

**DECLARATION REGARDING
COVENANTS, RESTRICTIONS, AND
EASEMENTS FOR EVANS CROSSING**

Document Number

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THIS DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS (the "Declaration") is made effective this ____ day of _____, 2023 (the "Effective Date") by Evans Crossing LLC, a Wisconsin limited liability company (hereinafter referred to as "Declarant").

PREAMBLE

A. Declarant owns fee simple title to a certain parcel of real estate in the Town of Middleton, Dane County, State of Wisconsin, legally described in **Exhibit "A"** attached hereto, being Lots 1 through 15 and Outlots 1 and 2, as designated upon the Plat of Evans Crossing, recorded _____, 2023 as Document No. _____ (the "Property"); and

B. Declarant desires to establish by this Declaration for itself, its successors and assigns, and the present and future Owners of Lots and Outlots depicted on the Plat of Evans Crossing, and their respective tenants, subtenants, licensees, contractors, concessionaires, suppliers, agents, employees, customers, and invitees, certain easements, rights, privileges and restrictions, and to provide for timely and proper maintenance and repair of the various facilities serving the Lots and Outlots.

NOW, THEREFORE, Declarant hereby declares that the Property is, and shall be held, transferred, sold, conveyed, and occupied, subject to the covenants, conditions, restrictions, and easements hereinafter set forth.

ARTICLE I DEFINITIONS

The following definitions shall apply to this Declaration:

"**Association**" shall mean the Evans Crossing Homeowners Association, Inc., and its successors and assigns.

"**Board**" shall mean the Board of Directors of the Association.

"**Bylaws**" shall mean those bylaws duly enacted by the Association which govern the Association.

"Declarant" shall mean Evans Crossing LLC and its representatives, successors and assigns.

"Declaration" shall mean this declaration, as amended and supplemented from time to time.

"Dwelling" shall mean any building or part thereof located on a Lot and intended for the shelter and housing of a Single Family. Dwelling shall include any Improvements attached or adjacent to the Dwelling utilized for storage of personal property, tools and equipment.

"Improvement" or "Improvements" shall mean and include Dwellings, any and all buildings, outbuildings, driveways, pedestrian walkways, fences, decks, patios, hedges, lawns, sidewalks, planted trees, shrubs and all other structures or landscaping improvements of every kind and description.

"Lot" or "Lots" shall mean each part of the Property, the size and dimension of which shall be established by the legal description in the Subdivision Plat.

"Member" or "Members" shall mean and refer to every Person or Persons who holds membership in the Association.

"Outlot" or "Outlots" shall mean the platted outlots within the Subdivision.

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

"Person" or "Persons" shall mean natural individuals, corporations, partnerships, trustees or other legal entities capable of holding title to real property.

"Plat" shall mean the Plat of Evans Crossing, as may be amended.

"Residential Lot" or "Residential Lots" shall mean Lots 1 through 15, inclusive. For avoidance of doubt, the Residential Lots specifically exclude Outlots 1 and 2.

"Single Family" shall mean one or more persons, each related to the other by blood, marriage, domestic partnership, or adoption, or a group of not more than three persons not all so related, maintaining a common household in a Dwelling.

"Subdivision" shall mean all Lots and Outlots in Evans Crossing, in the Town of Middleton, Dane County, Wisconsin.

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

**ARTICLE II
PURPOSE**

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

**ARTICLE III
ARCHITECTURAL CONTROL**

3.1 Architectural Control Committee.

(a) Declarant shall initially be the sole member of the Architectural Control Committee (the "ACC") and reserves the right to act by itself as the ACC without limitation.

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

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

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

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

3.2 Necessity of ACC Approval.

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

(b) **Contractors.** No Owner shall hire a general contractor for any improvement on any Lot without prior written approval by the ACC. The ACC has sole and absolute discretion regarding its approval of any general contractor and may base its decision on any factors, including but not limited to, general reputation within the building community.

(c) **Alterations.** All proposed alterations in the exterior appearance of any buildings erected or placed on any Residential Lot, including but not limited to, exterior remodeling, exterior repainting in different colors from those previously approved, and the construction of additions, patios, decks, tennis courts, basketball equipment, pickleball courts, exterior lighting, flag poles, swimming pools and other improvements, including landscaping changes, on Residential Lots, shall be approved in writing by the ACC, prior to construction. Construction activity for these types of alterations shall be limited to regular business hours Monday through Friday.

