TOWN OF COTTAGE GROVE
TOWN BOARD MINUTES
APRIL 07, 2025

I. ADMINISTRATIVE

A. Notice of the meeting was posted at the Town Hall and on the Town's website. Town Chair Kris Hampton and Supervisors Mike Fonger, Steve Anders, Kristi Williams and Mike DuPlayee were present, along with Deputy Clerk Jennifer Millage, Highway Superintendent Dan Dresen and Attorney Christopher Nelson. Clerk-Treasurer Kim Banigan was present virtually.

B. Hampton called the meeting to order at 7:00 P.M.

C. Flag Pledge.

D. Discuss/Consider approval of minutes of previous meetings: **MOTION** by Williams/DuPlayee to approve the minutes of the March 17, 2025 public hearing and Town Board meeting as presented. **MOTION CARRIED 5-0**.

E. Finance Report and Approval of Bills:

1. **MOTION** by DuPlayee/Fonger to approve checks #37799-37836 and EFTs in the amount of $36,843.88, **MOTION CARRIED 5-0**.

2. **MOTION** by Anders/DuPlayee to approve payment of March per diems as presented. **MOTION CARRIED 5-0.**

F. Public Concerns: Paula Severson, who was recently elected to the Village of Cottage Grove Board of Trustees, appeared to thank Hampton for his years of service to joint Town/Village services, and to congratulate Anders for his recent election as Town Board Chairperson. She said she ran on a platform of collaboration, and hopes to resurrect a joint Emergency Government Committee.

II. BUSINESS

A. Consider adoption of Ordinance 2025-04-07 adopting revisions to Chapters 8, and 9 of the Town Code of Ordinances: **MOTION** by Williams/DuPlayee to adopt the ordinance as presented. **MOTION CARRIED 5-0.**

B. Consider replacement of Police Squad Car #123 (2020 Model) with a 2025 model: Dane County Sheriff's Office projections were that the replacement squad would add $5,746.96 to the 2025 contract price. **MOTION** by Anders/DuPlayee to approve replacing the squad car. **MOTION CARRIED 5-0.**

C. Consider request for additional speed limit signage on Gaston Road: **MOTION** by Williams/Fonger to approve the additional signage as requested by Deputy Grafton's memo. **MOTION CARRIED 5-0.**

D. Plan Commission Recommendations:

1. Conditional Use Permit parcels 0711-073-8090-2 and 0711-073-8390-9 at 4311 Vilas Hope Road, Andy Meessmann, Snyder Associates, Applicant, Francis Wisniewski (Warm Belly Farms), Applicant. Includes revised relocation of an uninstalled storage building and a 5-year lease for 15 adjacent acres for parking and crops to be added to existing CUP for Agricultural Entertainment events more than 10 days per year: Francis Wisniewski was present. **MOTION** by Anders/DuPlayee to accept the Plan Commission's recommendation to approve revising the CUP as proposed, including moving the location for the hoop building and adding 15 acres of leased land to be used for parking and crops. All 8 CUP approval standards were considered satisfied. The Town should review the CUP every two years. **MOTION CARRIED 5-0.**

E. Wilmer A. Larson, applicant and landowner, parcel 0711-154-8001-0 near 2181 Uphoff Road: Seeking rezone of 2.22 acres from FP-35 to RR-2 to create a new residential lot, and 22.47 acres from FP-35 to FP-1 for the residual ag lot: Wilmer Larson was present. Hampton

noted that the Plan Commission allowed the lot size to exceed 2.0 acres due to a group of trees near the road. Larson said some of the trees will be moved for better sight distance at the driveway. **MOTION** by Williams/Fonger to accept the Plan Commission's recommendation to approve the rezone of 2.22 acres from FP-35 to RR-2 to create a new residential lot, and 22.47 acres from FP-35 to FP-1 for the residual ag lot. It may exceed the Town's 2 acre maximum so as to not leave an odd residual lot of trees near the road. **MOTION CARRIED 5-0.**

F. Donald Viney, Petitioner, Viney Acres, LLC, property owner, parcels 0711-331-800-7 and 0711-331-9502-8 on North Star Road: Petition for Comprehensive Development Plan Review for a commercial subdivision: Don and Marilyn Viney were present. Discussion was that the entire plat would be zoned General Commercial, although potential buyers could petition for Heavy Commercial in the future. Hampton asked if Viney's had contacted the DOT about the land between their property and North Star Road and US Hwy 12/18, they had not. Hampton referred to memos from the Town Planner and Engineer that were reviewed at the Plan Commission meeting, and suggested they be incorporated into the Town Board's motion. **MOTION** by Fonger/Willams to accept the Plan Commission's recommendation to approve the Comprehensive Development Plan, incorporating the memos from the Town Planner and Engineer. **MOTION CARRIED 5-0.**

G. Consider approval of Agreement for Public Improvements and Other Matters Relating to the Plat of Kennedy Hills First Addition: (the agreement is attached as Exhibit A) Atty. Nelson said the agreement is based off of the Town's standard development agreement. Unique elements included provisions for a construction entrance, no parkland dedication fee will be required since that requirement was satisfied by parkland dedicated under the first phase (Recreational improvement fees will still be due from each lot at the time a building permit is issued), and rather than a letter of credit, the developer will be providing a performance bond. Atty. Nelson said the form of the bond has been approved, but he does not have the final bond yet. **MOTION** by Fonger/DuPlayee to approve the agreement as presented, contingent on satisfaction of the performance bond requirements. **MOTION CARRIED 5-0.**

H. Consider approval of Declaration of Covenants, Restrictions, Conditions and Easements for the Plat of Kennedy Hills First Addition: (Covenants are attached as Exhibit B) Atty. Nelson said the developer has agreed to the redlined revisions he and the Town Planner suggested to section 3.6. Exhibit B will need to be developed and approved by the Town Engineer. Board members raised questions about restrictions on signage, asking if political signs would be prohibited, and about limits on solar facilities and allowing three years before requiring construction. Atty. Nelson said all of these provisions are also in the HOA for the first phase. A member of the Kennedy Hills first phase HOA was present and said that several of the original lots have political signs and solar arrays and no enforcement actions have been taken. **MOTION** by Fonger/Williams to approve the covenants as presented. **MOTION CARRIED 5-0.**

I. Discuss/Consider use of Ravenwood Park on Sandpiper & Nightingale for baseball practices: This request was withdrawn prior to the meeting.

J. Discuss/Consider Earth Day Park Clean-up Challenge: Williams suggested this after seeing that Madison is promoting such a challenge. Advice from the Town's insurance agent was that participants should sign a waiver. Hampton asked Dresen what cleanup is needed, Dresen said participants could pick up sticks and trash and pull weeds. The Highway crew would pick up any bags of trash or piles of sticks. **MOTION** by Anders/Williams to make the

volunteer form available for those who would like to participate in a cleanup of Town parks on Earth Day. The Clerk's office may choose to post an event on the Town's web site. **MOTION CARRIED 5-0.**

K. Consider TDS quotes for upgraded internet service for the Town and Flynn Halls: A memo from the Clerk-Treasurer explained that when she contacted TDS to renew a promotional rate for Flynn Hall, she was not offered a new promotional rate, but instead TDS proposed upgrades to service levels at both halls at slightly higher rates. Discussion was that additional bandwidth would be beneficial at the Town Hall, but not so much at Flynn Hall. **MOTION** by Williams/DuPlayee to approve the quote to update the Town Hall from 150M/40M to 500M/500M for $129/month, and leave Flynn Hall at 250M/50M at $119/month. **MOTION CARRIED 5-0.**

L. Discuss/Consider public open house to recognize Kris Hampton for his service to the Town: Consensus was to hold an open house at the Town Hall from 1-3 p.m. on Saturday April 26th. The Town will provide cake and beverages. The Clerk's office will take care of public notice of the event.

M. Consider WTA Town Advocacy Membership for 2025: **MOTION** by Fonger/DuPlayee to pay the fee for Town Advocacy Membership in 2025. **MOTION CARRIED 5-0.**

N. Consider approval of attendance for WTA Capitol Day on April 30th: Williams said she found this event very educational in the past, and would like to attend. **MOTION** by DuPlayee/Fonger to approve one attendee. **MOTION CARRIED 5-0.**

III. PUBLIC WORKS DEPARTMENT ACTIVITY UPDATE:

A. Report of Road Right-of-Way permits: No permits have been issued since the last meeting.

B. The salt shed roof is scheduled for replacement tomorrow, paving the way for the solar panels.

IV. CLERK-TREASURER'S OFFICE UPDATE: Banigan said the Spring Election went well, with a 70% turnout, which was 40% by absentee ballot. She is working on figuring out the procedures to fill the Supervisor 2 seat that Anders will need to decline in order to accept the Chairperson seat.

V. BOARD REPORTS AND COMMUNICATIONS:

A. Williams commended the Clerk's office for a well-organized election.

VI. COMMITTEE REPORTS:

A. Deer-Grove EMS Commission: The Chief's father died suddenly No news on the situation in Cambridge.

B. Natvig Landfill Monitoring Committee: Business as usual.

C. Cottage Grove Fire Commission: Replacement garage door openers and pest control services were approved using ESB Repair funds.

VII. Adjournment: **MOTION** by DuPlayee/Williams to adjourn. **MOTION CARRIED 5-0.** The meeting ended at 8:09 P.M.

Kim Banigan, Clerk-Treasurer

Approved 04-21-2025

EXHIBIT A

AGREEMENT FOR PUBLIC IMPROVEMENTS AND OTHER MATTERS RELATING TO PLAT OF KENNEDY HILLS FIRST ADDITION TOWN OF COTTAGE GROVE, DANE COUNTY, WISCONSIN

Executive Summary

1. **Real Estate Subject To Agreement:**
   - 1.1. **Recording Data for Plat:** _____
   - 1.2. **Total Number of Lots**: 20 Residential Lots and 1 Outlot
   - 1.3. **Phasing Plan:** N/A
2. **Contact Information for Owner/Developer (name/phone/email):**
   - 2.1. **Owner:** Dunroven Ridge, LLC
   - 2.2. **Developer:** Dunroven Ridge, LLC
   - 2.3. **Authorized Representative(s):** Dan O'Callaghan; Carlson, Black O'Callahan & Battenberg, LLP; 608-888-1685; dan.ocallaghan@carlsonblack.com
   - 2.4. **Developer Engineer:** Christine Pelto, MSA Professional Services, Inc.; 608-355-8859; cpelto@msa-ps.com
   - 2.5. **Developer Project Manager:** Cory Clemens, 608-212-7327; corykori5@yahoo.com
3. **Contact Information for Town (name/phone/email):**
   - 3.1. **Town Planner:** Mark Roffers, MDRoffers Consulting LLC, 608-770-0338, mark@mdroffers.com
   - 3.2. **Town Engineer:** Nick Bubolz, Town & Country Engineering, Inc., 608-273-3350, nbubolz@tcengineers.net
   - 3.3. **Town Attorney:** William S. Cole, Axley Brynelson, LLP 608-283-6766, wcole@axley.com
   - 3.4. **Only the Town Board can bind the Town of Cottage Grove.**
4. **Public Improvements Required:** *See* Town Ordinances, Town Engineer, Agreement.
5. **Construction:**
   - 5.1. **Standards:** *See* Town Ordinances, Town Engineer, Agreement.
   - 5.2. **Commencement Date:** Town Engineer approval required. No early start approved.
   - 5.3. **Contractor List:** Required.
   - 5.4. **Proof of Insurance:** Required; Town as Additional Insured.
6. **Acceptance of Work:** Developer Engineer provides certification of completion of Public Improvements in accordance with approved plans; Developer provides complete lien waivers to Town Engineer; Town Engineer observes public improvement installation periodically and provides written comments to Town Board; Developer provides full lien waivers; Dedication process requires approval of resolution by Town Board; Developer shall provide maintenance and repair until dedication.
7. **Guarantee of Work:** Required for 14 months after substantial completion, unless extended due to defective work.
8. **Surety:** Unless otherwise requested by Developer and incorporated in Agreement, Developer agrees to provide a letter of credit or performance bond at 120% of cost; reductions possible during term of Development Agreement following substantial

completion; Town Engineer recommendation and Town Board approval required for reductions.

