

FIRST AMENDED AND RESTATED  
DECLARATION

CAPITOL POINT CONDOMINIUM

Record this document with the Register  
of Deeds

Name and Return Address:

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(See Exhibit B for Parcel  
Numbers)

Parcel Identification Number

There are no objections to this condominium amendment with respect to Chapter 703 Wis. Stats. and is hereby approved for recording.

\_\_\_\_\_  
Director of Planning and Community & Economic Development  
City of Madison

\_\_\_\_\_  
Date

THIS INSTRUMENT DRAFTED BY:  
LYDIA J. CHARTRE

**CAPITOL POINT CONDOMINIUM**  
**FIRST AMENDED AND RESTATED DECLARATION OF CONDOMINIUM**

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**FIRST AMENDED AND RESTATED DECLARATION OF CONDOMINIUM**  
**OF**  
**CAPITOL POINT CONDOMINIUM**

Capitol Point Condominium was created by a Declaration, recorded on April 3, 2002 in the Dane County Register of Deeds as Document No. 3469446 (the "Declaration").

**ARTICLE I**

**STATEMENT OF PURPOSE**

WHEREAS, the Declaration contains portions which have become obsolete due to changes in the law, the turnover of control from Declarant to Capitol Point Condominium Association, Inc. (the "Association"), and changes in common practice over the years;

WHEREAS, the Association desires to clarify and update the provisions of this Declaration through this Restatement, so that its covenants, as restated, will continue to run with the land and shall be binding on all subsequent owners and occupants of all or any part of the Condominium;

WHEREAS, the real property (the "Property") subject to this Declaration is as described on Exhibit A appended hereto, and the addresses of the units that comprise the Condominium are as described on Exhibit B appended hereto; and

WHEREAS, the Association further desires to amend the Declaration and the Condominium Plat (as shown on the First Addendum to Condominium Plat, recorded herewith) to show the combination of originally declared Units 1101 and 1102 into one Unit, now known as Unit 1101;

NOW THEREFORE, the Association, pursuant to Chapter 703 of the Wisconsin Statutes, the Condominium Ownership Act, as the same may be amended, renumbered or renamed from time to time (the "Act"), hereby amends and restates its Declaration as follows.

**ARTICLE II**

**DESCRIPTION, NAME, RESTRICTIONS, AND DEFINITIONS**

2.1 Legal Description. The real estate subject to this Declaration is described as follows:

A. The real property comprising the Condominium is legally described in Exhibit "A," attached hereto and made a part hereof by reference as though fully set forth herein, subject to the terms and conditions of Section 8.4 below. When originally declared, the land comprising the Condominium was divided into two (2) parcels. The first parcel was described in Exhibit A-1, attached to the original Declaration, and is referred to herein as the "**Parkside Building Parcel**". The second parcel was described in Exhibit A-2, attached to the original Declaration and is referred to herein as the "**Capitol Point Parcel**". As more fully described in Section 8.4 below, the Parkside Building Parcel contains Capitol Parkside Condominium, a separately declared condominium.

B. The easement premises (collectively the “**Easement Parcel**”) described in that certain Easement and Restriction Declaration Regarding Capitol Point Condominium and Capitol Parkside Condominium (the “**Rooftop Declaration**”), which Rooftop Declaration is dated March 11, 2002, and was recorded March 25, 2002 in the Dane County Register of Deeds Office as Document No. 3464795, as executed by the Declarant, subject, however, to the rights of the owners and occupants of the Parkside Building Parcel, as more particularly described in the Rooftop Declaration, with respect to the use and occupancy of the Easement Parcel, as permitted users and occupants of the Easement Parcel, as provided in the Rooftop Declaration.

C. The leased premises (the “**Leased Premises**”) described in that certain Subterranean and Air Space Lease by and between the City of Madison and the Declarant (the “**City Lease**”), which City Lease is dated May 18, 2001, and was recorded May 21, 2001, in the Dane County Register of Deeds office as Document No. 3323185, for subterranean and air space in portions of the North Hamilton Street, East Mifflin Street and North Webster Street public rights-of-way to accommodate, among other things, certain features of the Condominium located in said public right-of-way, including, but not limited to, balconies, bay windows, building bays, canopies, utilities and an underground utility vault, which Leased Premises is made appurtenant to the Condominium (subject, however, to the terms and conditions of the City Lease). That is, the Leased Premises is not a permanent part of the Condominium, but is appurtenant to the Condominium for so long as the City Lease or any extension or renewal thereof is in effect. In the event the City Lease is terminated for any reason, the Leased Premises shall automatically cease to be appurtenant to the Condominium, with no further action by the Capitol Point Condominium Association, Inc. (the “**Association**”), the City of Madison, any Unit Owner or any, other party. The Leased Premises affects only the Capitol Point Parcel and not the Parkside Building Parcel.

