

AMENDED AND RESTATED DECLARATION OF PRIVATE
ALLEYWAY ACCESS AND
UTILITY EASEMENTS

KRISTI CHLEBOWSKI
DANE COUNTY
REGISTER OF DEEDS

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Drafted by and Return Address

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Madison, WI 53701-1767

Parcel No. See attached

This Amended and Restated Declaration of Private Alleyway Access and Utility Easements is made by Fitchburg Lands, LLC to govern the use of certain outlots in the Plat of Terravessa and the First Addition to the Plat of Terravessa (collectively the "Plat" and individually the "Original Plat" and the "First Addition") located in the City of Fitchburg (the "City"), Dane County, Wisconsin.

WHEREAS, a Declaration of Private Alleyway Access and Utility Easements was recorded for the Original Plat on October 15, 2018 in the office of the Dane County Register of Deeds as document #5447939 (the "Declaration");

WHEREAS, Fitchburg Lands, LLC is the owner of the real property located within the First Addition to the Plat of Terravessa, City of Fitchburg, Dane County, Wisconsin;

WHEREAS, Fitchburg Lands, LLC wishes to amend and restate the Declaration for the benefit of owners of Lots in the First Addition permitting the Lot owners to use Outlots 43, 45, 47 and 49 which will serve as private alleyways for ingress and egress and for utility purposes; and

WHEREAS, ownership of such outlots will be conveyed in the future to a homeowners association to be established for the mutual benefit of the Lot owners in the Plat of Terravessa.

NOW, THEREFORE, Fitchburg Lands, LLC provides as follows:

1. Alleyways. Outlots 4, 8, 13, 14, 16, 19, 20, 22-32, 43, 45, 47 and 49, inclusive (the "Alleyways"), shall be subject to the Declaration and governed by the conditions set forth herein. All of the Alleyways shall serve as private alleyways for the purpose of providing access between Lots in the Plat adjacent to the Alleyways, and the public streets located within the Plat, and to provide for the installation and location of utilities serving Lots on the Plat.

2. Access Easement. Fitchburg Lands, LLC hereby grants to each Lot owner whose Lot is contiguous to an Alleyway or contiguous to an Alleyway which intersects another Alleyway (the "Benefitted Lots") a permanent, perpetual and non-exclusive easement and right-of-way for vehicular and pedestrian ingress and egress over the Alleyway to such Lot. A list of the Alleyways and their respective Benefitted Lots is attached as Exhibit A. No Lot owner shall obstruct access to or passage over any portion of such Alleyways or use the Alleyways, even on a temporary basis, for parking, storage, or any other purpose. Fitchburg Lands, LLC may make reasonable exceptions to the above prohibition against obstruction of the Alleyways during construction on a Lot in order to permit the construction to proceed in an orderly and efficient manner provided, however, that such exception shall not deprive any other Lot owner of access over the Alleyway to their Lot during the construction period.

3. Utility Easement. Fitchburg Lands, LLC further grants to each Lot owner whose Lot is contiguous to an Alleyway a permanent, perpetual and non-exclusive easement over the contiguous Alleyway to construct, reconstruct, repair or maintain, operate, inspect and install fixtures, equipment, and other installations to provide utility services to each Lot, including a right of ingress and egress for utility purposes over the contiguous Alleyway. No use for utility purposes shall hinder or obstruct another Lot owner's use of the Alleyway, and any damage to the Alleyway caused by the use of the Alleyway for utility purposes shall be promptly repaired and the condition of the Alleyway restored at the cost of the Lot owner making such use.

4. Conveyance to Homeowner's Association. Fitchburg Lands, LLC will convey title to the Alleyways free and clear to a homeowners' association for the Plat of Terravessa to be established in the future for the benefit of the owners of the Benefitted Lots of such Alleyway. The deed or deeds for each Alleyway to the homeowners association(s) shall:

- a. Expressly provide that the Alleyway shall be held for the benefit of the owners of the Benefitted Lots of such Alleyway; and
- b. Expressly provide that in the event the association is dissolved and not reinstated or not replaced with a successor association within 90 days from the date of delivery of written notice from the City to each of the owners of the Benefitted Lots of such Alleyway, title to the Alleyway shall revert to the then owners of the Benefitted Lots of such Alleyway, in equal, undivided interests based upon the number of Benefitted Lots served by the applicable Alleyway, as tenants-in-common; and
- c. Shall contain a prohibition on transfers of ownership by the association to any party other than a successor association or the owners of the applicable Benefitted Lots,

in equal undivided interests based upon the number of Benefitted Lots served by the applicable Alleyway, as tenants-in-common in accordance with the foregoing provision; and

- d. Be expressly approved by the attorney for the City.

