

# ESKER

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DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR LOTS 1 THROUGH 4  
INCLUSIVE FOR THE PLAT OF ESKER

Drafted by and return to:  
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251/0608-022-0307-0; 251/0608-022-0306-2  
251/0608-022-0305-4; 251/0608-022-0304-6

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Parcel Identification Numbers

## DECLARATION

This Declaration of Covenants, Conditions and Restrictions is made effective as of February \_\_\_\_, 2020 by the Declarant Esker Apartments, LLC.

### RECITALS

A. Declarant is the owner of Lots 1 through 4 (each a “Lot” and collectively the “Lots”) in the plat of Esker (the “Subdivision”), as recorded on October 24, 2017, in the Office of the Dane County Register of Deeds, Volume 24 of Plats, Pages 444-445, Document No. 5366975 in the City of Madison, Dane County, Wisconsin. A copy of the Plat is attached as Exhibit A.

B. Declarant desires to subject the Subdivision to these Covenants, Conditions, and Restrictions to ensure the attractive development of the Subdivision and to preserve the value of each Owner’s Lot.

### COVENANTS, CONDITIONS, AND RESTRICTIONS

NOW, THEREFORE, Declarant hereby declares and provides that Lots 1 through 4, Esker, in the City of Madison, Dane County, Wisconsin, are hereby subject to the following covenants, conditions and restrictions.

### ARTICLE 1 DEFINITIONS

In addition to any capitalized terms set forth in this Declaration, the following terms shall have the following definitions:

- 1.1 “ACC” shall mean the Architectural Control Committee established under Article 3.
- 1.2 “Association” shall mean The Esker Homeowners Association, Inc., a Wisconsin nonstock corporation.
- 1.3 “Board” shall mean and refer to the Board of Directors of the Association.
- 1.4 “Declarant” shall mean Esker Apartments, LLC, and their successors and assigns.
- 1.5 “Declaration” shall mean this Declaration of Covenants, Conditions and Restrictions for Esker.
- 1.6 “Lot” or “Lots” shall mean Lots 1 through 4 as set forth in the Plat.
- 1.7 “Owner” shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to a platted Lot within the Property, except that as to any such Lot which is the subject of a land contract wherein the purchaser is in possession, the term “Owner” shall refer to such person instead of the vendor.

- 1.8 “Plat” shall mean the Plat of Esker.
- 1.9 “Property” shall mean the real estate legally described in paragraph A of the Recitals.
- 1.10 “City” shall mean the City of Madison.

**ARTICLE 2**  
**ARCHITECTURAL COVENANTS, CONDITIONS, AND RESTRICTIONS**

2.1 Architectural Control. No building or other improvement shall be erected or placed on any Lot unless: (i) such building or other improvements are consistent with the covenants, conditions, and restrictions set forth under this Article 2; and (ii) the Declarant or ACC, whichever is applicable, has approved in writing pursuant to Article 3 the Lot Owner’s construction plans, specifications, plot plan, minimum landscaping requirements, and elevations showing the location of each structure and Lot topography. Lot corner elevations and water flow must comply with the City’s interblock drainage plan. The Declarant, or the ACC, shall maintain a copy of all approved plot plans for the benefit of other purchasers in planning individual elevations for each Lot. The Declarant or any affected Lot Owner shall have the right to enforce any violation of the interblock grading plan.

2.2 Use. All Lots shall be used exclusively for single-family purposes. No structure shall be erected, altered, placed, or permitted to remain on any Lot, or part thereof, other than one single-family dwelling unit and a private garage attached to such dwelling unit.

2.3 Minimum Square Footage.

(a) Lots 1-4 Single-story homes shall have not less than 1,350 square feet of total finished area. Two-story homes shall have not less than 1,600 square feet of total finished area. Split-level or raised-ranch homes shall have not less than 1,350 square feet of total finished area on the main (first) floor.

For the purpose of determining floor area, stair openings shall be included, but open or screened porches, attached garages, and basements, even if finished off for residential or recreational use, shall be excluded.

These minimum square footage or other requirements may be waived by Declarant or the ACC (defined below) in the event the proposed design or architecture of the home is deemed to present a pleasing appearance compatible with other homes in the Subdivision.

