developer \$325.00 for the lots portion of the cost of the centralized cluster mailbox units. The Association shall be responsible for the maintenance and replacement of the centralized cluster mailbox units including, without limitation, snow clearing. If a Lot Owners mailbox key is lost the Lot Owner is responsible for replacement of the key.

5.21 Kennels/Runs. All dog kennels or runs must receive prior written approval from the Architectural Control Committee. Installation of landscape materials for screening and esthetic purposes may be required by the Committee. A building permit and/or zoning approval from the City of Madison may be required. Committee approval does not supersede the need for any municipal approvals or permits for kennels/runs. All gates shall open out from the kennel/run. Kennel/run may be located in the rear yard only and shall be adjacent to the home, meeting up with the corners of the home or garage and may not project past the face of the home or garage. Kennel/run must be orientated with the long side parallel to the home. Only one kennel/run per lot. Utility companies shall be consulted for current requirements and placement shall not interfere with utility equipment.

5.22 Use of Outbuildings and/or Temporary Dwellings. No trailer, basement, tent, shack, garage, barn or outbuilding, or any part thereof erected on any Lot shall at any time be used as a residence, temporarily or permanently, nor shall any building of a temporary character be used as a dwelling. This provision shall not pertain to approve granny flats as outline in section 5.8.

5.23 Driveways. All driveways from the garage to the public street shall be paved with concrete (cement) or brick within 9 months from the date of issuance of the building permit.

5.24 Yard Lights. Exterior lighting on each Lot shall be of such focus and intensity so as the residents of adjacent Lots shall not be disturbed.

5.25 Landscaping. Each Owner shall install foundation and other plantings, as outlined in 8.1, such that the overall appearance of home and land is in harmony with its setting.

5.26 Utilities. All utilities serving any building or site shall be underground. No building or other improvement, or trees shall be erected, placed or planted within any utility easement.

5.27 Construction Deadline. Each residential structure erected shall have its entire external construction completed and the Lot fully landscaped and driveway paved within 9 months from the date of issuance of the building permit

except for delays in completion due to inability to obtain building materials, strike, war or acts of God. Extensions of time due to other reasons may be permitted by the Architectural Review Committee if determined to be necessary due to similar extraordinary circumstances.

5.28 General. All buildings, dwellings, garages, outbuildings, satellite dishes, fences, walls, basketball hoops, lawn ornaments, tennis courts, swimming pools or other structures constructed or erected on any Lot shall be approved prior to construction or installation, in writing, by the Architectural Review Committee, as to placement, landscaping, materials, colors and design. No exterior antennas or satellite dishes shall be erected on any structure or Lot without the prior written approval of the Architectural Review Committee. Satellite dishes and exterior antennas shall be limited in size and must be properly screened from view.

5.29 Firewood Storage. No 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 Architectural Review Committee.

5.30 Solar Collectors. Sustainable energy devices such as solar collector apparatus are encouraged but must be approved in advance by the Architectural Review Committee, which approval shall not be unreasonably refused if panels are installed flat against or parallel to the plane of the roof.

5.31 Variances. No changes or deviations in or from submitted plans and specifications as approved shall be made without the prior written consent of the Architectural Review Committee. However, the Architectural Review Committee is authorized to grant variances from any provision of this Article V or this Declaration where such variance would assist in carrying out the spirit and intent of this Declaration and strict application of the provision would, in its sole discretion, result in undue negative impact to the Lot Owner seeking the variance.

5.32 Front and Side Yard Requirements. All buildings constructed on any Lots subject to this Declaration shall conform to all governmental zoning regulations and all side yard, front and rear yard setback requirements imposed by local ordinance.

