

Document No.

**DECLARATION OF PROTECTIVE
COVENANTS FOR LOTS 1 THROUGH 55,
INCLUSIVE, PLAT OF MID TOWN
COMMONS, LOTS 55 THROUGH 89,
INCLUSIVE, FIRST ADDITION TO MID TOWN
COMMONS, AND LOTS 90 THROUGH 96,
INCLUSIVE, PROPOSED SECOND
ADDDITION TO MID TOWN COMMONS**

Return to:
Karl C. Madsen
Great Dane Development, LLC
2249 Pinehurst Drive
Middleton, WI 53562

251-0708-344-0099-0

Parcel Number

THIS DECLARATION, made this _____ day of _____, 2001, by Great Dane Development, LLC ("Developer").

RECITALS :

A. Developer now owns certain lands in the City of Madison, Dane County, Wisconsin (the "City") which are legally described on the Preliminary Plat of Mid Town Commons, attached hereto and made a part hereof as Exhibit A (the "Development").

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

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

ARTICLE I

STATEMENT OF PURPOSE

1.01 General Purpose. The general purpose of this Declaration is to help assure that the Development will become and remain an attractive community; to preserve and maintain the natural beauty of the Development; to insure the most appropriate development and improvement of each Lot; to guard against the erection thereon of poorly designed or proportioned structures; to obtain harmonious improvements and use of material and color schemes; to prevent traffic congestion, to promote more responsible consumption of natural resources; to avoid duplication of municipal services; to promote greater overall safety; to insure the highest and best development of the Development; to encourage and secure the construction of attractive structures thereon; and to provide a diversity of housing, civic, institutional, recreational, entertainment, retail, office and commercial uses in a cohesive, pedestrian-friendly neighborhood.

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

ARTICLE II

DEFINITIONS

The following definitions shall be applicable to this Declaration:

- 2.01 Building. Any building constructed within the Development.
- 2.02 City. The City of Madison, Wisconsin.
- 2.03 Committee. The Architectural Control Committee described in Section 3.01(a).
- 2.04 Declaration. This Declaration of Protective Covenants.

2.05 Developer. Great Dane Development, LLC, its successors and assigns. Great Dane Development, LLC may assign the powers given to "Developer" under this Agreement to an assignee pursuant to a duly recorded assignment.

2.06 Development. The lands described on Exhibit A. Should the Development be expanded under Section 7.05, the term "Development" shall also include any lands within such expanded area.

2.07 Dwelling. A residential dwelling constructed within the Development.

2.08 Lot. Any of the following lots: Lots One (1) through Fifty-Five (55), inclusive, Plat of Mid Town Commons, Lots Fifty-Six (56) through Eighty-Nine (89), inclusive, First Addition To Mid Town Commons, and Lots Ninety (90) through Ninety-Six (96), Proposed Second Addition to Mid Town Commons, and together with any other platted lots that might be contained within any expansion under Section 7.05.

2.09 Neighborhood Association. Developer may create a neighborhood association for the Development to provide neighborhood governance and supportive services for the Development. Each Lot owner shall be a member of the association and shall be subject to the By-Laws of the corporation, including the Declaration creating Mid Town Commons Neighborhood Association.

2.10 Outlot. Any of the following outlots: Outlots One (1) through Eleven (11), inclusive, as shown on the Preliminary Plat of Mid Town Commons, and together with any other platted outlots that might be contained within any expansion under Section 7.05.

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

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

ARTICLE III

ARCHITECTURAL CONTROL COMMITTEE

3.01 Establishment, Duties, Membership.

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

(b) The Committee shall initially consist of Developer, so long as Developer owns any interest in any Lot. Developer may at any time, at its sole discretion, appoint up to two (2) additional Members to serve as the Committee with the decisions rendered by the majority to be binding. Developer appoints Peter Frautschi to serve on the Committee so long as he owns any interest in Lots 1, 95 or 96. Notwithstanding the foregoing provisions, at such time as Developer no longer owns any Lot subject to this Declaration, those persons owning a majority of the Lots may by written consent elect the members and fill vacancies on the Committee.

