

DECLARATION OF CONDOMINIUM OF HIGH POINT GARDENS CONDOMINIUM

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V30884P 23

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62

DECLARATION OF CONDOMINIUM

OF

V30884P 24

HIGH POINT GARDENS CONDOMINIUM

THIS DECLARATION is made under and pursuant to the Wisconsin Condominium Ownership Act of the State of Wisconsin (hereinafter "Act"), Chapter 703, Wisconsin Statutes, by Gorman & Company, Inc., a Wisconsin Corporation (hereinafter "Declarant").

ARTICLE I

STATEMENT OF PURPOSE

The purpose of this Declaration is to subject the property hereinafter described and the improvements to be erected thereon (hereinafter collectively "Condominium") to the condominium form of ownership in the manner provided by the Act. It is intended that all provisions contained herein shall be deemed to run with the land and shall constitute benefits and burdens to the Declarant and to its successors in interest.

ARTICLE II

DESCRIPTION, NAME, RESTRICTIONS, AND DEFINITIONS

2.1 Legal Description. The real estate subject to this Declaration is owned by Declarant and is described on Exhibit "A" attached hereto.

2.2 Name and Address. The name of the Condominium is High Point Gardens Condominium and has as its address 851 - 871 North High Point Road, Madison, Wisconsin, 53717.

2.3 Covenants, Conditions, Restrictions, and Easements. The Condominium shall be, on the date this Declaration is recorded, subject to:

A. General taxes and special assessments not yet due and payable.

B. Easements and rights in favor of gas, electric, telephone, water, sewer and other utilities.

C. All other easements, covenants, declarations, and restrictions of record including without limitation, the easements, covenants and restrictions, shown on the Plat of Old Sauk Addition to Wexford Village, on the Condominium Plat of High Point Gardens Condominium, in the Amended PCD-GDP of Wexford Village, and the Articles of Incorporation and By-Laws and rules and regulations of the Wexford Village Homeowners Association, Inc.

D. All municipal, zoning, (including, without limitation, the PUD/SIP zoning text for Lots 1 - 4, Old Sauk Addition to Wexford Village) and building ordinances.

E. All other governmental laws and regulations applicable to the Condominium.

**V30884P 25**

2.4 Definitions. Except as modified herein, the definitions contained in the Act shall govern in the interpretation of this Declaration.

2.5 General Description of Condominium. The Condominium shall consist of three (3) buildings containing ten (10) condominium units (hereinafter "**Units**"), together with guest parking stalls, driveways, pedestrian walkways and land. There are three (3) buildings constituting the Condominium. The buildings are a mix of one (1) and two (2) story structures together with partial basements. A survey plan of the land and buildings is attached hereto as Exhibit "B" and incorporated herein by reference ("**Condominium Plat**"). The partitioning, fixtures, attachments, and decorations within each Unit will be determined from time to time by each Unit Owner, subject to restrictions in this Declaration and in the rules and regulations adopted by the Association.

### ARTICLE III

#### UNITS

3.1 Definition. "Unit" shall mean a part of the Condominium intended for any type of independent use, including one or more cubicles of air at one or more levels of space or one or more rooms of enclosed space located on one or more floors (or parts thereof) in a building.

3.2 Boundaries of Units. A Unit in High Point Gardens Condominium shall include:

A. One or more contiguous or non-contiguous cubicles of air, including the perpetual right of ingress thereto and egress therefrom. The exterior boundaries of the cubicles shall be the vertical planes, the elevations of which coincide with and include the undecorated finished ceiling, floors and walls of the Unit. The foregoing boundaries extended to the intersection with each other shall constitute the Units as shown on Exhibit "B". It is intended that the surface of each plane described above (be it tiled, papered, panelled, painted, carpeted or otherwise covered) is included as a part of each defined Unit. Included within the Unit shall be all windows and doors, (including hardware), which provide direct access to the Unit with the exception of the garage door or doors and associated operating mechanism which shall be a Limited Common Element. In the case of a Unit with more than one (1) floor level, the boundaries delineated above shall apply to

each of said floor levels and shall include all stairways and stairwells situated therein.

V30884P 26

B. Any and all appliances and other fixtures contained within or serving each Unit, whether they are inside or outside the defined cubicle of air, including, without limitation:

- 1) Interior lights and light fixtures.
- 2) Cabinets.

C. All floor, wall, baseboard, or ceiling electrical outlets and switches and the junction boxes serving them.

D. All plumbing fixtures, hot water heaters, water softeners, if any, and the piping, valves, and other connecting and controlling mechanisms and devices lying between the fixtures and water or sewage lines serving more than one (1) Unit.

E. The heating, ventilating and air conditioning system, including the control mechanisms serving each Unit.

Specifically not included as part of the Unit are those structural components of each building and any portion of the plumbing, electrical or mechanical systems of the building serving more than one (1) Unit, even if located within the cubicle or cubicles of air comprising the Unit.

3.3 Legal Description. Units shall be identified by the number or other designation as specified on the Condominium Plat, which plat shall be recorded contemporaneously with this Declaration. A copy of the Condominium Plat is attached hereto as Exhibit "B".

#### ARTICLE IV

##### COMMON ELEMENTS

4.1 Definition. "Common Elements" shall mean all of the Condominium except the Units.

4.2 Description. The Condominium Common Elements are the following:

A. The land described in Exhibit "A".

B. The paved driveways, guest parking spaces, and pedestrian walkways situated on the land described in Exhibit "A",

without limitation, any handicapped parking spaces situated thereon.

V30884P 27

C. Structural walls separating more than one (1) Unit.

D. Any mechanical or utility mechanism, connection or service that serves more than one (1) Unit.

E. Any other portion of the improvements to the land described in Exhibit "A" which is not included within the boundary of a Unit as described above.

4.3 Use. Except as otherwise provided herein, and subject to the By-Laws of the High Point Gardens Condominium Association, Inc. (the "**Association**"), as hereinafter defined, and subject to any rules and regulations adopted by the Association, the Common Elements may be used by the Unit Owners for the purposes for which they were intended. The necessary work of maintenance, repair and replacement of the Common Elements and the making of any additions or improvements thereto shall be carried out only as provided in this Declaration, the By-Laws of the Association and rules and regulations adopted pursuant thereto.