5.33 Parade of Homes. So long as Developer shall own any Lot in the Subdivision, Developer retains the right to submit Fox Knoll, in whole or in part, as a site for the Parade of Homes of the Madison Area Builders Association. In the event lots within Fox Knoll are selected as a Parade of Homes site, this Declaration shall be deemed temporarily modified to the extent necessary to permit the Madison Area Builders Association to hold its Parade of Homes in the

Subdivision. Said time frame for any modification to the Restrictive Covenants shall be for a period of 48 hours prior to the commencement of the Parade of Homes and ending 48 hours after the conclusion of the Parade of Homes. All Owners take title subject to this specific reservation by the Developer and waive any right to object to violations of this Declaration for the period of the Parade of Homes, including the closing of any streets. All Owners appoint the Developer their attorney-in-fact to execute all necessary petitions, applications and consents to facilitate said street closings.

## ARTICLE VI

### USE RESTRICTIONS

6.1 Parking of Vehicles. The parking or storage of non-operable automobiles, or service vehicles with signage, tractors, lawn tractors, trailers, boats, travel trailers, mobile homes, campers, snowmobiles, motorcycles and other recreational vehicles, portable moving storage containers, mini storage or on-site storage containers is prohibited unless they are kept in garages. Semi-tractors and trucks of over one ton capacity shall not be temporarily or permanently kept on any Lot except in conjunction with providing services of a temporary nature to the Owner of such Lot. This shall not prohibit the temporary parking of such vehicles for the purpose of loading and unloading.

6.2 Lot Appearance. Each Lot Owner shall be responsible for maintaining the Lot and structures approved by the Architectural Review Committee in a neat condition.

6.3 Trash. Trash containers must be stored in the garage and may be placed upon the curb only on days of trash collections. No garbage or refuse shall be placed on any Lot unless in a suitable container. No trash, cuttings, leaves, rocks or earth may be deposited on any Lot or Outlot. Screened composting facilities may be maintained subject to the approval of the Architectural Review Committee.

6.4 Pets. Not more than three (3) domestic pets may be permanently kept on any Lot. No animals, livestock, reptiles or poultry of any kind shall be raised, bred or kept on any lot, except that not more than three (3) domesticated pets, may be kept provided that they are not kept, bred, or maintained for any commercial purposes. All animals must be housed within the principal structure with kennels/runs to be approved by the Architectural Control Committee. Commercial animal boarding, kenneling or treatment is expressly prohibited whether for fee or not. No Owner may keep a dog whose barking creates a

nuisance to neighbors. When outside the principal residence, dogs must be on leash or under voice control. No animal having vicious propensities shall be kept or maintained either inside or outside the principal dwelling.

6.5 Activities/Nuisances Prohibited. No noxious or offensive trade, hobby or any activity may be carried out on the Lots, nor shall anything be done which may be or will become a nuisance to the Subdivision. The Lots shall be used only for residential purposes (except as otherwise expressly provided for herein). Nuisances such as loud or unreasonable noise shall not be permitted to exist upon any Lot so as to be detrimental to any other Lot or its occupants. Exterior lighting shall not be directed in such a manner as to create an annoyance to neighbors. Trash and garbage containers shall not be visible to the public except on days of trash collection.

6.6 Yards. No clotheslines or other clothes-drying apparatus shall be permanently installed upon any Lot. No wind-powered electric generators, exterior television or radio receiving or transmitting antennae or satellite receiving dish shall be placed without approval of the Architectural Review Committee. Seasonal decorations are permitted; however, other yard decorations and sculptures, including wildlife reproductions, are prohibited without approval of the Architectural Review Committee. No above ground swimming pools shall be permitted.

6.7 Slope and Swale Areas. The graded slopes and swales established by Developer shall remain as permanent. No structure, planting or other material shall be placed or permitted to remain, or other activities undertaken by an Owner, its agents, contractors or representatives, which may damage or interfere with established slopes or swales, create erosion problems or change, obstruct or otherwise affect the direction or flow of water through drainage areas. The slopes and swale of a Lot shall be maintained continuously by the Owner, at the Owner's sole expense, unless otherwise the responsibility of a public authority or a utility. In order to control run off, all down spouts are to drain into a permeable area. Developer and the City of Madison have agreed to a certain stormwater management plan. That stormwater management plan shall control in the event of any conflict between it and other plans or designs. Developer 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 assess the cost of correction to the Lot Owner who caused the condition.