Such homeowners' association shall be responsible for the maintenance, repair, and improvement of the Alleyways and shall have the authority to levy assessments against the Lot owners in order to pay the cost of such maintenance, repair, and improvement. The Articles of Incorporation of the homeowner's association owning the Alleyways shall include provisions which ensure that such association shall be perpetual; shall provide as part of its purpose the owning and maintaining of the Alleyways and the repairing or replacing of the improvements within the Alleyways; shall prohibit the association from subjecting the Alleyways to a mortgage; and shall only permit distribution of the Alleyways to a successor association formed for substantially the same purposes as required hereunder or to the owners of the applicable Benefitted Lots, in equal undivided interests based upon the number of Benefitted Lots served by the applicable Alleyway, as tenants-in-common. Any modifications to the Articles of Incorporation of the provision regarding distribution of the Alleyways upon dissolution of the association shall require the written consent of the City; and such provision within the Articles of Incorporation shall expressly require such consent of the City for its modification.

5. Maintenance and Conditions of Alleyways. All maintenance, replacement and repairs for the Alleyways shall be the responsibility and obligation of Fitchburg Lands, LLC until such time as ownership of the Alleyways is transferred to the homeowners' association or a successor developer. Upon transfer of the Alleyways, the transferee shall take on responsibility for all maintenance, replacement and repairs of the Alleyways. Maintenance, replacement and repair of the Alleyways shall include, without limitation:

- a. Maintaining the Alleyways in good order and repair, with the type of surfacing materials originally installed or such substitute as shall in all respects be equal in quality, use and durability; and
- b. Removing all litter, ice, snow, mud and sand, debris and refuse, and sweeping the surfaces to the extent reasonably necessary to keep the surfaces in a reasonably clean condition; and
- c. Paying for the real estate taxes and assessments and other governmental impositions related to the Alleyways and procuring and paying for such insurance for the Alleyways as required herein and for any other costs or expenses associated with the ownership or use of Alleyways.

In the event that any owner of the Alleyways fails to maintain an Alleyway as required by this Declaration and such failure continues for a period of 60 days following delivery of written notice to the owner of the applicable Alleyway, with a copy to the owners of the Benefitted Lots of such Alleyway, the City and its agents, employees, and contractors shall have the right, but not the obligation, to enter upon the Alleyway at any time for purposes of maintenance, replacement, and repairs and is hereby granted a permanent, non-exclusive easement over the Alleyways to conduct

such maintenance, replacement and repairs. These rights and remedies include, but are not limited to, ultimately contracting to perform such maintenance or repairs as it shall deem necessary and charging the costs incurred by the City as a special assessment or a special charge upon the next tax roll equally against all of the Benefitted Lots of such Alleyway. The City shall have the right, but not the obligation, to enter upon the Alleyway at any time for purposes of inspection and undertaking necessary maintenance and repairs. In accordance with Wisconsin Statutes Section 66.0703(7)(b), Fitchburg Lands, LLC or any subsequent owner of an Alleyway, including any homeowners' association formed pursuant to this Declaration, and the owners of the Benefitted Lots, hereby waive all special assessment notices and hearings required by Wisconsin Section 66.0703, and further agree and admit that the assessed property receives a benefit from the work, which is equal to or greater than the total cost of the work.

6. Insurance. Public liability insurance shall be maintained by the owner of the Alleyway at all times insuring against claims for death, bodily injury and property damage arising out of use of the Alleyway as provided in this paragraph. All insurance required by this section shall be in an amount of not less than \$1,000,000.00 with respect to any one death or bodily injury, and in an amount of not less than \$250,000.00 with respect to property damage from any one occurrence. The owner of an Alleyway may increase the minimum public liability coverage by a reasonable amount from time to time to reflect the effects of inflation or for any other reason it deems necessary.