4.4 Ownership. There shall be appurtenant to the Units an undivided interest in the Common Elements in the percentages specified in Exhibit "C" attached hereto.

#### ARTICLE V

#### LIMITED COMMON ELEMENTS

5.1 Definition. "Limited Common Elements" shall mean those Common Elements identified in this Declaration as reserved for the exclusive use of one or more of the Units.

5.2 Description. The Condominium Limited Common Elements are the following:

A. Balconies and patios attached to, leading directly to or from, or adjacent to each Unit.

B. Entrances, including the door, step and stoop, or stairwell leading to or from each Unit.

C. The enclosed or fenced garden area situated adjacent to the front entrance to each Unit.

D. The garage door which encloses the garage portion of each Unit, including the operating mechanism.

E. The two (2) parking spaces situated immediately in front of the garage doors of each Unit.

**V30884P 28**

5.3 Use; Maintenance. Except as otherwise provided herein, the manner of use of the Limited Common Elements shall be determined solely by the Unit Owner who has the exclusive use of such Limited Common Elements, except that no use may occur which could damage the structure of any building or otherwise cause harm to the Condominium. In addition, maintenance, repair and replacement of the Limited Common Elements shall be the responsibility of the Unit Owner to whose use the Limited Common Element is limited, except for the garage doors and associated operating mechanism, the maintenance, repair and replacement of which shall be the responsibility of the Association and the cost of which shall be a common expense as set forth in Article XIV below.

## ARTICLE VI

### USES

The Units, Limited Common Elements, and Common Elements of the Condominium shall be used for residential occupancy and motor vehicular parking purposes only, and shall not be used for any other purpose. Notwithstanding anything to the contrary contained herein, the use of the Units, Limited Common Elements, and Common Elements shall comply with the City of Madison General Ordinances, any other applicable municipal ordinance, and any other restrictions as contained in the Association's Articles of Incorporation, By-Laws and any rules and regulations adopted by the Association. No use may unreasonably interfere with the use and enjoyment of the Common Elements or other Units by the other Unit Owners. There shall be no storage of material, and there shall be no conduct of any activity, which would materially increase the insurance rates on the Condominium. Any and all attorney fees and other expenses incurred by the Association in the enforcement of this provision shall be reimbursed by the Unit Owner in violation thereof and may be assessed against such Owner's Unit.

## ARTICLE VII

### UNIT OWNER

"Unit Owner" shall mean a person, combination of persons, partnership, or corporation, who or which holds legal title to a Unit; provided, however, that in the event equitable ownership has been conveyed in the Unit by means of a land contract or other similar document, "Unit Owner" shall mean the land contract purchaser.

## ARTICLE VIII

## ASSOCIATION

8.1 Definition. "Association" shall mean the High Point Gardens Condominium Association, Inc., a Wisconsin non-stock corporation.

**V30884P 29**

8.2 Duties and Obligations. All Unit Owners shall be members of the Association and subject to its Articles of incorporation, By-Laws, and rules and regulations adopted by it for the use and management of the Condominium.

8.3 Voting. The Owner of each Unit shall be entitled to one (1) vote in the Association, subject however, to suspension as provided herein. Even if a Unit is owned by more than one (1) person, the Unit must cast its vote or votes as a whole. No fractional voting will be allowed or considered. As provided in Article VII hereof, one who holds a land contract purchaser's interest or any other such equitable interest in a Unit shall be considered the Unit Owner. However, for purposes of being eligible to vote as a member of the Association, the land contract or other document establishing the equitable interest, or an instrument providing constructive notice of such interest, must be recorded in the Dane County Register of Deeds office.

8.4 Declarant Control. Except as otherwise provided in Section 703.15(2)(d), Wisconsin Statutes (1993-94), or as amended, Declarant reserves the right to appoint and remove officers of the Association or to exercise the powers and responsibilities otherwise assigned by the Declaration or the Act to the Association or its officers (hereinafter "**Declarant Contract**"). The period of Declarant control shall continue until the earlier of either of the following to occur: (i) the expiration of ten (10) years from the date the first unit is conveyed to a person other than Declarant, or (ii) the expiration of thirty (30) days after the conveyance of seventy-five (75%) percent of the Common Element interest (as expanded as is permitted herein) to purchasers. During this period, Declarant shall have the full and exclusive right to take all action on behalf of the Association, including but not limited to, the right to (a) enter into leases of units, (b) make contracts and agreements on behalf of the Association for the maintenance, operation, and management of the Condominium, (c) determine, levy, and collect assessments, (d) grant easements, and (e) enact and enforce rules and regulations for the use of the Condominium. Any contracts or agreements entered into by the Declarant on behalf of the Association with Declarant or an affiliate of Declarant shall not extend for a period exceeding one (1) year; provided, however, that such contracts or agreements may be automatically renewable if a reasonable period for giving notice of termination is provided at the end of each term. Furthermore, any such contracts or agreements shall provide for termination by either party without cause and without payment of a termination fee upon at least ninety (90) days' prior written notice. Notwithstanding the foregoing,

this provision shall not apply to any lease, the termination of which would terminate the Condominium.

V30884P 30

8.5 Termination of Control. Upon termination of the above-specified period of Declarant Control, or upon the earlier, voluntary relinquishment of control by Declarant, control of the Association shall be turned over to the Unit Owners; provided, however, Declarant reserves the right to name one member, who need not be a Unit Owner, of the Board of Directors until all Units have been conveyed to Unit Owners (other than Declarant) in fee simple. Notwithstanding any provision to the contrary, Declarant reserves the following rights: (i) to continue any unfinished development work on any unsold Unit and on the Limited Common Elements and Common Elements (including obtaining any necessary easements therefor); (ii) to conduct promotional and sales activities using unsold Units and both Limited Common elements and Common Elements, which activities shall include but need not be limited to maintaining sales and management offices, model Units, parking areas, and advertising signs; and (iii) to do all other acts Declarant shall deem reasonably necessary in connection with the development and sale of the remaining Units. However, any such acts shall not violate the rights of the Unit Owners or their Mortgagees or unreasonably interfere with the use and enjoyment of the Units, Limited Common Elements, or Common Elements. Declarant shall also have the right during the period of Declarant Control to grant easements over, through, or under any part of the Condominium for the benefit of the Condominium as a whole or any part thereof.