9. **Developer Reimbursement of Town Costs:** Reimbursement required per Development Agreement and Escrow Agreement.
10. **Development Documents:** All are subject to Town Attorney and Town Board approval; includes Development Agreement, Declaration of Covenants and Restrictions, Stormwater Management and Maintenance Agreement, Transfer Restrictions if Phased Development, other documents as specified; documents executed and submitted to Town for recording; all documents run with the land.
11. **Phasing:** Permitted with plan and Town Board approval; recording of Declaration Restricting Transfer required.
12. **Parkland Dedication or Fee in Lieu, and Fee for Initial Improvements:** There is no parkland dedication fee required for Kennedy Hills First Addition; A Recreational Improvement Impact Fee is required under Town Code § 15.03(4)(d) and shall be paid in accordance with Section 14 of the Development Agreement.
13. **Subdivision Signage:** Town Board design approval required; "A Cottage Grove Neighborhood" required on sign.
14. **Miscellaneous Provisions:** _____
    - 14.1. _____
    - 14.2. _____
    - 14.3. _____

The Executive Summary above is provided as a convenience to the parties. The requirements shall be as set forth in full in the Development Agreement itself.

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "**Agreement**") is made and entered into by and between Dunroven Ridge, LLC, a Wisconsin limited liability company, with its principal business office located at 7857 Dunroven Road, Dane, Wisconsin 53529 ("**Developer**"), and the Town of Cottage Grove ("**Town**"), a body corporate and politic, with its principal business office located at 4058 County Road N, Cottage Grove, Wisconsin 53527.

RECITALS

WHEREAS, the Developer has received approval from the Town as set forth in Town Board Resolution No. 2025-03-17, of a development to be known as Kennedy Hills First Addition (the "**Development**") and located on the Plat of Kennedy Hills First Addition in the Town of Cottage Grove, Dane County, Wisconsin ("**Plat**"), and Developer wishes to enter this Agreement to satisfy conditions of the Town Board's approval and shall thereafter promptly proceed with recording of the Plat;

WHEREAS, the Town seeks to protect the health, safety, and general welfare of the community by requiring the completion of various public improvements in the Development and thereby to limit the harmful effects of substandard developments, including premature development which leaves property undeveloped and unproductive;

WHEREAS, the Town Subdivision Ordinance requires, among other things, that provisions be made for the grading of public lands, erosion and stormwater runoff control and street and trail Public Improvements required to serve the Developer's Development;

WHEREAS, the Developer now wishes to proceed with the installation of such Public Improvements to serve in the Plat;

WHEREAS, the purpose of this Agreement includes, but is not limited to, the avoidance of harmful consequences of land development prior to satisfactory completion of Public Improvements, or prior to the payment of improvement costs and related fees;

WHEREAS, this Agreement is made for the mutual benefit of the Developer and the Town in order to assure compliance with Town Ordinances and standards for Public Improvements;

WHEREAS, the Developer acknowledges that the Town will be injured in the event of the Developer's failure to fully and completely perform the requirements of this Agreement; and

WHEREAS, the parties acknowledge and agree that the mutual promises, covenants, and obligations contained in this Agreement are authorized by state law and the Town Ordinances, waive the right to contest the terms of the Agreement, and agree to be bound hereto, all as set forth in the Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, which are incorporated herein by reference, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Town and Developer agree as follows:

1. **REQUIRED PUBLIC IMPROVEMENTS.**

1.1. **Agreements.** At a minimum, the Developer shall construct and install, at its expense, all on-site and off-site general Public Improvements required by Town Ordinances and this Agreement (collectively the "**Public Improvements**," unless otherwise noted) in order to provide public services to the Plat. Developer shall be required to connect the Plat to existing utilities, which may include facilities outside of the boundaries of the Plat. Construction of all such Public Improvements shall be completed in accordance with this Agreement.

1.2. **Plans**. Following consultation with Town staff, the Developer shall present plans for the Public Improvements, which plans shall be prepared under the seal of Developer's Engineer (the "**Plans**"). The Plans shall set forth the required Public Improvements for each Phase with particularity and shall include, at a minimum, the following: public stormwater management facilities; public streets; gas, electric, telephone/internet; and lighting. The Public Improvements shall satisfy all Town construction standards, as established by the **Town Ordinances**[1] and in accordance with generally acceptable industry standards. The Town Engineer shall have the authority to interpret and apply the ordinances and generally accepted industry standards as to the Public Improvements.

1.3. **Town and Utility Engineer Review.** The Town Engineer shall be given an adequate opportunity to review the Plans and may request such additional information from the Developer as desired. Following the Town Engineer's written statement of "no objection" to the Plans, and subject to the other requirements and conditions set forth herein, the Developer shall proceed with construction in accordance with the Plans and on the timetable represented to the Town by the Developer, which timetable has been reasonably relied upon by the Town.

2. **STANDARDS AND SPECIFICATIONS FOR PUBLIC IMPROVEMENTS.**

Developer's construction of the Public Improvements and performance of this Agreement shall be in accordance with the Town Ordinances, whether or not specifically referenced in this Agreement; the Town's standard specifications for public improvements, as determined by the Town Engineer and highway superintendent; and, the Plans. For convenience and reference, an overview of the Public Improvements for this Development and information identifying the Plans is provided in **Exhibit 1**, which is attached hereto and incorporated by reference as if set forth fully herein. The standards and specifications

[1] There is a QuickLink to the Town Ordinances at http://www.tn.cottagegrove.wi.gov.

for Public Improvements expressly include, but are not limited to, the following:

2.1. **During Construction: Grading, Erosion Control and Barricading.** The Developer shall furnish, install, and maintain during construction, and until the Public Improvements are accepted by the Town, all barricades and signs as are prudent and necessary for public safety, particularly where new rights-of-way extend or intersect existing streets and all street ends. The Town Engineer may also require Developer to furnish, install, and maintain additional barricades and signs. Developer shall maintain "road closed" barrier(s) in place to prevent non-emergency access until such time as the binder layer of asphalt is installed on all of the streets in the Phase under construction.

The Developer shall furnish, install prior to grading, utility installation or any other land disturbance activity, and maintain during construction and until the Improvements are accepted by the Town such stormwater runoff and erosion control measures as are required by and included in the County-approved plans for erosion control and stormwater runoff. The Developer shall obtain separate approvals for each construction phase, as required. The Town Engineer may also require Developer to furnish, install, and maintain additional erosion control and stormwater-runoff measures, as the Town Engineer deems appropriate. The Developer shall adhere to the requirements for erosion control and stormwater runoff, and expressly grant the right of entry on the Development to the Town Engineer, or designee, to observe the erosion control and stormwater runoff.

A construction entrance for the Development shall be a gravel driveway connected to Kennedy Road. Developer shall not require or allow for construction vehicles using roads within the adjacent plat of Kennedy Hills.

2.2. **Stormwater Management Facilities.** The Developer shall install adequate ditches, drainageways, and stormwater management facilities (collectively, **Stormwater Management Facilities**) based on generally-accepted industry standards and as required by law. The Developer's Engineer shall provide necessary background data, including stormwater calculations, to the Town Engineer along with a proposed plan for Stormwater Management Facilities certified by the Developer's Engineer. The Town Engineer may rely on the background data and stormwater calculations provided when reviewing the proposed plans. The Developer shall proceed with installation and construction of the Stormwater Management Facilities in accordance with the plans for all such matters for which a written statement of "no objection" has been issued by the Town Engineer.

2.3. **Streets and Street Lighting.** Streets, curb and gutter, and street lighting shall be installed and constructed in accordance with the Plans.

2.4. **Sidewalk and Trails.** All sidewalk and trails required to be constructed by Developer shall be constructed in accordance with plans to be prepared by

Developer and for which a written statement of "no objection" has been issued by the Town Engineer.

2.6. **Signage.** The entry sign for the Development shall be as required to meet all applicable signage requirements and shall be subject to prior approval by the Town Board, or designee. The signage shall include "A Cottage Grove Neighborhood."

3. CONTRACTORS ENGAGED BY DEVELOPER FOR PROJECT; INDEMNIFICATION AND INSURANCE.

3.1. **Approval of Contractor(s).** The Developer agrees to engage contractors for all construction, who shall first be approved for such work by the Town Engineer and who shall qualify with every applicable requirement of the Town and any Ordinance, rule, or regulation thereof. Prior to the commencement of construction of the Public Improvements, the Developer shall furnish to the Town Engineer the names of all contractors and subcontractors, together with a classification of the work performed by each, and copies of all construction documents relating to the construction of the Public Improvements. Such submittal shall be prior to the commencement of construction of any of the Public Improvements. All construction documents for the Public Improvements are subject to the prior review of the Town.

3.2. **Indemnification by Contractor(s).** The Developer shall require all contractors engaged in the construction of the Public Improvements to indemnify and hold the Town and its engineers and consultants harmless from and against any and all claims, losses, damages, costs, and expenses which such contractors may or might incur in connection with the construction of the Improvements. Such indemnification and hold harmless clause shall be in form and content acceptable to the Town Attorney and shall be included in each contract which the Developer has with a contractor.

3.3. **Indemnification by Developer.** For a period of time commencing with the execution of this Agreement and expiring fourteen (14) months from the date of substantial completion[2], the Developer hereby expressly agrees to indemnify, save and hold harmless the Town, its engineers, consultants, employees, officers and agents from and against all claims, costs, suits, causes of actions, demands, and liability of every kind and nature, for injury or damage received or sustained by any person or persons or property, whomsoever and whatsoever, in connection with, or on account of the performance of the work contemplated hereby and the

[2] *See* Wis. Stat. § 236.13, as amended, which applies to all preliminary and final plats as of August 1, 2014. Pursuant thereto, "substantial completion" is defined as follows: "(P)ublic improvements reasonably necessary for a project or a phase of a project are considered to be substantially completed at the time the binder course is installed on roads to be dedicated or, if the required public improvements do not include a road to be dedicated, at the time that 90% of the public improvements by costs are completed."

construction of the Public Improvements, except where such claim is the exclusive result of the willful or negligent acts of the Town.[3] As requested by the Town, the Developer further agrees to aid and defend the Town with legal counsel acceptable to the Town in the event the Town is named as a defendant in any action concerning the performance of the work pursuant to this Agreement, except where such suit is brought by the Developer. The provision is not intended to and shall not be interpreted to limit insurance coverage that may be available to the Town or governmental immunity or other defenses that may be available to the Town, each and all of which are expressly reserved by the Town. It is hereby agreed that the Developer is not an agent or employee of the Town, and neither Developer nor its contractors shall represent itself as an agent or employee of the Town.