(d) **Site Plans.** Site plans are to be completed by a licensed Wisconsin Surveyor and must show, at a minimum, the lot dimensions, any recorded easements, building envelope, spot grades, driveway details and elevations, permanent basketball courts, equipment, and all play equipment locations, septic system locations including drain fields and tanks, well location, any and all utilities, air conditioner location, final stormwater drainage routes, the Dwelling's top of foundation wall elevation, minimum unprotected opening elevation, elevation of the finished garage slab opening, tree removals pursuant to Section 4.3, and any other information for which the Owner seeks approval.

3.3 **Required Submissions.** In addition to any other information which the ACC may reasonably request, each Owner shall submit the following to the ACC in

conjunction with any request for approval of any construction or improvements on any Residential Lot:

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

(b) Representative color renderings for all four (4) sides of the Dwelling.

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

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

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

A submission shall not be complete, and the thirty (30) day approval time set forth in Section 3.4 shall not commence, until all required documents have been submitted.

3.4 ACC Approval. The ACC shall approve or disapprove a submission within thirty (30) days of its receipt of all materials required by Sections 3.2 and 3.3. The ACC's decision shall be in writing. If the ACC fails to mail its decision within the time limit, approval shall be deemed to have been given and the applicable covenants and restrictions in this Declaration shall be deemed to be met. If a submission is approved, all material changes to the approved submission must be resubmitted to, and approved by, the ACC. If the submission consists of building plans and specifications for construction or improvements on any Residential Lot within the Subdivision, the Owner, upon receiving approval of those building plans and specifications from the ACC, shall submit a copy of evidence of that approval to the Town Building Inspector for the Inspector's use. However, the Town Building Inspector is not obligated to enforce the covenants or conditions of approval. In addition to obtaining the approval of the ACC, the Owner shall obtain any required approvals from Dane County and site plan approval from the Town as set forth in Section 3.5.

3.5 Town Approval. In addition to approval from the ACC, approval from the Town is required for each site plan of Lots 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, and 15 since these Lots are subject to a Public Recreational Trail Easement and/or Public Stormwater Conveyance Easement. Site plan approval will be required for Lots 9 and 10 to ensure proper drainage is established after the homes are constructed on these Lots. For Town site plan approval, each Owner shall demonstrate how he or she will grade his or her property during home construction to properly direct stormwater runoff to the correct stormwater facility. Each site plan shall also demonstrate how the stormwater facilities and Public Recreational Trail facilities will be protected during home construction. Pursuant to Town Ordinances, Owners are responsible for all costs and fees associated with site plan reviews.

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

The following covenants shall apply to all Residential Lots:

- (a) The exterior walls of each building shall be constructed of brick, stone, wood, hardi plank or similar product, stucco or exterior insulation finishing system (EIFS), or any combination of the foregoing materials. Unfaced concrete block, structural concrete, prefabricated metal (except if used as stylish accents in limited areas), aluminum, vinyl or "Texture 1-11" siding shall not be permitted. All siding must be stained or painted.
- (b) All side elevations shall utilize two (2) siding materials.
- (c) All fireplace chimneys and exterior flues shall be enclosed and faced with masonry, EIFS, or an equivalent exterior material other than siding.
- (d) The submission shall specify quality of the materials to be used.
- (e) Soffits may be either wood, hardi plank, or a similar product. Vinyl or aluminum soffits are not permitted.

(f) All porches, decks, screened in porches, lanias, and the like shall have wrapped columns and fascias. Raised structures of the same shall cover or obscure exposed framing materials in soffited areas.

(g) Fascias shall be cedar, redwood, hardi plank, or a similar product and have a minimum depth of 8 inches. Aluminum fascia will not be permitted.

(h) Roofing shall be architectural type shingle similar to Celotex Dimensional IV, wood shakes, tile or slate, unless prior written approval from the ACC, in its sole discretion, is obtained. Standard three-in-one shingles are not permitted. Additionally, Owners must obtain prior written approval from the ACC as to the color of shingles to be used. Metal roofing may be considered as an accent feature.

(i) The colors of trim, siding, and roofing shall be coordinated to achieve an aesthetic combination for the house.

(j) The use of identifiable architectural styles and authentic features are encouraged. Transitional and Mediterranean styles are discouraged.

