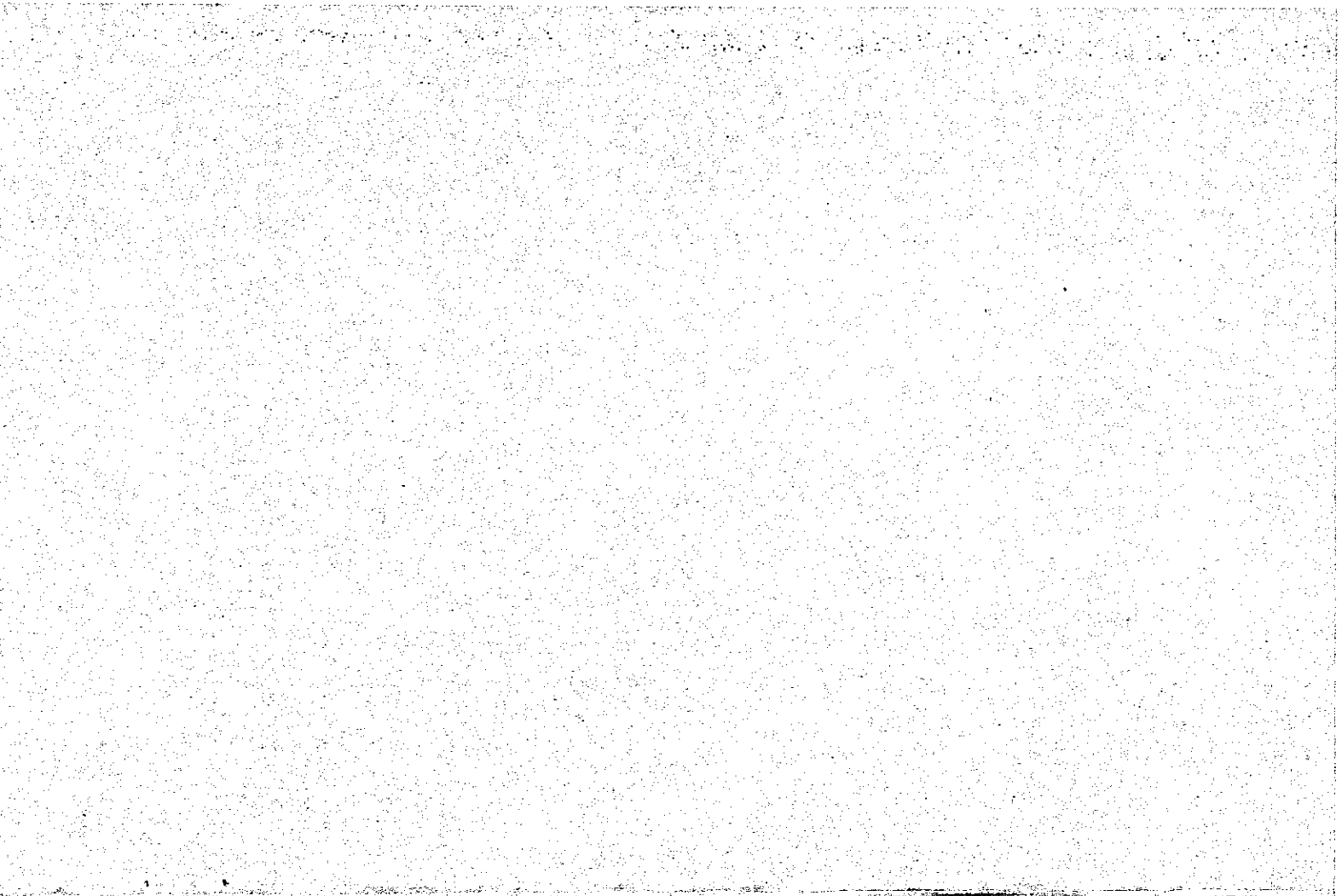




**HIGH  
POINT  
ESTATES**  
**PROTECTIVE COVENANTS**

**March, 1997**



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DOCUMENT # 2099688

DECLARATION OF PROTECTIVE COVENANTS  
FOR  
HIGH POINT ESTATES

THIS DECLARATION, made this 19th day of August, 1988, by WELTON ENTERPRISES, INC. ("Developer")

WITNESSETH:

WHEREAS, the Developer now owns certain lands in the city of Madison, Dane County, Wisconsin (The "City") which have been platted as "High Point Estates" and which are legally described on Exhibit A attached hereto and made a part hereof (the "Subdivision"); and

WHEREAS, the Developer desires to subject the Subdivision to the conditions, restrictions, covenants and reservations set forth below, which shall encumber the Subdivision and each lot thereof, and shall bind the successors in interest, any owner thereof, and the owner of any interest therein.

NOW, THEREFORE, Developer declares that the Subdivision and each Lot thereof shall be used, held, sold and conveyed subject to the conditions, restrictions, covenants and reservations set forth below, which shall inure to the benefit of, and encumber the Subdivision and each Lot thereof, and run with the land, and shall bind the successors in interest, any owner thereof, and the owner of any interest therein.

ARTICLE I

STATEMENT OF PURPOSE

1.01 General Purpose: The general purpose of this Declaration is to help assure that the Subdivision will become and remain an attractive community; to preserve and maintain the natural beauty of the Subdivision; to insure the most appropriate development and improvement of each Lot; to guard against the erection thereon of poorly designed or proportioned structures; to obtain harmonious improvements and use of

material and color schemes; to insure the highest and best residential development of the Subdivision; and to encourage and secure the construction of attractive residential structures thereon.

1.02 Architectural Control. No building or other improvement shall be erected, placed or altered on any lot until its construction plans and specifications shall have been approved in writing by the Committee.

## ARTICLE II

### DEFINITIONS

The following definitions shall be applicable to this Declaration:

2.01 Association. The High Point Estates Home Owners Association, Inc., a Wisconsin nonprofit, nonstock corporation, its successors and assigns.