3.4. **Insurance by Contractor(s).** The Developer shall also require all contractors engaged in the construction of the Public Improvements to maintain such reasonable insurance as shall be required by the Town Attorney and Engineer and, upon demand, furnish to the Town Attorney and Engineer, a current certificate of insurance to evidence such insurance. All such insurance shall comply with the Town's contract requirements pertaining to damage claims, indemnification of the Town, and insurance. The Contractor(s) so engaged are required to furnish comprehensive general liability insurance of not less than $1,000,000.00 aggregate for any such damage sustained by two or more persons in any one accident. The Developer is responsible for confirming that such insurance is in place and that the Town is named as an additional insured on such insurance.

4. CONSTRUCTION RELATED ACTIVITIES FOR PUBLIC IMPROVEMENTS.

In connection with the construction of the Public Improvements, it is hereby agreed as follows:

4.1. **Scheduling.** The Developer agrees that no work shall be scheduled for construction of the Improvements without the Town Engineer's approval of the starting date(s) and construction schedule. The construction of the Improvements shall be completed on or before the completion date(s) set forth in the schedule, unless otherwise extended in writing by the Town.

4.2. **Commencement.** The final plans and specifications, signed by the Developer's Engineer, shall be submitted to the Town Engineer prior to any land disturbance or commencement of work. A starting date will not be approved until (1) a written statement of "no objection" with respect to the final plans and specifications for the

[3] The Town does not by this provision, or by any other provision in this Agreement, waive, reduce or in any way limit any governmental immunity (whether absolute, qualified, as to intentional torts or discretionary acts or other immunity) to which it may be entitled, and hereby expressly reaffirms its right to any and all such immunity, notice of injury, notice of claim, and limitation as to damages to the full extent provided by law.

Improvements has been issued by the Town Engineer, and (2) the Letter of Credit or other security required by this Agreement has been furnished to the Town.

4.3. **Completion.** All work specified herein shall be completed within twelve (12) months after the date of commencement, and time is of the essence as to completion. The deadline for completion may be extended as to the laying of the final layer of asphalt paving on streets in accordance with Town policy, as recommended by the Town Engineer. Town policy also requires that Developer furnish appropriate surety for the completion of such work as recommended by the Town Engineer, and approved by resolution of the Town Board.

4.4. **Costs.** The Developer agrees that the Town shall not be responsible for any costs or charges related to the construction of the Improvements, and that the Developer is responsible for all such costs, except as otherwise expressly provided for in the Agreement.

4.5. **Construction Related Activities; Inspection and Certification; Lien Waivers.** The Town may periodically review construction progress, conduct inspections and/or complete material testing of the Improvements, and is granted access to the site for such purposes. The Developer shall have the obligation to provide such on-site inspection as is necessary to obtain written certification from Developer's Engineer that the Improvements as and when they are completed are in compliance with the standards and specifications of the Town and this Agreement. The Developer's Engineer's written certification shall be provided to the Town Engineer before the Town Engineer recommends acceptance of the Improvements to the Town Board. In addition, and also prior to recommendation of acceptance of the Improvements, the Developer shall present to the Town valid lien waivers from all persons providing materials and/or performing work on the Improvements for which certification is sought. The Developer agrees that no occupancy permits will be issued by the Town until the Improvements have been recommended for acceptance by the Town Engineer; and until all outstanding engineering and inspection fees (including engineering and inspection charges of the Town) have been paid in full, and affidavits and lien waivers are received by the Town indicating that the contractors, suppliers and subcontractors have been paid in full for all work and materials furnished in order to construct the Improvements.

4.6. **Maintenance and Repair.** The Developer agrees to provide for maintenance and repair of all Improvements and acknowledges that this obligation runs with the land. The Town will endeavor to provide timely notice to the Developer whenever the Town Engineer is not able to recommend acceptance of an Improvement, or otherwise determines that an Improvement does not conform to the Town's adopted standards and specifications or is otherwise defective. The Developer shall have thirty (30) days from the issuance of such notice to correct or substantially correct the defect. It is agreed that the Town shall not declare a default under the Agreement during the aforesaid thirty (30) day correction period on account of any such defect unless it is clear that the Developer does not intend to correct the defect

or unless the Town determines that immediate action is required in order to remedy a situation which poses an imminent health or safety threat.

4.7. **Cost Breakdown.** The Developer shall, upon substantial completion of the Improvements, provide to the Town a final cost for all of the costs associated with the construction thereof. Such final cost breakdown shall be in such form and content as the Town may reasonably require.

5. DEDICATION OF PUBLIC IMPROVEMENTS.

5.1 After substantial completion[4] of the construction in accordance with the Town's standards and specifications, as certified by the Developer's Engineer, and provided there is a written statement of "no objection" from the Town Engineer, the Developer shall dedicate the Public Improvements to the Town.

5.2 Acceptance of the dedication requires the approval of a resolution by the Town Board.

6. GUARANTEE OF THE WORK. The Developer agrees to guarantee and warrant all work performed under this Agreement against defects in workmanship or materials for a period of *fourteen (14) months from the date of substantial completion*[5] of the Public Improvements. If any defect should appear during the guarantee period, as determined in the reasonable discretion of the Town Engineer, the Developer agrees to make required replacement or acceptable repairs of the defective work at the Developer's own expense. Furthermore, following such notice to and repair by the Developer, the guarantee period shall be extended for an additional fourteen (14) month period from the date of Developer's completion of the repair. All guaranties or warranties for materials or workmanship which extend beyond the guarantee period are hereby assigned by the Developer to the Town, and confirmation of same shall be provided to the Town Engineer.

7. COMPLIANCE WITH LAW. When performing its obligations under this Agreement, the Developer shall comply with all terms of this Agreement, relevant laws, ordinances, and regulations in effect, as promulgated by all governmental bodies having jurisdiction thereover. In the event of a conflict among the requirements, the stricter provisions shall control.

8. FEES PAYABLE PRIOR TO CONSTRUCTION. The Developer agrees to pay the Town for all outstanding fees and assessments levied against the Property prior to the start

[4] *See* Wis. Stat. § 236.13, as amended, which applies to all preliminary and final plats as of August 1, 2014. Pursuant thereto, "substantial completion" is defined as follows: "(P)ublic improvements reasonably necessary for a project or a phase of a project are considered to be substantially completed at the time the binder course is installed on roads to be dedicated or, if the required public improvements do not include a road to be dedicated, at the time that 90% of the public improvements by costs are completed."

[5] See *Id.*

of construction of the Improvements.

9. DEVELOPER TO REIMBURSE THE TOWN FOR COSTS SUSTAINED. In addition to any escrow arrangement required by the Town pursuant to its customary practice for administering development projects, the Developer shall reimburse the Town for its actual cost of design, inspection, testing, construction, and associated legal and other fees associated with the Development. The Town's costs shall be determined as follows:

9.1. The cost of Town employees' time engaged in any way with the required Improvements based on the hourly rate paid to the employee multiplied by a factor determined by the Town representing the Town's cost for expenses, benefits, insurance, sick leave, holidays, overtime, vacation and similar benefits.

9.2. The cost of Town equipment employed.

9.3. The cost of mileage reimbursed to Town employees and consultants that is attributable to the Development.

9.4. The actual costs of Town materials incorporated into the work, including transportation costs, plus a restocking and/or handling fee not to exceed ten percent (10%) of the cost of the materials.

9.5. All costs and expenses incurred by Town in connection with the Development, including, but not limited to, the cost of professional services incurred by the Town for the review and preparation of required documents, attendance at meetings or other related professional services. This includes but is not limited to the costs incurred for the Town Attorney, Town Planner, and Town Engineer related to the Development.

9.6. Unless the amount totals less than $50.00, the Town shall bill the Developer monthly for expenses incurred by the Town. Bills outstanding for more than thirty (30) days shall accrue interest at the rate of one percent (1%) per month.

10. SURETY.

10.1. The Developer agrees to furnish the Town, prior to the commencement of any work under this Agreement, with surety in the form of an irrevocable Letter of Credit, in a form deemed acceptable by the Town Attorney, in the amount to be approved by the Town Engineer, to secure performance of this contract in accordance with the Town Subdivision Ordinance. The Letter of Credit shall be payable at sight to the Town and will bear an expiration date not earlier than twelve (12) months after the date of delivery to the Town. The Letter of Credit shall include a provision requiring that the Town be given written notice not less than forty-five (45) days and not more than sixty (60) days prior to the expiration of the letter. Developer shall provide a new Letter of Credit satisfactory to the Town not less than ten (10) days prior to the expiration of any earlier Letter of Credit sufficient to cover the

balance of any work to be performed by Developer hereunder and any sum required to secure the guarantee of work required by this Agreement. The Letters of Credit will be payable to the Town at any time upon presentation of: (i) a sight draft on the issuing Bank in the amount to which the Town is entitled to draw pursuant to the terms of this Agreement; (ii) an affidavit executed by an authorized Town official stating that the Developer is in default under this Agreement; and (iii) the original of the Letter of Credit.

Notwithstadning the foregoing, in lieu of a Letter of Credit, the Developer may deliver to the Town, as surety for performance of this contract in accordance with the Town Subdivision Ordinance, a performance bond provided by the Developer's contractor that names the Town as an additional obligee, provided such bond is consistent with a standard surety bond form used by a company that, on the date the bond is obtained, is listed as an acceptable surety on federal bonds in the most recent circular 570 published by the federal department of the treasury, as required under 31 CFR 223.16, and the performance bond is issued by a surety company licensed to do business in this state, and the form of the bond is otherwise reasonably acceptable to the Town.

10.2. As work progresses on installation of Public Improvements constructed as part of this contract, the Town Engineer, upon written request from the Developer from time to time, is authorized to recommend a reduction in the amount of surety as hereinafter provided. When portions of construction (street, stormwater or other Improvements) are completed by the Developer, the Town Engineer is authorized, upon submission of lien waivers by the Developer's contractors, to recommend reduction in the amount of surety. Any reduction shall require approval by resolution of the Town Board.

10.3. Upon acceptance by the Town of the Improvements, as approved by resolution of the Town Board, the Town agrees to reduce the surety to an amount which does not exceed ten percent (10%) of the cost of the Public Improvements, as estimated by the Town Engineer, to secure performance of the guarantee described in this Agreement, if such a reduction is requested by the Developer.

10.4. Developer agrees to provide written notice of the expiration of any Letter of Credit or performance bond (or replacement Letter of Credit or performance bond) provided for herein not less than forty-five (45) days nor more than sixty (60) days prior to its expiration, by sending notice to the following address:

Town Clerk
Town of Cottage Grove
4058 County Road N
Cottage Grove, WI 53527

11. COVENANTS AND RESTRICTIONS; STORMWATER MANAGEMENT AGREEMENT; TRANSFER RESTRICTIONS ON SALES; OTHER LEGAL

DOCUMENTS.

11.1. **Declaration of Covenants, Conditions and Restrictions.** Prior to commencement of construction of Improvements under this Agreement, Developer shall submit the Declaration of Covenants, Conditions and Restrictions to the Town Attorney and Town Board for review and approval as to conformity with the Town Subdivision Ordinance and any conditions of approval. The Covenants, Conditions and Restrictions shall contain provisions that provide for site plan and architectural review procedures for all Lots to insure that the represented quality of the Improvements is maintained.