(k) Desired color schemes shall be submitted to the ACC for approval. The ACC will generally discourage the use of reds, yellows, and light or bright blues for primary siding. Additionally, white trims and white garage doors are discouraged except for authentic architectural styling. Colors will be considered on an individual basis.

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

(m) Each building on a Residential Lot shall be set back in accordance with Section 4.1 of this Declaration and any setback restrictions noted on the Plat, or as otherwise may be required by the Town.

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

a. Single-story houses shall have not less than 2,000 square feet, excluding the garage.

b. Split-level and bi-level houses shall have not less than a total of 2,000 square feet on the two main living areas, excluding the garage.

c. Raised ranch houses shall have not less than 2,000 square feet on the main level, excluding the garage.

d. Two-story houses shall have not less than a total of 2,400 square feet on the first and second floor areas of the house, excluding the garage; and not less than 1,600 square feet on the first floor area, excluding the garage.

e. For the purpose of determining floor area, stair openings shall be included. Open porches, screen porches, attached garages, and basements, even if finished for recreational use, shall be excluded.

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

(o) The house constructed on any Residential Lot shall have an attached garage that contains not less than two (2) nor more than four (4) automobile garage stalls. Side-loaded garages are required unless approved in writing by the ACC. For side-loaded garages, no garage may protrude more than 4' in front of the primary front house façade. If approved by the ACC, any front-loaded garage face must be setback a minimum of 2' from the primary front house façade and utilize color schemes, styles, and architectural features to enhance the appearance of the primary front house façade.

3.7 Variances. The ACC shall have the right, in its sole discretion, to grant a variance to any of the covenants or restrictions in this Declaration, provided that the Town also approves such variance if such variance applies to Sections 3.5, 4.1, 4.2, 4.3(b), 4.4, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15, 4.17, 5.3(a), 5.4, 5.5(b), 5.6, 6.1, 6.2, 6.4(a), 8.1, 8.2, 8.5, 8.6, 9.2, 9.3, 9.4, 9.5, 9.6, 9.7 and 9.8.

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

3.9 Liability of Declarant, the ACC, and its Members. Declarant, the ACC, and its members shall not be liable under any circumstances for any damage, loss or

prejudice suffered or claimed on account of the approval or disapproval of any submissions or on account of the development of any property within the Subdivision.

ARTICLE IV ARCHITECTURAL RESTRICTIONS

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

4.1 Building Sites.

(a) All buildings constructed on Residential Lots shall have front, side, and back yards which, at a minimum, conform to applicable zoning ordinances and any restrictions set forth on the Plat (including, without limitation, setbacks set forth on the Plat relating to any Public Recreational Trail Easement). The ACC shall have the right to grant variances from such setback requirements from time to time, in its sole discretion, provided that any variances are in conformity with all applicable Dane County zoning ordinances. Any variance from such setback must be approved by the Town.

(b) As depicted on the Plat, the following Lots contain front building setback lines which are more restrictive than allowed under Dane County zoning requirements but are required by the Town:

50' front building setback line: Lots 1, 2, 6, 7, 8, 9, 10, 14, and 15.

(c) As depicted on the Plat, the following Lots contain front building setback lines which are less restrictive than allowed under Town zoning requirements, but allowed by Dane County zoning:

30' front building setback line: Lots 3, 4, 5, 11, 12, and 13.

(d) The following Lots contain a 20' rear building setback from the Public Recreational Trail Easement, as depicted on the Plat: Lots 1 and 2.

4.2 Surface Elevation.

(a) Except as provided in Section 4.2(b), the elevation of any Residential Lot shall not be changed so as to materially affect the surface elevation, grade or drainage patterns to the surrounding Lots or Outlots, nor shall the elevation

of any structure on a Lot deviate from the minimum low opening elevations identified on the Plat, which are set forth in **Exhibit "C."** Declarant may construct certain drainage swales and roadside ditches in the land comprising the Subdivision and that land may contain certain natural drainage ways. Such swales, ditches and ways, including the established grades, within all easement areas will be called the "Drainage System." As part of the Drainage System, various lots are subject to Stormwater Conveyance Easements and Public Stormwater Management Easements as particularly described in Section 9.2 and as shown on the Plat. No Owner shall alter the Drainage System without the prior written consent of Declarant and the Town. Each Owner shall maintain and repair all parts of the Drainage System (including, without limitation, any swales) located within the Owner's Lot and adjacent roadside ditch in the dedicated street right-of-way. Any Owner who violates these covenants shall be required to restore the Drainage System or restore the surface elevation, grade or drainage patterns to the surrounding Lots and Outlots at the Owner's sole expense. If an Owner violates the grading, site or landscaping plans submitted by the Owner to the ACC, the ACC or any affected Owner shall have a cause of action against the violating Owner for both damages and injunctive relief.

