

DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS
FOR THE PLATS OF HIGHLAND VILLAGE INCLUDING LOTS ONE (1)
THROUGH FOUR (4), INCLUSIVE OF CERTIFIED SURVEY MAP #6124
AND THE FIRST AND SECOND ADDITIONS TO HIGHLAND VILLAGE
CITY OF MADISON, DANE COUNTY, WISCONSIN

PART A. PREAMBLE

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, DON SIMON, INC., a Wisconsin Corporation, Developer of the Plats of Highland Village and the First and Second Additions to Highland Village, and the undersigned Highland Village Homeowner Association, Inc., a Wisconsin non-stock corporation, owner of Outlots 3 through 37 in the said plats, being owners of a majority of the lands subject to the Restrictions and Covenants for the Plat of Highland Village, recorded April 27, 1989 in Volume 12763, pages 13-20 as Document #2137845, in the Office of the Register of Deeds for Dane County, Wis., and the owners of a majority of the lands subject to Declaration of Conditions, Covenants and Restrictions for the Plat of First Addition to Highland Village, recorded March 20, 1991 in Volume 15566, pages 9-16 as Document #2251127, in the Office of the Register of Deeds for Dane County, Wis., and the owners of a majority of the lands subject to the Declaration of Conditions, Covenants and Restrictions for the Plat of the Second Addition to Highland Village, recorded April 9, 1992 in Volume 18497, pages 52-59 as Document #2341591, in the Office of the Register of Deeds for Dane County, Wis., for the purpose of preserving the value of the lots in the aforesaid subdivisions, and for the purpose of amending all three of said declarations of conditions, covenants and restrictions to provide for uniform rules and management do hereby declare and provide that all of the lands in said subdivisions shall be used only for the purposes and in the manner set forth hereinafter, and shall be subject to the following Restrictions, Covenants and Conditions for the term and time hereinafter specified.

PART B. AREA OF APPLICATION

B-1. FULLY-PROTECTED RESIDENTIAL AREA. The residential area covenants of Part C hereof shall apply to all of the lots in said subdivisions, but shall not apply to the outlots. All references to a lot or lots in the three plats, and all references to the Plat of Highland Village shall include and apply to Lots One (1) through Four (4) inclusive of Certified Survey Map #6124, recorded in Volume 29 of Certified Survey Maps, pages 196 and 197, as Document #2205016.

PART C. RESIDENTIAL AREA COVENANTS

C-1. LAND USE AND BUILDING TYPE. No lot in said subdivisions shall be used except for residential purposes, including gardens; provided, however, that lots designated or approved by the Architectural Control Committee may be used for church

or school purposes except as otherwise provided in this section C-1 for Lots 113 through 125 inclusive. No building, other than a church or school shall be erected, altered, placed or permitted to remain on Lots Thirteen (13) through One-Hundred Seventy-Four (174), nor on lots One (1) through Four (4) inclusive of CSM #6124 nor on Outlots Two (2) through Thirty-Seven (37) other than one detached single family dwelling unit not to exceed two and one-half stories in height. Each residential dwelling unit shall have a private garage of not less than one (1) nor more than two (2) cars, which garage shall be attached to the residential dwelling unit. No building other than a one Duplex or single family detached dwelling unit shall be erected, altered, placed or permitted to remain on Lots One-Hundred Thirteen (113) through One-Hundred Twenty-Five (125) and shall not exceed two and one-half (2-1/2) stories in height. Each Duplex dwelling unit shall have a private garage of not less than one (1) nor more than two (2) cars, which garage shall be attached to the duplex unit.

C-2. ARCHITECTURAL CONTROL. No building or fence shall be erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by a majority of the Architectural Control Committee as to the quality of workmanship and materials, harmony of external design with existing or proposed structures, including exterior colors and materials to be applied to said structures, and as to location with respect to topography and finish grade elevation. There shall be a variation in building elevations on adjacent lots. No fence or wall shall be erected, placed or altered on any lot nearer to any street than the minimum building setback line unless similarly approved. Approval shall be as provided in Part D.

C-3. DWELLINGS. All landscaping including fencing, trees, shrubs and plant beds installed on a lot by the developer, Don Simon, Inc., or its assigns shall be maintained by the owner of said lot. Maintenance shall include watering, pruning and routine fertilizing and mulching of all such plantings and plant beds, replacement of dead, dying and/or diseased trees and shrubs, prompt removal of weeds, trash and debris from plant beds and areas reasonably adjacent to shrubs and trees as to keep said landscaping in a healthy, attractive and neat condition.