7. Condemnation. Any award resulting from taking or condemnation of any portion or all of an Alleyway, less such funds as are necessary to replace the taken portion of such Alleyway, to as near the original condition as is possible, will ultimately be distributed equally to the owners of the applicable Benefitted Lots, even if paid first to an association described herein. If a single award is given for multiple Alleyways, the award shall be divided into shares prorated to reflect the proportionate share of the maintenance costs of such Alleyway, except to the extent that such funds are necessary to replace the taken portion of such Alleyway to as near the original condition as is possible, in which event such funds shall be held in trust by the recipient and used for such purpose in full or in part.

8. Termination, Modification, Waiver or Amendment. Except as set forth below, no termination, modification, waiver or amendment of this Declaration will be effective as to an Alleyway and the applicable Benefitted Lots unless a written instrument setting forth the terms thereof has been executed, acknowledged and recorded in the office of the Register of Deeds of Dane County, Wisconsin, signed by owners of 67% of the Benefitted Lots of such Alleyway, and the City as to amendments to paragraphs 4, 5, 7 and this paragraph 8. Fitchburg Lands, LLC or its assignees may amend this Declaration without the consent of any other party in order to add additional Benefitted Lots as a result of the platting of additional property which creates additional lots abutting an Alleyway. In addition, until Fitchburg Lands, LLC no longer owns any of the Benefitted Lots, any termination, modification, waiver or amendment of this Declaration shall also require the written consent of Fitchburg Lands, LLC.

9. Dedication. Nothing contained in this Declaration will be deemed to be a gift or dedication of any portion of the Alleyways to the general public or to any public purpose whatsoever. Fitchburg Lands, LLC or its successors or assigns, shall have the right to temporarily

close all or any portion of the Alleyways to such extent as may, in the opinion of its counsel, be legally sufficient to prevent a dedication thereof or the accrual of any rights to any person or to the public therein.

10. Waiver. No delay or omission by any party, or their successors and assigns, to exercise any right or power accruing upon any noncompliance or failure of performance by another party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver hereof. A waiver of any party, or their successors or assigns, of any of the provisions of this Agreement to be performed by another shall not be construed to be a waiver of any succeeding breach thereof or of any provision contained herein.

11. Invalidity. If any provision or portion of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable by virtue of any final judgment of any court of competent jurisdiction, the remainder of this Agreement or the application of such provision, or portion thereof, to any other persons or circumstances shall be valid and enforceable to the fullest extent permitted by law.

12. Successors and Standing to Enforce. All of the terms and provisions of this Declaration are intended to be and shall be construed as easements and as covenants running with the land, and shall be binding upon, to the benefit of and be enforceable by Fitchburg Lands, LLC or its successors or assigns. At such time as Fitchburg Lands, LLC transfers title to the Alleyways to its successor, Fitchburg Lands, LLC shall not have any financial responsibility for the maintenance, replacement and repair of the Alleyways except to the extent allocated to Fitchburg Lands, LLC pursuant to its ownership of one or more Benefitted Lots improved with a structure for which an occupancy permit(s) has been issued.

13. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

14. No Termination for Breach, Enforcement. No breach of this Declaration will entitle any party to cancel, rescind or otherwise terminate this Declaration, but this limitation will not affect, in any manner, all other rights or remedies which the parties shall have by reason of any breach of this Agreement. In the event that any party shall default in the performance of any obligation hereunder, after reasonable, advance, written notice, the injured party or owner may cause such default to be cured at the expense of the defaulting party, which sum the defaulting party shall pay upon demand, and in addition to the right to collect damages, may seek to enjoin such default in a court of competent jurisdiction, and recover the costs and expenses of any such action, including reasonable attorney fees.