(b) Notwithstanding the restriction in Section 4.2(a), the Declarant shall have the right at any time to grade or regrade the Lots and Outlots to accommodate, alter or establish drainage flows. The Declarant shall not be liable to any Owner for any such grading or regrading, except that if the grading or regrading occurs after the Owner has either seeded or installed sod on the Owner's Lot or Outlot, and if the grading or regrading damages the Owner's grass or sod, the Declarant shall be obligated to reasonably restore the grass or sod to its condition prior to the grading or regrading.

4.3 Tree Preservation. Retention of healthy native trees is strongly encouraged.

(a) No tree shall be removed outside the identified building envelope except to remove dead, dying, or diseased trees, to remove invasive species, for coordination with the placement of septic systems and primary home structures, or to fulfill Town of Middleton or Dane County regulations.

(b) No tree shall be removed in Public Recreational Trail Easements, except to remove dead, dying, or diseased trees, or to remove invasive species.

In all cases, removal of trees shall be approved by the Declarant and/or ACC, in writing, according to site plans or landscaping plans.

4.4 Drainage. To the extent possible, the Owner of each Lot shall direct stormwater from downspouts, driveways, and other impervious areas located on the Lot to pervious surfaces. Lots 5 and 6 shall have downspouts directed towards right-of-way ditches or appropriate stormwater conveyance channels within easements.

4.5 Construction Deadline. Construction of any house on a Residential Lot shall be completed within one (1) year after issuance of a building permit for the house.

4.6 Driveways. Driveways may be constructed with concrete or brick. However, if a driveway is constructed prior to the surface layer of asphalt being placed on the abutting street, a minimum of five (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 (5) feet which shall be sloped down to match the binder course elevation. At the time the surface course is placed, the last five (5) feet of asphalt pavement shall be removed and replaced to match the surface asphalt elevation at Owner's expense.

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

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

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

Any Owner who does not comply with these requirements may be required by the Town to remove and correct the Owner's driveway at the Owner's expense. Before the surface course is placed on a public street, the Town's 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.

Each Owner shall install the Owner's driveway within thirty (30) days after completion of construction of the Owner's house, unless not permitted by weather conditions. If weather conditions delay completion of a driveway, the driveway shall be completed as soon as weather permits.

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

4.7 Signs. No signs of any type shall be displayed on any Residential Lot without prior written approval of the ACC, except lawn signs of not more than seven (7) square feet advertising a home or Lot for sale or signs of any size displayed by the Declarant as part of the Declarant's marketing of the Lots. The Declarant may also erect permanent signs within easements as shown on the Plat adjacent to Pioneer Road at the entrance of Peyton Parkway identifying the Subdivision. Any sign and associated landscaping and/or lighting placed at the entrances to the Subdivision require Town approval and Dane County zoning approval before installation, and shall be maintained by the Association.

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

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

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

4.11 Existing or Prefabricated Buildings. No buildings previously erected elsewhere may be moved onto any Residential Lot, except for approved panelized construction, and other construction methods as approved by the ACC on a case by case basis.

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

4.13 Wells. Any well located on a Residential Lot shall be identified on the site plan and approved by the ACC. During construction of a well, the Owner and the Owner's contractor shall not discharge any drilling mud or cuttings into any roadside ditch or other improved drainageway. If any such discharge occurs, the Owner at the Owner's sole expense shall promptly restore the roadside ditch or the improved drainageway to its original condition.

4.14 Wastewater Treatment Systems. The Town will not issue a building permit for any Lot until the Dane County Environmental Health Department has approved the suitability of the Lot for the installation of an on-site private wastewater treatment system.

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

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

4.17 Exterior Lighting. An exterior light pole shall be constructed on all Residential Lots. Exterior lighting installed on a Residential Lot shall either be indirect or of such controlled focus and intensity that the lighting will not disturb the owners of adjacent Lots. Use of "daylight" or "bright white" lighting is not allowed. Exterior lighting hues shall be "soft white" or equivalent. The light poles for exterior yard lighting of a Residential Lot shall be of a design which is harmonious with the style and architecture of the building on the Lot. The Owner of the Residential Lot shall promptly replace burned out bulbs. Exterior landscape accent lights are encouraged.

