

Declaration of Conditions, Covenants  
And Restrictions

Document Number

Title of Document

DANE COUNTY  
REGISTER OF DEEDS

DOCUMENT #  
4121953

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Exempt II:

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Pages: 38

*Re: Waterford Glen, a Subdivision Located in the City of  
Fitchburg, Dane County, Wisconsin*

**Part A  
PREAMBLE AND ASSOCIATION MATTERS**

Declaration made this 7<sup>th</sup> day of October, 2005, by  
Gorman & Company, Inc., a Wisconsin Corporation  
(hereinafter "Developer").

**COPY**

Record this document with the Register of Deeds.

Name and Return Address:

John W. Van Note  
Mohs, MacDonald, Widder & Paradise  
20 North Carroll Street  
Madison, WI 53703

225-0609-151-8500-7  
(Parcel Identification Number)

**WHEREAS**, Developer is the owner of real property  
located in Dane County, Wisconsin and further described in  
Exhibit "A" attached hereto and incorporated herein by  
reference, and desires to build thereon a planned  
development with housing units and shared common property  
(the "Development"); and

**WHEREAS**, Developer desires to provide for the maintenance and enhancement of  
property values, amenities, environment and opportunities in said Development, and for the  
preservation of the properties and improvements thereon, as well as for the preservation of said  
Development's distinctive style, and to prevent the erection, or maintenance of poorly designed  
or constructed improvements; and

**WHEREAS**, to the above and Developer desires to subject said real property, to the  
covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which  
is and are for the benefit of said property and each owner thereof; and

**WHEREAS**, Developer has thought it desirable for efficient maintenance and  
preservation of the values of said Development to create an association to which should be  
delegated and assigned the powers administering and enforcing the covenants and restrictions,  
and collecting and disbursing the assessments and charges as hereinafter or in the future  
created or established, and promoting the health, welfare and recreation of the Development's  
residents; and

**WHEREAS**, Developer has incorporated Waterford Glen Homeowner's Association, Inc.,  
a non-profit, non-stock corporation, under the laws of the State of Wisconsin (the  
"Association"); and

**NOW, THEREFORE**, the Developer declares that the real property described in Exhibit  
"A" will and shall be sold, transferred and conveyed subject to the easements, covenants,  
restrictions, assessments, charges and liens hereinafter set forth.

**A-1) Definitions.**

A) "Association" shall mean and refer to Waterford Glen Homeowner's Association, Inc., and its successors and assigns.

B) "Developer" shall mean and refer to Gorman & Company, Inc., a Wisconsin Corporation, or its successors and assigns.

C) "Lot" or "Lots" shall mean and refer to one or more of the platted lots described in Exhibit "A", now owned by Developer, but which Developer in the future intends to convey to purchasers who shall thereupon become members of the Association. The terms "Property" or "Properties" shall be synonymous with the terms "Lot" or "Lots." If a Lot is further subdivided in any lawful manner permitted herein, each such lawfully subdivided parcel shall be deemed a Lot.

D) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any of the Lots. A purchaser of any of said Lots by land contract shall be referred to as "Owner" instead of the land contract vendor.

E) "Occupant" shall mean and refer to the occupant of any of the Lots who shall either be an Owner or a lessee who holds a written lease having an initial term of twelve months or more.

F) "Book of Regulations" shall mean and refer to a document containing the resolutions setting forth the rules, regulations and policies established and adopted by the Board of Directors as the same may be from time to time adopted, recorded and/or amended.

G) "Private Alleys" shall mean any roadways depicted on the subdivision plat for the Development as a private road or private alley.

H) "Duplex Lots" shall mean Lots 1 & 2; 7 & 8; 16 & 17; 21 & 22; 29 & 30; 33 & 34; 35 & 36; 41 & 42; 58 & 59; 60 & 61.

**A-2) Membership and Voting Rights.**

A) **Members.** Each Owner of a Lot shall be a member of the Association. Persons or entities, including a land contract vendor, who hold an interest merely as security for the performance of an obligation, shall not be members of the Association. Membership shall be appurtenant to and may not be separated from any Lot, which is subject to assessment, by the Association. Tenants of Lots who are not Occupants shall not be members of the Association. To the extent that Developer owns any Lot, Developer shall be a member of the Association until such ownership terminates.

**B) Voting Rights.**

1) Each member shall be entitled to one vote for each Lot owned except as set forth in A-2(B)(2) below.

2) When there is more than one Owner of a Lot, said Owners shall only be entitled to one collective vote for each Lot. There shall be no fractional votes or voting. When

there is more than one Owner of any Lot, the vote attributable to such ownership must be cast unanimously by all the Owners of that Lot, or it shall not be considered for any purpose.

C) **Proxies.** Any Member may vote by proxy. All proxies shall be in writing and signed by the Owner, or in cases where there is more than one Owner, by all Owners of the Lot.

**A-3) Covenant for Maintenance and Assessments.**

A) **Creation of the Lien and Personal Obligation of Assessments.** The Developer hereby covenants, and each Owner by acceptance of the deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following:

- 1) Annual general assessments or charges.
- 2) Such special assessments as may from time to time be imposed as hereinafter provided.

Assessments may be imposed for any of the following purposes:

- i) To pay for the costs and expenses of publishing a periodic newsletter or other, similar publication and a neighborhood directory and updates thereof;
- ii) To defray the reasonable expenses of running the Association;
- iii) To pay legal and other fees, charges and expenses incurred in connection with enforcing this Declaration and exercising and enforcing the rights, powers and duties of the Architectural Control Committee.
- iv) To pay the cost of maintaining any common areas or amenities which the Association is lawfully obligated to maintain, said common areas and amenities being further described in Exhibit "B," attached hereto and incorporated herein by reference (collectively the "Common Areas").
- v) To pay the cost of maintaining, repairing and replacing the Private Alleys, except that only those Lots that abut and are adjacent to the Private Alleys may be assessed for the cost and expense of maintaining, repairing and replacing the Private Alleys.

All such assessments, together with interest thereon and the actual costs of collection thereof as hereinafter provided, shall be a charge on each Lot and a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest thereon and the cost of collection thereof, shall also be the personal obligation of the Owner at the time when the assessment is made. Notwithstanding the foregoing, Developer shall not pay assessments on Lots owned by Developer until such time as Developer has turned over control of the Architectural Control Committee to the Association under Section C-8, below.

**B) General Assessments.**

1) **Purpose of Assessment.** Accrued general assessments levied by the Association shall be used exclusively for the purposes stated above.

2) **Basis for Assessment.** Subject to the above limitation, each Property, which has been certified for occupancy by the appropriate governmental entity, shall be assessed at a uniform rate to the Owner. That is, each Lot shall be assessed the same amount as any other Lot, regardless of size or use.

3) **Maximum Annual Assessment.** For each calendar year in which the Association is in existence, the Board of Directors shall set the annual assessment by majority vote of the Directors. The Board shall set the date(s) such assessment shall become due. In the event a majority cannot be obtained for fixing the assessment, the prior year assessment shall be deemed adopted. The assessment may be changed by a majority vote of the Members who are voting in person or by proxy at a general meeting or a special meeting duly called for this purpose.

C) **Date of Commencement of Annual Assessments.** Developer shall not impose or collect annual assessments against or from any Owner not the Developer who has taken title to a Lot unless and until Developer has conveyed 75% of all of the Lots in the subdivision to Owners who are not the Developer. At that time, annual assessments shall commence on the first day of the first complete calendar month following Developer's conveyance to an Owner who is not the Developer of Lots constituting 75% of all Lots in the subdivision. After assessments have commenced, the initial annual assessment on any assessable property shall be prorated on a calendar year basis to the date of conveyance of a Lot to an Owner who is not the Developer.

D) **Effect of Nonpayment of Assessments and Remedies of the Association.** Any assessment not paid within thirty (30) days after its due date shall bear interest from its due date at a percentage rate, to be set by the Board for each assessment, but in any case no greater than 18% per annum. If the Board fails to set such interest rate, it shall be deemed to be 12% per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot in like manner as a mortgage of real property. The Association may bid on the Lot at foreclosure sale, and acquire and hold, lease, mortgage and convey the same. If the Association has provided for collection of assessment in installments, upon default in the payment of any one or more installments, the Association may accelerate payment and declare the entire balance of said assessment due and payable in full. In the event the Association retains an attorney to collect any sums due hereunder, the Association shall be entitled to collect, and to make a part of its lien, actual attorney fees and costs of collection incurred by the Association in connection therewith.

E) **Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Property shall not release the assessment lien. However, the sale or transfer of any Property pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessment(s) as to payments, which become due prior to such sale or transfer. No sale or transfer pursuant to foreclosure or proceedings in lieu thereof shall relieve such Lot from liability from any assessments thereafter becoming due or from the lien thereof.

F) **Exempt Property.** The following Lots subject to this Declaration shall be exempted from the assessments, charge and lien created herein:

1) All Properties exempted from taxation by state or local government upon the terms and to the extent of such legal exemption.

Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

G) **Annual Budget.** By a majority vote of the Directors, the Board shall adopt an annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed by the Declaration and all amendments to this Declaration will be met.

H) **Joint and Several Liability of Grantor and Grantee.** Upon a voluntary conveyance, the grantee of a Lot shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor as provided in this Declaration up to the time of conveyance, without prejudice to the grantee's right to recover from the grantor the amount paid by the grantee therefor. However, any such grantee shall be entitled to a written statement from the Association setting forth the amount of such unpaid assessment and any such grantee shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid assessments against the grantor pursuant to this Declaration in excess of the amount described in the statement.

## Part B

### **CONDITIONS, COVENANTS AND RESTRICTIONS**

B-1) **Land Use And Building Type.** The Lots contained within the Property shall be used for the purposes set forth in Exhibit "C," attached hereto and incorporated herein by reference. With respect to those Lots identified in Exhibit "C" as Single Family Residential, no building shall be erected, altered, placed or permitted to remain on any such Lot other than one detached single family dwelling unit not to exceed two and one-half stories in height. Each dwelling unit located on a Single Family Residential Lot shall have a private garage of not less than two (2) nor more than three (3) cars attached to or located in a lower level of the dwelling unit. The size of a dwelling unit to be constructed on Single Family Residential Lots shall not be less than the minimum size set forth on Exhibit "D," attached hereto and incorporated herein by reference. All construction on a Lot must be completed within nine (9) months from issuance of a building permit except for construction items, such as landscaping, which may be delayed due to weather. When vacant, all Lots shall be maintained in a neat and clean manner, free of refuse and noxious weeds, and regularly mowed. As set forth in Part F, below, the Developer has reserved the right to develop Outlot 4 as a residential Lots or Lots when the City no longer requires Outlot 4 to be utilized for temporary storm water management.

B-2) **Architectural Control.** No building shall be erected, placed or altered on any Lot until the construction plans, specifications, elevations showing the location and design of all structures, sidewalks, driveways and a landscaping plan (collectively the "Plans") have been approved by a majority of the Architectural Control Committee (the "Committee") as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. There shall be a variation

in building elevations and color schemes on adjacent Lots. Approval shall be as provided below. The dimensions of front, side and rear yards shall be as required under applicable zoning codes.

**B-3) Dwellings And Landscaping.** The landscaping to be installed on all Lots in Phase I must meet or exceed the landscaping requirements set forth in Exhibit "E," attached hereto and incorporated herein by reference. The structure and the minimum landscaping requirements shall be fully completed and a certificate of occupancy obtained within nine (9) months after issuance of a building permit. All driveways shall be of poured concrete and shall be installed within nine (9) months after the issuance of a building permit for the residential home to be constructed on a lot. No outbuilding or accessory building of any nature shall be erected on any Lot. No aboveground swimming pools shall be permitted. A family garden may be located within the rear yard provided it does not exceed 10% of the total Lot size and is maintained in a clean and orderly condition.

Natural or prairie lawns are permitted provided the Owner obtains the advance written consent of the Committee, as described below. Rear yards may be planted with grass seed or sodded. All front and side yards shall be sodded. All landscaping and yards shall be maintained on a regular seasonal basis, including regular lawn mowing during the lawn-growing season. Maintenance of all improvements on a Lot is the responsibility of the Owner. Maintenance shall include, but not be limited to, watering, pruning and routine fertilizing and mulching of all 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 adjacent to shrubs and trees so as to keep said landscaping and lawn areas in a healthy, attractive, neat and clean condition. As applied to the Duplex Lots Identified in Exhibit "C," the requirements in this Section B-3 shall be applied on a per dwelling unit basis.

An Owner may, with the advance written consent of the Committee, install a natural prairie lawn or a rain garden ("Prairie Lawns" and "Rain Garden" respectively), subject to any conditions imposed upon the same by the Committee, compliance with all rules, regulations and ordinances of the City of Fitchburg, and the following conditions. Prairie Lawns shall not exceed five (5') feet in height. Prairie Lawns shall be a mixture of prairie grass and prairie flowers, regularly maintained by the Owner so as to minimize weeds and other unsightly conditions. Prairie Lawns shall be planted and maintained in accordance with sound landscape maintenance practices. The Committee reserves the right to require Owners to remove Prairie Lawns that are not properly maintained or which become unsightly and detrimental to the neighborhood.

Owners may install Rain Gardens as a bio-retention system dealing with rainwater runoff from paved areas and other impervious surfaces, in accordance with plans approved by the City of Fitchburg engineer, if such approval is required by the City of Fitchburg, and by the Committee. The Owner shall maintain records of installation, inspections, cleaning and other maintenance, all in accordance with Fitchburg General Ordinances. Visual inspection of the Rain Garden system shall be performed, at a minimum, annually. Maintenance shall be required when the system shows standing water beyond 72 hours of the rain event. Maintenance shall consist of removal of sediment; two (2') foot undercut, and undercut replacement with material consisting of one-third topsoil, one-third compost, and one-third sand, and restoration in kind. Restoration of plant material shall be by plugging, not seeding alone. Any alterations to an approved Rain Garden shall be approved by the City Engineer (if required by the City of Fitchburg) and the Committee. The Committee reserves the right to

require an Owner to remove any Rain Garden that is not being properly operated and maintained by the Owner in accordance with this Declaration and the Fitchburg Ordinances.

The Committee reserves the right to adopt further rules and regulations regarding Prairie Lawns and Rain Gardens, as future circumstances require.

If the Owner of any Lot, after reasonable notice, fails or refuses to install landscaping as described herein, or maintain it as required above, the Committee, or the Association, as the case may be, through its duly authorized agents or employees, shall have the right to enter upon said Lot at reasonable hours to perform said landscaping and/or maintenance. The costs of the materials and labor to perform such landscaping and/or maintenance shall be assessed against said Lot in accordance with the terms of Section (A-3), above, which assessment may be foreclosed or collected in accordance with the terms hereof or collected as provided herein.

**B-4) Vehicle and/or Equipment Storage.** No inoperable, dilapidated or junk vehicles of any nature may be kept upon any Lot except in a fully enclosed garage. The exterior storage of boats, trailers, travel trailers, campers, motorcycles, recreational vehicles, automobiles or trucks (collectively, without limitation by reason of enumeration "Equipment"), of any nature is prohibited whether or not screened from public view. No Equipment shall be parked or stored on lawns. The temporary storage of Equipment in a drive area for the purpose of loading or unloading for a period not to exceed twelve (12) hours is permitted. 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.

**B-5) Construction On Adjoining Lots.** Nothing contained herein shall be construed to prohibit the construction of a residential dwelling 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.

**B-6) Easements/Drainage.** 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 or flow of drainage channels in the easement, or which may obstruct or retard the flow of water through drainage channels in the easement. The easement area of each Lot, if any, and all improvements located therein, shall be maintained continuously by the owner of the Lot, except for those improvements for which a public authority or utility company is responsible. No drainage swale shall be graded or obstructed so as to impede the flow of water from other Lots or outlots through such swale. Final grading of Lots shall conform to the grading plan approved by the City of Fitchburg.

**B-7) 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 or which may have a detrimental effect on the value of other Lots and/or improvements.

**B-8) 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 or for any other purpose, either temporarily or permanently. Notwithstanding the foregoing, the following temporary structures shall be permitted:

i) Developer shall be permitted to maintain a sales trailer on the Development to be used in connection with the sale and marketing of Lots in the Development;

ii) Temporary construction trailers may be maintained on Lots in the Development for use by contractors in connection with construction on such Lots provided said trailers shall be promptly removed after the trailers are no longer needed for such purposes.

**B-9) Signs.** No sign of any kind shall be displayed to the public view on any Lot except, as approved by the Architectural Control Committee. Signs without regard to size used by the Developer, to advertise the property during the construction and sales period or to identify the subdivision and/or its Developer, are permitted without such approval so long as Developer owns any part of the Property. Notwithstanding the foregoing, for sale signs advertising that the real property on which the sign is located is for sale shall be permitted provided that the size and type of sign utilized by the owner of said Property is in conformance with normal and typical real estate sales industry practices.

**B-10) Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that up to four (4) domestic household pets (but not more than three (3) dogs) may be kept, provided that they are not kept, bred or maintained for any commercial purpose. No exterior animal enclosure, house, pen, fence or similar device shall be permitted.

**B-11) Garage 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. No incinerators shall be permitted. 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 Lot.

**B-12) Fences.** No fences over four (4') feet in height from ground to uppermost part of fence shall ever be permitted (with the exception of compliance with local ordinances with respect to enclosing private swimming pool areas) unless such fences are approved by the Committee or its designated approving authority. All fences shall be constructed of wood only. All permitted fences shall be first approved in terms of material and location by the Committee. Fencing is permitted with the prior written approval of the Committee, which may require the installation, and maintenance of landscape materials for screening and aesthetic purposes.

**B-13) Outbuildings.** No outbuilding or accessory building of any nature shall be erected on any Lot. No building erected elsewhere may be moved onto or placed upon any Lot.