6.8 Sight Distances. No fence, wall, hedge or planting which obstructs sight lines at elevations between 30" and 72" above roadway grade shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet

from the intersection of the street lines. No tree shall be permitted to remain within such area unless the foliage line is maintained at sufficient height to prevent obstruction of sight lines.

## ARTICLE VII

### LANDSCAPING RESTRICTIONS & EASEMENTS

7.1 Landscaping. The following are the minimum landscaping requirements:

(a) Landscaping Points. Each Lot shall have a landscaping plan prepared by the Owner and submitted to the Architectural Review Committee with a minimum of 600 landscaping points as determined by the following point schedule. Of the 600 points, a minimum of 420 points shall be applied to foundation plantings.

<u>Landscaping Element</u>	<u>Point Value</u>
• Canopy Tree (2"-3" caliper at 6 inches)	100
• Canopy Tree (3"-4" caliper at 6 inches)	150
• Canopy Tree (greater than 4" at 6 inches)	200
• Canopy Tree or Small Tree (1.5-2" caliper at 6 inches, i.e., Ornamental Crab, Hawthorn, etc.)	50
• Evergreen Tree (3 to 5 foot planted)	25
• Evergreen Tree (5 to 6 foot when planted)	50
• Evergreen Tree (7 feet or higher when planted)	100
• Small Deciduous Shrub (18" to 35" min.)	10
• Medium Deciduous Shrub (35" to 60")	15
• Large Deciduous Shrub ( 60" min. balled & burlapped)	25
• Evergreen Shrub (18" min. diameter)	20
• Decorative Retaining Walls (Boulders, stone or timber only. Points calculated per face foot)	10
• Planting Beds, Paver Stone Walks, Paths or Patios, excluding driveway. (Points per square foot. Planting beds must be mulch or decorative stone material).	1

Final point totals must include a variety of elements listed. Existing trees and shrubs may be included in the point total if they are protected and maintained. All existing elements to be included in

the point calculation shall be shown on the landscape plans submitted to the Architectural Control Committee.

(b) Lawns. All yards shall be fertilized and sodded, or fertilized, seeded and mulched. This requirement includes the terrace area within the street right-of-way.

(c) Landscaping Completion. Landscaping shall be completed within 30 days of occupancy of the home or upon completion of construction, whichever occurs first except that trees are not required to be planted during winter months when the ground is frozen, but rather shall be planted as soon as weather conditions permit.

(d) Maintenance of Landscaping. The maintenance of the plantings and yard areas is the responsibility of the Lot Owner. Any trees or shrubs which die shall be removed by the Lot Owner and replaced with a like variety of the same size as the original plant at the time of planting so as to maintain the original landscaping elements. Additional maintenance shall include but not be limited to, watering, pruning, fertilizing, removal of weeds, trash and debris.

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. Costs of labor and materials shall be assessed against said Lot.

(e) The use of plantings in excess of those required above is encouraged. However, the complete screening of the front yard area is prohibited.

7.2 Easements Areas. To the extent the following described easements conflict with or contradict those easements set forth on the final, recorded Plat, the Plat shall control and Owners are directed to review same.

(a) All Lots are subject to public utility easements six (6) feet in width unless otherwise noted on the plat. Utility easements are for the use of public and private utilities serving the area.

(b) All Lots are subject to a non-exclusive easement for drainage purposes which shall be a minimum of ten (10) feet in width measured from the property line, except that on the perimeter

of the Plat, the easement shall be a minimum of twenty (20) feet in width.