## ARTICLE IX

### REPAIRS AND MAINTENANCE

9.1 Units. Each Unit Owner shall be responsible for the decoration, furnishing, housekeeping, maintenance and repair and replacement of his, her, its or their Unit.

9.2 Limited Common Elements. With the exception of the garage door or doors of each Unit and associated operating mechanism, and that portion of the Limited Common Elements that are a part of the exterior of the structures comprising the Condominium, each Unit Owner shall be responsible for the decoration, furnishing, housekeeping, maintenance, repair, replacement, general cleanliness, and presentability of the Limited Common Elements which use is reserved to the Unit or Units.

9.3 Common Elements. Except as provided in Section 9.2 hereof, the Association shall be responsible for the maintenance, repair, replacement, general cleanliness and presentability of the Common Elements.



9.4 Entry by Association. Provided that twenty-four (24) hours prior notice is given, duly authorized officials or agents of the Association may enter any Unit or Limited Common Element(s) or both at reasonable times and under reasonable conditions when, in the opinion of the said authorized officials or agents, entry is necessary in connection with any maintenance, construction, or repair of public utilities and for any other matter for which the Association is responsible. The entry shall be made with as little inconvenience to the Unit Owner, his, her, its or their tenants, as possible under the circumstances, and during normal business hours, if possible. Any damage caused thereby shall be repaired by the Association and shall be treated as a "Common Expense", as hereinafter defined. Notwithstanding the foregoing, in the event of an emergency, the twenty-four (24) hour notice requirement shall not apply, although, prior notice to the Unit Owner shall be attempted.

ARTICLE X

V30884P 31

UNIT ALTERATIONS

10.1 Within Unit.

A. A Unit Owner may make improvements or alterations within his, her, its or their Unit; provided, however, that such improvement or alteration shall not impair the structural soundness or integrity or lessen the structural support of any portion of the Condominium, and does not impair any easement. A Unit Owner may not change the dimensions of or the exterior appearance of a Unit or any portion of the Common Elements (including Limited Common Elements) without obtaining the prior written permission of the Association's Board of Directors ("**Board**"), which permission may be denied in the sole discretion of the Board; provided, however, that the patio which is a Limited Common Element of each Unit, may be enclosed by a screened porch or full enclosure for all season use pursuant to guidelines and procedures adopted by the Board. Any approved improvement or alteration which changes the exterior dimensions of a Unit must be evidenced by the recording of a modification to the High Point Gardens Condominium Declaration and Plat before it shall be effective and must comply with the then-legal requirements for such amendment. Furthermore, any approved improvements or alterations must be accomplished in accordance with applicable laws and regulations, must not unreasonably interfere with the use and enjoyment of the other Units and Limited Common Elements or the Common Elements, and must not be in violation of any underlying mortgage, land contract, or similar security interest.

B. A Unit Owner acquiring an adjoining part of another Unit may remove all or any part of any intervening partition wall or create doorways or other apertures therein. This may be done

even if the partition wall may in whole or in part be a Common Element, provided that those acts do not impair the structural integrity or lessen the support of any portion of the Condominium, do not reduce the value of the Condominium, and do not impair any easement. The creation of doorways or other apertures is not deemed an alteration of boundaries.

#### 10.2 Relocation of Boundaries.

V30884P 32

A. If the Unit Owners of adjoining Units desire to relocate their mutual boundary, the affected Unit Owners shall prepare and execute appropriate instruments.

B. An amendment to the Declaration and Plat shall identify the Units and shall state that the boundaries between those Units are being relocated by agreement of the Unit Owners thereof. The amendment shall contain words of conveyance between those Unit Owners, and when recorded shall also be indexed in the name of the grantor and grantee, if applicable. The amendment to the Declaration shall also state the reallocation of the aggregate undivided interest in the Common Elements appertaining to the Units. If not stated, the prior allocation shall govern, until such time as the Unit Owners shall record an amendment to that effect in the Dane County Registry.

C. Plats and plans showing the altered boundaries and the dimensions thereof between adjoining Units, and their identifying numbers or letters, shall be prepared. The plats and plans shall be certified as to their accuracy in compliance with Subsection 703.13(6), Wisconsin Statutes, by a civil engineer, architect, or licensed land surveyor authorized to practice his or her profession in the State of Wisconsin.

D. After appropriate instruments have been prepared and executed, those instruments shall become effective when the adjoining Unit Owners and the Association have executed them and they have been recorded in the Dane County Registry. The recording thereof shall be conclusive evidence that the relocation of boundaries did not violate the Condominium instruments.

#### 10.3 Separation of Units.

A. A Unit may be separated into two (2) or more Units upon compliance with the provisions of this section, provided that the Board of Directors of the Association approves (which approval may be denied in the sole discretion of the Board of Directors). The Association President, upon written application of a Unit Owner proposing the separation of a Unit (hereinafter the "**Separator**") and after thirty (30) days' written notice to the other Unit Owners shall promptly present the matter to the Association's Board of Directors. If approved, the President of the Association shall promptly prepare and execute appropriate instruments under this

section. An amendment to the Condominium instruments shall assign a new identifying number to each new Unit created by the separation of a Unit, shall allocate to those Units, on a reasonable basis acceptable to the Separator and the other Unit Owners, all of the undivided interest in the Common Elements and rights to use the Limited Common Elements. The vote in the Association formerly appertaining to the separated Unit will be allocated among the resulting Units. For this purpose, a fractional vote shall be permitted. The amendment shall reflect a proportionate allocation to the new Unit(s) of the liability for Common Expenses and right to Common Surpluses formally appertaining to the subdivided Unit.

B. Plats and plans showing the boundaries and dimensions separating the new Units together with their other boundaries and their new identifying numbers or letters shall be prepared. The plat and plans shall be certified as to their accuracy and compliance with Subsection 703.13(7), Wisconsin Statutes, by a civil engineer, architect, or licensed land surveyor authorized to practice his or her profession in the State of Wisconsin.

C. After appropriate instruments have been prepared and executed, they shall be delivered promptly to the Separator upon payment by him, her or it of all reasonable costs for their preparation. Those instruments are effective when the Separator has executed them and they are recorded in the Dane County Registry. The recording of the instruments shall be conclusive evidence that the separation did not violate any restrictions or limitations specified by the Condominium instruments and that any reallocations were reasonable.