15. Effect on Successor Owners. In each instance in which Fitchburg Lands, LLC or any owner of a Benefitted Lot conveys all or any part of the interest in or rights to use any Alleyway to a grantee, such grantee shall be deemed to be a new party hereto. On recording of any such conveyance with the Register of Deeds of Dane County, Wisconsin, which conveys the entirety of the grantor's Benefitted Lot and therefore its interests in the Alleyway referred to herein, the conveying party will be released from any obligation under this Declaration arising thereafter with respect to such Benefitted Lot.

SIGNATURES ON FOLLOWING PAGES

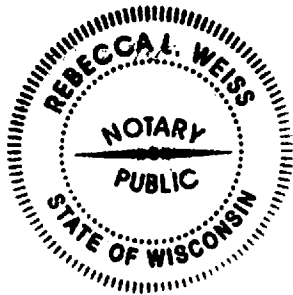
Dated this 5th day of February, 2021.

FITCHBURG LANDS, LLC

By: [Signature]
Printed name Philip Steven
Title: member

STATE OF WISCONSIN)
)SS.
COUNTY OF DANE)

Personally came before me this 5th day of February, 2021, the above named Philip Steven, member, of Fitchburg Lands, LLC, known to me to be the person who executed the above and foregoing instrument and acknowledged that he/she executed the foregoing instrument as such member as the deed of such limited liability company, by its authority.



Rebecca L. Weiss
Notary Public, State of Wisconsin
Rebecca L. Weiss
Print or Type Name
My commission: 07-23-2022

CONSENT OF MORTGAGE ON NEXT PAGE

CONSENT OF MORTGAGEE

The undersigned, being the holder of a mortgage executed by Fitchburg Lands, LLC to McFarland State Bank (nka One Community Bank) recorded in the office of the Register of Deeds of Dane County, Wisconsin, on August 20, 2018 as Document 5435105, does hereby consent to all of the terms and conditions of the foregoing Declaration.

Dated this 5th day of February, 2021.

MORTGAGEE:

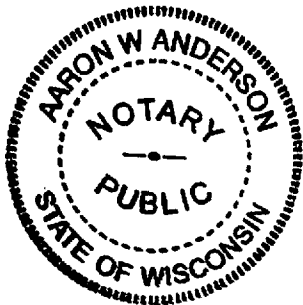
McFarland State Bank (nka One Community Bank)

By: John Krampfer
Name: John Krampfer
Title: VP Commercial Banker

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Personally came before me this 5 day of February, 2021, the above-named John Krampfer and to me known to be the VP Commercial Banker of McFarland State Bank (aka One Community Bank) who executed the foregoing instrument, and acknowledged the same on behalf of said entity.



[Signature]
Name (printed): Aaron W. Anderson
Notary Public, State of Wisconsin
My commission: 04/23/2023

EXHIBIT A

Outlot Serving as Alley	Benefitted Lots for the Outlot
4	11-33
8	34, 35
13	36, 37, 38
14	39, Outlot 3 of CSM 15003
16	40-44
19	45, Outlot 3 of CSM 15003
20	46-47, Outlot 3 of CSM 15003
22	48-56
23	57-63
24	64-75
25	76-83, now known as lots 1-8 of Paxton Place, 158-171
26	84-91, now known as lots 9-16 of Paxton Place II, 172-189
27	92-103
28	104-115
29	116-123, 190-206
30	124-129, 207-218
31	130-141
32	142-152
43	76-83, 158-171
45	84-91, 172-189
47	116-123, 190-206
49	124-129, 207-218

Note: Outlot 3 of CSM 15003 will be subdivided in the future and additional Benefitted Lots will be added to this Exhibit A.

Parcel Numbers

Outlot	PIN
4	0609-121-5225-2
8	0609-121-5325-2
13	0609-121-2225-2
14	0609-121-2250-2
16	0609-121-2300-2
19	0609-121-2325-2
20	0609-121-5425-2
22	0609-121-5475-2
23	0609-121-5500-2
24	0609-121-5525-2
25	0609-121-5550-2
26	0609-121-5575-2
27	0609-121-5600-2
28	0609-121-5625-2
29	0609-121-5650-2
30	0609-124-2575-2
31	0609-124-2600-2
32	0609-124-2625-2
43	0609-121-5916-2
45	0609-121-5920-2
47	0609-121-5922-2
49	0609-124-2800-2