2.02 City. The City of Madison, Wisconsin.

2.03 Committee. The Architectural Control Committee described in Section 3.01(a).

2.04 Common Areas. All real property owned by the Association for the common use and enjoyment of the Owners, which real property shall include lands conveyed to the Association by Developer, for the common use of the Owners.

2.05 Declaration. This Declaration of Protective Covenants.

2.06 Developer. Welton Enterprises, Inc., its successors and assigns.

2.07 Dwelling. The detached single-family dwelling referred to in Section 5.01.

2.08 Lot. A portion of the Subdivision identified as a lot on the recorded Plat of High Point Estates, specifically excluding

Outlots.

2.09 Owner. The person or persons, including any business organization, having the power to convey the fee simple title to a given lot.

2.10 Register of Deeds. Office of Register of Deeds for Dane County, Wisconsin.

2.11 Subdivision. The lands described on Exhibit A, as the same may be expanded from time to time pursuant to Section 11.05.

ARTICLE III

ARCHITECTURAL CONTROL COMMITTEE

3.01 Establishment, Duties, Membership

(a) There shall be an Architectural Control Committee, which shall have the rights and obligations set forth in this Declaration for the Committee and any powers necessary to exercise those rights.

(b) The Committee shall consist of no fewer than three (3) and no more than five (5) persons designated by Developer, one of whom shall be an officer or employee of Developer (the "Developer Member") and the remainder of whom shall be persons with expertise in architecture, construction, landscape architecture, land development, or design. All members of the Committee shall serve at the Developer's pleasure (until such time as Developer no longer owns any Lots in the Subdivision). A majority of the Committee (including the Developer Member) may designate a representative to act for it, in which case such representative shall have and may exercise all of the powers of the Committee until such designation has been revoked by a majority of the Committee. Notwithstanding the foregoing provisions, at such time as Developer no longer owns any Lot subject to this Declaration, the Developer and Committee members who are appointees of

Developer shall, within thirty (30) days thereafter, resign from the Committee. Thereafter, the directors of the Association shall elect the members and fill vacancies on the Committee. In the event of any vacancy, Developer shall, within thirty (30) days thereafter, appoint a new member to fill the vacancy on the Committee. A member of the Committee may resign by submitting a written resignation to the address to which submissions to the Committee are to be sent under Section 3.02. For the purpose of this Article, each Lot shall constitute a unit having a single vote.

(c) In applying the standards set forth in Section 3.03, the Committee shall consider the recommendations of the Builder's Committee regarding architectural design.

**3.02 Procedure.** An Owner desiring to construct a building or otherwise improve a Lot shall submit to the Committee, for its written approval, construction plans and specifications for all improvements, and a plot plan showing the location of all contemplated improvements. The items submitted to the Committee shall include:

- (a) Construction details for all buildings structures, fences, walls and other improvements;
- (b) Proposed facades of any building, including the style, color and location of eaves and windows;
- (c) Description of materials to be used in any building or improvement;
- (d) The color scheme of all improvements;
- (e) Detailed landscape plans and specifications, which shall show trees to be removed, existing trees, their species, size and location, and the size and location of proposed trees, shrubs, fences, berms, walls, patios, bedding plantings, and other landscape materials (a prototype landscape plan is attached as exhibit C), together with a point total computed under Section 4.10(f); and

(f) Such other materials as the Committee may deem necessary.

All structures shall be designed by a registered architect, a professional engineer experienced in home design, or comparable qualified individual or firm. A submission will not be complete and the thirty (30)-day approval time set forth below shall not commence until all documents required in this Section 3.02 have been submitted. All such submissions shall be to Developer at its principal place of business (or, if Developer ceases to be a member of the Committee, such other address that the Committee may designate), together with any applicable fee required under Section 3.05. Developer shall then call a meeting of the Committee to consider such plans and specifications. Action of the Committee shall be by majority vote of the Committee members present at such meeting. A tie vote on an issue shall be deemed equivalent to rejection. The Committee, with the unanimous written consent of at least four of its members (including the Developer Member), may take action without a meeting. The Committee may approve, disapprove or approve subject to stated conditions the preliminary and final development plans. If the Committee conditionally approves either the preliminary or final development plans, then the applicant shall be entitled to resubmit such plans. The Committee's decision shall be in writing, signed by two or more Committee members. If the Committee fails to render its decision on the preliminary or final development plans within thirty (30) days of their submission, or upon any resubmitted preliminary or final development plans within fifteen (15) days of their resubmission, approval will be deemed to have been obtained and the applicable covenants, conditions and restrictions in this Declaration shall be deemed to have been complied with. If such plans are not rejected, then the owner of the Lot shall construct the improvements materially in accordance with the submitted documents. All material changes to such plans must be resubmitted to, and approved by, the Committee. Any changes to such plans that would lessen the quality or expense of the construction as previously approved shall be deemed to be material changes.

**3.03 Standards.** The Committee shall have the right to reject any plans and specifications or plot plans which, in the

judgment and sole opinion of a majority of its members, or the representative of the Committee:

- (a) are not in conformity with any of the restrictions set forth in this Declaration; or
- (b) are not desirable for aesthetic reasons; or
- (c) are not in harmony with buildings located on the surrounding lots; or
- (d) have exterior lighting, exterior signs, exteriors television antennae, fencing or landscaping which are not desirable for aesthetic reasons; or
- (e) are not in conformity with the recommendations of the Builders' Committee; or
- (f) are not in conformity with the general purposes of this Declaration.

3.04 Occupancy. No structure shall be occupied unless it has been approved by the Committee pursuant to Section 3.02 hereof, constructed in accordance with the plans as approved by the Committee, and an occupancy permit has been issued therefor.

3.05 Fees. The Committee, by majority vote, shall from time to time adopt a fee schedule designed to defray the Committee's out-of-pocket costs incurred in connection with its review of any preliminary or final development plan or of any resubmission of any such plans and may be adjusted at any time by the Committee.

3.06 Approval of Contractors. 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 Committee prior to commencement of any construction. Such approval may be withheld for reasons such as the proposed contractor's or builder's financial status or building reputation.