4.18 Drying of Clothes. Clothes lines or other apparatus for the drying of clothes shall be of a temporary nature only and obscured from street views at all times if used.

4.19 Basketball Equipment. No basketball backboard, hoop, post and any other related equipment, whether portable or permanently affixed, shall be placed on any Residential Lot except in such location as may be approved in writing by the ACC. No such equipment shall ever be placed, whether permanently or temporarily, adjacent to the street, in the unpaved portion of the street, in the front yard of any Residential Lot, in any public street right-of-way, or within any Public Stormwater Conveyance Easement, Public Stormwater Management Easement, or Public Recreational Trail Easement.

4.20 Play Equipment and Structures. No swing set or other play equipment or structure shall be installed on any Residential Lot without the prior written approval of the ACC. Any such structure or equipment shall be set back at least thirty (30) feet from each property line of the Residential Lot. No such equipment shall ever be placed, whether permanently or temporarily, adjacent to the street, in the unpaved portion of the street, in the front yard of any Residential Lot, in any public street right-of-way, or within any Public Stormwater Conveyance Easement, Public Stormwater Management Easement, or Public Recreational Trail Easement.

4.21 Firearms and Hunting. No firearms shall be discharged within the Subdivision. No hunting shall be allowed within the Subdivision.

4.22 Miscellaneous.

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

permitted only on the back of a building in the most unobtrusive location, as approved in writing by the ACC.

(b) No firewood or wood pile shall be kept outside a structure unless it is neatly stacked, placed in a rear yard, and screened from street as well as, adjacent properties' views, by plantings or a fence approved by the ACC.

(c) Active solar systems are encouraged, but may not be installed on any Residential Lot unless such installation is first approved in writing by the ACC.

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

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

ARTICLE V LANDSCAPING REQUIREMENTS AND RESTRICTIONS

All Owners in this Subdivision are strongly encouraged to develop native prairie-themed landscaping plans and use related native vegetation plantings. Restored prairie-type landscaping is allowed. All Owners of Residential Lots shall comply with the following landscaping requirements and restrictions:

5.1 Completion. All landscaping required for a Residential Lot by this Article V shall be completed within sixty (60) days after completion of construction of a house on the Residential Lot, or within sixty (60) days after occupancy of that house, whichever occurs first. If weather conditions delay completion of landscaping, the Owner shall complete the landscaping as soon as weather permits.

5.2 Lawns. Front yards shall generally be sodded. Side and back yards may be seeded. Installation of native prairie-type yard/landscaping designs is permitted and highly encouraged. Front yards may be seeded provided the Owner complies with the following requirements:

(a) The Owner fertilizes and mulches the seeded front yard.

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

(c) All seeded areas must utilize a netted installation technique.

5.3 Additional Landscaping Requirements.

(a) **Conifers.** Each owner shall plant three conifers ranging in size from 4 to 6 feet in height in the front lawn area, chosen from the following varieties: Colorado Blue or Green Spruce, Black Hills Spruce, Scotch Pine, Austrian Pine or Douglas Fir. All landscaping elements shall comply with applicable Town ordinances and preference shall be given to any landscaping elements recommended by the Town. The landscaping points required in Section 5.3(b) shall be in addition to this requirement. No points shall be received for fulfilling the requirement in this Section 5.3(a).

(b) **Landscaping Points.** In addition to the requirement in Section 5.3(a), the landscaping plan for each Residential Lot shall achieve a minimum of 800 landscaping points as determined by the following point schedule. Credit up to a maximum of 200 points will be given for existing canopy trees.

<u>Landscaping Element</u>	<u>Point Value</u>
Existing Canopy and Evergreen Trees (greater than 5" at 18 inches)	150
Canopy Tree (2"-3" caliper at 18 inches)	75
Canopy Tree (3"-4" caliper at 18 inches)	100
Canopy Tree (greater than 4" at 18 inches)	150
Canopy Tree or Small Tree (1-1 1/2" caliper at 18 inches)	50
Evergreen Tree (4 to 6 feet in height)	50
Large Deciduous Shrub (3-year transplant- 36" min.)	10
Small Deciduous Shrub (3-year transplant- 18" min.)	5
Evergreen Shrub (3-year transplant- 24" min.)	5

5.4 **Ongoing Maintenance.** Each Owner shall be responsible for the ongoing landscaping maintenance of the Owner's Residential Lot and any landscaped portion of the adjoining public street right-of-way.