**B-14) 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 Committee.

**B-15) 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 or rear yard and screened from street or neighbor view by plantings or a fence approved by the Committee.

**B-16) Solar Collectors.** No active solar collector or apparatus may be installed on any Lot unless such installation is first approved in writing by the Committee, which shall consider

the aesthetic and sun reflection effects on neighboring structures. Solar collectors or apparatus installed flat against or parallel to the plane of the roof shall be preferred.

**B-17) 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.

**B-18) Mailboxes.** Mailbox posts serving each home in the neighborhood shall be made of wood or brick, shall be a size and design meeting U.S. Postal Service regulations and approved by the Committee. The design of the mailbox should be included with the Plans, as that term is defined in Section B-2, above.

**B-19) Professional or Business Offices.** An Owner may use the single family residential home constructed on a Lot for a professional or business office when such office is incidental to the principal use as a single family residence, is less than three hundred (300) gross square feet in area, the business is conducted without an identification sign or label displayed on the Lot or building and the business is conducted without any outside employees. Any professional or business office or use on a Lot, which does not comply with the foregoing conditions, is prohibited.

**B-20) Street Trees.** Street trees will be planted by the City of Fitchburg and specially assessed to the Owner of the Lot on which the street tree has been planted. Purchasers of Lots shall be responsible for payment of the City street tree assessment.

**B-21) Swimming Pools.** Above ground swimming pools are prohibited.

**B-22) Subdivisions.** No Lot may be further subdivided, without the advance written consent of the Committee.

**B-23) Additional Setbacks.** In addition to any other setbacks required by applicable City of Fitchburg zoning ordinances, any home constructed in the Development shall comply with the following setback requirements:

i) Garages for all homes in the Development shall be required to be set back at least four (4) feet from the front face of the dwelling, except side entry garages (i.e. garages that have garage doors that are perpendicular to the street) and except tri-level homes. Side entry garages shall not be affected by this Section B-23. Garages for tri-level homes may protrude up to four (4) feet from the front face of a home. This Section B-23(i) does not apply to garages that have driveways that connect directly to a Private Alley.

ii) The front of any house shall be at least 25 feet, but not more than 28 feet, from the front property line. For corner Lots, the front property line shall be deemed to be the shortest of the two property lines abutting a public street.

**B-24) Lots that Abut Private Alleys.** Any Lot that abuts a Private Alley shall be required to have all vehicular access, ingress and egress, over and across such Private Alley and shall not be permitted to have a curb cut onto any public street or right-of-way adjacent to such Lot. Neither the Association, nor the Developer, nor any Owner, nor any Occupant shall be permitted to make any rule, restriction or regulation that prohibits the use by adjacent Lots of a Private Alley for vehicular access, ingress and egress.

**B-25) Corner Lots.** Any Duplex Lots located on corners (i.e. Duplex Lots that abut two or more dedicated public streets) shall be required to have one curb cut on each such public street.

**B-26) Roof Pitch Restrictions.** Any Lot in the Development that has a sideyard setback of less than eight (8) feet must have a roof pitch of no greater than 6/12 (i.e. six inches vertical rise for each twelve inches of horizontal run), except that decorative gable ends located on the front elevation of a home in the Development can have a roof pitch greater than 6/12 provided such decorative gable end is located at least eight (8) feet from the sideyard property line.

**B-27) Private Alley Maintenance.** The Association shall maintain, repair and replace any and all facilities located in a Private Alley, including pavement, asphalt and curbs. The cost and expense of Private Alley maintenance may be specially assessed to Owners of the Lots as set forth in Section A-3, above.

**B-28) Possible Future Road Expansions.** The Developer hereby discloses that the public streets adjacent to the Development, including, but not limited to, Lacy Road, may be expanded or widened in the future.

### **Part C** **ARCHITECTURAL CONTROL COMMITTEE**

**C-1) Membership.** From time-to-time hereafter, Developer shall appoint the members of the Committee who initially, during the term of Developer's control of the Association, may be employees or other affiliates of Developer, or third parties with an interest in and skills related to the work of the Committee, including an architect, engineer or other person with specialized knowledge that will be of assistance to the Committee and the performance of its duties hereunder. A majority of the Committee may designate a representative to act for it. In the event of the death of any member of the Committee, the remaining members shall have full authority to designate a successor. All inquiries to the Committee shall be addressed as follows:

Waterford Glen Architectural Control Committee  
C/o Gorman & Company, Inc.  
1244 South Park Street  
Madison, Wisconsin 53715

The Committee as appointed from time-to-time shall serve for the time period specified in paragraph C-8, below. Any Committee member may resign prior to said date. Such resignation shall be effective upon receipt. If a resignation shall occur, prior to turning over control of the Committee, then the remaining members of the Committee may appoint a replacement.

**C-2) Architectural Control.**

**A)** No structure, whether residence, accessory building, tennis court, swimming pool, antenna (whether located on a structure or on a Lot), satellite dish, flag pole, wall, landscaping or other improvements, including exterior colors and materials to be applied to said improvements, shall be constructed, maintained or performed upon any Lot and no

alteration or repainting of the exterior of a structure shall be made unless the Plans therefore shall have been submitted to and approved in writing by a majority of the Committee. Approval shall also be required for location of improvements with respect to topography and finish grade elevation. Said 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 size of driveways, the landscaping, and grading. In addition, such Plans shall show the impervious surface ratio calculation and pervious surface ratio calculation in the manner described in Part H, below. A copy of such Plans as finally approved shall be deposited with the Committee. The Committee may, but shall not be required to, issue written design guidelines (the "**Design Guidelines**") as an aid to Owners, contractors and architects, in the preparation of the Plans, which are to be submitted to the Committee for the Committee's approval. The initial Design Guidelines for the Development are incorporated herein as Exhibit "F." The Committee reserves the right to change, in the sole exercise of its discretion, the Design Guidelines from time-to-time, as it shall see fit, and without the advice or consent of any other party. Any change in the Design Guideline shall not be applied retroactively to any improvement previously approved by the Committee for a Lot.

B) Whether or not stated in the Design Guidelines, all building colors shall be considered and approved in accordance with the palette of roof and building colors submitted to the City of Fitchburg Department of Planning and Development – Zoning and Planning Staff. A copy of said palette shall be provided to buyers and builders upon request. In general terms, earthtone colors are favored while white, bright primary colors and bright pastels are to be avoided.

C-3) **Plan Review.** The 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. The Committee shall have complete discretion to review, approve, grant variances to or otherwise act with respect to Plans submitted to it for review pursuant to the terms of this Declaration.

C-4) **Procedure.** Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant for the initial approval of a residential structure. Thereafter, said Committee may charge a "request for action" or "approval" fee not to exceed \$75.00 for each such request or approval. 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 fully.

C-5) **Records.** Until such time as a replacement Committee is designated, all plans, applications and requests shall be submitted to said Committee at the following address: Architectural Control Committee, Attn: Rob Christlieb, c/o Gorman & Company, Inc., 1244 South Park Street, Madison, Wisconsin 53715.

C-6) **Committee Liability.** Neither the 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.

**C-7) Variance.** The Committee shall have the power and absolute discretion 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 sole discretion and opinion, result in difficulties or undue hardship to the Lot owner or in the event the architecture of the proposed Lot improvement is such as to present in its opinion a particularly pleasing appearance compatible with other houses in the development.

**C-8) Successor to Committee.** Developer may turn over control of the Committee to the Members of the Association at any time, and shall turn over control when construction of the principal structure on each Lot is completed on ninety (90%) percent of all Lots in the Development (the "Relinquishment Date"). As used herein, the phrase "construction is completed" shall mean that a certificate of occupancy for the principal structure on the Lot has been issued by the City of Fitchburg or the principal structure on the Lot is actually occupied and is being used for the purpose for which it was constructed. At such time as Developer turns over control, the Association's Board of Directors shall designate not less than three (3) or more than five (5) Members of the Association to serve and act as the Committee for all purposes hereunder.

## **Part D**

### **GENERAL PROVISIONS**

**D-1) Term.** This Declaration shall run with the Property and Common Property, and shall be binding on Developer and all Members and their successors and assigns, and all persons claiming under them for a period of twenty-five (25) years from the date recorded, after which time said Declaration shall be extended automatically for successive periods of five (5) years each unless an instrument signed by a majority of the Members agreeing to change said Covenants in whole or in part or to terminate the same.

**D-2) Enforcement.** The Architectural Committee or any Owner shall have the right to enforce by any proceedings at law or in equity all restrictions, conditions and covenants created or imposed herein, against any person or persons violating or attempting to violate any covenant, by any action to either restrain violation or to recover damages, or both including reasonable attorney fees. Failure to enforce any covenant, condition or restriction herein shall in no event be deemed a waiver of the right to do so thereafter. In the event of a violation of this Declaration the Committee shall have the right to assess and collect from the violating party a fine for such violation equal to the greater of (i) the actual damages suffered on account of the violation, or (ii) the sum of \$100.00 per day for each day the violation remains outstanding plus (iii) all costs of collection and enforcement, including actual attorney fees.