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

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

#### ARTICLE IV

#### ARCHITECTURAL RESTRICTIONS

4.01 Front and Side Yard Requirements. No building of any part thereof shall be located closer to the front Lot line than the minimum number of feet stated in Exhibit B. No building front yard setback shall be more than fifteen feet more than the minimum. No building or any part thereof shall be located closer to the side Lot line than the minimum number of feet stated in Exhibit B. Where more than a single Lot is acquired for construction purposes, the side Lot line shall refer to the boundary bordering the adjoining property owner. Notwithstanding the foregoing, on Lots 70 through 93, inclusive, in addition to the side yard setback requirements of Exhibit B, a minimum of 25 feet must be kept between houses when constructing a house on a Lot adjoining a Lot with a house already started or completed.

4.02 Floor Area Minimums. Each Dwelling constructed on a Lot shall have minimum floor areas of finished living space according to those stated in Exhibit B.

- (a) Open porches, screened porches, patios, attached garages, and all basements whether finished or not are not to be included as part of the total area. Stair openings shall be included in determining floor area.

(b) The main level is defined as the level that is totally above the finished grade of the Lot.

4.03 Building Materials. The following standards shall be adhered to in relation to all designs and construction to preserve the initial and improve beauty of the Plat.

(a) If a chimney is in the front two-thirds of the Dwelling it must be made of brick, stone or stucco.

(b) All chimneys and flues shall be fully enclosed.

(c) Aluminum and vinyl siding shall be limited.

(d) No plywood siding shall be allowed.

(e) All fascia must be at least ten inches in width. No aluminum fascia shall be allowed.

(f) All roofing shall be of laminated architectural grade textured fiberglass, asphalt shingles, wood shakes, or other acceptable material. No standard 3 in 1 shingles will be allowed.

(g) The roof pitch must be no less than six inches in every twelve inches.

It is the intent of the Developer to coordinate trim, siding and roofing colors to provide the most aesthetic combination for a particular Dwelling as well as for the overall development of the Subdivisions.

4.04 Building Elevations. All elevations of the building shall be designed in a consistent and coherent architectural manner. Changes in material, color and/or texture shall occur at points relating to the massing, fenestration, and overall design concept of the building.

4.05 Building Location. All buildings should be sited on the Lot to present their most desirable face to the street and where possible should be related to buildings on adjoining Lots.

The Committee may check sight lines based on proposed structure location to minimize the structure's obstruction of views from neighboring lots.

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

4.07 Fencing. Fences shall not be allowed, except for screening of service areas, without the prior written consent of the Committee.

4.08 Mailboxes and Exterior Yard Lights. The Developer shall provide to each home a mailbox, newspaper tube, and post to be installed by the builder on the lot in accordance with the United States Post Office Department regulations. Each Owner at his or her expense shall install a post light approved by the Committee for the front yard. Each light shall use only a direct wire and shall be controlled by a photo cell. Each Owner shall be responsible for the maintenance of the fixture.

4.09 Use of Outbuildings. No trailer, basement, tent, treehouse, shack, detached garage, barn or outbuilding, or any part thereof, shall be erected or permitted to remain on any lot, temporarily or permanently, except for construction trailers during the period of construction.

4.10 Landscaping. The following are the minimum landscaping requirements:

(a) All plantings to be placed upon the lot shall be planted within thirty days of occupancy of the Dwelling or upon completion of construction, whichever comes first, except that sodding, seeding, and planting new vegetation shall not be required during any period in which winter weather conditions restrict the ability to complete the planting.

(b) No planting shall be permitted within an easement of record which may damage or interfere with the installation and maintenance of utilities or which may alter the direction or impede the flow of surface water in drainage

channels within the easement.

(c) No Owner shall grade or obstruct any swale or drainage way whether in an easement or not which is in existence at the time of construction so as to impede the flow of surface water from other Lots through such swale and drainage way. The elevation of a Lot shall not be changed so as to materially affect the surface elevation, grade, or drainage pattern of the surrounding Lots. Any modification to drainage patterns shall be approved by the Committee and the City of Madison Engineer.

(d) Upon completion of construction or within 30 days of occupancy, all front and side yards which are not covered with any plantings shall be sodded and fertilized and all rear yards shall be sodded and fertilized or fertilized, seeded and mulched. This shall also include the terrace area within the street right of way.

(e) A minimum of four conifers shall be planted on each Lot including one in the front yard. The size of these trees shall range from five to eight feet.

(f) In addition to the requirements in subparagraph (e) above, the landscaping plan for Lots 1 through 11, 14 through 36, 46 through 49, 60, 65 through 67, and 97 through 122 shall achieve a minimum 1300 landscape points, and Lots 12, 13, 37 through 45, 50 through 64, and 68 through 96 shall achieve a minimum of 1700 landscape points as determined by the following point schedule:

<u>Landscape Element</u>	<u>Point Value</u>
(A) Small Shade Tree (balled and burlaped) (1-1/2" - 2" Caliper at 6 inches)	50
(B) Medium Shade Tree (balled and burlaped) (2-1/2" - 2" Caliper at 6 inches)	100
(C) Large Shade Tree (balled and burlaped) (3 - 4" Caliper at 6 inches)	150

(D)	Extra Large Shade Tree (balled and burlaped) (greater than 4" Caliper at 18 inches)	200
(E)	Small Evergreen Tree (3 - 4-1/2 feet in height)	25
(F)	Medium Evergreen Tree (5 - 6-1/2 feet in height)	50
(G)	Large Evergreen Tree (7 - 8 feet or more in height)	100
(H)	Evergreen Shrubs (minimum of 18 inches in diameter)	20
(I)	Small Deciduous Shrub (18 - 35 inches in height)	10
(J)	Medium Deciduous Shrub (18 - 35 inches in height)	15
(K)	Large-Scale Shrub (balled and burlaped) (60 inches or greater in height)	25
(L)	Decorative Wall (per face feet) (Note: materials for walls may include boulders and timber, but not cement.)	5
(M)	Decorative Fence (per linear foot)	1
(N)	Earth Berm (per linear foot)	1
(O)	Paver Stone Walk or Patio (per square foot) (Note: driveways constructed of paver stones will not constitute landscaping.)	1

(g) The final point totals must come from a balanced variety of the listed elements acceptable to the Committee.