5.5 Lawn Mowing and Snow Removal by Association.

(a) The Association shall contract with a third-party professional landscaping and snow removal company to mow and trim all Owner Lots during the growing season and remove snow on driveways as needed during the winter months. The annual Association fees will reflect the bulk bid contract for such services.

(b) While Individual Lot Owners are prohibited from mowing their own Lots and snow plowing their own driveways, they are responsible for removing snow from their front walks and stoops and may contract those services separately.

(c) The third-party professional landscaping company shall endeavor to mow lawns during typical business hours and at later hours during the week, but reserves the right to complete its mowing services on Saturdays, as may be necessary, from time to time, prior to 1:00 P.M.

(d) Declarant intends to enter into a five (5) year contract with Olson Toon Landscaping, Inc. for the provision of these lawn mowing and snow plowing services which may be assigned to and would be binding upon the Association until contract expiration or mutual agreement of termination.

5.6 Fencing; Screening.

(a) Owners shall not install any fence or wall of any kind, including a partition fence described in Section 5.7, without prior written approval from the ACC. All fences shall be of a uniform style as identified by the ACC and shall not exceed four (4) feet in height unless approved by the ACC. Any approved fence shall be restricted to the rear yard commencing at the nearest rear corners of the Dwelling and shall not be located in any side yards unless approved by the ACC. "Invisible" electronic fencing for pets is generally prohibited unless approved by the ACC on a case by case basis and may not be placed in any circumstances at side or in front yard areas. Owners shall not cause a complete visual screening of the front, rear, and side boundaries of any Residential Lot by use of landscape plantings or other means, without prior written approval from the ACC.

(b) No fence or wall constructed by an Owner shall encroach upon any Public Stormwater Conveyance Easement, Public Stormwater Management Easement, or Public Recreational Trail Easement.

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

ARTICLE VI USE RESTRICTIONS

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

6.2 Pets. No more than three domestic animals may be kept on any Residential Lot, provided those domestic animals are not kept, bred or maintained for any commercial purpose. All animals shall be housed in the house or garage. No free-standing kennels shall be allowed. Commercial animal boarding, kenneling or training shall be prohibited, whether or not for a fee. No Owner may keep a dog whose barking creates a nuisance to neighbors. No animals having vicious propensities and specifically, dogs of breeds commonly known to be dangerous and with aggressive tendencies, shall be kept on a Residential Lot. Except as expressly provided in this paragraph, no animals, livestock, reptiles, birds or poultry of any kind shall be raised, bred or kept on any Residential Lot. Pets shall not be kept in an "invisible" electronic fencing system unless approved by the ACC, in writing, consistent with Section 5.5 above.

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

Any cars or comparable motor vehicles owned or operated by residents of a Residential Lot shall also be kept inside garages, except that the residents may park in driveways such vehicles which are in regular, daily use. For this purpose, a vehicle shall be considered in regular, daily use if the resident uses the vehicle for travel to and from the Residential Lot at least once every forty-eight (48) hours.

6.4 Appearance. Each Owner shall be responsible for maintaining the Residential Lot and all its buildings in a neat appearance at all times. This covenant shall apply to all Residential Lots from the date of purchase, regardless of whether a building

has been or is in the process of construction. The Owner's obligation shall include, but is not limited to the following:

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

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

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

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

6.6 Noise Control. No loud, excessive, or disturbing noise shall be allowed to emanate from any Residential Lot. As an example, if a failing air conditioner unit makes excessive noise, an Owner shall promptly repair or replace said unit to minimize and control the disruptive noise.

ARTICLE VII ASSOCIATION

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

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

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

7.4 **Obligations of the Association.** The Association, subject to the rights of the Declarant set forth in this Declaration and subject further to the enforcement rights provided in Section 8.5, shall be responsible for enforcing this Declaration.

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

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

ARTICLE VIII GENERAL PROVISIONS

8.1 Term. This Declaration shall run with the land and shall be binding upon and inure to the benefit of all persons having an interest in any of the Lots for a period of thirty (30) years after this Declaration is recorded, after which time this Declaration shall automatically stand renewed for successive five-year periods unless terminated as provided in Section 8.2.