If the owner of any lot, after reasonable notice, fails or refuses to perform the maintenance described herein, the Architectural Control Committee through its duly authorized agents or employees, shall have the right to enter upon said lot at reasonable hours to perform said maintenance. The costs of the materials and labor to perform such maintenance shall draw interest at 12% per annum, or at the highest rate permitted by law, whichever is greater, and become an assessment against said lot enforceable by filing a lien with the Clerk of Circuit Court in the manner prescribed in paragraph C-21 below.

All driveways shall be of concrete or asphalt and shall be installed within nine (9) months after issuance of a certificate of occupancy by the City of Madison. No outbuilding or accessory building of any nature shall be erected on any lot or outlot in

said plat without the prior written approval of the Architectural Control Committee.

C-4. VEHICLE AND/OR EQUIPMENT STORAGE. The storage of boats, trailers, travel trailers, campers or recreational vehicles of any nature is prohibited in the front, rear, or side yards, on any vacant lot or at any time on any outlot. The temporary storage of such vehicles in the front yard for the purpose of loading or unloading for a period not to exceed twelve (12) hours is permitted. No automobiles, trucks or other vehicles shall be parked on lawns, private drives, cul de sacs or outlots at any time unless in a designated parking space. No commercial vehicles, including trucks, semi-trailers or trailers, may be stored or parked overnight on or in front of said lots except in an enclosed garage.

C-5. DWELLING LOCATION.

- (a) No building shall be located on any lot nearer than ten (10) feet to a lot line which fronts on a public street.
- (b) No residential dwelling unit ("building") shall be located nearer than six (6) feet to an interior lot line, and no building shall be less than ten (10) feet from any other lot line.
- (c) For the purposes of this covenant, eaves, steps and open porches shall not be considered as part of a building, provided however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot.
- (d) The minimum driveway length from the lot line shall be eighteen (18) feet.
- (e) The Architectural Control Committee shall have the power to authorize a variance from any of the requirements of this part C-5 and Parts C-3 and C-4 above, if it finds in its absolute discretion that the strict application thereof would result in peculiar or exceptional practical difficulties or undue hardship to the lot owner without commensurate benefit to the owners of neighboring lots.

C-6. CONSTRUCTION ON ADJOINING LOTS. Nothing contained herein shall be construed to prohibit the construction of a residential dwelling unit or private garage partially on one lot and partially on an adjoining lot without regard to side yards between adjoining lots, provided that all such lots are owned by the same person or persons and provided that any subsequent division of such lots shall provide for the areas, side yards, and setbacks set forth in these restrictions.

C-7. EASEMENTS. No structure, planting or other materials shall be placed or permitted to remain within any easement of record which may damage or interfere with

the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easement, or which may change, obstruct or retard the flow of water through drainage channels in the easement. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

C-8. NUISANCES. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Remedies of nuisance activities shall be pursued by the Association as directed in Paragraph C-22.

C-9. TEMPORARY STRUCTURES. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.

C-10. SIGNS. No sign of any kind shall be displayed to the public view on any lot except: (a) one professional sign of not more than one square foot; (b) one sign of not more than six square feet advertising the property for sale or rent; (c) church signs; or (d) signs without regard to size used by the developer, a builder or licensed real estate broker to advertise the property during the construction and sales period or to identify the subdivision and/or its developer.

C-11. ANIMALS. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. No animal enclosure, stable, house, pen dog run, or fence or similar device shall be placed on any lot.

C-12. GARBAGE AND REFUSE DISPOSAL. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No trash, building materials, debris, leaves, lawn clippings, rocks or earth shall be placed in any outlot.

C-13. SIGHT DISTANCE AT INTERSECTIONS. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line limitations shall apply on any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

C-14. FENCES. No fence, wall, hedge or series of shrub plantings shall be placed or permitted in any yard of any lot or outlot in said subdivision without the express written approval of the Architectural Control Committee.

C-15. OUTBUILDINGS. No outbuilding or accessory building of any nature shall be erected on any lot without the prior written approval of the Architectural Control Committee.

C-16. ANTENNAE/WIND POWERED ELECTRIC GENERATORS. No wind powered electric generators, exterior television, radio receiving or transmission antennae, satellite signal receiving station or dish shall be placed or maintained upon any portion of a lot without prior written approval of the Architectural Control Committee.

C-17. FIREWOOD STORAGE. No firewood or wood pile shall be kept outside a structure unless it is neatly stacked, placed on a non-street side yard and screened from street view by plantings approved by the Architectural Control Committee.