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

- (a) Construction details for all buildings structures, fences, walls and other improvements;
- (b) Elevation drawings of any building;
- (c) Description of materials to be used in any building or improvement;
- (d) A detailed site plan showing the building footprint and driveway, the location of all structures with respect to topography and finish grade elevation, the top of the foundation structure in relation to the nearest street or curb elevation and the proposed water drainage patterns;
- (e) The color scheme of all improvements;
- (f) Landscape plan;
- (g) All exterior lighting; and
- (h) Such other materials as the Committee may deem necessary.

A submission will not be complete and the fifteen (15) day approval time set forth below shall not commence until all documents required in this Section 3.02 have been submitted. The Committee may approve, disapprove or approve subject to stated conditions the preliminary and final development plans. If the Committee conditionally approves either the preliminary or final development plans, then the applicant shall be entitled to resubmit such plans. The Committee's

decision shall be in writing. If the Committee fails to render its decision on the preliminary or final development plans within fifteen (15) days of their submission, or upon any resubmitted preliminary or final development plans within seven (7) days of their resubmission, approval will be deemed to have been obtained and the applicable covenants, conditions and restrictions in this Declaration shall be deemed to have been complied with. If such plans are not rejected, then the Owner of the Lot shall construct the Improvements materially in accordance with the submitted documents. All material changes to such plans must be resubmitted to, and approved by, the Committee. Any changes to such plans that would lessen the quality or expense of the construction as previously approved shall be deemed to be material changes.

3.03 Standards. The Committee shall have the right to reject any plans and specifications or plot plans which, in the judgment and sole opinion of the Committee:

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

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

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

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

3.06 Subsequent Changes Require Committee Approval. Once the Committee has approved of any plans, specifications, plot plans, landscaping plans or any other matters submitted

to it for approval under this Declaration, no material changes to the same shall be allowed unless they are resubmitted to, and approved by, the Committee.

ARTICLE IV

ARCHITECTURAL RESTRICTIONS

4.01 General Development Plan. Each Building constructed upon any Lot shall comply with all setback requirements, floor area minimums, height restrictions, and other architectural restrictions as are set forth within the zoning text of the General Development Plan attached hereto as Exhibit B (the "GDP") and applicable Specific Implementation Plan ("SIP"). Any reasonable variations will be considered for approval by the Committee and shall comply with applicable building codes and zoning ordinances.

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

4.03 Fencing. No fence or exterior wall shall be erected on any part of any Lot without the written approval of the Committee. Fences in front yards may not be greater than three feet in height and may not be constructed from chain link or similar materials.

4.04 Mailboxes. Developer may provide clustered mailboxes within the public right-of-way at street intersections or internal site locations. Such mailboxes may be installed at Developer's expense. All other mailboxes shall be provided by the Owner of each Lot at such Owner's expense.

4.05 Use of Outbuildings. Each Lot shall be served by off-street parking meeting the minimum parking requirements set forth in the Concept Plan. No trailer, tent, treehouse, shack, or barn, or any part thereof, shall be erected or permitted to remain on any Lot, temporarily or permanently, except for construction trailers during the period of construction, except as approved by the Committee.

4.06 Utility Easements. No planting shall be permitted within an easement of record which may damage or interfere with the installation and maintenance of utilities.

4.07 Construction Deadline. Each single-family Dwelling erected shall have its entire external construction completed within nine (9) months from the date of issuance of the building permit. Each multifamily residential Building erected shall have its entire external construction completed within twelve (12) months from the date of issuance of the building permit. Each Building that is to be used in whole or in part for office, retail or civic uses shall have its entire external construction completed within twelve (12) months from the date of issuance of the building permit.