10.4 Expenses. All expenses involved in any improvements or alterations approved by the Association or permitted under this Article, whether or not completed, including all expenses to the Association, shall be borne by the Unit Owner or Owners involved and may be charged as a special assessment to the affected Units.

## ARTICLE XI

### INSURANCE

11.1 Property Insurance. The Association shall obtain and maintain insurance for the Units, Limited Common Elements and Common Elements on an "all risk basis" for an amount not less than the full replacement value of the insured property. For purposes of this paragraph, "insured property" shall include all elements of the buildings constituting the Condominium existing as of the most recent date of completion of a Unit ("**Completion Date**"). That is, the Completion Date shall be continually updated to the date coinciding with the completion of the most recent Unit since the Condominium is under construction. The final Completion Date shall occur once all Units have been completed, including Units described

in the expansion area as set forth in Article IX below, including without limitation, all interior finishes, built-in cabinets, plumbing fixtures, heating, ventilating and air conditioning equipment, partition walls and floor coverings. The Association shall be the named insured with Unit Owners and the Mortgagees of Units as additional insureds. For purposes of this provision and for the Declaration, "Mortgagee" shall mean the holder of any recorded mortgage encumbering one or more Units or a land contract seller.

**V30884P 34**

11.2 Liability Insurance. The Association shall maintain general liability insurance against all claims commonly insured against and in such amounts as the Association shall deem suitable. The policies may, at the discretion of the Board of Directors of the Association, include standard coverage for the errors and omissions of Association directors and officers. The Association shall be the named insured with Unit Owners and the Mortgagees of Units as additional insureds. Such policies shall also contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of negligence on the part of the Association or any Unit Owners, their tenants or visitors.

11.3 Fidelity Insurance. If the Board of Directors of the Association affirmatively elects, the Association shall maintain fidelity coverage against dishonest acts by any person responsible for handling the funds belonging to or administered by the Association. The Association shall be the named insured, and the insurance shall be in an amount of not less than fifty (50%) percent of the Association's annual operating expenses and reserves.

11.4 Administration. Any and all premiums associated with the insurance purchased by the Association shall be a Common Expense. The Association shall act as the trustee for the purpose of obtaining insurance coverage and for the receipt, application, and disbursement of proceeds. All insurance shall be obtained from insurance carriers licensed or permitted to do business in the State of Wisconsin.

11.5 Unit Owner's Insurance. Each Unit Owner shall maintain property insurance for the contents, additions and alterations contained within his, her, its or their Unit on an all-risk basis for an amount not less than the full replacement value of the insured property. For the purpose of this paragraph, "insured property" shall mean additions and alterations made to the interior of a Unit by a Unit Owner after the Completion Date, as well as contents which each Unit Owner may elect to insure. The Unit Owner shall be the named insured and the Association shall be named as an additional insured. Each Unit Owner shall also maintain comprehensive general liability coverage at a single limit of not less than One Hundred Thousand (\$100,000.00) Dollars per incident

or such other limits as the Board may, from time to time, prescribe. Unit Owners shall, upon request, provide the Association with certificates of insurance evidencing the required coverage. All policies must be issued by insurance carriers acceptable to the Association and licensed to do business in the State of Wisconsin. The Association's approval shall not be unreasonably withheld.

**V30884P 35**

11.6 Disbursement. Insurance proceeds shall first be disbursed by the Association for the repair or restoration of the damaged Units, Limited Common Elements and Common Elements, and the Unit Owners and their Mortgagees shall not be entitled to receive payment of any portion of the insurance proceeds unless the Association has determined not to rebuild, or a court has ordered partition of the Condominium property, and the same can be legally accomplished under the City of Madison General Ordinances, or there is a surplus of insurance proceeds after the Common Elements, Limited Common Elements, and Units have been completely repaired or restored.

11.7 Commencement. All insurance required by this Declaration shall be purchased and maintained by the Association commencing on or before the date of the sale of the first Unit.

## ARTICLE XII

### REPAIR OR RECONSTRUCTION

In the event the Condominium is damaged or destroyed, in whole or in part, the Association shall promptly undertake to repair or reconstruct the damaged portion of the Condominium to its former condition unless, by the affirmative vote of Unit Owners representing at least seventy-five (75%) percent of the votes in the Association as set forth on Exhibit "C" as amended from time to time and their first Mortgagees, a contrary decision is made. Upon reconstruction, the Association may vary the design, plan, and specifications of the Condominium from that of the original; provided, however, the number of square feet for any Unit may not vary by more than five (5%) percent from the number of square feet for such Unit existing immediately prior to the damage or destruction (unless Unit Owners owning at least eighty (80%) percent of the Units agree otherwise); and provided, further, the location and floor plan of the buildings and Units therein shall be substantially the same as they were prior to the damage. In the event of any variance, an amendment to the Declaration and Condominium Plat shall be recorded. In the event insurance proceeds are insufficient to pay the estimated or actual costs of reconstruction, the shortage shall be considered a Common Expense, and the Association shall have the responsibility and the right to levy assessments against the Unit Owners as provided herein.

ARTICLE XIII

EMINENT DOMAIN

In the event of a taking of all or any portion of the Common Elements under the power of eminent domain, the provisions of Section 703.19, Wisconsin Statutes, shall control; provided, however, the affirmative vote of at least fifty-one (51%) percent of the first Mortgagees, calculated on a per-Unit basis, shall also be required in order to partition the Condominium; and provided, further, if Common or Limited Common Elements are taken, the same shall be reconstructed by the Association if practical to do so.

ARTICLE XIV

**V30884P 36**

COMMON EXPENSES

14.1 Liability of Unit Owner. Each Unit Owner (other than the Declarant) shall be liable for the share of expenses of the Association assessed against such Owner's Unit. These expenses ("Common Expenses") shall be allocated among the Units in the percentages specified in Exhibit "C" attached hereto, except that charges may be specifically allocated to particular Units by the Board of the Association, or by separate agreement among the Unit Owners, based on the benefit to the Unit Owner of the cost or expense involved or on the usage, fault or negligence or other factors affecting the deterioration or damage of or to Units, Common Elements, or Limited Common Elements as to which the Association may have responsibility.