11.2. **Stormwater Management and Maintenance Agreement.** Developer shall also enter into the Town's Stormwater Management and Maintenance Agreement, in recordable form satisfactory to the Town Engineer and Town Attorney, prior to the commencement of construction, which agreement shall provide that the Developer shall maintain the Stormwater Management Facilities, at the expense of Developer, until the Town accepts the Improvements, and that after acceptance of the Improvements by the Town, the homeowner association formed by Developer shall maintain the Stormwater Management Facilities at the expense of the association. In the event the association fails to properly maintain the Stormwater Management Facilities, then the Town's Stormwater Management and Maintenance Agreement shall provide that the Town may enter the property and maintain the Stormwater Management Facilities, with the cost thereof to be charged back as a special charge to the owners of Lots within the Development. The foregoing instruments shall be recorded prior to the commencement of any work under this Agreement. As part of this requirement, the Developer shall obtain all required Dane County Stromwater Permits and Reviews and provide proof of County review and approval to the Town.

11.3. **Restrictions on Transfer Of Lots Outside Current Phase**. Developer agrees to execute and record, in a form approved by the Town Attorney, an instrument prohibiting the conveyance to third parties of Lots outside of such Phase of the Development on which Improvements are being constructed (other than to a bona fide financial institution as a mortgagee for the costs of development and construction of the project by Developer), without the consent of the Town, or until the execution of a development agreement between Developer and the Town for particular Lots outside of such Phase as to which this prohibition would not then apply.

12. **SURVEY MONUMENTS.** Developer agrees to install all survey monuments for the final Plat in the manner required by law and Town Ordinance, except that pursuant to the provisions of Wis. Stat. § 236.15(1)(h), Developer shall have a period of up to five (5) years after the date of execution of this Agreement by all parties, or the start of construction of the final Phase of the Development, whichever comes first, within which to complete installation of all required monuments in the entire Development as required by law and Town Ordinance. Notwithstanding the foregoing, Developer agrees to complete all such

survey work for each phase of the Plat by the time of completion of Improvements for such phase of the Plat. Developer will provide security in the amount and manner reasonably required by the Town Engineer at the time of commencement of construction of the first Phase of the Plat based on estimates from responsible surveying firms, to secure the full costs of such survey monumentation work within such time period. No construction shall be commenced until the Town Engineer has approved the adequacy of the security for the surveying costs.

13. **PARKLAND DEDICATION OR FEE IN LIEU OF DEDICATION.** The Town acknowledges that all requirements of the Town Subdivision Ordinance with regard to the dedication of park lands or the payment of fees in lieu of dedication of park lands for the Development were satisfied upon recording of the the Plat of Kennedy Hills.

14. **FEE FOR INITIAL IMPROVEMENTS TO PARKLAND PER WIS. STAT. § 236.45(6).** The Town acknowledges that no fee for initial improvements to parkland is currently due. Rather, each lot owner in the Plat shall be obligated to pay a recreational improvement impact fee to the Town of Cottage Grove in the amount specified by Town ordinance at the time the lot owner applies for a residential building permit.

15. **ANNEXATION.** Developer agrees that at no time will the Developer petition to annex or attach all or any part of the Property to any city of village under applicable annexation or boundary agreement laws, without the consent of the Town. Developer further acknowledges that any such annexation by Developer shall result in damages to the Town, which damages shall be substantial and difficult to quantify. Developer and Town agree to quantify such damages by applying to this Development the terms and calculations used to calculate Tax Increment in Tax Increment Districts formed under Wis. Stat. § 66.1105. The Town's liquidated damages shall be equal to the Tax Increment that would be calculated and paid to the Town over a 27-year period at the value of the Development upon complete buildout.

16. **GENERAL CONDITIONS.**

16.1. **No Vested Rights Granted.** Except as provided by law, or as expressly provided in this Agreement, no vested right in connection with this project shall inure to the Developer. Nor does the Town warrant by this Agreement that the Developer is entitled to any other required approvals.

16.2. **No Waiver.** No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor shall it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both Town and Developer; nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Town's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act by the Developer or the acceptance of any Improvement.

16.3. **Town Rights Retained.** The Town does not hereby waive, and expressly retains, its right to governmental immunity and other defenses that may be available to the Town. The obligations set forth herein are not intended to, and shall not be interpreted to, limit the Town's insurance coverage or other similar protections. To the extent not expressly contracted in this Agreement, the Town retains and expressly reserves its legislative discretion.

16.4. **Amendment/Modification.** This Agreement may be amended or modified only by a written amendment approved and executed by the Town and the Developer.

16.5. **Default.** A default is defined herein as the Developer's breach of, or failure to comply with, the terms of this Agreement. The Town reserves to itself all remedies available at law or equity as necessary to cure any default. The Town also reserves to itself the right to draw on a Letter of Credit or other surety provided hereunder in addition to pursuing any other available remedies. Remedies shall include, but not be limited to, stopping all construction in the approved final Plat and prohibiting the transfer or sale of Lots. Remedies shall be cumulative, and the exercise of one shall not preclude the exercise of others.

16.6. **Entire Agreement.** This written Agreement, and written amendments, and any referenced attachments thereto, shall constitute the entire Agreement between the Developer and the Town.

16.7. **Attorney Fees.** If either party resorts to litigation or arbitration to enforce the terms of this Agreement, the prevailing party in the litigation or arbitration shall pay the other party's costs, including reasonable attorney fees and expert witness fees. If the court or arbitrator awards relief to both parties, each will bear its own costs in their entirety.

16.8. **Time.** For the purpose of computing the commencement, abandonment and completion periods, and time periods for Town or Developer action, such times in which war, civil disasters, acts of God, or extreme weather conditions occur or exist shall not be included if such times prevent the Developer or Town from performing their/its obligations under the Agreement.

16.9. **Severability.** If any part, term or provision of this Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect the validity of any other part, term or provision, and the rights of the parties will be construed as if the part, term or provision was never part of the Agreement.

16.10. **Benefits.** The benefits of this Agreement to the Developer are personal and shall not be assigned without the express written approval of the Town. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also shall be binding on the heirs, successors and

assigns of the Developer.

16.11. **Notice.** Any notice required or permitted by this Agreement shall be deemed effective when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified mail and return receipt requested, and addressed as follows:

If to Developer:	Cory K. Clemens Dunroven Ridge, LLC 7857 Dunroven Road Dane, WI 53529
If to Town:	Town of Cottage Grove Attn: Town Clerk 4058 County Road N Cottage Grove, WI 53527

16.12. **Recordation.** The Town may record this Agreement or a memorandum of this Agreement in the Register of Deeds Office. All costs of recording shall be paid by the Developer.

16.13. **Effective Date.** This Agreement shall be effective as of the date and year executed by both parties.

[SIGNATURES ON FOLLOWING TWO PAGES]
[EXHIBITS INCORPORATED BY REFERENCE]

Executed in Dane County, Wisconsin, on this _____ day of _____, 20____.

TOWN OF COTTAGE GROVE

By: _____
Kris Hampton, Town Chairperson

Attest: _____
Kim Banigan, Town Clerk

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Personally came before me this _____ day of _____, 20__, the above-named Kris Hampton and Kim Banigan, Chairperson and Clerk of the Town of Cottage Grove, respectively, to me known to be the persons and officers who executed the foregoing instrument and acknowledged the same as such officers by the Town's authority.

_____

Notary Public, State of Wisconsin
My Commission Expires: _____

Executed in Dane County, Wisconsin, on this _____ day of _____, 20___.

DEVELOPER
DUNROVEN RIDGE, LLC

By: _____
Cory K. Clemens
Its: Manager

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Personally came before me this _____ day of _____, 20__, the above-named Cory K. Clemens, to me known to be the person who executed the foregoing instrument and acknowledged the same on behalf of _____ _____.

_____

Notary Public, State of Wisconsin
My Commission Expires: _____

This instrument drafted by:
Christopher T. Nelson
Axley Brynelson, LLP
2 E. Mifflin Street, Ste. 200
Madison, WI 53703
cnelson@axley.com
608-283-6766

EXHIBIT 1
IDENTIFICATION OF PLANS AND SUMMARY OF IMPROVEMENTS

Overall:

PLANS: The Town Engineer has no objection to the final OVERALL plans presented by the Developer's Engineer, which plans are dated and marked as follows:
Kennedy Hills First Addition Plat Plans, dated March 4, 2025.

SUMMARY:

1. Well & Septic: Approval required for well; Approval required for septic by Dane County Sanitarian.
2. Public roads:
    a. Right-of-way width: Scenic Oak Drive is 66 ft, Quercus Drive is 66 ft, and Wooded Ridge Trail is 70 ft.
    b. Paved width: Scenic Oak Drive is 24 ft, Quercus Drive is 24 ft, and Wooded Ridge Trail is 30 ft.
    c. Pavement: asphalt.
    d. Curb and gutter:None required by the Town.
    e. Driveway aprons: May be gravel, asphalt, or concrete; owner shall be required to installs culverts in accordance with the grading plans.
    f. Town road construction standards: Set by Town Engineer.
3. Grading Requirements: The lowest exposed building elevation shall in all cases be a minimum of two (2) feet above the lowest lot corner elevation at the time of initial development, which grade shall be as established in the approved grading and stormwater plans.
4. Stormwater Management and Erosion Control: Approval by Dane County's Land & Water Resources Department ("LWRD") REQUIRED; for more information contact the Water Resource Engineering ("WRE") staff.
    a. Drainageways: Shall be marked on Plat. The Developer shall execute a Drainage Easement and Maintenance Agreement with the Town that is satisfactory to the Town prior to commencment of work on the site. The easement shall include the following, as well as standard provisions:
        i. Property Owners shall be prohibited from filling or planting or placing obstructions in the drainage easements.
        ii. Drainage easements shall not overlap with septic areas or septic replacement areas.
        iii. Drainage easements shall be adequate to provide Town equipment/vehicles to access for maintenance purposes.
        iv. Property Owners shall keep drainage easements in mowed grass condition.
    b. Stormwater Management Factilities: Shall be required by Dane County Land & Water Resources Department (LWRD).
    c. Erosion Control: As required by Dane County Permit.
5. Sidewalk: not required.
6. Trees: No public terrace trees required; private tree preservation as set forth in the covenants.

7. Trails: As set forth in the plans.
8. Landscaping and restoration: As set forth in the plans and covenants.
9. Parks:
    a. Park Improvements: Trail accessing park in original plat between Lots 28/29 and 30, to be installed by Developer per the approved plans.
    b. Open space: No public or common open space in Development, except access easement over aforementioned trail.
10. Signage: as required by Town Board at Developer's cost.
    a. Fire numbers/addresses: As required by Fire Department and EMS at Developer's cost.
    b. Street signs: Provided and installed at Developer's cost in accordance with Town standards.
11. Maintenance Agreement: As required by Town Attorney and Dane County Land & Water Resources Department.
12. Transfer Restriction: Subject to review/approval by Town and Town Attorney.
13. Covenants: Subject to review/approval by Town and Town Attorney.
14. Easements: Subject to review/approval by Town and Town Attorney
15. Other: _____

_____

EXHIBIT B

**PLAT OF KENNEDY HILLS FIRST ADDITION,
TOWN OF COTTAGE GROVE,
DANE COUNTY, WISCONSIN:**

**DECLARATION OF COVENANTS, RESTRICTIONS,
CONDITIONS AND EASEMENTS**

("Declaration")

Legal Description of Affected Property:
Lots 17-36, Outlot 1, Plat of Kennedy Hills First Addition, Town of Cottage Grove, Dane County, Wisconsin.