C-18. SOLAR COLLECTORS. No active solar collector or apparatus may be installed on any lot unless such installation is first approved in writing by the Architectural Control Committee which shall consider the aesthetic and sun reflective effects on neighboring structures. Solar collectors or apparatus installed flat against or parallel to the plane of the roof shall be preferred.

C-19. LIGHTING. Exterior lighting installed on any lot shall either be indirect or of such controlled focus and intensity that such lighting will not disturb the residents of adjacent lots.

C-20. OUTLOT MAINTENANCE. It shall be the equal and undivided responsibility of all lot owners within the Plat of Highland Village and the First and Second Additions thereto to maintain all Outlots. Maintenance shall include removal of snow and ice from paved driveways and walkways, the patching, repairing, striping and resurfacing of all driveways and walkways and the removal of trash and debris therefrom so as to keep and maintain each outlot in an attractive, neat and clean condition, and the maintenance and replacement of mailboxes and their platforms.

C-21. MANAGING OWNER FOR OUTLOT MAINTENANCE-SELECTION AND DUTIES. At the annual meeting of the Lot owners of the Plat of Highland Village and the First and Second Additions thereto as described in D-1 below, the owners of the majority of all of the lots in the three plats present in person or by proxy and voting shall select one or more among them who shall be the Managing Owner(s). Said Managing Owner(s) shall be primarily responsible for carrying out the requirements of Section C. and shall be entitled to receive reasonable compensation therefore.

On or before November 1st of each year said Managing Owner(s) shall establish an annual budget to pay and provide for the above-described outlot maintenance for the

next year. Said budget shall include a reasonable reserve for repairs and replacements, liability and worker's compensation insurance, accounting and legal services, the purchase, maintenance and storage of equipment, administrative expenses and compensation for the Managing Owner(s). The Managing Owner(s) shall then establish equal assessments for each lot in the Plats of Highland Village and the First and Second Additions to Highland Village and shall notify each lot owner of the amount of the assessment due. All assessments shall be due and payable on December 1st of each year. Assessments which are not paid by December 31 shall bear interest at the rate of 12% per annum, or at the highest rate permitted by law, whichever is greater, commencing December 1, until paid in full. Assessments not paid within 45 days of their due date shall be subject to the filing of a lien with the Clerk of Circuit Court which may be foreclosed or collected as provided by law with all costs of collection including attorneys' fees paid by the delinquent lot owner.

C-22. REMEDIES If any Highland Village property owner fails to comply with any provision of this Declaration of Covenants and Restrictions, Association By-Laws, Articles of Incorporation, or any rules and regulations promulgated by the Association, the property owner may be sued for damages caused by the failure or for injunctive relief, or both, by the Association. In the event no damages are capable of being accurately determined, liquidated damages of Twenty-Five Dollars (\$25.00) may be assessed for each violation. Each day of violation shall constitute a separate violation for purposes of this Article. Any and all attorney fees and other expenses incurred by the Association in enforcing this provision shall be reimbursed by the property owner in violation. The following procedure shall be followed:

- 1.) The property owner is notified of the violation by either the full board or a board member either verbally or in writing, and is requested to remedy the situation.
- 2.) If there is continued non-compliance after 10 days, the property owner will be notified via registered letter of the violation and be given a specific date by which the situation must be remedied. If not remedied by that date, the imposition of penalties cited herein shall begin on that date.

PART D. ARCHITECTURAL CONTROL COMMITTEE

D-1. MEMBERSHIP. A. The Architectural Control Committee shall exist for the term of this declaration and any extensions thereto and shall initially be comprised of one or more representatives appointed by the developer, DON SIMON, INC., its successors or assigns; until such time as no lots in the plats of Highland Village and the First and Second Additions to Highland Village are owned by Don Simon, Inc., its successors or assigns.

B. Thereafter, the Committee shall consist of three (3) or more Highland Village and the First and Second Additions to Highland Village lot owners, selected by majority vote of the Board of Directors, who shall serve for a period of one year or until their

successors are chosen. Any owner of an interest in any lot in Highland Village and the First and Second Additions thereto shall be eligible for nomination to said committee.

C. A majority of the Committee may designate a representative to act for it. The initial designated representative shall be David P. Simon. In the event of the death or resignation of any member of the Committee, the Board of Directors shall have full authority to designate a successor.