4.08 Driveways and Parking Areas. All driveways from the parking areas to the street, and all parking areas, shall be paved with bituminous concrete (asphalt) or concrete (cement) within twelve (12) months from date of issuance of the building permit. Any other materials must be approved by the Committee in advance and in writing. All Owners or partial Owners of shared driveways (not otherwise covered by some form of condo agreement) are required to sign maintenance agreements each year specifying responsibilities for driveway maintenance and repair. Such agreements must represent unanimous consent of the Owners and be delivered and approved by the Neighborhood Association. In the event that one or more Owners refuse to consent to such an agreement the Neighborhood Association will perform maintenance and repair of the driveway and charge the Owners accordingly.

4.09 Drainage Swale. No Owner of any Lot shall grade or obstruct any stormwater drainage swale which is in existence at the time of original development or is so designated on the Plat of Mid Town Commons so as to impede the flow of stormwater from other lots across or through such swale. All site plans are required to provide grading so that storm water runoff shall drain into the storm water system and NOT ADVERSELY AFFECT adjacent Owners.

4.10 Permitted Encroachments. Architectural elements extending toward the street from the main volume and façade of the building. Such elements include porches, stoops, bay or bow windows, balconies, etc. Permitted encroachment elements may only be included in the Permitted Encroachment Zone. The Permitted Encroachment Zone is the area that extends beyond the build-to line toward the street in which permitted encroachment elements may be built.

4.11 Required Ground Floor Grades. All residential units must be designed so that the ground floor level is a minimum of 18 inches above the sidewalk (measured half way between the front property line corners) except where topography makes such elevations impractical. All accessibility codes normally affecting these properties still apply. All commercial and mixed-use buildings must be designed according to current ADA standards.

4.12 Parking Garages. All parking garages or structures for parcels requiring 18 inch ground floor grades are encouraged to be located on the higher side of the lot so as to make accessibility easier.

4.13 Antenna/Wind-Powered Generator. No wind-powered electric generators, exterior radio receiving or transmission antenna, and no satellite signal receiving dish with a diameter in excess of one (1) meter shall be placed or maintained upon any portion of a Lot without the written approval of the Committee which may, in its absolute discretion, require the same to be screened from view.

4.14 Variances. The Committee is authorized to grant variances from any provision of this Declaration where such variances will assist in carrying out the intent and spirit of this Declaration, will not result in a violation of applicable building codes and zoning ordinances and

where strict application of the provision would result in a particular hardship to the person seeking the variance.

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

4.16 General Architectural Guidelines. These guidelines are for aesthetic and/or functional purposes only and do not supplant any other existing safety codes. Additional provisions to these codes may be made by majority vote of the Architectural Control Committee.

1. Building Walls:

- a) Materials: Building walls may be finished in brick, stone, stucco (or similar), wood siding, hardboard and batten. Steel, aluminum or vinyl siding materials are discouraged because of their high level of embodied energy. Any steel or vinyl siding must be color-changeable or capable of new paint.
- b) Configuration: Brick, stone, or stucco used on walls should wrap around corners for a minimum of two feet. If brick, stone or stucco is used for only a portion of a wall it should be capped along the top edge and/or trimmed along side edges
- c) Technique: Clapboard should be 3.5" to 6" to the weather. Dropsiding in any material should not exceed 8" to the weather. Brick should be laid in a true bonding pattern. Stack patterns are not permitted. All neon, metallic, and florescent colors and any especially bright colors are prohibited. Color schemes must be approved by the Committee originally and by the Neighborhood Association henceforth.

2. Building Elements:

- a) Materials: Columns, posts, balconies, porches and bay windows may be constructed of wood, brick or stucco. Stoops may be constructed of wood or cast concrete, and may be finished in brick or stone. Railings should be constructed of wood or wrought iron sections. Trim elements may be constructed of wood, or other molded or extruded materials, but should have a consistent aesthetic carried through the exterior design.
- b) Configuration: Spindles and balusters on balconies, porches, and decks should be constructed of wood and not exceed 4" separation on center. Porch openings should be rectangular in proportion. Bay windows should not exceed 3' in depth. Railings may be

constructed of wood or metal, and should not exceed 6" separation on center.

c) Technique: Wood posts should be no less than 4" x 4".