(h) The Developer encourages the use of plantings and various landscaping materials in excess of the required minimums, but the overall plan should adapt to the surrounding topography.

(i) The maintenance of the plantings and yard areas is the responsibility of the Owner. Any trees which die shall be removed by the Owner and replaced with a similar variety of approximately the same size as the trees or shrubs removed.

(j) Due to the wooded nature of lots 108 through 117, the following guidelines shall be followed to help preserve the maximum number of mature healthy trees on each Lot:

(i) Trees which have a good chance of long-term survival should be selected. The Owner should consider tree species, age, projected lifespan, susceptibility to disease, etc.

(ii) The Owner should consider construction requirements to save only those trees which have a good chance of survival, and should avoid crowding several trees in hopes of miraculous survival. The Owner should pick the good trees that can be well-protected and remove the marginal ones prior to construction.

(iii) The Owner should provide protection during construction to protect tops and root zones from grading, trenching, filling, compaction by vehicle traffic and erosion. This should include fenced construction limits, erosion control, and immediate removal of excess excavated materials.

(iv) The Owner should provide good tree care, including careful removal of unwanted trees, trimming of those to be kept, and fertilization appropriate to the timing, of possible construction damage. Construction in oak woods, especially tree trimming or removal, should be done

during the dormant season to prevent infection and spread of the oak wilt fungus.

(k) The eastern twenty (20) feet of Lots 1, 3, and 122 and that portion of Lots 83 and 84 designated on the Plat of High Point Estates as subject to a planting and sign easement shall be landscaped by Developer and maintained thereafter by the Association, as described in Section 7.07, and the Owners of those Lots shall not alter such landscaping except pursuant to plans approved by the Committee.

4.11 Construction Deadline. Each residential structure erected shall have its entire external construction completed within twelve (12) months from the date of issuance of the building permit except for delays in completion due to strike, war, or act of God.

4.12 Driveways. All driveways from the garage to the public street shall be paved with bituminous concrete (asphalt) or concrete (cement) within thirty (30) days of occupancy or upon completion of construction, whichever comes first, unless winter weather conditions restrict the Owner's ability to complete such construction.

4.13 Variations. The Committee is authorized to grant variations from any provision of this Declaration where such variations will assist in carrying out the intent and spirit of this Declaration and where strict application of the provision would result in a particular hardship to the person seeking the variance.

4.14 Inspections. The Committee and its designated representatives shall have the right to inspect the construction of any improvements to any Lot, without notice and during regular business hours, to ensure that all construction is performed in accordance with the plans and specifications previously approved by the Committee.

ARTICLE V

USE RESTRICTIONS

5.01 Single-Family Residences. Each Lot shall be used for single family residential purposes, with the following as exceptions.

(a) Lots 1 through 6, 121, and 122 may be used for other than single-family residences so long as the purposes for which they are used have been approved in advance by the Committee.

(b) The Committee may approve the use of one or more Lots for churches or educational facilities if, in the Committee's discretion, the churches or educational facilities are architecturally compatible with the Subdivision.

(c) The Committee may approve use of one or more Lots as a swimming pool or tennis complex, provided a majority of the Owners have agreed in writing to the construction of such a facility.

(d) Lot 76 may be improved as a roadway, as described in Section 7.08.

A Lot shall be deemed to be used for "single-family residential purposes" if it is occupied by no more than one family (defined to include persons related by birth, marriage or adoption) plus no more than one unrelated person. No structures shall be erected, altered, placed or permitted to remain on any Lot or part thereof other than one detached single-family dwelling not to exceed two stories in height, and a private garage attached to said dwelling for not less than two cars, nor more than four cars. No business, whether or not for profit, including, without limitation, any day care center, animal boarding business, products distributorship, manufacturing facility, sales office, or professional practice, may be conducted from any Dwelling.

5.02 Signs. No sign of any kind shall be displayed to the public view on any Lot except one professional sign of not

more than six square feet advertising the Property for sale during the hours of open house showings only, or signs provided and allowed exclusively by the Developer for builders or licensed real estate brokers during the initial construction and sales periods. The Developer reserves the right to erect monuments surrounded with landscaping at the entrances to the Subdivision on Lots 3, 83, 84 and 122 to identify the Subdivision and to erect appropriate signage for the sales of Lots.

5.03 Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or waste. All clippings, rocks, or earth must be in containers. No outlots shall be used for dumping.

5.04 Storage. Outdoor storage of vehicles, boats, or any other personal property shall not be permitted. The parking of service vehicles owned or operated by the Lot Owners and their families is prohibited unless they are kept in garages. The storage of automobiles, boats, travel trailers, mobile homes, campers, snowmobiles, motorcycles or any other recreational vehicles is prohibited unless kept inside garage. This shall not prohibit the temporary parking of such vehicles for the purpose of loading and unloading. No exterior antennas, windmills or satellite dishes shall be erected on any structure or Lot without the prior written approval of the Committee. No firewood or wood pile shall be kept outside a structure unless it is neatly stacked, placed in a rear yard or a side yard not adjacent to a street, and screened from street view by plantings or a fence approved by the Committee. Nothing set forth in this Section 5.04 shall prohibit temporary storage of moving vehicles for the purpose of loading or unloading for a period of more than eight (8) hours. No cars or other equipment may be parked on any yard at any time.

5.05 Nuisance Prohibited. No noxious or offensive trade or activity shall be carried on which may be or will become a nuisance to the neighborhood. No wood piles be kept outside a structure unless they are neatly stacked, placed in the rear yard only, and screened from view by plantings or a fence approved by the Committee. All areas of the Lot not used as a building site or lawn or under cultivation (such as a vegetable garden) shall be so cultivated or tended as to be kept free from noxious weeds. The Owner of each Lot shall be responsible for

maintaining the lot in a neat appearance. This Covenant should not be construed to prevent a family garden or orchard, provided that all vegetable gardens and orchards shall be located in the rear yard.