Recording information above

Return To:

Kim Banigan, Town Clerk
Town of Cottage Grove
4058 County Road N
Cottage Grove, WI 53527

Parcel Identification Number(s):

See attached Exhibit A

Dunroven Ridge, LLC, is a Wisconsin limited liability company, and is the owner and developer of property in the Town of Cottage Grove, County of Dane, State of Wisconsin, platted as Lots through 17 through 36, inclusive, and Outlot 1, Plat of Kennedy Hills First Addition, Town of Cottage Grove, Dane County, Wisconsin (the "Property") and hereby declares that the Property is and shall remain subject to the following restrictions, covenants, conditions and easements, and that all of such lots are and shall be held, sold, occupied, conveyed and transferred subject to the covenants, restrictions, conditions and easements set forth in this Declaration.

The Property is adjacent to the Plat of Kennedy Hills, a 16-lot subdivision also located in the Town of Cottage Grove (the "Initial Phase"), which was developed by Kennedy Hills, LLC (the "Initial Developer"), several years prior to the recording of the Plat of Kennedy Hills First Addition. The restrictions, covenants, conditions and easements set forth in this Declaration are modeled on, and are intended to be harmonious with, the covenants governing the Initial Phase.

PLEASE NOTE: This Declaration creates certain private rights and obligations among the parties identified herein that may be enforced in a court of law or equity. (*See, for example*, Article 3, paragraph 3.25). State law, County ordinances and/or Town ordinances also establish requirements with respect to the subject matter of this Declaration. Governmental authorities are not obligated to enforce this Declaration even where public rights are implicated, and may not have jurisdiction to the extent that the Declaration creates a private rights or obligations between private parties.

ARTICLE 1

Definitions

For purposes of this Declaration, the following terms shall be defined in the following manner:

1.1. "Developer" shall refer collectively to Dunroven Ridge, LLC, a Wisconsin limited liability company, and its representatives, successors and assigns.

1.2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to a platted lot (exclusive of outlots) within the Property, except that as to any such lot which is the subject of a land contract wherein the purchaser is in possession, the term "Owner" shall refer to said purchaser instead of the land contract vendor.

1.3. "Property" shall mean and refer to the Plat of Kennedy Hills First Addition, Town of Cottage Grove, Dane County, Wisconsin.

1.4. "Town" shall mean the Town of Cottage Grove, Dane County, Wisconsin, or its successor in interest.

1.5. "County" shall mean Dane County, Wisconsin.

1.6. "Lot" shall refer to a platted lot on the Property, and does not include Outlot 1 unless said outlot is expressly included.

1.7 “Structure” means all buildings or improvements on the Property, including play structures, fences, patios, decks and swimming pools.

ARTICLE 2

Property Subject to This Declaration

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the Town of Cottage Grove, Dane County, Wisconsin, and is known as the Plat of Kennedy Hills First Addition, Town of Cottage Grove, Dane County, Wisconsin. The real property includes Lots 17-36, inclusive and Outlot 1 (collectively, the "Property").

ARTICLE 3

Architectural Control and Protective Covenants and Restrictions

3.1. Plan Review Required for all Buildings and Structures. For all buildings and structures to be erected or placed on any lot subject to this Declaration, the plans, specifications, site, grading and landscaping plans for all such buildings or structures must be submitted to the Developer or the Architectural Control Committee, whichever is then applicable, for written approval as to appearance, the quality of workmanship and materials, harmony of exterior design, including exterior colors, size, location with respect to topography and finish grade elevation, site layout, roof pitch, location of improvements and amount, quality and nature of landscaping, prior to commencement of any construction on any lot.

The roof pitch must be a minimum of 5/12 for gable roofs and 4.5/12 for hip roofs, provided however, that the Developer may approve roofs having a minimum of 4/12 roof pitch if the Developer determines, in its sole judgment and discretion, that the overall architecture of the subject building will be attractive and will not adversely affect other lots within the Property. 30-year (or more) architectural dimensional shingles are required, provided however, that the Developer may approve the use of other roofing materials, if the Developer determines, in its sole judgment and discretion, that the use of other roofing materials will be attractive and will not adversely affect other lots within the Property. Vinyl and

aluminum siding are restricted to the rear and side elevations and up to 80% of the front elevation of the residence (garage openings shall be excluded from this calculation). Materials that may be used on the front elevation of the residence in the portion of such elevation that is not vinyl or aluminum siding shall include, but not be limited to, the following: brick, stone, stucco, EIFS, glass, natural wood, engineered wood siding, horizontal lap concrete siding or any other materials that have the same effect or appearance. Brick, stucco, stone or other materials shall be required to terminate at an interior corner of the front facade, or other significant architectural transition, where a change in materials is logical and aesthetically appropriate.

3.2. Architectural Control Committee. After the Developer and its representatives, successors and assigns, cease to have any title to any lot subject to this Declaration, the plans, specifications, site, grading and landscaping plans, and all other matters to be submitted to the Developer under this Declaration, must be submitted to the Architectural Control Committee ("Committee") for approval in writing by a majority of the members of said Committee. The Committee shall consist of the members of the Board of Directors of the Kennedy Hills First Addition Homeowners Association, Inc., or in the alternative, if the Directors of the Association so elect, three persons elected by a majority of the members of the Board of Directors of the Association. A copy of all site, grading and landscaping plans shall be kept by the Developer or the Committee for the benefit of other Owners and enforcement of this Declaration.

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

3.4. Alterations of Exterior Appearance Require Approval. No alteration in the exterior appearance of existing buildings or structures, including but not limited to, exterior remodeling and the construction of play structures, fences, patios, decks, and swimming pools, shall be made without the prior written approval of the Developer or the Committee, whichever is then applicable.

3.5. Best Efforts Required for Preservation of Trees and Vegetation; Approval Required for Removal. On each Lot subject to this Declaration, trees with a trunk diameter at breast height of four (4) inches or greater but excluding those listed as an invasive species under regulations promulgated by the Wisconsin Department of Natural Resources, shall not be destroyed or removed except where dead, or where such removal is determined essential and approved in writing by the Developer or the Committee, whichever is then applicable. The Owner shall also use best efforts to preserve such trees on its Lot, including limiting grading, soil compaction, and hard surfacing in their driplines; not burying the root ball; not exposing or significantly cutting roots; for oaks not pruning or removing limbs outside of December-February, and other best practices. Such practices are required for and around the 36”-40” oak trees on Lot 28 and near the line between Lots 26 and 27, and any proposal to remove either such tree (unless dead) is restricted except by approval of the Town Plan Commission. If any non-invasive tree with a diameter of four (4) inches or greater, is removed or destroyed without approval, the Developer or Committee may require the replanting or replacement with non-invasive tree species beyond the landscaping requirements in Sec. 3.26, the cost thereof to be borne by the Owner. This paragraph does not apply to the Developer, which instead is governed with regard to tree removal and preservation via other means.

3.6. Building Elevations Set; ~~Certified As-Built Grading and~~ Stormwater Plans Required; Violations and Enforcement. ~~The lowest exposed building elevation on any lot within the Property shall in all cases be a minimum of two (2) feet above the lowest lot corner elevation at time of initial development, which grade is established in the approved grading plans. The Grading Plan applicable to this Plat overall is described on Exhibit A, which is incorporated herein by reference as if set forth fully herein. The~~

~~elevation of a lot shall not be changed so as to materially affect the surface elevation, the projected stormwater flows per the approved grading plans, or the grade of the surrounding lots. A copy of all approved site, grading and stormwater plans shall be kept by the Developer or the Committee and may otherwise be on file with the Town of Cottage Grove or Dane County.~~

~~FOLLOWING CONSTRUCTION OF A RESIDENCE ON A LOT, THE CURRENT OWNER OF RECORD SHALL PROVIDE THE TOWN BUILDING INSPECTOR WITH AS-BUILT GRADING DOCUMENTS CERTIFYING THAT GRADING AS-BUILT ON THE LOT IS CONSISTENT WITH THE GRADE ESTABLISHED BY THE APPROVED AS-BUILT GRADING AND STORMWATER PLANS FOR THE PLAT. THE TOWN BUILDING INSPECTOR SHALL NEITHER SIGN-OFF ON THE FINAL INSPECTIONS REQUIRED UNDER THE BUILDING PERMIT NOR ISSUE AN OCCUPANCY PERMIT UNTIL THE CURRENT OWNER OF RECORD PROVIDES CERTIFICATION BY A QUALIFIED CONSULTANT THAT THE AS-BUILTS FOR THE LOT COMPLY WITH THE APPROVED AS-BUILT GRADING AND STORMWATER PLANS FOR THE PLAT. IF THE AS-BUILTS FOR THE LOT DO NOT COMPLY WITH APPROVED AS-BUILT GRADING AND STORMWATER PLANS, THEN THE CURRENT OWNER OF RECORD SHALL BE OBLIGATED TO BRING THE LOT INTO COMPLIANCE BEFORE OCCUPANCY IS PERMITTED.~~

~~No earth, rock, gravel, or clay shall be excavated or removed from any Lot within the Property without the approval of the Developer or the Committee, whichever is then applicable. Violations of this provision or the approved grading and stormwater plans shall give either the Developer or Committee, whichever is then applicable, any adjacent or affected Owner, and/or the Town of Cottage Grove a cause of action for injunctive relief or damages as appropriate against the Owner and others violating such grading and stormwater plans.~~

No portion of any outside door, window, vent, or other opening to the outside that is part of any dwelling unit on any Lot within the Property shall be at an elevation which is less than the minimum opening elevation set forth on the table found on Exhibit B.

A copy of all approved site and stormwater plans shall be kept by the Developer or the Committee and may otherwise be on file with the Town of Cottage Grove or Dane County. The construction of all improvements on any Lot shall be consistent with the approved site and stormwater plans.

No earth, rock, gravel, or clay shall be excavated or removed from any Lot withing the Property without the approval for the Developer or the Committee, which ever is then applicable.

Violations of Paragraph 3.6 shall give either the Developer or the Committee, which ever is then applicable, any adjacent or affected Owner, and/or the Town of Cottage Grove cause for injunctive relief and/or damages as appropriate against the Owner and others violating the building elevation provision or the stormwater management plans.

3.7. Single Family Residential Only; Square Footage Requirements. All lots within the Property (other than Outlot 1) shall be used only for single family residential purposes and for such accessory uses as may be permitted by zoning, except that, prior to commencement of construction of public improvements on the Property, Developer may continue to use lands owned by Developer for existing agricultural purposes and uses including Outlot 1.

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

(a) No single-story building shall have less than 1,500 square feet.

(b) No two-story building shall have less than 1,600 square feet.

(c) No raised ranch, bi-level, or trilevel building, or other building style not covered by paragraphs (a) or (b), or this paragraph (c), shall have less than 1,600 square feet on the main two floors.

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

The above minimum requirements may not be waived by the Developer or the Committee, whichever is then applicable, without approval of the Town.

Violations of the approved square footage requirements shall give either the Developer or Committee, whichever is then applicable, any adjacent or affected Owner, and/or the Town of Cottage Grove a cause of action for injunctive relief or damages as appropriate against the Owner and others for violating such square footage requirements.