**D-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.

**D-4) Amendment.** At any time until the Relinquishment Date, Developer may modify, amend, alter and grant variances to this Declaration without the consent of any Member, Owner or Occupant or any other party, including the Association. Thereafter, this Declaration may be amended by majority vote of the members of the Association, taken at a meeting of such members duly called pursuant to the By-Laws of the Association.

**Part E**  
**SIDEYARD RESTRICTIONS**  
**(Zero Lot Line Maintenance)**

**E-1) Applicability.** The provisions of this Part E shall be applicable to the Duplex Lots (the "Affected Lots"). Duplex Lots may be referred to on the Plat as "Zero Lot Line" Lots.

**E-2) Sideyard Restrictions.**

A) The sideyard of an Affected Lot which is subject to the easement herein created ("**Servient Lot**"), shall be measured from the common lot line between the Servient Lot and the adjacent Duplex Lot identified herein ("**Dominant Lot**"), to the face of the building to be constructed on the Servient Lot, and the face of such building extended in a straight line from the front and rear corners of the building face to the front and rear property lines. In any case where a front or rear property line of the Servient Lot extends beyond the corresponding front or rear property line of the Dominant Lot the easement shall terminate at a point drawn perpendicular to the front or rear boundary line of the Dominant Lot, as the case may be, extended to the line described in the immediately preceding sentence.

B) Each Owner of a Dominant Lot that is subject to the terms of this paragraph shall have a perpetual, non-exclusive easement for the use of the sideyard located on the Servient Lot. The Owner of the Dominant Lot shall be responsible for maintenance of that area of the Servient Lot subject to this easement. Maintenance shall include seasonal lawn and landscape care, the repair and replacement of any fences located within the easement and such other normal and customary care and maintenance that a prudent homeowner would exercise were that area of the Servient Lot subject to the easement owned by the Owner of the Dominant Lot. The Owner of a Lot which is subject to this easement (the "**Servient Lot Owner**") shall have access to the easement area at such limited times as may be necessary for maintenance, repair and replacement of the building to be located on the Servient Lot. If the Easement Area is of insufficient width to provide adequate access to the home located on the Servient Lot by the Servient Lot Owner, then there shall be and hereby is created on the Dominant Lot an easement for access to the home on the Servient Lot, by the Servient Lot Owner, such that there is an area on the Servient Lot and the Dominant Lot, of not less than five (5) feet in width, in favor of the Servient Lot and Servient Lot Owner, for the purposes permitted under the terms of this Paragraph E-2(B). The Servient Lot Owner may not use the easement area for landscaping, lawn, garden, storage or any other use whatsoever, but only for the necessary maintenance, repair and replacement of the building located on the Servient Lot, and for only such time as the same is required to take place. Each of the Owners of the Servient and Dominant Lots, which are subject to this easement shall be responsible for payment of real estate taxes and assessments for their respective Lots and shall maintain public liability insurance on their Lots at all times.

**E-3) Binding Effect.** The easement created herein shall be perpetual, non-exclusive and shall be deemed to run with the land. The easement shall be binding upon the Owners of the Servient Lots and Dominant Lots in question, and their respective heirs, successors and assigns. No Owner whose Lot is subject to the terms, covenants and conditions of the easement created by this paragraph shall take any action which would impede the use and enjoyment of the adjoining Lot, or of the easement created herein.

**E-4) Duplex Lot Maintenance.** The Owner of each unit on a Duplex Lot shall maintain and repair the exterior surface of their dwelling portion the duplex building and the driveway leading to the dwelling portion of the duplex building, including, without limitation, the painting of exterior surfaces as often as necessary, the repair and replacement of siding, the repair and replacement of trim and caulking, and the maintenance and repair of the roof and driveway, and to be liable for the cost of any such maintenance or repairs made on their dwelling portion of the duplex building. In the event the repair of a duplex building is required on an emergency basis, and the failure to make such repairs would result in further and substantial damage to said building or rendering the building inhabitable, an Owner may repair the same and be entitled to contribution from the Owner of the other unit for the cost of any repairs made to the other Owner's portion of the building.

**E-5) Material Requirements.** Any repair, replacement or maintenance performed or allowed to be performed by an Owner on the exterior of a building on a Duplex Lot shall employ materials uniform and consistent with those materials already incorporated into the existing building and improvements.

**E-6) Prohibited Actions.** No Owner of a Duplex Lot shall perform or allow any act or work which will impair the structural integrity of a duplex building or the safety of either Owner's property including, in particular, the common wall separating such duplex units.

**E-7) Party Wall.** Any portion of the wall or roof of the building located on a Duplex Lot, that is placed on the dividing line between the Owners' respective property shall constitute a party wall and the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts and omissions shall apply.

## **Part F**

### **OUTLOT 4 REDEVELOPMENT AND REVERSION TO GORMAN & COMPANY, INC.**

**F-1) Reservation of Right of Reversion in Outlot 4 and Reservation of Right to Develop Outlot 4.** Notwithstanding anything else stated on the Plat or set forth in this Declaration, the Developer reserves unto itself, fee simple ownership of Outlot 4, and reserves the right and option to replat and redevelop Outlot 4 as residential Lots in the event the City determines that Outlot 4 is no longer necessary for temporary storm water management purposes. That is, in the event the City determines that Outlot 4 is no longer needed for temporary storm water purposes, fee simple ownership of Outlot 4 shall, at the sole option of the Developer, automatically vest in and revert to the Developer without any action by any party. Upon reversion of the ownership of Outlot 4 to the Developer, the Developer shall be free to subdivide and replat Outlot 4 to be used for Lots, as described in this Declaration. Such Lots, after creation by the Developer, shall be subject to all of the terms and conditions of this Declaration. Any Owner (and their mortgagee) that takes title to a Lot (or any other interest in a Lot, including a mortgage or land contract vendor's interest) shall, upon acceptance of such title or interest be deemed to have consented to the terms of this Part F, and appoints the Developer as attorney in fact to execute any document to confirm the matters described in this Part F.

**Part G**  
**TREE PRESERVATION**

**G-1) Tree Preservation.** All Plans shall comply with all of the terms and conditions of the Tree Inventory and the Tree Protection Plan prepared by Allison Tree Care, Inc. and dated March 31, 2005, a copy of which tree preservation guidelines are attached hereto as Exhibit "G" and made a part hereof.

**Part H**  
**MAXIMUM ALLOWABLE IMPERVIOUS SURFACE RATIO; MINIMUM FIRST FLOOR BUILDING ELEVATIONS; AND MINIMUM PERVIOUS SURFACES RATIO (I.E. OPEN SPACE) PERCENTAGE**

**H-1) Maximum Allowable Impervious Surface Ratios.** The schedule attached hereto as Exhibit "H" sets-forth the maximum allowable impervious surface ratios for each Lot in the Development. Conversely, the minimum amount of pervious surface space (i.e open space) is also set forth in the attached Exhibit "H". Prior to commencing any construction on a Lot, an Owner shall provide to the Developer, the Committee and the City, a calculation of the impervious surface ratio and pervious surface ratio for the proposed development of the Lot, which calculations shall be shown on the Plans for the development of each Lot. The impervious surface ratio shall be calculated by dividing the numerator of a fraction, which numerator shall be the total Impervious surface area to be constructed on a Lot, by the denominator of a fraction, which denominator shall be the total square feet contained in the Lot, the result of the division of such fraction shall be the impervious surface ratio for such Lot. In no event shall the impervious surface ratio for any Lot exceed the percentage set forth in Column 2 of the attached Exhibit "H". The determination of the impervious surface ratio shall be made by a licensed architect or licensed engineer and shall be subject to review and approval by the Committee, the Developer and the City.

**H-2) Minimum First Floor Building Elevations.** The third column of the schedule attached hereto as Exhibit "H" contains the minimum first floor building elevation for each Lot in the Development (with the exception of Lot 26, which shall be exempt from the requirements of this Section H-2, as Lot 26 had a house constructed on it prior to the recording of this Declaration). The Owner of each Lot shall provide written evidence to the Committee, the Developer and the City, that the improvements to be constructed on a Lot comply with the minimum first floor building elevation contained in Exhibit "H".

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the said Gorman & Company, Inc., a Wisconsin Corporation, has caused these presents to be signed and sealed this 7<sup>th</sup> day of October, 2005.

**\*\*DEVELOPER\*\***

**GORMAN & COMPANY, INC.**

By: *Gary J. Gorman*  
Gary J. Gorman, President

**ACKNOWLEDGMENT**

STATE OF WISCONSIN )  
                                  ) ss.  
COUNTY OF DANE        )

Personally came before me, *Paula J. Collins* notary public for the above State and County, this *7<sup>th</sup>* day of October, 2005, the above named Gary J. Gorman, to me known to be the person who executed the foregoing instrument and acknowledged the same in the capacity and for the purposes therein intended.