5.06 Pets and Animals. A maximum of two domestic animals (dogs and cats) may be housed in the Dwelling, except for pitbulls which are not allowed. No commercial boarding shall be allowed. Kennels shall be inside the Dwelling unless otherwise approved by the Committee.

#### ARTICLE VI

#### ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

6.01 Members. Every Owner in fee simple of that Lot shall automatically be deemed to be a member of the High Point Estates Home Owners Association, Inc., a Wisconsin non-profit, non-stock corporation (which together with its successors and assigns, is referred to herein as the "Association"). The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

6.02 Voting. The Association shall have two classes of voting membership:

(a) Class A. Class A members shall be all Owners of Lots, with the exception of the Developer. Class A members shall be entitled to one vote for each such Lot owned. When more than one person holds any interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

(b) Class B. The Class B members shall be the Developer. The Class B member shall be entitled to two (2) votes for each Lot owned. The Class B member shall terminate and

be converted to Class A membership upon the happening of either of the following events, whichever occurs earlier:

- (j) The Developer shall have notified the Board of Directors of the Association in writing that no further properties will be brought within the jurisdiction of the association, by the recording of amended or supplemental declaration under Section 11.05 and the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership, or
- (k) on the thirtieth (30th) anniversary of the date this Declaration is recorded.

#### ARTICLE VII

#### COMMON AREAS

7.01 Obligations of the Association. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for enforcing this Declaration and for the exclusive management and control of the Common Area and all improvements thereon (including furnishing and equipment related thereto, if any), and shall keep the same in good, clean, attractive and sanitary condition, order and repair.

7.02 Member's Easement of Employment. Subject to the provisions herein, every Owner shall have a right to easement of employment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, and every Member shall have a right of enjoyment in the Common Area.

7.03 Extent of Owner's Easements. The Owner's easements of enjoyment created hereby shall be subject to the following:

- (a) The right of the Association to establish reasonable rules regulating use of the Common Area, including the right of the Association to suspend the right of an Owner to use Common Area facilities, if any, for any period during

which any assessment against his or her Lot remains unpaid for more than 30 days after notice, or for violation of the Association rules;

(b) The right of the Association to mortgage any or all of the Common Area for the purpose of financing improvements or repair to Association property pursuant to approval of the Class B member and of two-thirds of the votes of the Class A members who are voting in person or by proxy at a regular meeting of the Association or at a meeting duly called for this purpose;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by the Class B members and two-thirds of the Class A members agreeing to such dedication or transfer has been recorded.

**7.04 Delegation of Use.** Any Owner may delegate his or her right of enjoyment to the Common Area and facilities to the members of his or her family and to his or her guests subject to such general regulations as may be established from time to time by the Association.

**7.05 Damage or Destruction of Common Area by Owner.** In the event any Common Area is damaged or destroyed by an Owner or any of his or her guests, tenants, licensees, agents or member of his or her family, such Owner does hereby authorize the Association to repair said damaged area; the Association shall repair said damaged area in a good workman-like manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association in the discretion of the Association. The amount necessary for such repairs shall become a special assessment upon the Lot of said Owner.

**7.06 Conveyance of Common Area to Association.** Developer covenants that it will convey to the Association as and

for Common Area, Outlots 1, 2, 3, 5, 6, and 8 of the Plat of High Point Estates, the landscaped berm on McKenna Boulevard, the landscaped berm on High Point Road and the entrance signs for all entrances.

7.07 Maintenance of Entryways and Common Areas Conveyed to Association. Maintenance of any and all landscaping and vegetation growing within the Common Areas, and of those portions of lots 1, 3, 83, 84, 122 described in Section 4.10(k), shall be the responsibility of the Association.

7.08 Dedication of Lot 76 as a Street. Developer reserves the right to improve Lot 76, at its sole expense, as a private drive, and to dedicate the same to the City as a public right-of-way, in which case the City shall have the right to improve the same as a public street. Lot 76 shall be subject to none of the architectural or use restrictions set forth in this Declaration that apply to residential Lots.

7.09 Acquisition of Additional Common Area. The Association may acquire (by gift, purchase or otherwise) and improve additional real property as and for Common Area upon approval by the Class B member and by a two-thirds majority of the Class A members who are voting in person or by proxy at a meeting of the Association duly called for this purpose.

#### ARTICLE VIII

#### DIVISION OF LOTS BY OWNERS

No Lot located within the Subdivision shall be further divided or reduced in size without the prior written approval of the Committee. In no instance shall such division create a parcel which is not developable in compliance with this Declaration or which would violate any applicable state or local laws, ordinances or regulations regulating the subdivision of lands.

ARTICLE IX

CHARGES AND ASSESSMENTS

9.01 General Annual Charge. All Lots shall be subject to general annual charges, which may be determined and assessed annually by the Association, solely for the purpose of defraying the pre-litigation and litigation related costs and expenses (including actual attorney's fees) of the Association in carrying out its stated purposes and functions in maintaining and improving the Common Area. The general charge shall be sufficient to raise an amount which, in the reasonable judgment of the Association, may be required for the ensuing calendar year (including interest costs) and shall be divided and levied equally among all the Lots; provided, however, that such general annual charge shall not exceed the Stated Maximum per Lot without the affirmative consent of the owners of at least 60% of the Lots and, so long as Developer owns a Lot in the Subdivision, together with the consent of Developer. Such charges shall be paid annually to the Association on or before March 1 of each year. The Stated Maximum shall be \$15 in calendar year 1988.