(c) Lots 6/7, 16/17, 26/27, 38/39, 61/62 will have a twenty (20) foot shared (ten (10) foot on each Lot), public storm sewer and access easement along the adjoining property lines that shall be maintained (any necessary repairs or replacements) by the Association but shall be mowed by the Owner. If the Association damages any part of a Lot, it shall restore the Lot to substantially the same condition as prior to such damage. There will be an inlet adjoining Lots 38/39 on the property line intended to collect water from the adjoining Lots.

(d) Lots 31-37 will have a building setback line eighty (80) feet from the rear property line. Decks or any other structures will not be permitted within this setback area.

(e) Lots 31-37 and Outlot 1 will have a ten (10) foot wide grading and sloping easement to the City of Madison for sidewalks to be installed along Pioneer Road. The sidewalk adjacent to the rear property line of these Lots will be maintained by the City of Madison.

(f) Lots 31-37 and Lots 44-49 will have a thirty (30) foot landscaping easement ("Buffer") along the rear property line. The purpose of the Buffer is to provide a vegetation screen between the Lots and public road using plants that are aesthetically and ecologically appropriate for the area. Developer shall plant trees and shrubs in the Buffer. Fences, structures, playground equipment or other such items are not permitted to be placed within the Buffer.

(g) Lots 36 & 46 will have a sign/landscaping easement for purposes of installation and maintenance of Subdivision monument, sign, landscaping and lighting.

(h) Certain Lots feature grouped mailboxes as required by the United States Postal Service. A multi-user Mailbox Easement will be recorded for such Lots and all affected Owners agree to consent to such multi-user requirement and the recording of an easement affecting their respective Lots.

(i) Improvements In Drainage Ways. No Owner shall grade or obstruct any swale or drainage way whether protected by



easement or not which is in existence at the time of development so as to impede the flow of surface water from other Lots through such swale or drainage way. This shall include drainage ditches along the public streets.

(j) Improvements In Easements. No structure, fence, planting or other materials shall be placed or permitted to remain within any easement of record which may damage or interfere with the installation and maintenance of utilities or which may change the direction or impede the flow of surface water in drainage channels in the easement. The easement area of 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 Lot Owner shall not change the finished grade on a utility easement without the consent of the utility company. Any improvements within an easement is subject to removal at the Owner's expense, as determined necessary by the party benefitted by the easement.

(k) Maintenance of Landscape Easement Area and Buffer. Those portions of the Landscape/Sign Easement Area set forth on the Plat that are within a Lot shall be maintained and mowed by the Owner of the Lot. The Association shall provide for the care, operation, management and maintenance of any trees and shrubs, sign, monument, lighting fixtures or similar improvements within any Landscape Easement Area, Common Area, or as otherwise set forth in a separately recorded easement. Except as otherwise provided for in this Declaration or on the Plat, no structures shall be permitted within the Landscape Easement Area except a sign, decorative pillars, lights and/or a monument identifying the Subdivision Without limiting the generality of the foregoing the Owners and Association shall keep their respective parts of the Landscape/Sign Easement Area in good, clean, attractive and sanitary condition; In the event an Owner shall fail to maintain such area and/or landscaping as required, the Developer the Association or the City may perform such landscaping maintenance, at such Owner's expense and if not paid upon request of the Owner, assess the cost of same against the Owner's Lot. If the City performs maintenance due to the failure of an Owner or the Association to do so, it may charge Lot Owners in the Plat on a pro rata basis therefore.

(l) Temporary Construction Easement. Each Lot is hereby made subject to a temporary, non-exclusive easement over, under, upon, across and through so much of the Lot as may be necessary for the safe and code compliant construction of a basement, including but not limited to footings, foundation and basement walls, on an adjoining Lot. The purpose of this Temporary Construction Easement is to permit Developer to adequately slope and provide lateral support to the walls of the basement excavation in question, so as to protect against cave-ins and loss of lateral support and it shall be in effect for so long as needed to permit construction of the basement on the adjoining Lot in a safe and code compliant manner. After completion, Developer shall backfill the excavated area, compact such backfill in accordance with good construction practices and restore the affected area to the materially the same condition existing immediately prior to the excavation.