*Paula J. Collins*  
Notary Public, State of Wisconsin  
My Commission expires: *9/16/07*

**ACKNOWLEDGMENT AND CONSENT  
OF MORTGAGEE**

McFarland State Bank, as the mortgagee of the property described in Exhibit "A", hereby acknowledges the foregoing Declaration of Conditions, Covenants and Restrictions and expressly consents to said Declaration of Conditions, Covenants and Restrictions and its recording in the Dane County Register of Deeds Office.

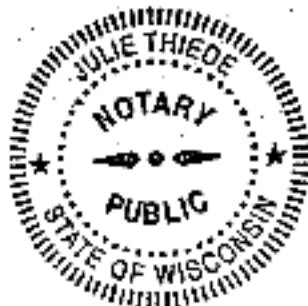
Executed this 11 day of August, 2005.

**McFARLAND STATE BANK**

By: James E. Walker

STATE OF WISCONSIN )  
  )ss>  
COUNTY OF DANE        )

Personally came before me, Julie Thiede, notary public for the above State and County, this 11<sup>th</sup> day of August, 2005, the above named James Walker, to me known to be the person who executed the foregoing instrument and acknowledged the same in the capacity and for the purposes therein intended.



Julie Thiede  
Notary Public, State of Wisconsin  
My Commission expires:

**THIS DOCUMENT DRAFTED BY:  
Attorney John W. Van Note  
MOHS, MACDONALD, WIDDER & PARADISE  
20 North Carroll Street  
Madison, WI 53703**

## **Exhibit "A"**

### **The Property**

Part of the NE ¼ of Section 15, T 6 N, R 9 E, City of Fitchburg, Dane County, Wisconsin to wit:

Commencing at a brass cap concrete monument marking the NE corner of said Section 15; thence S 86°41'52"W along the North line of said Section 15, 1,328.6 feet to the point of beginning of this description; thence S 00°12'W, 1,345.52 feet; thence S 86°58'04" W, 667.89 feet to a 1" iron pipe; thence N 00°12'26"E, 1,342.38 feet to the North line of said Section 15; thence N 86°42'52"E along said North line, 667.90 feet to the point of beginning of this description.

Subject to that land and use for Lacy Road along the North side thereof.

## EXHIBIT "B"

### Description of Common Areas and Common Amenities

- 1) Outlot 2, as shown on the Plat, is dedicated to the Association for signage and landscaping purposes.
- 2) Outlot 3, as shown on the Plat, is dedicated to the Association for temporary storm water, signage and landscaping purposes.
- 3) Outlot 4, as shown on the Plat, shall be used for temporary storm water purposes, and reserved for the development of future Lots by the Developer as described in Part F.
- 4) Outlot 1, as shown on the Plat, is dedicated to the public for park purposes.
- 5) Developer may, but shall not be required to, construct a subdivision identification sign on Outlot 3, the design, size, style and location of which shall be determined by Developer, in Developer's sole discretion. Payment for the subdivision identification sign and annual maintenance and repair costs, including utility charges, may be assessed to Owners pursuant to the provisions of this Declaration.

## EXHIBIT "C"

### Lot Uses

<u>Use</u>	<u>Lot Numbers</u>
Single Family Residential Lots	3-6, 9-15, 18-20, 23-28, 31, 32, 37-40, 43-57, 62-67
Duplex Lots	1 & 2; 7 & 8; 16 & 17; 21 & 22; 29 & 30; 33 & 34; 35 & 36; 41 & 42; 58 & 59; 60 & 61
Future Lots	Outlot 4

\* Developer may redesignate Lot Uses by amendment to this Declaration.

\* As set forth in Part F, Developer has reserved ownership of Outlot 4, and reserves the right to develop Outlot 4 as Single Family Residential Lots, Duplex Lots, or any other use permitted by the City of Fitchburg.

## EXHIBIT "D"

### Minimum Dwelling Unit Sizes

<u>Type</u>	<u>Minimum Square Footage</u>
One Story	1,450 sq. ft.
Two Story	1,700 sq. ft.
Split Level	1,450 sq. ft.
Duplex Lot	2,900 sq. ft.

## EXHIBIT "E"

### Landscaping Requirements

- A) Minimum of two (2) conifers of not less than 5 feet in height.
- B) Minimum of not less than one (1) shade tree, having a trunk diameter size of not less than 2.5 inches.
- C) Minimum of not less than eight (8) foundation plantings consisting of 18"-24" high deciduous and 3'-4' high conifer shrubs.

## EXHIBIT "F"

### Design Guidelines

All homes built in the Development must seek approval of the Committee. The Committee has the ultimate responsibility for approving all Plans for construction in the Development, and can approve or disapprove of Plans at their sole discretion. Please note that the deed restrictions contain complete details. However, the following guidelines will help you better prepare for the Committee:

#### Minimum Dwelling Unit Sizes:

One Story	1,450 sq. ft.
Two Story	1,700 sq. ft.
Split Level	1,450 sq. ft.
Duplex Lot	2,900 sq. ft.

The Committee will prefer historically suitable styles, such as Cape Cod, Tudor, Craftsman Bungalow, Cotswold Cottage, Foursquare and Prairie. The Committee will consider how each home will fit the Development. An Owner must provide the Committee with a front elevation of the design to show the proposed color and materials of the exterior. Also provide samples of exterior materials with this submittal.

A list of approved materials and practices follows:

- All windows must be wrapped in 4" wood/cement board trim unless not appropriate for the building style.
- All chimneys must have a chase.
- Cement board siding, such as Hardiplank, is preferred.
- Homes with vinyl or aluminum siding require wood corners and fascia. All "J" channels must be hidden behind wood/cement board trim.
- Minimum thickness of vinyl siding shall be .044 and aluminum siding .019
- Vinyl and wood windows are both acceptable.
- Vinyl and aluminum siding is restricted to rear and side elevations, and up to 70% of the front elevation. Brick, stucco, stone, organic material or "Hardiplank" is required on the remainder of the front elevation. Front projections (such as the garage) and the sides of the house shall be properly transitioned from natural materials to vinyl with a return of the natural material to avoid a veneer appearance at the front of the house.
- All roofing shall be laminated architectural grade textured fiberglass shingles, asphalt shingles, wood shakes or other acceptable material. Standard 3 in 1 shingles are not allowed.
- If garages are not side or ally loading, they must be set back from the house facade 4' unless not appropriate for the building style.
- Builder must provide the first floor elevation in relation to the curb/street.
- Tree Protection Planning and Guidelines, per attached Exhibit G.
- All conditions set forth in the Declaration of Conditions, Covenants and Restrictions are incorporated as part of these Design Guidelines

The Committee may approve substitute materials and practices, which are suitable to the home styles.

**EXHIBIT "G"**

**Tree Inventory and Tree Protection Plan**

[Attached.]

NOTE: Please be advised that the Developer, Gorman & Company, Inc., hereby directs viewers to ignore the printed text material on the maps attached to this Exhibit "G." Only the spatial relationships of the illustrations on the maps are being presented for your information.

**\* DEVELOPER \***

**GORMAN & COMPANY, INC.**

By: 

Gary J. Gorman, President

10-7-05  
Date

**TREE INVENTORY AND TREE PROTECTION PLAN  
WATERFORD GLEN SUBDIVISION  
FITCHBURG, WI**

March 31, 2005

**Prepared by:**

R. Bruce Allison, Ph.D.  
Registered Consulting Arborist #272  
Allison Tree Care, Inc.  
1830 Sugar River Rd.  
Verona, WI 53593

**Submitted to:**

Gorman & Company, Inc.  
Rob Christlieb  
1244 South Park Street  
Madison, Wisconsin 53715

**Contents:**

- I. Introduction & Goals
- II. General Site Assessment
- III. Tree Inventory
- IV. Design Implications
- V. Tree Protection Plan
- VI. Post Construction Maintenance
- VII. Photographs
- VIII. Site Plan

## I. INTRODUCTION & GOALS

The objective of the Tree Inventory and Tree Protection Plan is to identify the quality and quantity of the woodland resource in the Waterford Glen Subdivision development site, in addition to planning for its protection during construction and enhancement as a landscape amenity.

## II. GENERAL SITE ASSESSMENT

This 20.57 acre site at 5369 Lacy Road, Fitchburg, Wisconsin is currently a single family rural home site. The house is near the middle of the site with established landscape trees along the driveway and in the yard. White pine plantings are grouped along the east fence line and just west of the back yard. A mix of self-seeded deciduous trees grows along the farm field fence line. The Comprehensive Development Plan dated February 15, 2005 provided by Gorman & Company, Inc. indicates that the original house site will be preserved along with some of the surrounding landscape trees. Many of the fence line trees will be in the far rear yard of the proposed lots thus making preservation more probable. Outlot 4 appears to be protecting some of the trees along the north fence line along Lacy Road although the hike path will impact some of the trees.