9.02 Collection. The right to collect or enforce the collection of charges is hereby exclusively delegated to the Association. The Owner of a Lot, or any portion thereof, shall be personally obligated to pay such charges which were assessed or accrued upon the land owned during the period of ownership. All charges which are unpaid when due shall from such date become and remain a lien upon the Lot until paid, with interest thereon from the due date of Twelve Percent (12%) per annum until paid in full. The Association shall have the sole right to bring any and all actions and proceedings for the collection of the charges and the enforcements of liens therefor. Any liens securing unpaid charges arising by virtue of this Article IX shall be subject and subordinate to the lien of any mortgage whether the mortgage is executed or recorded prior to or after the creation of such liens. Nothing herein contained shall present or impede the collection of lawful charges, taxes or similar charges by the City. The Association may commence an action against any Owner personally obligated to pay the charges or to foreclose the lien for such charge against any Lot. Any such foreclosure action may be brought, at the Association's election, either in the same manner

as an action to foreclose a real estate mortgage, or as a proceeding to enforce a statutory maintenance lien as provided in Section 779.70, Wisconsin Statutes, to the extent said section is applicable. The Association shall, upon the written request of an owner or purchaser of any Lot, issue a Certificate of Status of Lien. If an attorney is retained to enforce any such delinquent charge, reasonable attorney's fees, title charges and court costs and other costs incurred shall be added to and become part of such charge.

#### ARTICLE X

#### SCHOOL DISTRICT CHANGES

Although the Subdivision currently is located in the Middleton-Cross Plains School District, it is possible that the Owners of a number of the Lots within the Subdivision may, in the future, elect to petition to join the Madison Metropolitan School District or any other district other than Middleton-Cross Plains. To ensure that the Owners of a minority of Lots do not frustrate the wishes of the Owners of a majority of the Lots, each Owner agrees that he or she shall not: (a) file a petition to annex the Subdivision to the Madison Metropolitan School District or any other district other than Middleton-Cross Plains unless such petition has been signed by the Owners of a majority of the Lots in the Subdivision; or (b) oppose at any public hearing, or in any official proceeding, any petition to annex the Subdivision to the Madison Metropolitan School District or any other district other than Middleton-Cross Plains if such petition has been signed by the Owners of a majority of the Lots in the Subdivision.

#### ARTICLE XI

#### MISCELLANEOUS

\* \* 11.01 Terms and Amendments. Unless amended as provided herein, this Declaration shall run with the land and shall be binding upon all persons claiming an interest in a Lot, or through Developer for a period of thirty (30) years from the date this Declaration is initially recorded. Until all of the Lots subject

to this Declaration have been sold by Developer, this Declaration may be amended by the recording of a written instrument executed by or on behalf of all the following: (1) Developer and (2) the owners of at least seventy-five percent (75%) of the Lots subject to this Declaration. Thereafter until the termination of this Declaration, this Declaration may be amended by the recording of an instrument executed by the owners of at least seventy-five percent (75%) of the Lots subject hereto. All amendments shall be consistent with the general plan of development embodied in this Declaration. After the expiration of the initial term of this Declaration, this Declaration, (as presently written or so amended) shall be automatically extended for successive periods of ten (10) years, unless an instrument executed by the Owners of at least sixty percent (60%) of the Lots subject hereto has been recorded to terminate or amend the same in whole or in part. In ascertaining the number of Owners assenting to any such instrument, persons, including any business organizations, having the power to convey the fee simple title in a given Lot shall constitute a unit having a single vote.

11.02 Enforcement. The Association shall have the sole right to enforce the provision hereof or any of its orders by proceedings at law or in equity against any person or persons violating or attempting to violate any provision of the Declaration, either to restrain or cure the violation or to recover damages, or both, for a period which shall include thirty (30) days from the date of the filing with Association of a petition by any person who shall be an Owner of a Lot subject to this Declaration on the date of the filing, petitioning the Association to redress the violation or attempted violation of any of the provision of this Declaration by any other persons. Such period of thirty (30) days shall be considered to be a period for the consideration of the petition by the Association and in the event the Association denies or fails to act upon the petition to the satisfaction of the petitioner within the thirty (30) day period, thereafter such petitioner shall have the right to enforce the provision hereof (except for the collection of charges and assessment under Section 9.01), to the extent that he or she shall so have petitioned, by proceeding at law or in equity against any person or persons violating or attempting to violate the provisions of this Declaration, either to restrain the violation or to recover damages, or both, provided, however, that any such person shall be an Owner and commence such pro-

ceeding against such other person or persons within a period of sixty (60) days from (i) the date of the Association's denial of such petition, or (ii) the passage of the aforementioned thirty (30) day period for consideration of the petition by the Association. Any damages collected by the Association shall be distributed, first, to pay for all costs of enforcement, and secondly to the owners of the Lots damaged by the violation pro rata. Notwithstanding the foregoing, the Developer, so long as it owns any Lot, shall have the right to initiate any legal action to enforce the provisions of this Declaration without first petitioning the Association.

11.03 Severability. Invalidation of any one of these covenants by judgment or court order shall in no way affect any other provisions, which other provisions shall remain in full force and effect.

11.04 Nonforfeiture. Any violation of these restrictions shall not result in a forfeiture or reversion of title to any Lot in the Subdivision.

11.05 Additions to Existing Property. The Developer, its successors and assigns, shall have the right, but shall not be obligated, to bring within and subject to this Declaration, at such times and in such stages as Developer in its sole discretion shall determine, additional lands that are contiguous to the Subdivision, by executing and recording with the Register of Deeds for Dane County amended or supplemental declarations of covenants and restrictions with respect to the additional property. Such additional lands shall, upon the recording of such amended or supplemental declarations, be deemed to be part of the Subdivision. Under no circumstances shall this Declaration or any amended or supplemental declaration bind the Developer, its successors or assigns, to make any additions (except as specifically agreed therein).

11.06 Attorney's Fees. If any suit or action is brought to enforce the provisions of this Declaration, the party who prevails in such action or suit shall be entitled to recover its court costs and attorney's fees from the other party.

Executed at Madison, Wisconsin, the day and year first above written.

Executed and signed by Kenneth R. Welton and Kurtis D. Welton and notarized by Wendy K. Moe. Registered as document #2099688 with Carol R. Mahnke, Register of Deeds, Registers Office, Dane County, WI on August 19, 1988 at 11:34 a.m.