2.4 Building Materials.

- (a) Fascia must be at least 8 inches wide.
- (b) Windows must include window wrap.
- (c) If siding is vinyl, premium vinyl is preferred.

(d) If the chimney is in the front two-thirds of the home it must be brick, stone, or stucco. All chimneys and flues shall be fully enclosed.

2.5 Garages. Each home shall have a minimum of two (2) motor vehicle garage stalls which shall be located within an attached or basement garage.

2.6 Driveways. All driveways shall be poured concreted and are to be completed within nine (9) months from the date of issuance of a building permit.

2.7 Roof. The roof pitch must be a minimum of 6/12 for gable roofs and 5/12 for hips. Architectural shingles are required. Prairie style or flat roofs may be allowed on a case by case basis.

2.8 Exterior Siding. T1-11 wood or wood-based siding product or similar type siding shall not be permitted for exterior finish.

2.9 Fences. No fences over four (4') feet in height from ground to uppermost part of fence shall ever be permitted (excepting only local ordinances with respect to enclosing private swimming pool areas) unless such fences are approved by Declarant or the ACC.

2.10 Mail Boxes. The Declarant will install a cluster mailbox pedestal or pedestals on a post with a United States Postal Service lock and outgoing mail slot at a location approved by the City of Madison and the United States Postal Service. The maintenance of the cluster mailbox is the sole responsibility of the Association. The cost of the mailbox or mailboxes will be pro-rated between the 4 Lots and paid to Declarant at the closing of each initial Lot sale. If the mailbox is not installed prior to lot closings, then the Declarant reserves the right to assess each Lot its pro-rata share per Section 4.4. A mailbox key will be provided by the Declarant to each buyer upon payment of its pro-rata share. If a Lot Owner loses his/her key, he/she may obtain a new key from the United States Postal Service at its Madison location. The cost of any replacement key(s) shall be the responsibility of the Lot Owner. If the cluster mailbox requires plowing or shoveling, then the HOA shall be responsible for such plowing or shoveling.

2.11 Lawn Cover. All front and side yards, except tree, shrub, and flower bed areas, shall be sodded with grass. All rear yards, except tree, shrub and flower bed areas, shall be either seeded or sodded with grass. Lot Owners may have a family fruit and/or vegetable garden within the rear yard; provided, however, that such a garden does not exceed 5% of the total Lot size and is regularly maintained in a clean and orderly condition. No natural or prairie style landscaping shall be permitted. Each Lot Owner shall be responsible for maintaining the entire Lot so that it has a neat and debris-free appearance.

2.12 Landscaping. Each Lot shall have a minimum tree and shrub landscaping that shall include at least:

- (a) One (1) conifer of not less than four (4) feet in height;
- (b) One (1) shade tree of not less than two and one-half (2 ½) inch diameter (trunk size); and

(c) Six (6) foundation plantings consisting of twelve (12) inches to eighteen (18) inches diameter (deciduous) and/or two (2) to three (3) feet in height (conifer) shrubs.

All sizes noted reflect the minimum allowable size. Landscaping shall be completed within twelve (12) months from the date of the issuance of building permit. All plants must be maintained, and, if necessary, replaced in order to comply with the minimum conditions set forth in this Section 2.12.

2.13 Parking. Vehicular parking is prohibited on any portion of the lot except the driveway and in the garage. The parking of any service vehicles owned or operated by residents of the home are permitted only in the garage. Storage of boats, travel trailers, mobile homes, campers, and other recreational vehicles are prohibited unless kept in the garage. The foregoing provisions shall not prohibit the temporary storage of such vehicles for the purpose of loading or unloading.

2.14 Domestic Animals. Only three (3) domestic animals may be kept on any Lot and must be housed within the principal structure. Commercial animal boarding, kenneling, or treatment is expressly prohibited, whether for a fee or not.

2.15 Swimming Pools. No above-ground swimming pools shall be permitted.

2.16 Signs. No sign of any kind shall be displayed to the public view on any Lot except, one (1) professional sign of not more than (1) square foot advertising the house for sale or rent. Notwithstanding this restriction, the Declarant, the Declarant, a builder, or licensed real estate broker may install a sign with regard to sign to advertise the Lot during the construction and sales period or to identify the development and/or the Declarant. Nothing in this Section 2.16 is intended to prohibit any signage otherwise permitted by law.