## ARTICLE VIII

### PROVISIONS FOR USE, OWNERSHIP AND MAINTENANCE OF OUTLOTS

#### 8.1 Use of Outlots.

(a) References to “Outlots” in this Declaration shall be deemed to refer to Outlots One (1) and Two (2).

(b) Outlots One (1) and Two (2) shall be dedicated to the public and used for storm water management and drainage purposes, relatively contemporaneously with the recording of the Plat and this Declaration with the Dane County Register of Deeds.

(c) Except as otherwise provided for in this Declaration, or on the Plat, no Lot Owner shall keep or store anything on or in any of the Outlots; nor shall any Lot Owner hang, erect, affix or place anything within or on any of the Outlots.

8.2 Maintenance of Outlots. Those areas designated as drainage easements on the Plat shall be maintained according to the order of the City of Madison.

## ARTICLE IX

### HOMEOWNERS ASSOCIATION

9.1 Fox Knoll Homeowners Association. Fox Knoll, LLC., a non-profit, Limited Liability Corporation organized under the laws of the State of Wisconsin (hereinafter the "Association") shall be formed by the Developer upon or before recording of the Plat and shall be responsible for owning, maintaining, and managing landscape and sign easement areas, Subdivision monuments/signage and those areas located in the Subdivision 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 Subdivision, excluding areas dedicated to the Public (hereinafter the "Common Property")

9.2 Membership. The 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 consents to such Owner's membership in the Association. Said membership is appurtenant to the Lot of said Owner, and the ownership of the membership for a Lot shall automatically pass with fee simple title to the 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. Membership in the Association shall be limited to the fee simple Owners of the Lots in the Plat, except that in case of a land contract, the vendee, and not the vendor, shall be a member.

9.3 Board of Directors. The affairs of the Association shall be managed by a Board of Directors, which may delegate any portion of its authority to an executive committee, subject to applicable law. Notwithstanding anything to the contrary provided for herein, until Developer has sold all of Lots 1-74 in the Plat which are subject to this Declaration or such earlier time as determined by the Developer, the members of the Board of Directors shall be appointed by Developer, its successors or assigns, and need not be Owners of Lots. Developer's waiver of right to appoint the Board of Directors shall be effective upon the recording of a notarized statement of waiver in the office of the Dane County Register of Deeds.

9.4 Voting of Owners. Subject to the terms, conditions and limitations contained in the Articles of Incorporation and Bylaws of the Association, and the limitation on the election of the Board of the Association in Subsection 9.3above, the Owner or Owners of each Lot shall be entitled to one vote as members of the Association for each such Lot

owned by said Owner or Owners. Where more than one person or persons are Owners of one Lot, all such persons shall be members of the Association, but they shall be cumulatively entitled to only one vote per such Lot, and they may cast their total one vote in proportion to their ownership of such Lot. Any member may vote by proxy. All proxies shall be in writing and signed by the Owner or in the case where there is more than one Owner, all Owners of the Lot.

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

9.6 Certain Rights and Obligations of the Association. The Association shall have and may exercise any right or privilege given to it expressly by this Declaration, the Articles or Bylaws or reasonably to be implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges. The Association shall not be empowered or entitled to change the pro rata interest or obligations of any individual Lot for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards.

9.7 Assessment for Common Expenses. All Lot Owners, including Developer, shall be obligated on an annual basis to pay the estimated assessments imposed by the Board of Directors to meet the common expenses.

(a) "Common Expenses" means and includes all sums lawfully assessed against the members of the Association as expenses of administration, operation, maintenance or repair of the Common Areas, and shall be allocated among the Lots on an equal basis.