3.8. Attached Garage; Requirements. All single-family residential buildings must have an attached garage and such garage must contain not less than two (2) nor more than four (4) garage stalls for automobiles or other vehicles (tandem stalls are encouraged), and must be enclosed. Garages shall be directly attached or connected to the residence. Carports, which are defined as garages not enclosed on all four (4) sides, are prohibited. Side load garages are allowable and encouraged throughout the Property. Except for side loading garages which shall not be limited by this sentence, the width of the garage facing a public street shall be limited to no more than 50% of the overall width of the front facade, unless one or more garage stalls is recessed behind the front facade by at least 4 feet.

3.9. Buildings Not to be Moved to or Relocated to a Lot. No building previously erected elsewhere may be moved onto any lot subject to this Declaration, unless approved by the Developer or the Committee, whichever is then applicable, in their discretion.

3.10. Driveway and Culvert Requirements. All driveways must be concrete, except where otherwise required by the Town of Cottage Grove. There shall be at least three feet of a two-inch thick bituminous mixture (hot mix) of asphalt placed between the end of the concrete driveway (or over the concrete) so that the end of the driveway matches street grade in the main traveled portion of the road. The Owner shall be responsible for selection of an appropriately sized culvert and proper installation and maintenance of the driveway culvert in a manner that does not interfere with the approved drainage plans for the Property. The Owner shall be responsible for obtaining a driveway, culvert or right-of-way permit from the Town of Cottage Grove, as required by Town ordinances.

Violations of the approved driveway and culvert requirements shall give either the Developer or Committee, whichever is then applicable, any adjacent or affected Owner, and/or the Town of Cottage Grove a cause of action for injunctive relief and/or damages as appropriate against the Owner and others violating such driveway and culvert requirements.

3.11. Accessory Buildings and Structures. Accessory buildings or structures, including, but not limited to, storage sheds, detached garages and above ground swimming pools, are expressly prohibited within the Property except where approved in writing in advance by the Developer or Committee, whichever is then applicable.

Violations of the accessory buildings and structures requirements shall give either the Developer or Committee, whichever is then applicable, any adjacent or affected Owner, and/or the Town of Cottage Grove a cause of action against the Owner and others violating such accessory buildings and structures requirements for injunctive relief and/or damages as appropriate.

3.12. Public Sidewalk. Where public sidewalks exist, and for the path between Lots 28/29 and Lot 30, it is the responsibility of the abutting lot Owner(s) to maintain same in a safe and passable condition, reasonably free from snow, ice or obstruction.

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

3.14. Parking and Storage. Parking of commercial or service vehicles owned or operated by residents within the Property is prohibited unless such vehicles are kept in garages. Parking or storage of boats, travel trailers, mobile homes, campers, and other recreational vehicles within the Property is prohibited unless kept inside garages. Parking of more than three (3) vehicles in the driveway or on the street within the Property of any size, by the residents or owners of any one lot in the Property, shall be prohibited, except for vehicles of guests, invitees or contractors of the residents or owners of such lot. This section shall not prohibit the temporary parking of any vehicles otherwise prohibited, if such parking is for the sole purpose of loading or unloading such vehicles at the lot at which parked, or for a period not to exceed twenty-four (24) hours. No cars or other vehicles shall be parked on lawns, yards or ditch areas at any time. All garage doors shall be closed when the garage is not being actively used. Trash or recycling containers may not be located, stored or placed in the front yard of the residence, except during the period of 12 hours before or after the time of collection of trash or recyclables by the Town of Cottage Grove or a trash collection contractor.

3.15. Mowing and Yard Maintenance Required. All areas of lots (excluding outlets) not used as a building site or lawn or under cultivation as a garden shall have a cover crop and be kept free from noxious weeds. All lawns and unoccupied lots are to be mowed to grass length of 6" or less and maintained in a manner consistent with neighboring lots on the Property. The Owner shall keep each Lot , and all improvements, in good order and repair and free of debris, including, but not limited to, the mowing of all lawns, the pruning of all trees and shrubbery (consistent with Sec. 3.5) and the painting (or other external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management. This paragraph shall not be construed to prevent a family garden or orchard, provided that all family gardens and orchards shall be located in the back yards, shall not require existing tree removal in violation of Sec. 3.5,and shall be located no closer than ten (10') feet from the lot line, and the garden area on any lot may not exceed twenty (20%) percent of the lot area not covered by residence, garage and driveway.

3.16. Land Contracts. On any lot conveyed by land contract or deed from the Developer, construction shall be commenced within three (3) years from the date of such land contract or deed. Upon violation of this restriction, the Developer shall have the option, exercisable by written notice to the lot owner within ninety (90) days after the expiration of such three (3) year period, to have said lot conveyed to the Developer at the original sales price, free and clear of any liens and encumbrances created by act or default of the Owner of such lot, with taxes and installments on assessments for the year in which conveyance occurs being prorated as of date of such conveyance. Developer may waive its rights under this section in writing, in its discretion.

3.17. Time for Completion of Construction. Construction of all buildings shall be completed within twelve (12) months after issuance of a building permit for the respective building. Landscaping (including grading, sodding, and seeding) and pouring of driveway shall be completed within one hundred eighty (180) days of completion of construction, provided weather conditions so allow. If such construction or landscaping is delayed due to matters beyond the control of the Lot owner, the time for completion shall be extended by the period of such delay. **NOTE:** State law, County ordinances and/or Town ordinances may provide a different time period for completion of construction and/or include other requirements with respect to construction. The Owner is required to meet the more restrictive requirements.

3.18. Limits on Antennas, Satellite Dishes, Solar Facilities, and Wind Facilities. Except to the extent preempted by federal or state law, no exterior antennas, satellite dishes over one (1) meter in diameter, solar panels, wind mills, walls or fences of any kind shall be permitted within the Property unless approved in writing in advance by the Developer or the Committee, whichever is then applicable, including approval of the location, material, height and color thereof. Satellite dishes of one (1) meter or

less in diameter shall be permitted without Developer or Committee approval, but shall be installed so that they are not visible from the street unless such requirement is preempted by state or federal law.

3.19. No Noxious or Offensive Trade. No noxious or offensive trade or activity shall be carried on, nor shall anything be done which may be or will become a nuisance to the neighborhood. This shall not be construed to prevent a home occupation as allowed under applicable zoning regulations or a family garden or orchard, provided that all family gardens and orchards shall be located in back yards, shall not be established in violation of Sec. 3.5, and shall be located no closer than ten (10') feet from the lot line, and the garden area on any Lot may not exceed twenty (20%) percent of the lot area not covered by the residence, garage and driveway. No burning barrels shall be allowed on any Lot.

3.20. Limits on Domestic Animals; No Commercial Animal Boarding. No more than three (3) domestic animals may be kept on any Lot subject to this Declaration. Commercial animal boarding, kenneling or treatment is expressly prohibited, whether for free or not, within the Property. Outdoor kennels are not allowed except with written approval from Developer or Association.

3.21. No Change in Elevations. The Owner of any Lot subject to this Declaration shall not change the elevation of any public utility or drainage easement, as shown on the final plat or otherwise recorded, in excess of six (6) inches without the permission of the Town and all of the applicable utilities and shall be responsible for any damages caused to underground utilities based on any changes in grade of more than six (6) inches. Costs associated with obtaining permission from the Town (such as the costs the Town incurs for engineering and legal review) shall be paid by the Owner.

3.22. No Re-Subdivision. No Lot as platted shall be re-subdivided. No boundary line within the Property shall be changed, except with the approval of the Developer or the Committee, whichever is then applicable, and approval of governmental authorities. This paragraph shall not be construed to prevent the use of one lot and part or all of another lot or lots as one building site.

3.23. Signage. No signs of any type shall be displayed to public view on any lot without the prior written consent of the Developer or the Committee, whichever is then applicable, except for (a) lawn signs of not more than eight (8) square feet in size advertising the property where located for sale, (b) signs erected by Developer, or its agents, advertising lots within the Property for sale, and (c) any entry sign for the Property erected by Developer pursuant to Sec. 2.6 of the Development Agreement for the Property.

3.24. Local Requirements. All buildings constructed on any lots subject to this Declaration shall conform to all governmental zoning, building code, and other ordinance requirements including all f dimensional and other requirements (including minimum setbacks) imposed by governmental ordinance and the recorded final plat, whichever is more restrictive.

3.25. Interference with Drainage and Stormwater Prohibited. No Owner of any Lot shall regrade or obstruct any swale, drainage way, drainage ditches or stormwater detention area, whether established by easement or not, which is in existence at the time of development on such Lot, so as to impede the flow of surface water across such swale, ditches or drainage way, or interfere with the proper functioning of any such swale, ditches, drainage way or storm water detention area, and no structure, planting or other materials shall be placed or permitted to remain within any such swale, ditches, drainage way or stormwater detention area. The road ditch area directly adjacent to an Owner's Lot shall be maintained and mowed as lawn by the Owner. An Owner who violates this provision may be liable for damages that said violation causes to third parties.

3.26. Landscaping Requirements. The following landscaping requirements apply to all Lots (other than Outlot 1) within the Property:

(a) All yards must be either (i) sodded or (ii) or seeded, fertilized and crimp mulched or covered with an erosion mat, including street terraces. The Lot Owner shall comply with all Town and Dane County erosion control requirements.

(b) Landscape plantings and maintenance of the premises and adjoining street terrace (area between public street pavement and Lot line) shall be the responsibility of the Lot Owner. Complete visual screening of the front, rear and side boundaries of the premises is prohibited without approval of the Developer or the Committee, whichever is then applicable, except as may be provided by existing trees and other vegetation that is retained.

(c) The landscaping plan for each Lot shall achieve a minimum of 500 landscaping points as determined by the following point schedule:

Point Value

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

Each Lot Owner that has existing, non-invasive trees with trunk diameter at breast height of four (4) inches or greater may request to the Developer or Committee (and such entity may grant) credit against the landscaping requirements in this paragraph for the preservation of such trees, provided that the landscaping, Lot grading, and home building plans include approaches and best practices for their preservation, and subject to the replacement requirement in Sec. 3.5 in the event such preservation fails.

3.27. Committee's Right to Review Plans. The Developer, after a period of ten (10) years from the date of recording the final plat or after the Developer and its representatives, successors and assigns, cease to have any title to any lot subject to this Declaration, whichever comes first, hereby assigns to the Committee all of Developer's rights to approve the plans, specifications, site, grading and landscaping plans, and all of the items set forth in Article 3 hereof.

3.28. Review of Plans. In the event the Developer or the Committee, whichever is then applicable, does not affirmatively approve or reject the plans, specifications and site, grading and landscaping plans, the prime contractor or builder, alterations, or any other matters which must be submitted to the Developer or Committee, within thirty (30) calendar days after the same have been submitted to the approving authority in writing, then such approval shall not be required in that instance. However, even though approval shall not be required, the standards established by this Article 3 shall continue to apply.