2.17 Accessory Uses. Accessory of use of interior space is permitted within the principal structure when such accessory use is in compliance with all local ordinances and is conducted without disturbance or nuisance to adjoining Lots.

2.18 Professional or Business Office. A single-family home may be used for a professional or business office when such office is incidental to the principal use as a single-family residence, such use is less than three hundred (300) square feet in area, and the business is conducted without an identification sign or label displayed on the home or Lot, and no outside employees may utilize the home as their workplace.

2.19 Prefabricated Buildings. No building previously erected elsewhere shall be moved upon any Lot, excepting new prefabricated construction which has been approved by Declarant or the ACC.

2.20 Earth Shelter. No earth or berm type shelter shall be allowed on any Lot.

2.21 Accessory Buildings. Accessory buildings or structures are expressly prohibited except where approved by Declarant or the ACC.

2.22 Temporary Structures. No trailer, basement, tent, shack, garage, barn, or outbuilding, or any part thereof, shall at any time be used as a residence, temporarily or permanently, nor shall any residence of a temporary character be used as a dwelling.

2.23 Antennas, Solar Panels, etc. No visible exterior antennas or windmills in excess of twenty (20) inches in diameter shall be permitted on any structure located on any Lot. Satellite dishes of twenty (20) inches or less shall be permitted only on the rear of a home and affixed in the most unobtrusive location possible. No solar panels shall be permitted unless the Declarant or the ACC determines in writing that installation of solar panels for a particular home will not be incompatible with the improvements on any other Lot and will not adversely affect the overall appearance homes in the Subdivision.

2.24 Drainage Swale. No Lot Owner shall grade or obstruct any drainage swale which is in existence at the time of purchase of the Lot by the Lot Owner so as to impede the flow of drainage water from other lots across such swale.

2.25 Utility Easements. The elevation of the utility easements may not be changed in excess of six inches (6") without the express, prior written permission of the affected utility companies. The Lot Owner shall be liable for all damage, costs, and expense caused to underground utilities based on any grade changes not in conformity with this provision.

2.26 Time Limits for Commencing Construction. Each Lot Owner, other than Declarant, shall commence construction within thirty-six (36) months of a date of closing for the purchase of such Lot. For purposes of this paragraph, "commence construction" shall mean complete installation of the foundation for the home to be constructed on the Lot. The Declarant shall have the right, but shall not be obligated, to extend in writing the deadline set forth in this Section 2.26, but any one extension shall not obligate the Declarant to issue any additional extensions.

2.27 Completion - Time. All homes must be completed and receive a certificate of occupancy within twelve (12) months from the date of the issuance of the building permit.

2.28 Right to Repurchase. If the Lot Owner fails to meet the deadlines set forth in Sections 2.26 and 2.27, then, in addition to all other rights that the Declarant has under this Declaration, the Declarant may, upon thirty (30) days' written notice to the Lot Owner, repurchase the Lot for an amount equal to the purchase price paid for the Lot by the Lot Owner minus the sum of credits to the Lot Owner at the original closing and minus the Declarant's out-of-pocket costs to repurchase the Lot, including but not limited to, title insurance, recording fees, document preparation, reasonable attorneys' fees, and other settlement costs. The purchase price shall be applied to pay off all existing liens against the Lot, and the Lot shall be conveyed by the Lot Owner to the Declarant free and clear of all encumbrances except municipal and zoning ordinances, easements, and covenants and restrictions of record. The Lot Owner shall pay all transfer fees and other usual and customary seller costs. The real estate taxes and installments on special assessments for the year in which such conveyance occurs shall be pro-rated as of the date of such conveyance.

### **ARTICLE 3 ARCHITECTURAL CONTROL COMMITTEE**

3.1 Architectural Control Committee. Until such time as the Declarant ceases to hold an ownership interest in any Lot, the ACC shall be the Declarant. After the Declarant no longer has any ownership interest in any Lot, the ACC shall be appointed by the Board of Directors of the

Association, and shall consist of three (3) persons that are elected by majority vote at the annual Board of Directors' meeting. Vacancies that arise between elections shall be filled by the Board of Directors. In the event of the failure of a majority vote by the Board of Directors to elect a complete ACC in any year, the most recently elected ACC members shall continue to serve on the ACC until successors are duly elected or appointed.