## III. TREE INVENTORY

An inventory was conducted during March 2005. White plastic tags were placed on the trunks of 250 trees of significance with a unique identification number assigned to each tree and written in permanent black marker on the tag. Significance was established by trunk diameter over 5". The attached spreadsheet identifies the species, size, condition, and zone location. Size is identified by class with small having an 8" trunk diameter or less; medium 9-20", large 21-30" and extra large greater than 30". Condition is poor, fair or good, depending upon structure, decay and maintenance. Zones are A-G as identified in the attached zone map.

Due to the large number of trees and uniformity of size and species, zones D, E, F, and G are described only without individual tree identification.

### Waterford Glen Subdivision

#### Tree Inventory

Zone	ID Number	Species	Size	Condition
A	1	Black Cherry	Small	Poor
A	2	Black Cherry	Small	Poor
A	3	Elm	Medium	Fair
A	4	Arborvitae	Small	Poor
A	5	Black Walnut	Medium	Fair
A	6	Crabapple	Small	Fair
A	7	Colorado Spruce	Medium	Good

Zone	ID Number	Species	Size	Condition
A	8	Black Walnut	Medium	Good
A	9	Red Pine	Small	Poor
A	10	Elm	Medium	Fair
A	11	Black Walnut	Small	Fair
A	12	Black Walnut	Medium	Fair
A	13	Cherry	Medium	Poor
A	14	Spruce	Medium	Good
A	15	Black Walnut	Medium	Fair
A	16	Colorado Spruce	Medium	Fair
A	18	Cherry	Small	Poor
A	19	Elm	Medium	Fair
A	21	Black Walnut	Small	Fair
A	22	Black Walnut	Small	Fair
A	23	Colorado Spruce	Medium	Fair
A	24	Colorado Spruce	Medium	Fair
A	25	Colorado Spruce	Medium	Fair
A	26	Black Walnut	Medium	Fair
A	27	Mulberry	Medium	Poor
A	28	Hackberry	Medium	Fair
A	29	Red Pine	Small	Fair
A	30	Colorado Spruce	Medium	Fair
A	31	Black Walnut	Medium	Fair
A	32	Black Walnut	Medium	Fair
A	33	Black Walnut	Medium	Fair
A	34	Colorado Spruce	Small	Poor
A	35	Red Pine	Small	Poor
A	36	Cherry	Medium	Poor
A	37	Hackberry	Medium	Fair
A	38	Black Walnut	Small	Poor
A	39	Colorado Spruce	Small	Poor
A	40	Red Pine	Small	Fair
A	41	Red Pine	Small	Poor
A	42	Colorado Spruce	Medium	Fair
A	43	White Pine	Medium	Fair
A	45	Colorado Spruce	Medium	Fair
A	47	Red Pine	Small	Poor
A	48	Black Walnut	Medium	Fair
A	49	Cherry	Medium	Fair
A	50	Cherry	Small	Poor
A	51	Black Walnut	Small	Fair
A	52	Black Walnut	Medium	Fair
A	53-68	Black Walnut	Medium	Fair
A	69	Spruce	Small	Fair
A	70	Spruce	Small	Fair
A	71-82	Black Walnut	Medium	Fair
A	83	Silver Maple	Medium	Fair
A	84-97	Black Walnut	Medium	Fair
B	98	Silver Maple	Medium	Fair
B	99	Honey Locust	Medium	Good

Zone	ID Number	Species	Size	Condition
B	100	Silver Maple	Medium	Good
B	101	Silver Maple	Large	Fair
B	102	Colorado Spruce	Large	Good
B	103	Colorado Spruce	Large	Good
B	104	Honey Locust	Large	Good
B	105	Hawthorne	Medium	Fair
B	106	Honey Locust	Medium	Fair
B	107	Honey Locust	Medium	Fair
B	108	Silver Maple	Large	Fair
B	109	Norway Maple	Medium	Fair
B	110	Silver Maple	Large	Fair
B	111	Norway Maple	Medium	Fair
B	112	Pin Oak	Large	Good
B	113	Red Oak	Small	Good
B	114	Honey Locust	Large	Good
B	115	Silver Maple	Large	Fair
B	116	Crabapple	Medium	Fair
B	117	Pin Oak	Large	Good
B	118	Norway Maple	Medium	Fair
B	119	Honey Locust	Medium	Good
B	120	Paper Birch	Medium	Good
B	121	Honey Locust	Large	Good
B	122	Paper Birch	Medium	Good
B	123	Pin Oak	Medium	Good
B	124	Silver Maple	Large	Fair
B	125	Pin Oak	Large	Good
B	126	Apple	Medium	Fair
B	127	Red Pine	Medium	Fair
B	128	Red Pine	Medium	Fair
B	129	Fruit	Small	Fair
B	130	Fruit	Small	Poor
B	131	Pear	Small	Fair
B	132	Pear	Small	Fair
B	133	Fruit	Small	Fair
B	134	Pin Oak	Medium	Good
B	135	Apple	Small	Fair
B	136	Silver Maple	Large	Fair
B	137	Black Walnut	Small	Fair
B	138	White Pine	Medium	Good
B	139	Cherry	Small	Fair
B	140	Cherry	Small	Fair
B	141	Apple	Small	Fair
B	142	Apple	Medium	Fair
B	143	Cherry	Small	Poor
B	144	Cherry	Small	Poor
B	145	Apple	Small	Fair
B	146	Cherry	Small	Fair
B	147	Cherry	Small	Fair
B	148	Cherry	Medium	Fair

<b>Zone</b>	<b>ID Number</b>	<b>Species</b>	<b>Size</b>	<b>Condition</b>
B	149	Spruce	Medium	Good
B	150	Spruce	Medium	Fair
B	151	White Pine	Small	Fair
B	152	White Pine	Medium	Fair
B	153	Fir	Small	Good
B	154	Fir	Small	Good
B	155	White Pine	Medium	Fair
B	156	Fir	Small	Fair
B	157	White Pine	Medium	Fair
B	158	White Pine	Medium	Fair
B	159	Fir	Small	Fair
B	160	Fir	Small	Fair
B	161	White Pine	Medium	Good
B	162	Spruce	Small	Fair
B	163	Fir	Small	Fair
B	164	Spruce	Small	Fair
C	165	Boxelder	Medium	Poor
C	166	Boxelder	Small	Poor
C	167	Boxelder	Medium	Poor
C	168	Boxelder	Medium	Fair
C	169	Apple	Medium	Fair
C	170	Hackberry	Medium	Fair
C	171	Cherry	Large	Fair
C	172	Hackberry	Small	Good
C	173	Boxelder	Medium	Fair
C	174	Boxelder	Medium	Fair
C	175-249	White Pine	Medium	Fair
C	250	Silver Maple	Large	Fair

#### **Zone D**

Fence line row of densely spaced boxelder in the 6-12" trunk diameter size category with occasional cherry and hackberry mixed in. There are no singular remarkable specimen trees.

#### **Zone E**

Southern fence line of property continues with a dense but narrow collection of primarily self-seeded boxelders in the 6-12" category with an occasional elm, hackberry and some self-seeded red oaks in an occasional cluster in the 6" trunk diameter category. There are occasional cherry, but no singular specimen trees.

#### **Zone F**

East fence line at the southerly end has a continuation of the boxelder with occasional cherries. That group of deciduous trees continues for approximately 400 feet in a narrow strip. Starting approximately 110 feet from the southeast corner, there is a planted double row of primarily white pines that are in a trunk diameter range of 8-14". There is an occasional arbutus blended in and occasional red pines. That planting of fence row

white pines continues all the way to the northeast corner. There are occasional larger silver maples interspersed along with volunteer oaks, cherries, hackberries and walnuts.

#### **Zone G**

North property line along the Lacy Road right of way. Unplanted mix of black walnuts, some red oaks, hackberry, cherry in the 4-12" category with occasional mulberry. Interspersed are some smaller red and white pines that are in the small size category. It is a densely grown area, in a narrow strip along the fence line.

### **IV. DESIGN IMPLICATIONS**

Those established groups of trees that can be saved will provide significant environmental and aesthetic benefits to the development. The closed upper canopy will provide rainwater interception reducing the potential for erosion and increasing soil moisture retention. The solar orientation and height will provide shading, cooling and glare reduction. Urban wildlife habitat is also provided.

The aesthetic contributions to the landscape include visual and acoustic screening; vertical shape and color relief, naturalizing to the urban setting. The effort to protect these trees is well justified by the benefits to the development.

### **V. TREE PROTECTION PLAN**

The Tree Preservation Plan (TPP) provides the strategy for conducting the construction project in a way that allows those trees designated for preservation to continue healthy growth for years after the project's completion. A successful TPP requires accurate information on the biology of tree growth, the details of design and construction methods plus knowledge of how trees respond to changed environments. Success is dependent upon a team approach to the problem with a total commitment by the project owner, architect, regulatory authorities, construction crew and consulting arborist.