3.29. Stormwater Management Facilities. Lots within the Property are served by certain stormwater management facilities located within the Initial Phase. The homeowners association for the Initial Plat (Kennedy Hills Homeowners Association, Inc.) is responsible for maintaining such storm water management facilities in accordance with best management practices, the terms of the Dane County

stormwater management permit and erosion control permits issued with respect to the Property, the plans for the stormwater management facilities approved by Dane County and the *Agreement for Maintenance of Stormwater Management Measures* recorded in the Dane County Register of Deeds Office and applicable to the Initial Phase. Each Lot Owner within the Property subject to this Declaration shall be responsible for a proportionate share of the costs incurred by the Kennedy Hills Homeowners Association, Inc. in maintaining such shared stormwater facilities. Annually, the Kennedy Hills Homeowners Association, Inc. may send the Kennedy Hills First Addition Homeowners Association, Inc. a request for reimbursement of a proportionate share of the costs, together with copies of paid invoices reasonable substantiating the requested reimbursement. The proportionate share shall be a fraction, the numerator of which is the 20 (being the number of lots in the First Addition) and the denominator of which is 36 (being the total number of lots in the First Addition plus the total number of lots in the Initial Plat).

3.30. Exterior Lighting Standards.

(a) *Purpose*. The purpose of this section is to regulate the spillover of light and glare on adjacent lots (whether inside or outside the Property), operators of motor vehicles, and pedestrians in the vicinity of a light source in order to promote traffic safety and prevent the creation of nuisances. A further purpose of this section is to regulate outdoor night lighting fixtures to preserve and enhance the area's dark sky while promoting safety, conserving energy and preserving the environment for astronomy.

(b) *Applicability*. The requirements of this section apply to all exterior lighting located on a Lot. For the purpose of this section:

(1) "*Exterior lighting*" means an outdoor artificial illuminating device, whether permanent or portable, used for illumination or advertisement, including general lighting fixtures, searchlights, spotlights and floodlights, whether for architectural lighting, parking lot lighting, landscape lighting, signage or other purposes.

(2) "*Shielded*" means a fixture that is shielded in such a manner that light rays emitted by the fixture, either directly from the lamp or indirectly from the fixture, are projected at least fifteen degrees below a horizontal plane running through the lowest point on the fixture where light is emitted.

(c) *Requirements*.

(1) *Orientation of fixture*. All exterior lighting shall be shielded, except for fixtures with light output of 2600 lumens or less, . so that the lighting element (or a transparent shield) is not visible beyond the Lot line. The use of shielded lighting and careful fixture placement is required so as to facilitate compliance with this requirement.

(2) *Intensity of illumination and filtering*. In no instance shall the amount of illumination attributable to any exterior lighting, as measured at the Lot line, exceed 0.50 footcandles above ambient lighting conditions on a cloudless night. In addition to this requirement, all exterior lighting fixtures shall not exceed the illumination levels recommended by the Illuminating Engineering Society of North America (IES) as may be amended from time to time. All metal halide fixtures shall be filtered by a glass or acrylic enclosure. Quartz glass shall not be considered as meeting this requirement.

(3) *Location and quantity*. No light fixtures shall be located within five (5) feet of any lot line, and in no case shall a Lot have greater than fifteen (15) exterior light fixtures except between November 20 and January 20.

(4) *Flashing, flickering and other distracting lighting*. Flashing, flickering and/or other lighting which may distract motorists are prohibited.

(5) *Architectural lighting*. Under no circumstances shall the illumination of exterior architecture be permitted between 11:00 p.m. and 7:00 a.m. All exterior lighting during the permitted time period shall have a minimum of 90% of their light fall onto the illuminated structure rather than into sky or space beyond the structure.

(6) *Use of mercury vapor fixtures*. No mercury vapor exterior lighting fixtures shall be installed on a Lot.

3.31. Binding; Run with the Land. All of the covenants and conditions set forth in this Declaration shall run with the land and shall be binding upon and inure to the benefit of all persons having an interest in the Property for a period of thirty (30) years after the Plat is recorded, after which time this Declaration shall automatically stand renewed for successive five (5) year periods unless the same is cancelled as provided herein. If any person, or his/her heirs, successors or assigns, shall violate or attempt to violate any of the covenants and restrictions contained in herein, the Developer, the Committee or any person or persons owning any lot or lots within the Property, shall have standing to bring proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants or restrictions, and the prevailing party shall be awarded reasonable attorney fees and costs, and any person violating any of these covenants or restrictions shall be liable for all costs of removing any such violation.

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

(a) to assure the most appropriate development and improvement of the Property;

(b) to protect each Owner of a lot against improper uses by other lot owners;

(c) to preserve the beauty of the Property;

(d) to guard against the erection of poorly designed or poorly proportioned structures, or structures built of improper or unsuitable material;

(e) to encourage and secure the erection of attractive, adequate sized homes, which conform and harmonize in external design with other structures within the Property and which are properly located upon the lot in accordance with its topography and finished grade elevation; and (f) to provide for high quality improvements which will protect the investments of purchasers of lots on the Property and on adjacent lands.

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

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

3.35. Violations; Standing. If any Owner shall violate or attempt to violate any covenant or restriction with regard to drainage swales, ditches, drainage ways or easements, stormwater detention areas, use of public outlets or rights-of-way, maintenance or landscaping, or exterior lighting, or if any lot Owner responsible for specific duties with regard thereto shall fail to perform such duties, the Developer, the Committee, other Owners of Lots within the Plat and/or the Association *(see* Article 4) shall have standing to bring proceedings at law or in equity against the person or persons violating or attempting to violate such covenant or restriction or failing to perform such duties, and shall be awarded appropriate relief, including reasonable attorney fees and costs, to remedy said violation.

With respect to violations of any covenant or restriction contained in sections 3.6, 3.7, 3.10, 3.21, 3.24, 3.25, 3.28, 3.29, 3.30, 3.35, 3.36 and 3.37 or if any person responsible for specific duties with regard thereto shall fail to perform such duties, the Town of Cottage Grove shall have standing to bring proceedings at law or in equity against the person or persons violating or attempting to violate such covenant or restriction or failing to perform such duties, and shall be awarded appropriate relief, including reasonable attorney fees and costs, to remedy said violation.

3.36. Cancellation, Release, Amendment and/or Waiver of Article 3. Article 3 hereof, or any part thereof, may be cancelled, released, amended, or waived in writing as to some or all of the lots subject to this Declaration by an instrument signed by the Developer and the Owners of a majority of the lots (other than Outlot 1) subject to this Declaration, or if the Developer has released or assigned the Developers rights under Article 3 of this Declaration as provided, then by an instrument in writing signed by the Owners of a majority of the lots (other than Outlot 1) subject to this Declaration. Notwithstanding the foregoing, sections 3.6, 3.7, 3.10, 3.21, 3.24, 3.25, 3.28, 3.29, 3.30, 3.35, 3.36 and 3.37 hereof may not be cancelled, released, amended, or waived without the consent of the Town of Cottage Grove.

3.37. Notice of Right to Farm. NOTICE IS HEREBY GIVEN TO ALL OWNERS OF LOTS WITHIN THE SUBDIVISION THAT THE SUBDIVISION IS IN THE VICINITY OF LANDS WHICH ARE USED FOR AGRICULTURAL PURPOSES, WHICH MAY INVOLVE CROP AND ANIMAL PRODUCTION ACTIVITIES, THE USE OF MACHINERY AND EQUIPMENT, AND THE USE OF AGRICUTURAL FERTILIZERS AND PESTICIDES. AGRICULTURAL ACTIVITIES MAY INVOLVE THE CREATION OF DUST AND NOISE, AND THE PRESENCE OF STRONG ODORS. THE SUBDIVISON IS LOCATED IN AN AGRICULTURAL AREA AND RESIDENTS MUST EXPECT THAT CONDITIONS WHICH OCCUR IN AGRICULTURAL AREAS MAY OCCUR IN OR NEAR THE SUBDIVISION. WISCONSIN HAS ADOPTED A "RIGHT TO FARM" LAW WHICH PROVIDES LEGAL PROTECTION FOR AGRICULTURAL ACTIVITIES AGAINST LEGAL ACTIONS CLAIMING NUISANCE. ALL LOT BUYERS BY PURCHASING A LOT ACKNOWLEGE THIS NOTICE AND CONSENT TO SUCH ACTIVITIES.

ARTICLE 4

Kennedy Hills First Addition Homeowners Association, Inc.

Definitions

For purposes of Article 4 of this Declaration, the following terms shall be defined in the following manner:

4.1. "Association" shall mean and refer to Kennedy Hills First Addition Homeowners Association, Inc., its successors and assigns.

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

4.3. "Declaration" shall mean the Declaration of Covenants, Restrictions, Conditions and Easements for the Plat of Kennedy Hills First Addition, as it may from time to time be amended.

Association Membership and Board of Directors

4.4. Members. The Owner of each platted Lot (exclusive of Outlot 1) within the Plat of Kennedy Hills First Addition, Town of Cottage Grove, Dane County, Wisconsin, shall be a member of the Association. Where more than one person holds an ownership interest in any lot, all persons holding such interest shall be members. The members shall have such rights as are set forth herein, in the Articles and By-Laws of the Association, as amended from time to time, and as may be provided by the laws of the State of Wisconsin.

4.5. Board of Directors. The affairs of the Association shall be managed by the Board. The Board shall be selected in the manner, and shall have such duties, powers and responsibilities as are set

forth herein, in the Articles and Bylaws of the Association, as amended from time to time, and as may be provided by the laws of the State of Wisconsin, subject to the rights of Developer as set forth in such instruments. A current list of the members of the Board, with addresses and contact information, shall be provided to the Town Clerk annually on or before October 1st of each year.

Common Areas

4.6. Acquisition of Common Areas. The Association may take title from time to time to real property within the Plat of Kennedy Hills First Addition, Town of Cottage Grove, Dane County, Wisconsin, for the purpose of providing common areas for the use and benefit of the members. The Association shall have the right to exclusive management and control of all such common areas and all improvements thereon.

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

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

4.9. Entrance Sign. The Developer may install an entrance sign for the plat. All signage will be subject to review and approval by the Town of Cottage Grove and subject to Dane County's signage requirements, as applicable.

Association Assessments

4.10. Creation of Lien and Personal Obligation of Assessments. The Developer hereby covenants, and each Owner of any lot within the Property (other than Outlot 1) by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all assessments in the amount and manner hereinafter provided. All such assessments, together with interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and a continuing lien upon the Lot (but not Outlot 1) against which each such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the person who was the Owner of such lot (other than Outlot 1) at the time when the assessment became due and payable.

4.11 Creation of Assessments. Assessments shall be determined, established and collected each year, starting with the calendar year 2027 in the following manner:

(a) *Budget*. In December of each year, starting in December 2026, the Board shall determine a budget for the following calendar year, which shall include the costs to be incurred by the Association in connection with the maintenance, improvement and operation of common areas, payment of taxes and insurance, and other costs connected therewith, including a reasonable reserve for depreciation and reimbursement of any storm water maintenance costs owed to the Kennedy Hills Homeowners Association, Inc. as contemplated in Section 3.29 above. Such budget shall be approved by a vote of two thirds (2/3) of the Board on or before the last day of December each year. For the calendar years of 2025 and 2026, the Developer shall be responsible for all typical costs.

(b) *Limitation on Assessments*. The maximum annual assessment which may be authorized under this Article shall be $100.00 for each lot to which the Association has the power to make assessments hereunder or under other comparable instruments (excluding outlets), until the actual annual costs of maintenance, improvement and operation of common areas, and payment of taxes,

insurance and other costs associated therewith, including a reasonable reserve for depreciation and reimbursement of shared stormwater maintenance costs, shall exceed the annual revenue generated by an assessment of $100.00 per Lot, in which event the maximum assessment per Lot shall be such actual costs of maintenance, improvement and operation of common areas, and payment of taxes, insurance and other costs associated therewith, including a reasonable reserve for depreciation, and reimbursement of shared stormwater maintenance costs, divided equally among all Lots as to which the Association has the power to make assessments hereunder or under other comparable instruments (excluding Outlot 1). In determining the annual costs of maintenance, improvement and operation of common areas, the Board shall review competing bids for the cost of such work prior to determining the budget and level of assessments.