14.2 Enforcement. The assessments for Common Expenses, together with such interest as the Association may impose in the By-Laws for delinquencies and with the costs of collection and actual attorney fees, constitute a lien on the Units against which they are assessed, except as otherwise provided in Section 14.5 below. Attachment, filing, effectiveness, priority, and enforcement of the lien shall be as provided in Section 703.16, Wisconsin Statutes.

14.3 Suspension of Voting Rights. If any assessment of Common Expenses is delinquent and a "Statement of Condominium Lien" as described in Section 703.16(9), Wisconsin Statutes, has been filed against a Unit, the Association may, upon notice to the Unit Owner, suspend the voting rights of the delinquent Unit Owner.

14.4 Unit Sale; Reserve Fund. Except as otherwise provided herein, unpaid Common Expenses assessed against a Unit shall be a joint and several liability of the seller and purchaser in a voluntary transfer of the Unit if a Statement of Condominium Lien covering the delinquency shall have been recorded prior to the transfer. In addition, at the time of each voluntary transfer of a Unit, the Buyer thereof (or other acquirer of title, if other

than a purchase) shall pay an additional non-refundable fee equal to two (2) monthly installments of assessments for Common Expenses for deposit into the Association's reserve fund. The reserve fund shall be used by the Association for capital improvements or extraordinary expenses, as the Board shall determine.

V30884P 37

14.5 Lien for Non-Payment. The Association shall have a lien, from the date an assessment is made, upon any Unit for assessments made against that Unit, which assessments remain unpaid. Such lien shall be subordinate to any first (1st) priority mortgage, as described in Section 708.09, Wisconsin Statutes. The lien shall secure payment of the assessment, interest, and costs of collection, including reasonable attorney's fees. The lien may be recorded in the Dane County Clerk of Court's office by an instrument executed by the Association and may be foreclosed. The Unit Owner shall be personally liable for all unpaid assessments, interest, and costs of collection. This liability shall not terminate upon transfer of ownership or upon abandonment by the Unit Owner by disclaiming use of the Common Elements. When any lien is foreclosed, if the Unit Owner remains in possession of the Unit, he, she, it or they shall pay the reasonable rental value of the Unit. The Association shall be entitled to the appointment of a receiver of the Unit, as a matter of strict right. Assessments shall be paid without offset or deduction. No Unit Owner may withhold payment of any assessment or any part thereof because of any dispute which may exist among or between Unit Owners, the Association, the Declarant, or combination thereof. Rather, the Unit Owner shall timely pay all assessments pending resolution of any dispute.

14.6 Installment Payment. Except for items such as insurance premiums which must be prepaid, assessments shall be paid in advance, in the form of a monthly maintenance fee determined by a budget of Common Expenses prepared by the Board, which budget shall include a reserve fund for extraordinary maintenance and replacement items. Special assessments for items not provided for in the budget shall be paid at such time or times, in a lump sum, or in such installments, as the Board may determine.

14.7 Negligence of Owner. If, due to the negligent or intentional act or omission of a Unit Owner, or a member of his family or household pet, or of or to a guest or other authorized occupant or visitor of such Unit Owner, damage shall be caused to the Common Elements or to a Unit or Units owned by others, or maintenance, repairs or replacements shall be required which would otherwise be a Common Expense, then such Unit Owner shall pay for such damage and such maintenance, repairs and replacements as may be determined by the Board, subject to the rules, regulations and By-Laws of the Association.

#### ARTICLE XV

**AMENDMENTS**

**V30884P 38**

Except as otherwise provided herein, this Declaration may only be amended with the written consent of the Unit Owners owning at least sixty-six and 2/3rds (66.67%) percent of the Units; provided, however, no such amendment may substantially impair the security of any mortgagee. No amendment to this Declaration shall be effective until an instrument containing the amendment and stating that the required consents or votes were duly obtained, signed on behalf of the Association, and duly acknowledged or authenticated, is recorded with the Dane County Register of Deeds as required by statute.

**ARTICLE XVI**

**NOTICES**

The person to receive service of process for the Condominium or the Association shall be Gary J. Gorman, 131 W. Wilson Street, Suite 1250, Madison, Wisconsin, 53703 or such other person as may be designated from time to time by the Association, which designation shall be filed with the Wisconsin Secretary of State's office.

**ARTICLE XVII**

**REMEDIES**

If any Unit Owner fails to comply with all provisions of the Act, this Declaration, the Association By-Laws, the Articles of Incorporation or with any rules and regulations promulgated by the Association, the Unit Owner may be sued for damages caused by such failure or for injunctive relief, or both, by the Association or by any other Unit Owner. In the event no damages are capable of being accurately determined, liquidated damages of One Hundred and no/100ths (\$100.00) may be assessed for each violation. Each day of violation shall constitute a separate violation for purposes of this Article. Any and all attorneys' fees and other expenses incurred by the Association in enforcing this provision shall be reimbursed by the Unit Owner in violation and may be assessed against such Owner's Unit. Individual Unit Owners shall have similar rights of action, but not reimbursement, against the Association.

**ARTICLE XVIII**

**EASEMENTS**

Easements are reserved over, through, across and underneath the Common Elements for ingress and egress and for present and future utility services, including but not limited to, easements for water pipes, sanitary sewer pipes, emergency sewer lines, storm



drainage pipes, sprinkler pipes, electrical wires, TV wires, computer cables, security wires, street lights and the like, whether or not shown on the exhibits attached hereto. Easements for such utility services are reserved to the Declarant, the Association and Unit Owners. Easements for ingress and egress are reserved to the Association in, over, across and under the Units and Limited Common Elements, their ceilings, floors, and walls for the purpose of making any repairs which are the obligation of the Association. The Association shall be responsible for any damage resulting from the use of such easements. Easements for decoration are reserved to Unit Owners over and into the surfaces of the Common Elements, provided such use does not impair the structural integrity of the Condominium.