EXHIBIT A

Lot One (1) through Lot One Hundred Twenty-Two, Inclusive,  
High Point Estates.

EXHIBIT B

Lot Numbers	Yard Requirements (ft)				Single-story Total	Multistory Total	Main Level
	Side Yard	Front Yard	Back Yard	Depth			
1-9	10	30	1800	2100	1100		
10,16,17,26,27	10	30	1800	2100	1100		
11-15	10	35	2000	2400	1200		
18-25	10	30	2000	2400	1200		
28-35	10	35	2000	2400	1200		
36	10	35	2250	2500	1250		
37-45	10	40	2750	3000	1250		
46	10	35	2250	2500	1250		
47-48	10	35	2250	2400	1200		
49,56	10	35	2400	2650	1350		
50-64	10	40	2750	3200	1600		
66	10	35	2400	2650	1350		
67-68	10	40	2700	3000	1500		
69	10	45	3000	3500	1800		
70-93	10	50 <sup>†</sup>	3000 <sup>†</sup>	3500 <sup>†</sup>	1800 <sup>†</sup>		
94-97	10	40 <sup>†</sup>	2700 <sup>†</sup>	3000	1500		
98	10	35	2400	2650	1350		
99-107	10	35	2000	2400	1200		
108-119	10	35	2200	2500	1300		
120	10	35	2000	2400	1200		
121-122	10	35	2000	2400	1200		

-25-<sup>†</sup> See page 26

\* Pursuant to the Third Amendment to Declaration of Protective Covenants, as Recorded April 30, 1990, the following has been declared:

Floor Area Minimums for Lots 73 through 94. The minimum yard and floor area requirements set forth in Exhibit B to the Declaration that are applicable to Lots 73 through 93 are hereby amended as follows:

- Side yard: 10 feet
- Front yard: 45 feet
- Single-story--total square feet: 2,500
- Multistory--total square feet: 3,000
- Multistory--main floor square feet: 1,500

FIRST AMENDMENT TO DECLARATION OF PROTECTIVE  
COVENANTS

THIS FIRST AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS (the "Amendment") is executed as of this 21st day of November, 1989, by WELTON ENTERPRISES, INC. (the "Developer").

WITNESSETH:

WHEREAS, the Developer executed and recorded the Declaration of Protective Covenants for High Point Estates dated August 19, 1988, and recorded with the Dane County Register of Deeds in Volume 11851 of Records, page 86, as Document #2099688 (the "Declaration"); and

WHEREAS, Section 11.05 of the Declaration provides that the Developer may bring additional lands that are contiguous to the Subdivision (as defined in the Declaration) by executing and recording amended or supplemental Declarations of Covenants and Restrictions, and that, upon the recording of such Amendments, such additional lands shall be deemed to be part of the Subdivision; and

WHEREAS, the Developer desires to amend the Declaration to subject thereto certain additional lands, pursuant to the terms hereof.

NOW THEREFORE, the Developer does hereby declare as follows:

1. Definition of Lot. Section 2.08 of the Declaration is hereby amended to read, in full, as follows:

Lot. A portion of the Subdivision identified as a lot on the recorded Plat of High Point Estates, or on the recorded Plat of the Heritage Addition to High Point Estates, specifically excluding outlots.

2. **Landscaping Points.** The introductory clause of Subsection (f) of Section 4.10 is hereby amended to read, in full, as follows:

(f) In addition to the requirements in subparagraph (e) above, the landscaping plan for Lot 219 shall achieve a minimum of landscaping points in a number to be determined by the Committee; Lots 1 through 11, 14 through 36, 46 through 49, 60, 65 through 67, 97 through 122, 177 through 185, 191, 192, 201, 202 and 218 shall achieve a minimum of 1300 landscape points; and Lots 12, 13, 37 through 45, 50 through 64, 68 through 96, 186 through 190, 193 through 200, and 203 through 217 shall achieve a minimum of 1700 landscape points; all of which points shall be determined by the following point schedule:

3. **Description of Lots.** Exhibit A to the Declaration is hereby superseded in its entirety by Exhibit A attached hereto and made a part hereof.

4. **Floor Area Minimums.** Exhibit B to the Declaration is hereby amended by adding as Page 2 thereof Schedule B attached hereto and made a part hereof.

Executed at Madison, Wisconsin, the day and year first above written.

Executed and signed by Kevin D. Welton and Paul G. Lenhart, notarized by Jesse S. Ishikawa. Registered as Document #2173384 with Jane Licht, Register of Deeds, Recorder's Office, Dane County, Wisconsin on November 22, 1989 at 8:05 A.M. in Volume 13577, Page 4.

**EXHIBIT A**

Lots One (1) through One Hundred Twenty-Two (122), inclusive, High Point Estates, and Lots One Hundred Seventy-Seven (177) through Two Hundred Nineteen (219), inclusive, Heritage Addition to High Point Estates.

**SCHEDULE B**

**FIRST AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS**

Lot Numbers Yard Requirements (Ft.)

Floor Area Minimums (Sq. Ft.)

LOT	SIDE YARD	FRONT YARD	SINGLE STORY TOTAL	MULTI STORY TOTAL MAIN
177	10	35	2000	2400 1200
178	10	35	2000	2400 1200
179	10	35	2000	2400 1200
180	10	35	2000	2400 1200
181	10	35	2000	2400 1200
182	10	35	2000	2400 1200
183	10	35	2000	2400 1200
184	10	35	2000	2400 1200
185	10	35	2000	2400 1200
186	10	35	2100	2500 1300
187	10	35	2100	2500 1300
188	10	35	2100	2500 1300
189	10	35	2100	2500 1300
190	10	35	2100	2500 1300
191	10	35	2000	2400 1200
192	10	35	2000	2400 1200
193	10	40	2100	2500 1300
194	10	40	2100	2500 1300
195	10	40	2100	2500 1300
196	10	40	2100	2500 1300
197	10	40	2100	2500 1300
198	10	40	2100	2500 1300
199	10	40	2100	2500 1300
200	10	40	2000	2400 1200
201	10	35	2000	2400 1200
202	10	35	2100	2500 1300
203	10	35	2100	2500 1300
204	10	35	2100	2500 1300
205	10	35	2100	2500 1300
206	10	35	2100	2500 1300
207	10	35	2100	2500 1300
208	10	35	2100	2500 1300
209	10	35	2100	2500 1300
210	10	35	2100	2500 1300
211	10	35	2100	2500 1300
212	10	35	2100	2500 1300
213	10	35	2100	2500 1300
214	10	35	2100	2500 1300
215	10	35	2100	2500 1300
216	10	35	2100	2500 1300
217	10	35	2100	2500 1300
218	10	35	2000	2400 1200