3. Roofs/Chimneys/Vents:

a) Materials: Roofs may be clad with metal, wood shingles or asphalt shingles. Gutters should be constructed of galvanized and painted aluminum or vinyl colored to match the principal building or its trim.

b) Configuration: Principal building roofs should be symmetrical gables or hips, pitched between 4:12 and 12:12. Shed (monopitch) roofs should be attached by its highest point to the principal building. The pitch of a shed roof should be no less than 4:12. Projecting dormers should be framed with shed, symmetrical gable or hip construction.

c) Technique: The eaves of a box cornice should be closed with boards and molding. Overhanging rafters should be finished by vertical fascia boards. Eaves should not exceed 36" in depth between the wall and the fascia board.

4. Windows and Doors:

a) Materials: Windows and doors should be glazed in clear glass with no more than a 10% daylight reduction. Decorative windows such as stained glass are permitted as approved by the Committee.

b) Configuration: Windows should be square or vertical in proportion. Windows may be arranged side-by-side to create a horizontal massing. Windows may be circular or hexagonal. Windows should have a minimum dimension of 30 inches. Windows and doors should be aligned horizontally and vertically in any façade. They should not be aligned haphazardly or in off-centered configurations. Windows and doors should be surrounded by trim not less than 3.5 inches in width. Exterior doors should be a minimum of 36" wide, and should include a window inset or side panel. Wood shutters sized to match openings and canvas awnings (except for circular geometry) are permitted accessories.

c) Technique: Rectangular windows should be single hung, double hung, or casement. Dormer windows may be double hung, hinged casement or hopper. Circular and hexagonal windows may be fixed or pivot. All doors should be hinged except garage doors or sliding doors. Sliding doors are permitted on rear yard elevations, or onto balconies, only. Door swings on all buildings may not encroach on public rights-of-way.

5. Garden Walls and Fences:
- a) Materials: Garden walls may be finished in brick or concrete block matching the principal building. Fences should be constructed of wood pickets, lattice or boards.
 - b) Configuration: Brick or stone walls should be constructed no less than 8" wide and capped. Perimeter fences should be constructed with no more than 3" gaps between pickets. Fences and walls at street fronts and front yards should be between 18" and 36" in height. Fences in rear yards may be no more than 72" in height.
 - c) Technique: Wood fences should be painted or stained in an earth tone (or white) color complimentary to the principal residence. An owner erecting a fence should make reasonable effort to paint or stain the side of the fence facing an adjacent property a color complimentary to that residence.

ARTICLE V

USE RESTRICTIONS

5.01 General. Each Lot shall be used only for those purposes that are allowed to such Lot under the "Permitted Uses" section of the Zoning Text of the General Development Plan.

5.02 Signs. No sign of any kind shall be displayed to the public view on any Lot except for signs that comply with the signage requirements of the GDP and Zoning Text and that are approved by the Committee. Developer reserves the right to erect signs, gates or other entryway features surrounded with landscaping at the entrances to the Development and to erect appropriate signage for the sales of Lots.

5.03 Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or waste. All clippings, rocks or earth must be in containers. All equipment for the storage or disposal of such waste material shall be kept in a clean and sanitary condition and suitably screened from view from the street. Trash to be collected by public authorities shall be kept inside Buildings until twelve hours prior to the scheduled time for pick-up. In the case of any Lot that is adjacent to an alley, trash pickup shall be from the alley and not from the street in front of said Lot. Regular trash pick-up will be provided in the alleys, where such exist, by private carriers contracted with by the Neighborhood Association. Costs for such services will be made a part of Neighborhood Association Dues: there will be no differences in dues for those with alleys and those without alleys

5.04 Parking.

(a) Parking shall be prohibited on any portion of a Lot except upon a paved driveway or parking area or within a garage, all of which driveways, parking areas and garages shall meet

the requirements of the Zoning Text of the GDP. The parking upon a Lot of service vehicles (including, but not limited to, trucks, semi-trailers, trailers, buses, boats, travel trailers, mobile homes, campers and other recreational vehicles) is prohibited unless kept inside a garage. This provision shall not prohibit the temporary parking of said vehicles for the purpose of loading and unloading. Any vehicle that is not operational or in regular daily use shall be kept inside a garage.