8.2 Amendment.

(a) While Declarant owns any Lot, Declarant by its sole act shall have the right to terminate or amend this Declaration by an instrument signed by the Declarant and recorded with the Dane County Register of Deeds, provided that the Town also approves such amendment if it applies to any of the following Sections of this Declaration: 3.5, 4.1, 4.2, 4.3(b), 4.4, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15, 4.17, 5.3(a), 5.4, 5.5(b), 5.6, 6.1, 6.2, 6.4(a), 8.1, 8.5, 8.6, 9.2, 9.3, 9.4, 9.5, 9.6, 9.7, and 9.8.

(b) After Declarant ceases to own any Lot, the Owners, by the vote or consent of Owners owning two-thirds or more of the Lots, shall have the right to amend or terminate this Declaration by an instrument recorded with the Dane County Register of Deeds, provided that the Town also approves such amendment of this Declaration if it applies to the following Sections: 3.5, 4.1, 4.2, 4.3(b), 4.4, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15, 4.17, 5.3(a), 5.4, 5.5(b), 5.6, 6.1, 6.2, 6.4(a), 8.1, 8.5, 8.6, 9.2, 9.3, 9.4, 9.5, 9.6, 9.7 and 9.8. The instrument shall either be signed by the described number of Owners or shall contain a certification that the required number of the Owners approved the amendment or termination at a meeting of the Association duly called and held.

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

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

8.5 Enforcement Actions.

(a) The Declarant, the Association, the ACC, and any Owner shall have the right to sue for and obtain a prohibitive or mandatory injunction or any equitable remedy to prevent the breach of, or to enforce the observance of, this Declaration, in addition to the right to bring a legal action for damages. The Association, however, shall have the exclusive right to collect assessments that are assessed pursuant to the Association's bylaws. The Town shall have the right to enforce only those Sections of this Declaration listed in Section 8.2.

(b) Any Owner who violates a provision of this Declaration shall be liable for reasonable attorney fees and court costs incurred by the enforcing party in any action brought under Section 8.5(a). Any person violating any of these covenants or restrictions shall be liable for all costs of curing the violation.

8.6 Zoning. All Lots are further subject to, and shall fully comply with, the applicable zoning laws, ordinances and building codes. The current zoning for the Residential Lots and Outlots is AT-5, Agriculture Transition. The Town, in the Town's sole discretion, may rezone the Residential Lots to SFR-08, Single Family Residential, and the Outlots to another classification at any time in the future. Each Owner of a Residential Lot or Outlot waives any objection to the rezoning of any and all Residential Lots and Outlots by the Town.

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

(a) By personal delivery,

(b) By delivery by an express mail service,

(c) By mailing via the first class United States mail, postage prepaid, addressed to the last known address of the recipient, or

(d) By electronic mail or other comparable means.

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

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

ARTICLE IX EASEMENTS AND RESTRICTIONS

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

9.2 Stormwater Conveyance Easements. The following Lots are subject to Stormwater Conveyance Easements in the widths as stated below and as more particularly described in the Plat:

Lots 2-5:	10 feet
Lot 6:	12.5 feet
Lot 7	12.5 feet (on the east side of the Lot) and 15 feet (on the south side of the Lot)
Lots 8, 11, and 12:	15 feet

Outlots 1 and 2 are subject to a blanket easement that encompasses Stormwater Conveyance Easements and Public Stormwater Management Easements as more particularly described in note 4 on the Plat.

9.3 Stormwater Management.

(a) The Owner of the Outlots shall repair and maintain the Outlots pursuant to the requirements of the Agreement for Maintenance of Stormwater Management

Measures to be executed in connection with the Plat, a copy of which is attached hereto as **Exhibit "D,"** as the same may be amended (the "Stormwater Management Agreement"), including but not limited to the removal of noxious weeds, periodic mowing, and upkeep of stormwater management facilities (including, without limitation, any swales). Furthermore, the Owner of a Lot shall be responsible to maintain any drainage swales located within easement areas on such Owner's Lot. If the responsible party fails to maintain any areas required in this section, the Town shall have the right, after providing the respective Owner of the Outlots or the Lot, as applicable, with written notice of the maintenance issue and thirty (30) days to comply with the Town's maintenance request, to enter the property at issue in order to conduct the work specified in the notice. The Town shall conduct such work in accordance with all applicable laws and shall not unreasonably interfere with the Outlot Owner's or Lot Owner's use of the property. All costs and expenses incurred by the Town in conducting such maintenance may be charged to the respective Outlot Owner or Lot Owner, as applicable, by placing the amount on the tax roll as a special assessment in accordance with Section 66.0703, Wis. Stats., and applicable Town Ordinances. The Outlot Owner and each Lot Owner hereby waive notice and protest of any special assessment made by the Town pursuant to this section.