2.2 Name and Address. The name of the Condominium is Capitol Point Condominium and has as its address 125 North Hamilton Street, City of Madison, Wisconsin 53703.

2.3 Covenants, Conditions, Restrictions, and Easements. The Condominium shall be, on the date this Amended and Restated Declaration is recorded, to the extent still relevant, 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, cable television and other utilities and utility providers.
- C. All easements, covenants and restrictions shown on the Condominium Plat of the Capitol Point Condominium, as such Condominium Plat may be amended from time-to-time.
- D. All other easements, covenants, declarations and restrictions of record.
- E. All municipal, zoning, and building ordinances.
- F. All terms and conditions contained and set forth in the PUD (SIP)-Planned Unit Development (Special Implementation Plan) (the “**SIP**”) for the Condominium, as such SIP may be amended or modified from time-to-time by the municipality or any other third party.
- G. All other governmental laws and regulations applicable to the Condominium.

H. All terms and conditions contained in the Rooftop Declaration. All terms and conditions contained in the City Lease.

I. Terms and conditions of Resolution creating tax increment Finance District No. 14 as set forth in instruments recorded in the Dane County Register of Deeds Office on April 8, 1986, in Volume 7975 of Records, on Page 92 as Document No. 1929114 and recorded in the Dane County Register of Deeds Office on April 8, 1986, in Volume 7976 of Records, on Page 1, as Document No. 1929115.

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 one structure containing fourteen (14) levels, which structure is located entirely on the Capitol Point Parcel. That is, no portion of the structure is located on the Parkside Building Parcel. The lower three (3) levels shall be used for motor vehicle parking, commercial purposes (including two (2) commercial condominium units as described below), storage areas, mechanical rooms, entry foyers, lobbies, an electrical vault, a generator room, a trash room, an electrical switchboard room, a fire and domestic pump room, and other appurtenant common and limited common elements. The upper eleven (11) levels shall be used for residential purposes and appurtenant storage areas and other appurtenant common elements. The Condominium shall contain (i) sixty-three (63) residential condominium units (hereinafter “**Residential Units**”); (ii) two (2) commercial condominium units (hereinafter “**Commercial Units**”); (iii) ninety-one (91) parking units (hereinafter “**Parking Units**”); and (iv) seventy-six (76) Storage Areas (hereinafter “**Storage Areas**”) which Storage Areas shall be limited common elements, together with drive lanes, all common elements and the land. The Residential Units, the Commercial Units, and the Parking Units may be collectively referred to herein as the “Units”. The three (3) parking levels shall be accessed from East Mifflin Street, North Webster Street and North Hamilton Street. Thirteen (13) of said ninety-one (91) Parking Units are “tandem” Parking Units (the “**Tandem Parking Units**”). The thirteen (13) Tandem Parking Units are designed to accommodate two (2) vehicles parked end to end, such that the thirteen (13) Tandem Parking Units are designed and intended to accommodate parking for twenty six (26) vehicles, Parking Units 26-30, inclusive, Parking Units 56-60, inclusive, Parking Units 89-91, inclusive, are the Tandem Parking Units. Therefore, although there are ninety-one (91) Parking Units, said ninety-one (91) Parking Units can accommodate parking for up to one hundred four (104) vehicles. A survey plan of the land and building was attached to the original Declaration as Exhibit “B” (“**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 contained in this Declaration and contained in the Association’s by-laws and any rules and regulations adopted by the Association from time to time, and any and all amendments and modifications thereto as adopted by the Association from time to time.

## 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, some of which spaces may be non-contiguous, as more particularly described and depicted in the Condominium Plat.

3.2 Boundaries of Units. A Unit in Capitol Point Condominium shall include one (1) or more contiguous or non-contiguous cubicles of air, including the perpetual right of ingress thereto and egress therefrom located within the boundaries described below (except as otherwise expressly provided herein):

A. Residential Units. The exterior boundaries of the cubicles that constitute Residential Units shall be the vertical or horizontal planes, the elevations of which coincide with and include the following: (i) for the walls, the outermost plane of the unfinished drywall, plaster, or other material affixed to the masonry or stud walls, including the drywall, plaster or other material affixed to the masonry or stud walls; (ii) for the floor, the uppermost plane of the concrete floor or wood subfloor; and (iii) for the ceiling, the uppermost plane of the drywall, plaster or other material that constitutes the unfinished structural ceiling, including the drywall, plaster or other material affixed to the structural portion of the ceiling. The foregoing boundaries extended to the intersection with each other shall constitute the Residential Units as shown on the Condominium Plat. It is intended that the surface of each plane described above (be it tiled, papered, paneled, painted, carpeted or otherwise covered) is included as a part of each defined Residential Unit. However, the studs of Unit boundary walls are not a part of each defined Residential Unit. Included within the Residential Unit shall be all doors (including hardware), with the exception of exterior doors and the doors to common hallways which shall be Limited Common Elements as defined below. Windows shall also be Limited Common Elements as defined below. In the case of a Residential 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. Included within each Residential Unit shall be all interior partition walls (including the studs and drywall for such interior partition walls) not shared with any other Unit and interior doors (including hardware). The Residential Units may be designated simply as a "Unit" or as "Units" on the Condominium Plat.