(b) Off street parking must be provided in sufficient quantity so as to minimize parking shortages and yet not become wasteful. For single family detached residential homes and duplexes two parking spaces are required. For multi-family residential homes a minimum of one space per unit, or one half space per bedroom, (whichever is more) is required. For commercial or mixed-use parcels one parking space per 300 square feet of net leaseable space, plus one space per residential unit is required.

5.05 Nuisance Prohibited. No noxious or offensive trade or activity shall be carried on which may be or will become a nuisance to the neighborhood.

5.06 Firewood Storage. No wood piles shall be kept outside a structure unless they are neatly stacked, placed in the rear yard only, and screened from view by plantings or a fence approved by the Committee.

5.07 No Weeds. All areas of the Lot not used as a building site or lawn or under cultivation (such as a vegetable or flower garden) shall be so cultivated or tended as to be kept free from noxious weeds. The Owner of each Lot shall be responsible for maintaining the Lot in a neat appearance. This covenant should not be construed to prevent a family garden, provided that all vegetable gardens and orchards shall be located in the rear yard or in the front yard with written consent of the Committee.

5.08 Pets and Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept within a residential Dwelling unit, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose or allowed to annoy neighbors. No commercial boarding shall be allowed. Kennels shall be inside the Dwelling unless otherwise approved by the Committee.

ARTICLE VI

DIVISION OF LOTS BY OWNERS

No Lot located within the Development shall be further divided or reduced in size without the prior written approval of the Committee. In no instance shall such division create a parcel which is not developable in compliance with this Declaration or which would violate any applicable state or local laws, ordinances or regulations regulating the subdivision of lands. This provision shall not be construed to prevent the use of one Lot and part of another adjacent Lot as

one building site for construction on the site provided prior written approval of the Committee is obtained.

ARTICLE VII

MISCELLANEOUS

7.01 Term and Amendment. Unless amended as provided herein, this Declaration shall run with the land and shall be binding upon all persons claiming an interest in a Lot, or through Developer for a period of twenty-five (25) years from the date this Declaration is initially recorded. Until all of the Lots subject to this Declaration have been sold by Developer, this Declaration may be amended by the recording of a written instrument executed by or on behalf of all the following: (a) Developer and (b) those persons owning a majority of the square footage of all of the Lots. Thereafter until the termination of this Declaration, this Declaration may be amended by the recording of an instrument executed by the Owners owning a majority of the square footage of all of the Lots shall be automatically extended for successive periods of ten (10) years, unless an instrument executed by the Owners owning a majority of the square footage of all of the Lots has been recorded to terminate or amend the same in whole or in part. In addition, Developer shall have the unilateral right to amend this Declaration under Section 7.05.

7.02 Enforcement. Developer and any Owner shall have all rights and remedies to enforce the provisions hereof or any of its orders by proceedings at law or in equity against any person or persons violating or attempting to violate any provision of the Declaration. Nothing herein shall be deemed to limit the rights of the City of Madison to enforce any zoning codes, ordinances, regulations or other requirements which may be identical or similar to the requirements of this Declaration.

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

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

7.05 Expansion. Developer, its successors and assigns shall have the right, but shall not be obligated, to bring within and subject to this Declaration, at such times and in such stages as Developer in its sole discretion shall determine, additional lands in the vicinity of the Development, by executing and recording with the Register of Deeds for Dane County amended or supplemental declarations of covenants and restrictions with respect to the additional property. Such additional lands shall, upon the recording of such amended or supplemental declarations, be deemed to be part of the Development. Under no circumstances shall this Declaration or any

EXHIBIT A

Preliminary Plat of Mid Town Commons

EXHIBIT B

General Development Plan