SECOND AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS

Affecting the following property located in the City of Madison, Wisconsin:

Lots One (1) through One Hundred Twenty-Two (122), Inclusive, High Point Estates, Lots One Hundred Seventy-Seven (177) through Two Hundred Nineteen (219), Inclusive, Heritage Addition to High Point Estates, and Lots Two Hundred Twenty (220) through Two Hundred Eighty-Two (282), Seminary View Addition to High Point Estates.

SECOND AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS

THIS SECOND AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS (the "Amendment") is executed as of this 27th day of April, 1990, by WELTON ENTERPRISES, INC. (the "Developer").

WITNESSETH:

WHEREAS, the Developer executed and recorded the Declaration of Protective Covenants for High Point Estates dated August 19, 1988, and recorded with the Dane County Register of Deeds in Volume 11851 of Records, page 86, as Document #2099688 in which Declaration was amended by a First Amendment dated November 21, 1989, and recorded November 22, 1989, in Volume 13577 of Records, page 4 as Document No. 2173384 (which declaration, as amended, is referred to herein as the "Declaration"); and

WHEREAS, Section 11.05 of the Declaration provides that the Developer may bring additional lands that are contiguous to the Subdivision (as defined in the Declaration) by executing and recording amended or supplemental Declarations of Covenants and Restrictions, and that, upon the recording of such Amendments, such additional lands shall be deemed to be part of the Subdivision; and

WHEREAS, the Developer desires to amend the Declaration to subject thereto certain additional lands, pursuant to the terms hereof.

NOW THEREFORE, the Developer does hereby declare as follows:

1. Definition of Lot. Section 2.08 of the Declaration is hereby amended to read, in full, as follows:

Lot. A portion of the Subdivision identified as a lot on the recorded Plat of High Point Estates, or on the recorded Plat of the Heritage Addition to High Point Estates, or on the recorded Plat of the Seminary View Addition to High Point Estates, specifically excluding outlots.

2. Landscaping Points. The introductory clause of Subsection (f) of Section 4.10 is hereby amended to read, in full, as follows:

(f) In addition to the requirements in subparagraph (e) above, the landscaping plan for Lot 219 shall achieve a minimum of landscaping points in a number to be determined by the Committee; Lots 1 through 11, 14 through 36, 46 through 49, 60, 65 through 67, 97 through 122, 177 through 185, 191, 192, 201, 202, 218, 222, 223, 224, 227 through 273 and 282 shall achieve a minimum of 1300 landscape points; and Lots 12, 13, 37 through 45, 50 through 64, 68 through 96, 186 through 190, 193 through 200, 203 through 217, 220, 221, 225, 226, and 274 through 281 shall achieve a minimum of 1700 landscape points; all of which points shall be determined by the following point schedule:

3. Description of Lots. Exhibit A to the Declaration is hereby superseded in its entirety by Exhibit A attached hereto and made a part hereof.

4. Floor Area Minimums. Exhibit B to the Declaration is hereby amended by adding as Page 3 thereof Schedule B attached hereto and made a part hereof.

5. No Other Changes. Except as modified hereby, all remaining terms and conditions of the Declaration shall remain in full force

and effect.

Executed at Madison, Wisconsin, the day and year first above written.

Executed and signed by Kenneth R. Welton and Kevin D. Welton, notarized by Jesse S. Ishikawa. Registered as Document #2199484 with Jane Licht, Register of Deeds, Recorder's Office, Dane County, Wisconsin on May 16, 1990 at 9:04 A.M. In Volume 14187, Page 24.

SCHEDULE B

LOT	SINGLE		MULTI STORY	
	SIDE YARD	FRONTSTORY YARD TOTAL	TOTAL MAIN	TOTAL
222,223,224,227 thru 233,254,255, 270 thru 273	10	35	1800	2200 1100
234 thru 253, 256 thru 269	10	35	2000	2400 1200
282	10	35	2000	2400 1200
220,221,225,226	10	35	2100	2500 1300
274 thru 281	10	35	2100	2500 1300

**\*\*Pursuant to Fourth Amendment to Declaration of Protective Covenants, as Recorded March 5, 1997, Document number 2836026, the following has been declared:**

**11.01 Terms and Amendments.** Unless amended as provided herein, this Declaration shall run with the land and shall be binding upon all persons claiming an interest in a Lot, or through Developer for a period of thirty (30) years from the date this Declaration is initially recorded. Until all of the lots subject to this Declaration have been sold by Developer, this Declaration may be amended by a recording of a written instrument executed by or on behalf of all of the following: (1) Developer and (2) the owners of at least two thirds (67%) of the Lots subject to this Declaration. Thereafter until the termination of this Declaration, this Declaration may be amended by the recording of a written instrument executed by the owners of at least two thirds (67%) of the Lots subject hereto. All amendments shall be consistent with the general plan of development embodied in this Declaration. After the expiration of the initial term of this Declaration, this Declaration (as presently written or so amended) shall be automatically extended for successive periods of ten (10) years, unless an instrument executed by the owners of at least sixty percent (60%) of the Lots subject hereto has been recorded to terminate or amend the same in whole or in part. In ascertaining the number of Owners assenting to any such instrument, persons, including any business organizations, having the power to convey fee simple title in a given lot shall constitute a unit having a single vote. Owners of multiple lots shall be granted one vote for each lot.