D-2. ARCHITECTURAL CONTROL POWERS. No structure, including dwelling unit, residence, accessory building, tennis court, swimming pool, antenna (whether located on a structure or on a lot), flagpole, wall, landscaping or other improvement shall be constructed, maintained or performed upon any lot and no alteration or repainting of the exterior of a structure shall be made unless complete plans, specifications and plot plans therefore shall have been submitted to and approved in writing by a majority of the Architectural Control Committee. For the purposes of this Declaration, a swimming pool shall be defined as any container used to hold water with a sidewall height of 24 inches or more, larger than 15 feet in length, width, or diameter at its greatest point, or of any size using any kind of filtration or circulation system.

Said plans, specifications and plot plans shall show the exterior design, height, building materials and color scheme thereof, the location of the structure plotted horizontally and vertically, the location and dimensions of walkways and driveways, the plans for required landscaping and/or garden, and the grading plan. A copy of such plan specifications and plot plans as finally approved shall be deposited with the Architectural Control Committee. Except as otherwise provided in Section D-4 below, no building permit will be issued by the City of Madison until the plans and specifications therefore have been approved in writing by said Committee. No verbal authorization, in any circumstance, shall constitute a final approval of any submitted plan, and shall not be binding under any circumstance.

D-3. PLAN REVIEW. The Architectural Control Committee shall review said plans and specifications as to quality of workmanship and materials, harmony of external design with existing or proposed structures and as to location with respect to topography and finish grade elevation. Said plans and specifications shall describe the nature, kind, shape, height, materials, locations and approximate cost of the improvements proposed to be constructed or installed.

D-4. PROCEDURE FOR PLAN REVIEW. The Committee's approval or disapproval, as required in these covenants, shall be in writing. In the event the Committee fails to approve or disapprove within thirty (30) days after plans and specifications or any other matters requiring approval have been submitted to it, approval shall not be required and the related covenants shall be deemed to have been complied with in full.

D-5. RECORDS. The Architectural Control Committee shall maintain written

records of all applications submitted and of all actions taken by it. All plans, applications and requests shall be submitted to the chair of the Architectural Control Committee as identified in the Association newsletter, or who can be contacted through the Association president, vice-president or secretary-treasurer.

D-6. ARCHITECTURAL CONTROL COMMITTEE LIABILITY. Neither the Architectural Control Committee nor any member thereof shall be liable for damages to any person submitting request for approval or to any owner of any lot by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove with regard to such requests.

D-7. VARIANCE. The Architectural Control Committee shall request Board of Directors approval to authorize a variance from any of the requirements of these Restrictions and Covenants if it finds that the strict application thereof would, in its opinion, result in difficulties or undue hardship to the lot owner.

PART E. GENERAL PROVISIONS

E-1. TERM. These Covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these Covenants are recorded, after which time said Covenants shall be extended automatically for successive periods of five (5) years each unless an instrument signed by the then owners of a majority of lots in the three plats referred to above has been recorded, agreeing to change said Covenants in whole or in part or to terminate the same. There are currently 166 lots in the three plats: Lots Thirteen (13) through One-Hundred Seventy-Four (174) and lots One (1) through Four (4) of C.S.M. #6124. Therefore, the owners of Eighty Four (84) lots constitute a majority.

E-2. ENFORCEMENT. As delineated in paragraph C-22, enforcement shall be by proceedings at law or in equity against any person, persons or entity violating or attempting to violate any covenant, either to restrain violation or to recover damages, or both and the prevailing party shall be entitled to also recover reasonable attorneys fees and costs for the person, persons or entity found to be in violation of these covenants.

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

IN WITNESS WHEREOF, and for the purposes set forth above, the undersigned Developer and owners have caused this instrument to be executed on the date set after their names.

DON SIMON, INC., a Wisconsin corporation, Developer

HIGHLAND VILLAGE HOMEOWNER ASSOCIATION, INC., Owner of Outlots Three (3) through Twenty-Two (22), Highland Village, Outlot 23, First Addition to Highland Village, and Outlots Twenty-Four (24) through Thirty-Seven (37), Second Addition to Highland Village

By: _____

Date: _____

(Print name and office)

Attest: _____

Date: _____

(Print name and office)

STATE OF WISCONSIN)

) ss.

COUNTY OF DANE)

Personally came before me this _____ day of _____, 1999, the above-named _____, _____, and _____, of Highland Village Homeowner Association, Inc., to me known to be such _____ and _____ of Highland Village Homeowner Association, Inc., and acknowledged that they executed the same as such officers as the deed of Highland Village Homeowner Association, Inc., by its authority.

_____, Notary Public
Dane County, State of Wisconsin
My commission expires: _____