The following guiding principles adapted from the International Society of Arboriculture publication Trees and Development, A Technical Guide To Preservation of Trees During Land Development by Methany and Clark (1998) summarize the required approach to a successful tree protection effort:

1. Preservation requires the serious commitment of all parties including developer, general contractor, subcontractors, utility providers, city regulators, owners and consultants.
2. Preservation requires an accurate understanding of tree growth and development. For example, it is important to know that the majority of roots are in the first one foot of soil and that oak wilt can enter a tree through untimely pruning wounds.
3. Preservation must begin at the earliest stages of planning.
4. Not all trees can or should be saved. Those with defects or unsolvable siting conflicts should be considered for removal.

5. Preservation focuses on avoiding injury to trees. Once a tree has been damaged even the most competent arborist is limited in finding solutions.
6. Construction impacts are accumulative. Trees have some degree of tolerance for injury but will die as readily from a dozen small injuries as one large one.
7. Good communication between the designated tree consultant, designers, builders and owners is essential.
8. Accurate site information is critical to make useful decisions. One must know not just tree and building location but also grade change, utility trenching, construction equipment access lanes, etc.
9. Tree protection requires adequate space for the trees to survive.

The TPP strategy addresses four distinct stages of the development process as follows:

1. Planning - Design is influenced by tree facts such as location, species and condition. Data is gathered in the field and compiled in a tree resource inventory. Impact evaluation is conducted using the available data.
2. Pre-construction preparation - Includes clearance pruning and tree health enhancement, removal of select trees as needed, determination of a tree protection zone and placement of fencing or soil protectors.
3. Construction - Assignment of tree protection responsibilities to the project superintendent and a strong on site presence of the consulting arborist or a designated responsible person and good relationships with the construction crews is essential to assure that the contractor is enforcing the TPP. Accidents and unforeseen circumstances must be addressed quickly. Documentation is accomplished through a journal and photographs.
4. Post-construction maintenance - Even in the best-case scenario most trees will have been impacted either directly by injury or indirectly through changed environment. The owners will minimally need to guard against opportunistic pests and provide a higher level of water and nutrient monitoring during the trees' adjustment period.

Following are tree protection and pruning guidelines provided by the City of Fitchburg:

1. *A tree inventory must be completed to determine the genus/species, size and location and to assess the health and value of all trees on the site. A site inspection must be conducted prior to building starts to assess the health of preserved trees and to determine if wind throw hazards exist. A management plan must be developed and executed to ameliorate any hazard or tree risk.*
2. *A protected root zone (PRZ) must be established for all trees designated for preservation to protect roots beyond the apparent drip line or the critical root radius. The PRZ will be determined using the following calculation: a minimum distance of 18 times the tree trunk diameter measured at 4.5 feet above the ground.*
3. *A fence must be erected and maintained outside the PRZ. Visible "Off Limits" signs must be posted at 50-foot intervals along the fence. The following is prohibited within the PRZ:*
  - a. *Grading and excavation except as shown*

- b. *Storage or parking of machinery, equipment or vehicles*
  - c. *Storage, stockpiling, or dumping of construction materials, waste, refuse and excavated soils*
  - d. *Runoff or spillage of noxious materials*
  - e. *Ponding, erosion, or excessive wetting caused by dewatering operations*
  - f. *Attachment of any object to tree branches or trunks.*
4. *Soils must not be stripped from or disturbed within the PRZs of those trees designated for preservation (except for the removal of competing trees or other plants) to prevent the removal of nutrients or beneficial microbes*
  5. *Grade changes around trees designated for preservation must be carefully monitored and avoided. If grade transitions are necessary near any tree designated for preservation the following arboricultural accepted actions must be taken:*
    - a. *A retaining wall must be built to reduce the horizontal distance for the grade rather than creating a slope from the natural to the finish grade.*
    - b. *Soil aeration systems, consisting of tree well encircling the tree trunk to prevent fill from coming in contact with the base of the tree, load-bearing geotextile fabric covering the original surface, a horizontal grid system of perforated pipes connected together and vented to the tree well and the final fill surface, a layer of gravel fill surrounding the pipes and finally a second layer of geotextile fabric between the gravel and soil fill to prevent the layers from mixing.*
  6. *All trees designated for preservation must be thoroughly watered throughout the PRZs prior to pruning and prior to the removal of nearby trees to reduce the risk of stress and to enhance the recovery periods. Watering must continue throughout the growing season, even after construction is completed, at a rate of 1 inch of water per week.*
  7. *The PRZs must be covered with 3" - 4" of shredded mulch or 4" - 6" of wood chips to retain moisture and reduce soil compaction. The mulch should be retained to cover the PRZs at a depth of 3" - 4" around all preserved trees when construction is completed. Any PRZ that suffers soil compaction due to construction or the operation of heavy equipment must be restructured with a deep-water aeration system.*
  8. *In addition, PRZs for future tree planting should be protected and surrounding soil preserved by applying a layer of wood chips at least six inches thick over areas that will be used for traffic or materials storage during construction. If these areas become part of the new landscape, the wood chips will prevent the soil from becoming too compacted.*
  9. *All trees designated for preservation must be properly pruned of dead, diseased, or hazardous branches and selected live branches prior to the removal of nearby trees to reduce the risk of accidental injury during tree removal and construction. Wounds on live wood of all oaks must be dressed with an arboricultural wound dressing to prevent the spread of oak wilt. Only apply wound dressing to oaks and elms; do not dress the wounds of other species. Do not prune live wood on any oaks between April 15<sup>th</sup> and October 1<sup>st</sup>.*

10. All trees tagged for removal that are within the PRZ of a tree designated for preservation must be removed with a chainsaw and stump grinder rather than being bulldozed to avoid damaging the roots, trunks and limbs of the tree(s) designated for preservation.
11. Any roots that must be severed within the PRZs must be cut with sharp, clean root cutting equipment. The roots must be cut cleanly avoiding any ripping or tearing - do not tear, break, or chop roots. Cover exposed roots within one hour with soil, mulch, or a damp burlap.
12. Avoid trenching where underground utilities are required within the PRZ. Tunnel under or around roots by drilling, auger boring, pipe jacking, or digging by hand.
13. All paved areas and foundations must be located outside of the PRZs of trees designated for preservation. In the case of exceptions, any tree designated for preservation that's PRZ is encroached by pavement or a foundation must be protected by a root barrier to prevent damage to the pavement or foundation and to protect the health of the tree.

#### TREE PROTECTION ZONE FENCING

Fencing defining the tree protection zones should be in place prior to any lot clearing, grade changes, road work or utility excavation. A sturdy, rigid, 4-foot tall plastic fence should be installed around the trees to be protected to maintain rigidity and avoid sagging. Steel fence posts are to be placed at 6' intervals. Appropriate warning signage will be placed in visible locations. This fencing will be maintained during the entire construction and landscaping phase by the responsible contractor. The exact location of the fencing will be specified in the construction contract documents as drawn on the attached site plan. A gate will limit access to the protection zone. The project superintendent or other designated responsible person should control access.

#### UTILITIES

No utility trenching should occur in the tree protection zones. If necessary to cross these zones, tunneling will be required below the root zone. It is required that the contractor advise the consulting arborist or responsible party when utility work will be done near the tree protection zones.

#### OAK WILT PROTOCOL

Oak wilt is a fungus that can enter the vascular system of oaks causing that system to close with resultant wilting of leaves. Oaks from both the red and white oak groups can become infected with mortality inevitable in the red oak group. Infection can occur in two ways: 1) overhead infection when a wound is made during the vulnerable time of approximately April 15 to October 1 allowing the fungus to enter the tree; or 2) through a root graft between a healthy tree and a nearby infected tree.

No oaks will be pruned or wounded from April 15 to October 1. If a wound is accidentally made, an asphalt base tree wound dressing will be immediately applied.

Two cans of this material will be kept on site during construction. If additional clearance pruning is needed, then pruning can be done during the prohibited oak wilt season only with prior consultation with the consulting arborist and under his monitoring. The fungicide Alamo is now available to protect high value oaks from infection if there is nearby disease pressure or to treat recently infected white or bur oaks therapeutically. All wounds or injuries to the trees will be reported to the consulting arborist and documented. Detailed information on oak wilt is available from the University of Wisconsin Extension Bulletin No. G5590 titled, "Oak Wilt Management – What Are the Options?" (1993)

#### VERIFICATION AND DOCUMENTATION

Either a consulting arborist or a designated responsible person from the construction staff will provide verification that the terms of the tree protection plan are met. Documentation will be generated by a written journal and photographs of the tree protection plan enforcement during the complete construction process.