### 3.2 Plan Approvals / Procedures.

(a) Submission of Plans. A residential Lot Owner shall submit complete plans and specifications and a site plan showing the location of the residence or any other improvements to be constructed on the residential lot to the Declarant or the ACC in order to obtain the express, prior written approval thereof prior to commencing any construction on or alteration of any Lot. The submissions shall include, as applicable in each instance, the following:

- (i) A one (1) foot contour topographic map of the residential lot and area outside the residential lot proposed for driveway purposes.
- (ii) A complete and to scale site grading plan showing the location of the residence, driveway, and all other improvements. The plans must also include proposed floor elevations, and the location and elevations of drainage swales or berms as necessary to direct storm water runoff safely away from the residence or any other improvements on the residential lot and from adjacent lots. All such grading plans shall comply with the City approved interblock drainage plan.
- (iii) Detailed construction plans for the home and other improvements including size, shape, and height.
- (iv) Proposed facades of the home, including the style and location of eaves, windows, roof lines, and pitch.
- (v) Detailed descriptions of the materials to be used in construction and all exterior colors.
- (vi) Identification of the general contractor (builder) of the home or other improvements and a list of all principal subcontractors (including a list of contact information (telephone and email) for the general contractor and each subcontractor). The Declarant or the ACC shall have the absolute right and sole discretion to reject the general contractor/builder or any subcontractor taking into consideration financial status, business history and prospects, litigation history, building or contracting reputation, or any other reason which would be similarly considered or relied upon by a reasonable prudent business person or entity which is developing a neighborhood of quality single-family homes. Notwithstanding the foregoing sentence, the approval of any general contractor or subcontractor shall not be unreasonably withheld.

(b) Repetitive Plans. Declarant, or the ACC, reserve the right to disapprove plans with repeating floor plans and/or exteriors on side by side or facing Lots. Repetitive plans will be required to be scattered throughout the plat to avoid similarity of design in any one area.

## **ARTICLE 4 HOMEOWNERS ASSOCIATION**

### 4.1 Association Membership, Declarant Control, and Voting.

(a) *Membership.* Members of the Association shall be every Lot Owner who is the record owner of a fee, undivided fee or land contract vendee's interest (but excluding any party holding an interest merely as security for the performance of an obligation) in any Lot. There shall be no other qualifications for membership, and membership shall be appurtenant to and may not be separated from such ownership. Change of membership shall be established by recording the instrument which gives constructive notice of the conveyance to the new Lot Owner in the public records of Dane County, Wisconsin.

(b) *Voting Rights.* Each platted Lot shall have one (1) vote only in the affairs of the Association. Where more than one person holds an Ownership interest in any Lot, all persons holding such interest shall be members of the Association, but such Lot shall have only one (1) vote. The consent or agreement of a majority of the Owners of any such Lot shall be deemed to be the consent or agreement of the Owners of any such Lot for purposes of voting the Lot's one vote.

(c) *Declarant Control.* Notwithstanding anything contained in this Declaration to the contrary, the Declarant shall totally govern the affairs of the Association until the Declarant has sold all of the Lots and has no ownership interest in the Property. The Declarant shall turnover control of the Association to the Lot Owners at the earlier of: (i) the conveyance of all of its ownership interest in the Lots; or (ii) thirty (30) days after the Declarant's election to waive its right of control.

4.2 Maintenance of Common Property, If Any. The Association may, in the discretion of its Board of Directors, assume the maintenance responsibilities for the common property, if any, in the event the City fails or neglects to properly maintain such areas. This maintenance may include mowing, fertilizing, weeding, seeding, planting, and trimming the lawn, and such other maintenance and repairs as deemed necessary and appropriate by the Board of Directors to keep the common property in good, clean, attractive and sanitary condition, order, and repair. The cost of maintaining the common property shall be included in the Assessments defined in Section 4.4.

4.3 Insurance. The Association's Board of Directors or its duly authorized agent shall have the authority to obtain liability and/or such other insurance as the Board deems necessary and appropriate to protect the Association and its directors, officers, members, and agents against liability for all damage or injury caused by the negligence of the Association or any of its directors, officers, members, or agents. The cost of such insurance coverage shall be included in the General Assessment as defined in Section 4.4.