(c) Declaration of Assessments. The Board shall declare assessments so levied due and payable thirty (30) days from the date of such levy. The Board shall notify each Owner of the action taken by the Board, the amount of the assessment against the lot owned by such Owner and the date such assessment becomes due and payable. Such notice shall be mailed to the Owner at the last known post office address by United States mail, with postage prepaid, or be personally delivered to the Owner.

(d) Collection of Assessments. In the event any assessment levied against any lot remains unpaid for a period of sixty (60) days from the date of the levy, the Board may, in its discretion, file a claim for a maintenance lien against the lot for which payment is not made, and upon compliance with the provisions of Section 779.70, Wisconsin Statutes, or other applicable authority, such claim shall be and become a lien against such lot. The claim shall thereafter accrue interest at the rate of interest payable upon legal judgments in the State of Wisconsin, and the Board may exercise such remedies to collect such claim as may be afforded by law. The Owner of the subject lot shall be responsible for all costs of collection incurred by the Association in connection therewith. No Owner may waive or otherwise escape liability for the assessment provided for herein by nonuse of any common areas or abandonment of his or her lot.

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

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

4.13. Cancellation, Release, Amendment or Waiver. Article 4 hereof, or any part thereof, may be cancelled, released, amended or waived in writing as to some or all of the lots subject to this Declaration by an instrument signed by the Developer and the Owners of a majority of the Developer's rights under Article 3 of this Declaration as provided herein, then by an instrument in writing signed by both (a) the Owners of a majority of the lots (other than Outlot 1) subject to this Declaration, and (b) a majority of the Board of the Association. Notwithstanding the foregoing, sections 3.6, 3.7, 3.10, 3.21, 3.24, 3.25, 3.28, 3.29, 3.30, 3.35, 3.36 and 3.37 hereof may not be cancelled, released, amended, or waived without the consent of the Town of Cottage Grove.

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

[Signature pages follow.]

Executed in Dane County, Wisconsin, on this ____ day of _____, 2025.

DEVELOPER
DUNROVEN RIDGE, LLC

By: _____
Cory K. Clemens
Its: Manager

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Personally came before me this _____ day of _____, 2025, the above-named Cory K. Clemens, to me known to be the person who executed the foregoing instrument and acknowledged the same on behalf of _____ _____.

_____

Notary Public, State of Wisconsin
My Commission Expires: _____

This document was drafted by:
Atty. Daniel A. O'Callaghan
Carlson Black O'Callaghan & Battenberg LLP

Approved by the Town Board of the Town of Cottage Grove on the ___ day of _____, 2025, and hereby acknowledged as to sections 3.6, 3.7, 3.10, 3.21, 3.24, 3.25, 3.28, 3.29, 3.30, 3.35, 3.36, 3.37 and 4.5, which shall not be cancelled, released, amended, or waived without the consent of the Town of Cottage Grove.

Executed in Dane County, Wisconsin, on this _____ day of _____, 20____.

TOWN OF COTTAGE GROVE

By: _____
Kris Hampton, Town Chairperson

Attest: _____
Kim Banigan, Town Clerk

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Personally came before me this _____ day of _____, 2025, the above-named Kris Hampton and Kim Banigan, Chairperson and Clerk of the Town of Cottage Grove, respectively, to me known to be the persons and officers who executed the foregoing instrument and acknowledged the same as such officers by the Town's authority.

_____

Notary Public, State of Wisconsin
My Commission Expires: _____

Exhibit A

Legal Description of Property

Lots 17-36, Outlot 1, Plat of Kennedy Hills First Addition, Town of Cottage Grove, Dane County, Wisconsin.

Parcel Identification Number(s):

_____

ORDINANCE OF THE TOWN OF COTTAGE GROVE, WISCONSIN
Adopted pursuant to Sec. 25.01 of the Town of Cottage Grove Code

Title: Ordinance 2025-04-07 adopting revisions to the Town Code of Ordinances

Code Section(s) created, amended, or repealed	08.02, 08.03, 09.05
Presented to Board by	Highway Superintendent, Clerk-Treasurer, Town Engineer (08.02) Town Attorney (09.05)
Committee Review by	None
Date(s) Public Hearing(s) held (if required)	March 17, 2025
Date adopted	April 7, 2025
Vote	April 7, 2025
Date of posting of adoption of ordinance	April 9, 2025
Date of publication of adoption of ordinance	April 12, 2025

The Town Board of the Town of Cottage Grove does ordain as follows:

TCG Ord. subsection 08.02 (2)(b) and (c) are hereby amended and Figure 1 is added to read as follows:

(b) Each driveway which serves a dwelling, commercial building, agricultural building, swimming pool, garage or other outbuilding, which is more than 100 feet but less than 200 feet in length shall be constructed and maintained with:

1. A stabilized base of compacted rock, 6 inches or more in depth;
2. An all-weather roadway of compacted road gravel, asphalt or concrete, 2 inches or more in depth and 16 feet or more in width;
3. An area 8 feet or more from each side of the ~~centerline~~ edge of the driveway, and a full-width overhead clearance of 14 feet or more in height, free of encroachments, as described in § 86.04, Wis. Stats.;
4. Adequate drainage, including side ditches as necessary; and
5. A grade of 12 percent or less.

(c) ~~In addition to the requirements of (b), e~~Each driveway which serves a dwelling, commercial building, agricultural building, swimming pool, garage or other outbuilding, which is 200 feet or more in length shall be constructed and maintained with:~~in accordance with the design standards, as described in § 82.50(1)(b), Wis. Stats., with the exception that the driveway need not be dedicated to the town. Driveways 200 feet or more in length shall have an area of 6 feet or more from eachside of the edge of the driveway free of encroachments, as described in § 86.04, Wis. Stats.~~See Figure 1 for cross-section details.

1. A stabilized base of compacted 12 inches or Breaker Run and 6 inches or more in depth of 3/4 " aggregate;
2. An all-weather roadway of compacted road gravel, asphalt or concrete, 2 inches or more in depth and 18 feet or more in width;
3. An area 6 feet or more from each side of the edge of the driveway, and a full-width overhead clearance of 14 feet or more in height, free of encroachments, as described in § 86.04, Wis. Stats.;
4. Adequate drainage, including side ditches as necessary; and
5. A grade of 11 percent or less.

Explanation: To clarify specifications for driveways over 100 feet in length.

TCG Ord. Section 08.03 Exhibit A is hereby created/amended to read as follows:

08.03 RIGHT-OF-WAY PERMITS EXHIBIT A RIGHT-OF-WAY PERMIT FEES, DEPOSITS AND STANDARDS		
CALCULATION OF PERMIT FEES:	**QUANTITY @ $ PER**	**AMOUNT**
A base fee for permit to work in Town road right-of-way is to be paid per permit prior to commencement of work.	$55	$_____
Borings, trenching (small trenching projects) or plowing fees apply to all borings, whether under the Town roadway or parallel to the Town road (such as a boring in the drainage ditch). The Town will need to review and monitor all boring, trenching or plowing to determine that the proposed location(s) are the best available locations in terms of the public interest in the project.	_____ @ $45 per boring/trenching/plowing	$_____
An open cut pavement fee applies any time roadway pavement is impacted. If the opening is not large enough for a roller compactor to be used, then a Type II patch shall be applied. (Type II patch detail drawings are available from the Town.) If the Applicant wishes to use an alternate patch type, the alternate must be approved by the Town Engineer. The Applicant shall pay the costs incurred for the Town Engineer's review of patches other than the Type II patch.	_____@ $220 per open cut	$_____
A trenching fee is required for any trench in excess of 1,320 feet (large trenching projects)	_____@ $110 X # of lineal feet/1,000	$_____
A construction of vault or other structure fee is required for vaults or other structures placed in the right-of-way. It does not apply to utility pedestals that are not installed on a concrete base. All structures should be placed at the right-of-way line and/or adjacent to existing structures, and have a 4' above ground marking stake attached.	_____@ $110 per vault/structure	$_____
	Subtotal	$_____
For use by Permitting Authority Only		
Engineering fees: When Town Engineer review is needed, as requested by the Highway Superintendent, and approved by either the Town Board or the Town Chair, the Applicant shall pay all such fees incurred within 30 days of the invoice to the Applicant. Prepayment may be required in an amount and as determined by the Town Clerk, following consultation with the Town Chair.	All fees incurred by Town; prepayment of estimate may be required. Actual amount will be billed to the applicant if it exceeds the estimate, any excess deposit will be refunded	Pre-payment required $_____
DEPOSIT TO ASSURE PROPER CONSTRUCTION, COMPLETION, RESTORATION AND ABSENCE OF DAMAGES (see TCG s. **Error! Reference source not found.**)		$_____
TOTAL FEES AND DEPOSIT DUE PRIOR TO COMMENCEMENT OF WORK		**$_____**
Notes regarding restoration: All affected areas must be restored to a condition as good or better than existed prior to disruption. Restoration of trench walls shall be sloped (rather than vertical) and trench compaction shall be as good as prior to disruption. The Permit Holder shall re-use native fill materials below the pavement to the full extent possible to avoid possible differential frost heave. The Permit Holder shall notify the Highway Superintendent upon completion of work. If restoration is not complete to the satisfaction to the Highway Superintendent or Town Engineer within 5 days of the completion of work, the Town may cause such restoration to occur and use the Permit Holder's deposit to pay for any costs incurred by the Town to complete the restoration.		

Explanation: To provide a visual to mower and snowplow operators

TCG Ord. subsection 09.05(1) shall hereby be revised to read as follows:

(1) PARKING WITHIN THE RIGHT-OF-WAY

(a) No person shall park a vehicle, including, but not limited to: motor vehicles, agricultural equipment, busses, recreational vehicles, mobile and modular homes, trucks and trailers, on the pavement of any ~~highway~~ public road within the Town limits, for any period of time that would create a hazard to other persons using the ~~highway~~public road; without obtaining prior written authority to do so, from the police department.

(b) No person shall park any vehicle within the right-of-way of any ~~highway~~ public road within the Town limits, for more than 24 consecutive hours; without written authorization from the police department.

(e) Snow emergency declarations. The Town Board hereby declares that a snow emergency exists in the Town whenever a snowfall during any period of 24 hours or less reaches a depth of three inches or more. Such emergency is declared to be a serious public hazard impairing transportation and public health, safety, and welfare for a period until such time as snow removal operations have been completed. No person shall park any vehicle on any public road during a snow emergency and for a period of 24 hours thereafter (ie. from the time three inches of snow accumulates within a 24 hour period and for the next 24 hours).

All other provisions of the Code of Ordinances not specifically amended herein shall remain unmodified and in full force and effect. This Ordinance shall take effect upon passage and publication as provided by law.

Adopted this 7th day of April, 2025, by a vote of 5 for, 0 against, with 0 abstentions.

TOWN OF COTTAGE GROVE

Kris Hampton, Town Chair

ATTEST:

Jennifer Millage, Deputy Clerk