(b) The Association shall make biennial reports to the Town regarding the stormwater management facilities on Outlots 1 and 2 and on Lots 1-5, 6, 7, 8, 11 and 12. The biennial reporting shall be in accordance with Town reporting ordinances and policies.

(c) The Owner of the Outlots shall be responsible for required inspections as required by **Exhibit "D"** or for the Biennial Inspection Report required by the Town and shall be responsible for all improvements within the Public Stormwater Conveyance and Public Stormwater Maintenance Easements.

9.4 Public Recreational Trail Easements. The 30-foot Public Recreational Trail Easement located on Lot 1, Lot 2, and Outlot 1, and the 20-foot Public Recreational Trail Easements on Lot 1 and Lot 15 (the "Public Recreational Trail Easements") are and shall remain permanent open space and shall be subject to an easement in favor of the Town for open space and Public Recreational Trails. The Owner of any Lot or Outlot containing a Public Recreational Trail Easement shall not install or allow the installation of any plantings or above-ground improvements, nor any soil absorption system for waste disposal, within or above the easement without written permissions from the Town. The Town shall not have any responsibility or liability for damage to, or destruction of, any improvements made within the easement area resulting from the intended use of the easement by the Town or the public, or from any maintenance activities performed on

any trail improvements constructed by the Town. The use of snowmobiles, motorcycles, golf carts, and other motorized vehicles within the Public Recreational Trail Easement areas shall be prohibited, except to the extent the Town allows their use on established Public Recreational Trails or as may be necessary to accomplish repairs and maintenance of the Public Recreational Trail Easement areas. The Town of Middleton, as beneficiary of the Public Recreational Trail Easements, shall have the right to improve, repair, maintain, and allow public use of the Public Recreational Trails within the Public Recreational Trail Easement areas shown on the Plat, as the Town from time to time determines.

9.5 Landscape Buffer Easement. Lot 1 and Lot 15 are subject to a landscaping easement as depicted on the Plat. The Association shall be responsible for the installation and maintenance of landscaping within such easement areas in accordance with Section 15.13 of the Town Code, and as approved by the Town Engineer and Town Board. The Association shall be responsible for the removal of noxious weeds, periodic mowing, and upkeep of such easement areas, including the removal and replacement of dead or dying trees and shrubs.

9.6 Vision Corner Easement. Lot 1 and Lot 15 are each subject to a vision corner easement as depicted on the Plat. No structure, berm, or vegetation of any kind which exceeds a height of 2.5 feet above the average elevation of the roadway within such vision corner, except for necessary highway and safety signs or approved public utility lines, shall be permitted within said vision corner easement area. No plant material which obscures safe vision of the approaches to the intersection shall be permitted; grasses and similar vegetation within the height limitation specified above are acceptable.

9.7 Landscaping within Easements. No trees, shrubs, structures, or other improvements, other than grass or similar ground cover, shall be placed within any sanitary sewer, Public Recreational Trail, stormwater, or vision corner easement, except as provided in Section 9.4 or otherwise approved in writing by the Town.

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

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

ACKNOWLEDGEMENT

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

IN WITNESS WHEREOF on this ____ day of _____, 2023, before me personally appeared _____ as _____ of _____, who is personally known to me to be the same person who executed the within instrument and acknowledged to me that he/she executed the same as the free and voluntary act for the uses and purposes mentioned in the instrument.

Name: _____
Notary Public, State of Wisconsin
My commission expires/is: _____

EXHIBIT "A"
Legal Description of Property

See attached.

EXHIBIT "B"
Plat of Evans Crossing

See Attached.

EXHIBIT "C"
Minimum Low Opening Elevations

Lot 1: 1063.50

Lots 2, 3 and 4: 1059.50

Lot 5: 1061.05

Lots 6 and 7: 1059.10

Lots 9 and 10: 1063.85

EXHIBIT "D"
Agreement for Maintenance of Stormwater Management Measures

See Attached.