ARTICLE XIX

V30884P 39

EXPANSION OF THE CONDOMINIUM

19.1 Expansion of Condominium. Declarant reserves the right to expand the Condominium as permitted by Wisconsin Statute Section 703.26 by subjecting additional property to this Declaration and by reallocating the respective percentage of undivided interests and obligations in the Common Elements as set forth in Exhibit "C" hereof. As to these future phases, Declarant reserves the right to amend this Declaration, its Exhibits, and the Condominium Plat, without any other consent or approval, for the purpose of effecting an expansion of the Condominium. The addition of property subjected to this Declaration and the reallocation of interests may be accomplished by the recording of amendments to this Declaration, for which purpose it shall be sufficient to record amended Exhibits "A", "A-1", "B" and "C", and amended Condominium Plats. The property which may be added to the Condominium under this reservation of right to expand is described in attached Exhibits "A-1" and "B". The maximum number of Units which may be added to the Condominium is thirty-eight (38) Units. If all Units described in this paragraph were to be added, there would be forty-eight (48) Units in the Condominium. Each new Unit shall have one (1) vote in the Association. The reallocation of percentage interests, as currently set forth in Exhibit "C" shall be based on a formula stated as a percentage, the numerator of which shall be the number one (1) and the denominator of which shall be the total number of all Units in the Condominium as expanded.

The right to expand the Condominium and to amend the Declaration and Condominium Plat for this purpose is reserved for a period ending ten (10) years from the date of recording this Declaration, unless the statute governing expansion of condominiums is amended to permit a longer period, in which event, such longer period shall apply ("Expansion Expiration Date"). In the event all or any portion of the land described in Exhibit "A-1" has not been included in the Condominium by means of an Amendment to the Declaration as herein provided by the Expansion Expiration Date (or

by an extended date, if an amendment to such effect is adopted by the Association and approved by the Declarant), then the reservation herein provided as to such portion shall cease and terminate with no action necessary on the part of the Unit Owners, the Association, or Declarant, its successors or assigns. In addition, Declarant may terminate this reservation on the land described in Exhibit "A-1" by executing and recording an instrument to that effect with the Dane County Register of Deeds.

**ARTICLE XX**

**V30884P 40**

**GENERAL**

20.1 Utilities. Each Unit Owner shall pay for his, her or its telephone, electrical, gas, and other utility services which are separately metered or billed to each user by the respective utility company. Utilities which are not separately metered or billed shall be treated as part of the Common Expenses except as may be otherwise provided under Section 14.1 hereof.

20.2 Encroachments. If any portion of a Unit, Limited Common Element, or Common Element encroaches upon another, an easement for the encroachment and for its maintenance shall exist. In the event all or a portion of the Condominium is damaged and subsequently reconstructed, the Unit Owners shall allow encroachments on the Units, Limited Common Elements, or Common Elements during construction, and easements for such encroachments and their maintenance shall exist.

20.3 Pets. Each Unit shall be entitled to one (1) pet (not including fish), not exceeding twenty (20) pounds in weight, but subject to rules and regulations adopted by the Board. Variances may be granted by the Board pursuant to procedures adopted by the Board. In addition, the Board shall have the authority to order an otherwise permitted pet to be removed if such pet constitutes a nuisance to other Unit owners.

20.4 Invalidity of a Provision. If any of the provisions of this Declaration, the Association's Articles of Incorporation, the Association's By-Laws, or of any rules and regulations adopted by the Association, or any portion thereof, shall be determined to be invalid by a court of competent jurisdiction, the remaining provisions and portions thereof shall not be affected thereby.

20.5 Conflict in Condominium Documents. In the event a conflict exists among any provision of this Declaration, the Articles of Incorporation, the By-Laws, or any rules and regulations, or between any of them, this Declaration shall be considered the controlling document.





EXHIBIT "A"

Legal Description of Land Subject to Declaration

V30884P 43

HIGH POINT GARDENS CONDOMINIUM

Part of Lot 2, Old Sauk Addition to Wexford Village recorded in Volume 57-027B of Plats on Page 98 Dane County Registry located in the SW 1/4 of the SW 1/4 of Section 14, T7N, R8E, City of Madison, Dane County, Wisconsin, To-wit: Beginning at the southwest corner of said Lot 2; thence N01°30'30"W, 261.00 feet; thence N88°29'30"E, 212.00 feet; thence S01°30'30"E, 89.50 feet to a point of curve; thence southeasterly on a curve to the left which has radius of 10.00 feet and a chord which bears S46°30'30"E, 14.14 feet; thence N88°29'30"E, 97.99 feet; thence S01°30'30"E, 161.50 feet; thence S88°29'30"W, 319.99 feet to the point of beginning. Containing 72,793 square feet.

EXHIBIT "A-1"

LEGIBILITY  
IMPAIRED

Legal Description of Land Subject to  
Expansion of the Condominium

V30884P 44

HIGH POINT GARDENS CONDOMINIUM  
AREA RESERVED FOR POSSIBLE EXPANSION (SOUTHERN PART)

Lots 3 and 4 Old Sauk Addition to Wexford Village, record in Volume 57-027B of Plats on Page 98 Dane County Registry located in the SW 1/4 of the SW 1/4 of Section 14, T7N, R8E, City of Madison, Dane County, Wisconsin. Containing 158,394 square feet.

HIGH POINT GARDENS CONDOMINIUM  
AREA RESERVED FOR POSSIBLE EXPANSION (NORTHERN PART)

Lot 1 and part of Lot 2, Old Sauk Addition to Wexford Village recorded in Volume 57-027B of Plats on Page 98 Dane County Registry located in the NW 1/4 and SW 1/4 of the SW 1/4 of Section 14, T7N, R8E, City of Madison, Dane County, Wisconsin, To-wit: Beginning at the southwest corner of said Lot 1; thence N01°30'30"W, 122.84 feet to a point of curve; thence northwesterly on a curve to the left which has a radius of 347.32 feet and a chord which bears N12°34'29"W, 133.33 feet; thence N88°29'30"E, 345.59 feet; thence S01°30'30"E, 353.19 feet; thence S88°29'30"W, 97.99 feet to a point of curve; thence northwesterly on a curve to the right which has radius of 10.00 feet and a chord which bears N46°30'30"W, 14.14 feet; thence N01°30'30"W, 89.50 feet; thence S88°29'30"W, 212.00 feet to the point of beginning. Containing 93,004 square feet.