#### 4.4 Assessments.

(a) *Assessments.* The Board may assess the Lots for any expenses incurred by the Association (the “Assessments”). All Assessments shall be allocated equally among all Lots not owned by Declarant.

(b) *Declaration of Assessments.* The Board shall declare Assessments so levied due and payable thirty (30) days from the date of such levy. The Board shall notify each Owner of the action taken by the Board, the amount of the Assessment against the Lot owned by such Owner, and the date such Assessment becomes due and payable. Such notice shall be mailed to the Owner at the last known post office address by United States mail, with postage prepaid, or be personally delivered to the Owner.

(c) *Collection of Assessment.* In the event any Assessment levied against any Lot remains unpaid for a period of sixty (60) days from the date of the levy, the Board may, in its discretion, file a claim for a maintenance lien against the Lot for which payment is not made, and upon compliance with the provisions of Section 779.70, Wisconsin Statutes, or other applicable authority, such claim shall be and become a lien against such Lot. The claim shall thereafter accrue interest at the rate of interest payable upon legal judgments in the State of Wisconsin, and the Board may exercise such remedies to collect such claim as may be afforded by law. The Owner of the subject Lot shall be responsible for all costs of collection incurred by the Association in connection therewith. No Owner may waive or otherwise escape liability for the Assessment provided for herein by non-use of any common areas or abandonment of his/her Lot.

(d) *Joint and Several Liability of Grantor and Grantee.* Upon a voluntary conveyance, the grantee of a Lot shall be jointly and severally liable with the grantor for all unpaid assessments as provided in this Article up to the time of the conveyance, without prejudice to the grantee’s right to recover from the grantor the amount paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the Association setting forth the amount of such unpaid assessments and any such grantee shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid assessment against the grantor pursuant to this Article in excess of the amount therein set forth. If the Association does not provide such a statement within ten (10) business days after the grantee’s request, it is barred from claiming any lien which is not filed prior to the request for assessments owed by the grantor.

4.5 Foreclosures. The Association, acting on behalf of its members, shall have the power to bid for any Lot and any improvements constructed thereon at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. During the period that a Lot is owned by the Association following foreclosure, no right to vote shall be exercised on its behalf; no assessment shall be assessed or levied on it; and each other Lot shall be charged, in addition to its usual assessment, its equal *pro rata* share of the assessment that would have been charged such Lot had it not been acquired by the Association as the result of foreclosure.

**ARTICLE 5  
MISCELLANEOUS**

5.1 Term. The Declaration shall run with the land and shall be binding upon all Lot Owners and the Lots subject to the Declaration for a period of thirty (30) years from the date this Declaration is recorded. Thereafter, the Declaration shall automatically renew for successive ten (10) year periods unless an instrument terminating or changing the Declaration in whole or in part is signed by the Owners of a majority of the Lots subject to this Declaration.

5.2 Amendment. The Declaration in part or in whole may be canceled, released, amended, or waived in writing as to some or all of the Lots subject to this Declaration by an instrument signed by the Declarant, or if the Declarant's rights under this Declaration have been assigned to or assumed by the Association, then by an instrument in writing signed by the Owners of a majority of the Lots subject to this Declaration.

5.3 Enforcement. Declarant, the Association, or any Lot Owner shall have the right to enforce by any proceeding at law or in equity all conditions, covenants, restrictions, and easements created or imposed herein, against any person or persons violating or attempting to violate any covenant, by an action to either restrain violation or to recover damages, or both, including reasonable attorney fees. Failure to enforce any condition, covenant, restriction, or easement herein shall in no event be deemed a waiver of the right to do so thereafter.

5.4 Arbitration. A neutral third party arbitrator shall decide any controversy, claim, or dispute that relates to or arises out of this Declaration, or that involves the Declarant or the Association through binding arbitration under the Dispute Resolution Rules and Procedures of the Madison Area Builders Association. If either party refuses to submit a claim to arbitration, or fails to abide by all of the rules adopted, the non-breaching party shall be entitled to recover all costs, including reasonable, actual attorneys' fees, incurred in seeking further action to enforce the terms of this provision and/or to compel arbitration. Nothing in this section precludes or requires the parties to mediate this matter prior to invoking their right to arbitration.

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

5.6 Recitals. The Recitals are incorporated into and made a part of this Declaration.

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**EXHIBIT A**

*Attached Esker Plat*