#### VI. POST CONSTRUCTION MAINTENANCE

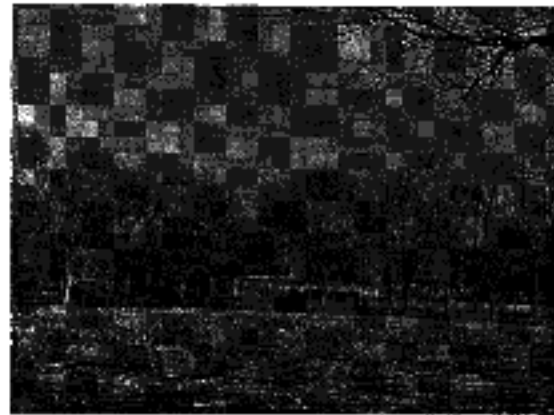
Even with the best planning and the greatest care during construction, land development does have some impact on remaining trees. The habitat changes with different heat loads, changed water movement and drainage and some root loss. The higher value trees will need careful follow-up monitoring. My general recommendations for post-construction action are as follows:

- The trees will require continued monitoring by the owners for at least two full growing seasons after completion of the project.
- Drought stress is to be avoided. One inch of moisture per week is normal.
- Be prepared to treat for significant foliar insects such as gypsy moth or canker worm.
- If crown dieback occurs in the first or second growing season, consider the growth regulator Cambistat 2SC.
- Avoid any further root disturbance, pruning or wounding.
- Do not apply fertilizers at a rate above 1 pound nitrogen per 1000 square feet for two growing seasons and only if the trees are exhibiting some nutrient deficiency symptoms.
- During winter months choose road salts that specifically say non-phytotoxic on the label for use in those areas near the valuable trees. Avoid piling up plowed snow under the root zone of the oaks.

VII. PHOTOGRAPHS



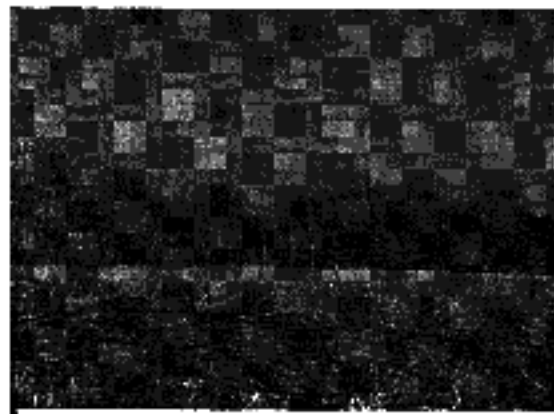
Zone A



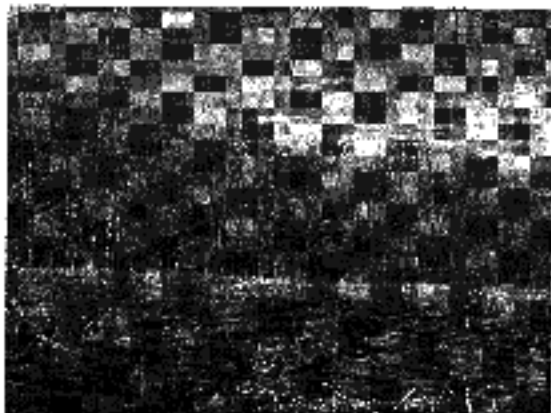
Zone B



Zone C



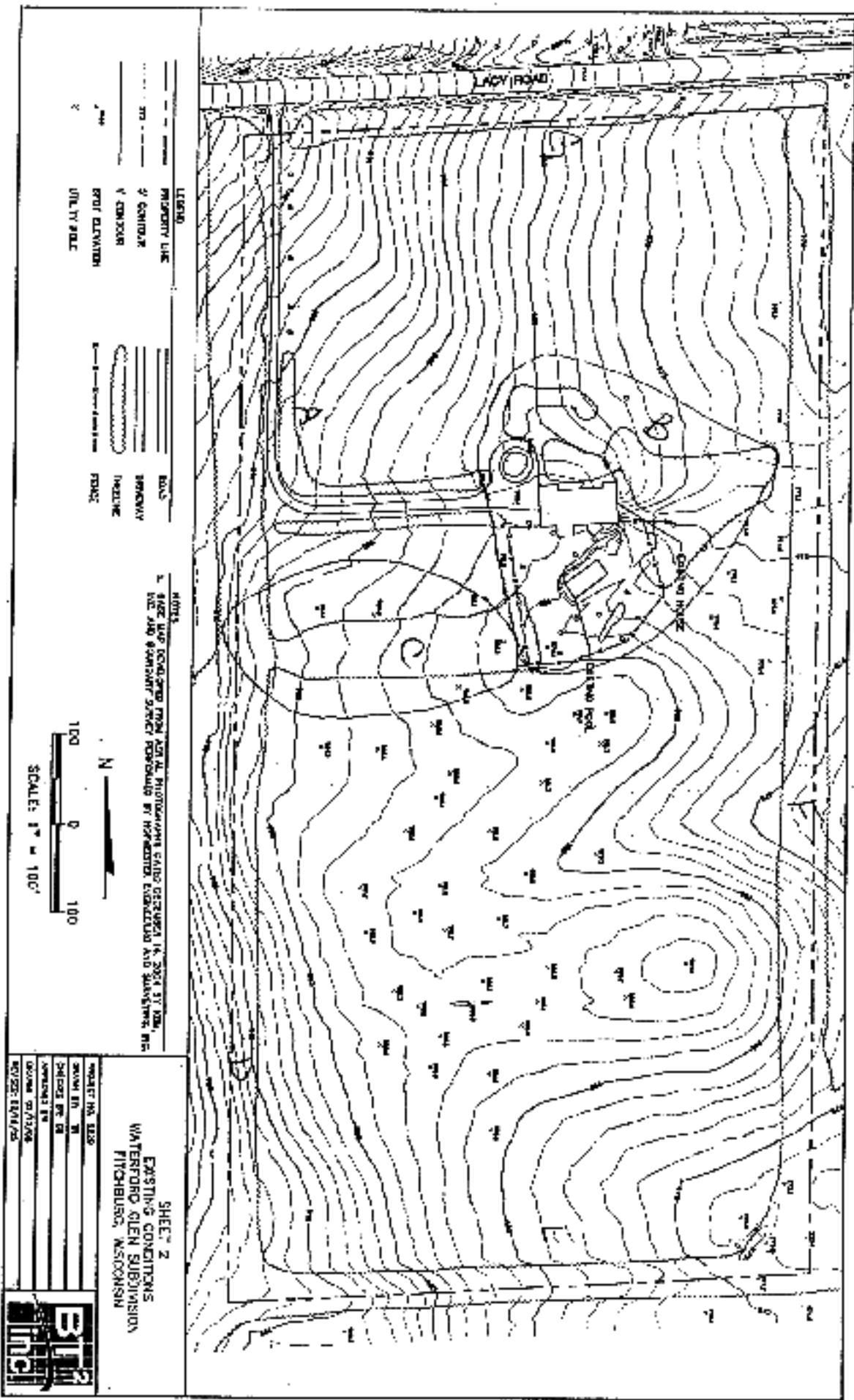
Northeast corner between zones F & G



Zone G



Zone G



## EXHIBIT "H"

### Schedule of Maximum Allowable Impervious Surface Ratios; Minimum First Floor Building Elevations; and Minimum Pervious Surfaces Ratio (i.e. Open Space) Percentage

Lot Number	Maximum Impervious Surface Ratio Percentage (ISR %) (Developable Land)	Minimum Building Elevation	Minimum Pervious Surface Ratio (i.e. Open Space) Percentage (Non-Developable Land)
1	44	984.35	58
2	44	984.81	56
3	50	985.06	50
4	50	985.34	50
5	50	985.56	50
6	50	985.55	50
7	44	985.35	56
8	44	985.08	56
9	50	984.31	50
10	50	984.15	50
11	50	983.73	50
12	50	983.28	50
13	50	982.85	50
14	50	982.43	50
15	50	981.99	50
16	44	985.04	56
17	44	985.31	56
18	50	985.63	50
19	50	985.89	50
20	50	986.23	50
21	44	986.96	56
22	44	988.00	56
23	50	981.07	50
24	50	977.49	50
25	50	976.93	50
26	50	Exempt	50
27	50	983.99	50
28	50	984.07	50
29	42	981.19	58
30	42	981.45	58
31	42	981.73	58
32	42	982.11	58
33	42	982.88	58
34	42	983.43	58
35	42	984.00	58
36	42	984.58	58
37	42	984.95	58
38	42	985.26	58
39	42	985.54	58
40	42	985.55	58
41	42	985.36	58
42	42	985.17	58

Lot Number	Maximum Impervious Surface Ratio Percentage (ISR %) (Developable Land)	Minimum Building Elevation	Minimum Pervious Surface Ratio (i.e Open Space) Percentage (Non-Developable Land)
43	42	985.17	58
44	42	985.44	58
45	42	985.77	58
46	42	986.13	58
47	42	986.92	58
48	42	988.12	58
49	42	988.06	58
50	42	987.64	58
51	42	986.32	58
52	42	983.05	58
53	42	979.86	58
54	42	977.77	58
55	42	977.25	58
56	42	977.02	58
57	42	979.00	58
58	42	980.62	58
59	42	982.54	58
60	42	984.79	58
61	42	985.08	58
62	42	985.36	58
63	42	985.68	58
64	42	985.30	58
65	42	983.85	58
66	42	982.35	58
67	42	981.49	58