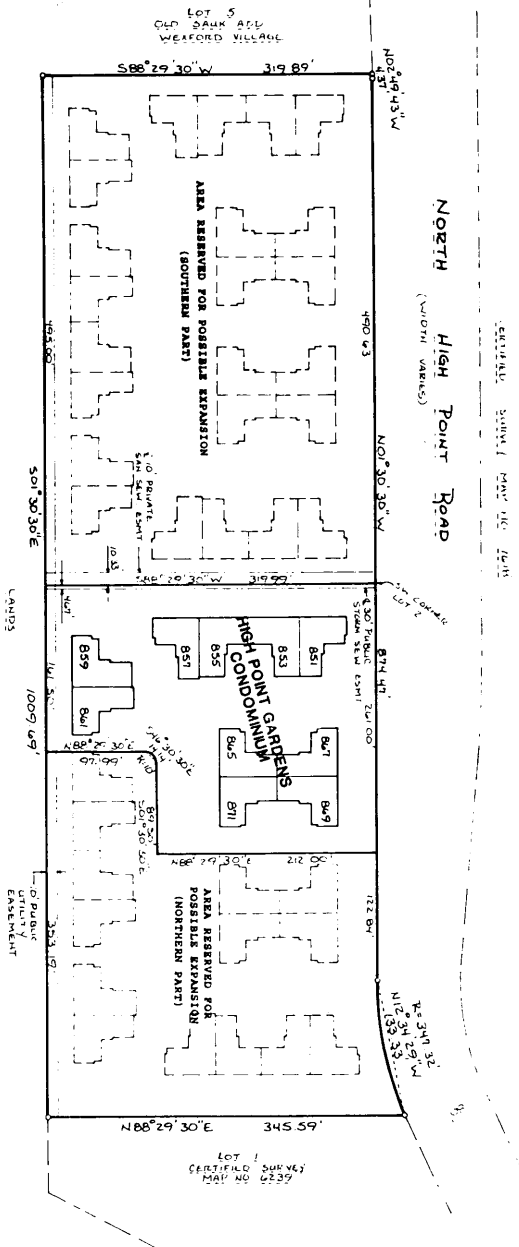
EXHIBIT "B"

Condominium Plat

V30884P 45

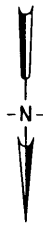
V30884P 46

LEGIBILITY IMPAIRED



HIGH POINT GARDENS CONDOMINIUM

A CONDOMINIUM PLAT  
DANE COUNTY, WISCONSIN





NOTE: All items that are not shown as units are common elements

REGISTER OF DEEDS CERTIFICATE

Received for recording this \_\_\_\_\_ day of \_\_\_\_\_, 1995, at \_\_\_\_\_ M., and record in Volume \_\_\_\_\_ of Condominium Plats on pages \_\_\_\_\_ as Document No. \_\_\_\_\_

Jane Light, Dane County Registrar of Deeds

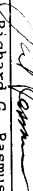
LEGEND

 Proposed units within expansion area.  
 Balance of expansion area will be common elements

SURVEYOR'S CERTIFICATE

I, Richard G. Raasmussen, Registered Land Surveyor, S-1034, hereby certify that the plat hereon is a correct representation of the condominium described and that the identification and location of each unit and the common elements can be determined from the plat.

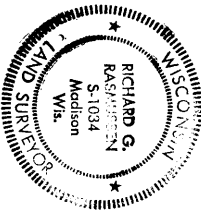
Dated this 18TH day of SEPTEMBER, 1995, at Madison, Wisconsin.

  
Richard G. Raasmussen  
Registered Land Surveyor, S-1034

FN: 86-03-101

DATE: SEPTEMBER 11, 1995

PAGE 1 OF 3



Part of Lot 2, Old Sank Addition to Wexford Village recorded in Volume 57-0278 of Plats on Page 98 Dane County Registry located in the SW 1/4 of the SW 1/4 of Section 14, T7N, R8E, City of Madison, Wisconsin, to-wit: Beginning at the southwest corner of said Lot 2, thence N01°30'30"W, 261.00 feet; thence N88°29'30"E, 212.00 feet; thence S70°00'00"E, 14.14 feet to a point of beginning; and a chord which bears S46°30'30"E, 14.14 feet; thence N88°29'30"E, 97.99 feet; thence S01°30'10"E, 161.50 feet; thence S88°29'30"W, 319.99 feet to the point of beginning. Containing 72,793 square feet.

AREA RESERVED FOR POSSIBLE EXPANSION (SOUTHERN PART)

0278 of Plats on Page 98 Dane County Registry located in the SW 1/4 of the SW 1/4 of Section 14, T7N, R8E, City of Madison, Dane County, Wisconsin. Containing 158,394 square feet.

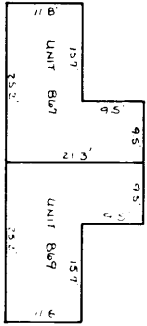
AREA RESERVED FOR POSSIBLE EXPANSION (NORTHERN PART)

Lot 1 and part of Lot 2, Old Sank Addition to Wexford Village recorded in Volume 57-0278 of Plats on Page 98 Dane County Registry located in the NW 1/4 of the SW 1/4 of Section 14, T7N, R8E, City of Madison, Dane County, Wisconsin, to-wit: Beginning at the southwest corner of said Lot 1; thence N01°30'30"W, 122.84 feet to a point of beginning; thence northwesterly on a curve to the left which has a radius of 147.32 feet and a chord which bears N12°34'29"W, 113.13 feet; thence N88°29'30"E, 345.59 feet; thence S01°30'10"E, 153.19 feet; thence S88°29'30"W, 97.99 feet to a point of beginning; thence northwesterly on a curve to the right which has a radius of 147.32 feet and a chord which bears N46°30'30"W, 14.14 feet; thence N01°30'10"E, 161.50 feet and a chord which bears N46°30'30"W, 212.00 feet to the point of beginning. Containing 91,004 square feet.