(b) Assessments for the estimated Common Expenses shall be due in advance, on the first day of each year. The Board of Directors shall prepare and deliver or mail to each Lot Owner an itemized annual statement showing the various estimated or actual expenses for which the assessments are made. The assessments made for Common Expenses shall be based upon the requirements deemed to be such aggregate sum as the Board of Directors shall from time to time determine is to be paid to provide for the payment of all expenses growing out of or connected with the administration,

operation, maintenance or repair of the sign easement areas Common Areas, items within any easement for which the Association is responsible for, which sum may include, but is not limited to: expenses of management, premiums for insurance; landscaping and care of grounds; repairs and renovations; costs of lighting Common Areas, mailboxes, legal and accounting fees; capital expenditures; deficits remaining from a previous period; and other costs and expenses relating to the operation of the Association and Common Areas.

(c) The omission or failure of the Board of Directors to fix the assessment for any reason shall not be deemed a waiver, modification or a release of the Lot Owners from their obligation to pay same. At the end of any calendar year, the Board of Directors may, but shall not be required to, refund to each Lot Owner his, her or their proportionate share of funds then held by the Association which are not deemed to be necessary to meet the Common Expenses. The Declarant shall only be responsible for payment of assessments which are assessed against lots in any previously developed phase of the Fox Knoll subdivision. Future phases are not subject to assessment until development of any phase is complete.

(d) Lien. The Association shall have the sole right to collect all sums assessed by the Association but unpaid for the share of Common Expenses chargeable to any Lot, and such sums shall constitute a lien on such Lot. If attorneys' fees, court costs and associated collection charges are incurred by the Association to collect an unpaid share of the Common Expenses, these shall be added to the amount due from the member. All unpaid charges shall be subject to 18% interest per year or the highest interest rate allowed by law per annum until paid in full. Liens for unpaid assessments or charges may be obtained or enforced in conformity with Section 779.70, Wis. Stats.

(e) Owners Obligation. The amount of the Common Expenses assessed against each Lot shall be the personal and individual debt of the Lot Owner or Owners thereof at the time the assessment is made. Suit to recover a money judgment for unpaid Common Expenses, and costs of suit and attorneys' fees, shall be maintainable without foreclosing or waiving the lien securing same. No Lot Owner may become exempt from liability for the contribution towards the Common Expenses by abandonment of a Lot.

(f) Liability. The grantee of a Lot shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for the proportionate share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

9.8 Separate Taxation. Each Lot shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing governmental entity and special district for all types of taxes authorized by law, including special assessments. No forfeiture or sale of any Lot for delinquent taxes, assessment or other governmental charges shall divest or in any way affect the title to any other Lot.

## ARTICLE X

### MISCELLANEOUS

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

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

10.3 Notices. Notices shall be given to the Declarant at the following address: Fox Knoll, LLC 7601 Ganser Way, Suite 200, Madison, Wisconsin 53719. Notices to one Owner of any Lot within the Subdivision shall be given care of the street address of the Lot. Any party may change its address by written notice given to the other parties. Either party, their successors and assigns, may change said addresses by notice properly given hereunder.

10.4 Amendment. All provisions of this Declaration are subject to amendment by written instrument by Declarant or its successors. When Declarant no longer owns a Lot in the Subdivision, this Declaration may be amended by vote of at least a 2/3 majority of members of the Fox Knoll Homeowners Association. Any Amendment shall be recorded with the Dane County Register of Deeds Office. Any amendment that relates to the use or maintenance of the Outlots or the duties, rights or obligations of the City of Madison set forth herein must also

be approved by the City of Madison in writing executed by an authorized representative of the City.

10.5 Enforcement. In the event any party seeks to enforce its rights, hereunder, the jurisdiction for such action shall be in Dane County, Wisconsin. In the event of alleged material breach of this Declaration, the breaching party shall be entitled to thirty (30) days' advance written notice of the alleged breach. Any alleged breach not cured within such (30) thirty-day period, may be subject to an action in the Dane County Circuit Court, or if all parties agree, to binding arbitration under the then-in-effect Rules of the American Arbitration Association. In any action, either in the Courts or by arbitration, the prevailing party shall be entitled to an award of its actual costs and reasonable attorney's fees.