# Legibility Impaired

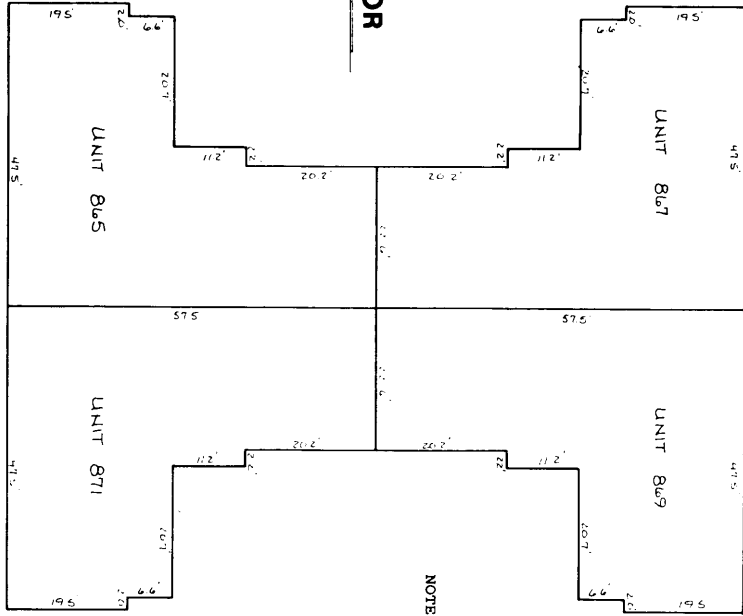
**LOWER LEVEL**  
388 S.F.



**47**

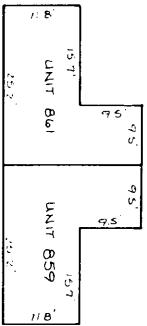
**V30884P**

**FIRST FLOOR**  
1932 S.F.

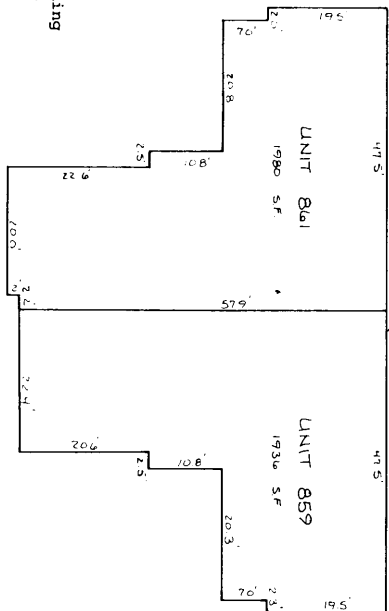


NOTE: The garage door which encloses the garage portion of each unit, including the operating mechanism is a common element.

**FIRST FLOOR**

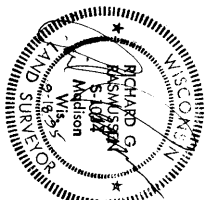


**LOWER LEVEL**  
388 S.F.

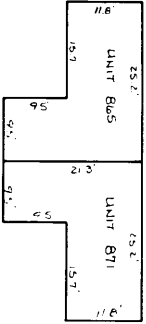


## HIGH POINT GARDENS CONDOMINIUM

A CONDOMINIUM PLAT  
DANE COUNTY, WISCONSIN



**LOWER LEVEL**  
388 S.F.



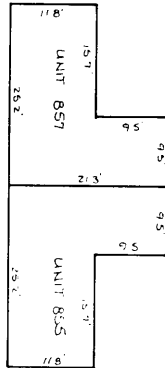
V30884P 48

Legibility Impaired

**HIGH POINT GARDENS CONDOMINIUM**

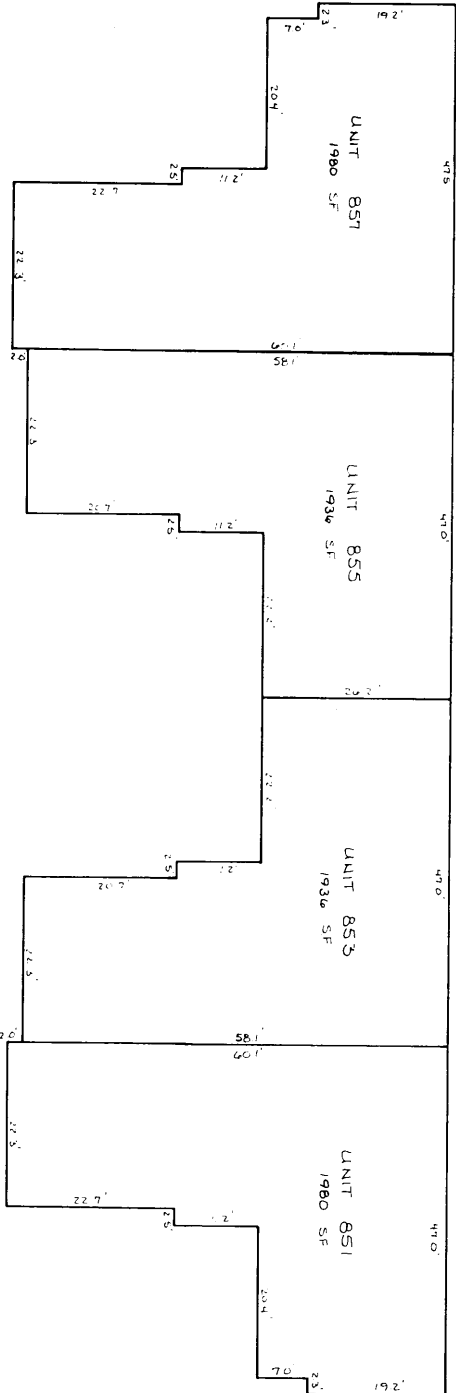
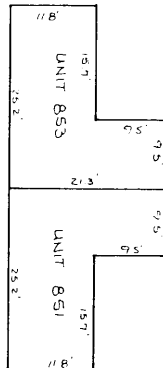
A CONDOMINIUM PLAT  
DANE COUNTY, WISCONSIN

NOTE: The garage door which encloses the garage portion of each unit, including the operating mechanism is a common element.



**LOWER LEVEL**

388 S.F.



**FIRST FLOOR**

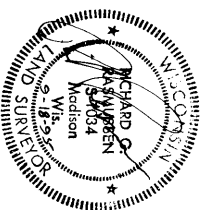


EXHIBIT "C"Percentage Interest in Common Elements

<u>UNIT</u>	<u>% INTEREST IN COMMON ELEMENTS</u>	<u>VOTE(S) IN ASSOCIATION</u>
<u>I. RESIDENTIAL UNITS</u>		
851 North High Point Road	10%	1
853 North High Point Road	10%	1
855 North High Point Road	10%	1
857 North High Point Road	10%	1
859 North High Point Road	10%	1
861 North High Point Road	10%	1
865 North High Point Road	10%	1
867 North High Point Road	10%	1
869 North High Point Road	10%	1
871 North High Point Road	10%	1
	<hr/>	<hr/>
	100%	10