10.6 Private Right of Action. The Architectural Review Committee shall not be responsible for inspecting any construction to ensure compliance with the approved plans, but any Lot Owner, including the Declarant, shall have the right to bring legal action to enjoin any noncompliance or violation as set forth in Section 9.5.

10.7 Term of Covenants. This Declaration shall run with the land and shall be binding upon all Owners of Lots covered by this document for a period of 25 years from the date this document is recorded, after which time it shall automatically stand renewed for successive 10-year periods unless an instrument terminating or changing such covenants, in whole or in part, is signed by at least two-thirds of the Lot Owners and recorded in the office of the Dane County Register of Deeds. No term, covenant, or restriction regarding the Outlots or City of Madison rights shall terminate or change without the written consent of the City of Madison.

10.8 Validity. Invalidation of any of these covenants or restrictions or any severable part of any covenant or restriction by judgment or court order, shall in no way affect any of the other provisions, which shall remain in full force and effect.

10.9 Zoning and Municipal Approvals. All Lots are further subject to the applicable zoning laws, ordinances and building codes. Obtaining the approval of the Architectural Review Committee shall not be deemed approval by the City of Madison, nor shall approval by the City of Madison be deemed approval by the Architectural Review Committee. Owners are solely responsible for determining the need for and obtaining necessary municipal approvals related to the use of a Lot.





EXHIBIT A

All Lots have prefix 251	
Lot Number	Parcel Number
1	0708-201-1824-2
2	0708-201-1823-4
3	0708-201-1822-6
4	0708-201-1821-8
5	0708-201-1820-0
6	0708-201-1819-3
7	0708-201-1818-5
8	0708-201-1817-7
9	0708-201-1816-9
10	0708-201-1815-1
11	0708-201-1920-8
12	0708-201-1919-1
13	0708-201-1918-3
14	0708-201-1917-5
15	0708-201-1916-7
16	0708-201-1915-9
17	0708-201-1914-1
18	0708-201-1913-3
19	0708-201-1912-5
20	0708-201-1911-7
21	0708-201-2020-5
22	0708-201-2019-8
23	0708-201-2018-0
24	0708-201-2017-2
25	0708-201-2016-4
26	0708-201-2015-6
27	0708-201-2014-8
28	0708-201-2013-0
29	0708-201-2012-2
30	0708-201-2011-4
31	0708-201-2106-3
32	0708-201-2107-1
33	0708-201-2108-9
34	0708-201-2109-7
35	0708-201-2110-4
36	0708-201-2201-1
37	0708-201-2202-9
38	0708-201-2203-7
39	0708-201-2205-3
40	0708-201-2206-1
41	0708-201-2207-9
42	0708-201-2208-7
43	0708-201-2209-5

44	0708-201-2210-2
45	0708-201-2211-0
46	0708-201-2212-8
47	0708-201-2501-5
48	0708-201-2502-3
49	0708-201-2503-1
50	0708-201-2306-9
51	0708-201-2307-7
52	0708-201-2301-9
53	0708-201-2302-7
54	0708-201-2303-5
55	0708-201-2304-3
56	0708-201-2305-1
57	0708-201-2407-5
58	0708-201-2408-3
59	0708-201-2409-1
60	0708-201-2410-8
61	0708-201-2411-6
62	0708-201-2412-4
63	0708-201-2401-7
64	0708-201-2402-5
65	0708-201-2403-3
66	0708-201-2404-1
67	0708-201-2405-9
68	0708-201-2406-7
69	0708-201-2605-5
70	0708-201-2606-3
71	0708-201-2607-1
72	0708-201-2602-1
73	0708-201-2603-9
74	0708-201-2604-7