In addition, a Residential Unit shall include any and all appliances and other fixtures contained within or serving each Residential Unit, whether they are inside or outside the defined cubicle of air, including, without limitation:

- 1) Interior lights and light fixtures, including the wiring therefor.
- 2) Cabinets.
- 3) All floor, wall, baseboard, or ceiling electrical outlets and switches, all wiring and the junction boxes serving them.
- 4) All telephone, telefax, cable television, computer, Internet, stereo or other sound system, if any, including all wiring, outlets, switches, hardware and other appurtenances serving them.
- 5) 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 the water or sewage lines serving more than one (1) Unit.

6) The heating, ventilating and air conditioning system, including the control mechanisms, all vents and related appurtenances from the Residential Unit to the exterior of the Condominium, including vents for the furnace, clothes dryer, rangehood, all other exhaust fans, and such other vents appurtenant to each Residential Unit, condensers and all connections thereto serving each Residential Unit.

Specifically not included as part of the Residential 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 Residential Unit.

B. Parking Units.

1) Boundaries of Parking Units. The boundaries of each Parking Unit shall be the horizontal or vertical planes, the elevations of which coincide with and include the following: (i) for the lower boundary, the uppermost plane of the finished paved surface, but excluding such finished paved surface; (ii) for the upper boundary, the lowermost plane of the structural ceiling, excluding said structural ceiling; (iii) for the side boundaries, either the center of the painted markings, as shown on the Condominium Plat, or the interior plane of the immediately adjacent wall, but excluding such immediately adjacent wall, as the case may be, extended perpendicularly between the lower boundary and upper boundary; and (iv) for the front and back, the straight lines connecting the ends of the painted markings or the immediately adjacent wall of each side boundary, as the case may be, where said side boundaries terminate and such vertical lines extended perpendicularly between the lower boundary and upper boundary to the intersection with each other. The foregoing boundaries extended to the intersection with each other shall constitute the Parking Units as shown on the Condominium Plat.

C. Commercial Units. The exterior boundaries of the cubicles that constitute Commercial Units shall be the vertical or horizontal planes, the elevations of which coincide with and include the following: (i) for the walls, the outermost plane of the unfinished drywall, plaster, or other material affixed to the masonry or stud walls, including the drywall, plaster or other material affixed to the masonry or stud walls; (ii) for the floor, the uppermost plane of the concrete floor or wood subfloor; and (iii) for the ceiling, the uppermost plane of the drywall, plaster or other material that constitutes the unfinished structural ceiling, including the drywall, plaster or other material affixed to the structural portion of the ceiling. The foregoing boundaries extended to the intersection with each other shall constitute the Commercial Units as shown on the Condominium Plat. It is intended that the surface of each plane described above (be it tiled, papered, paneled, painted, carpeted or otherwise covered) is included as a part of each defined Commercial Unit. However, the studs of Unit boundary walls are not a part of each defined Commercial Unit. Included within the Commercial Unit shall be all doors (including hardware), with the exception of exterior doors and the doors to common hallways which shall be Limited Common Elements as defined below.



Windows shall also be Limited Common Elements as defined below. In the case of a Commercial 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. Included within each Commercial Unit shall be all interior partition walls (including the studs and drywall for such interior partition walls) not shared with any other Unit and interior doors (including hardware).

In addition, a Commercial Unit shall include any and all appliances and other fixtures contained within or serving each Commercial Unit, whether they are inside or outside the defined cubicle of air, including, without limitation:

- 1) Interior lights and light fixtures, including the wiring therefor.
- 2) Cabinets.
- 3) All floor, wall, baseboard, or ceiling electrical outlets and switches, all wiring and the junction boxes serving them.
- 4) All telephone, telefax, cable television, computer, internet, stereo or other sound system, if any, including all wiring, outlets, switches, hardware and other appurtenances serving them.
- 5) 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 the water or sewage lines serving more than one (1) Unit.
- 6) The heating, ventilating and air conditioning system, including the control mechanisms, all vents and related appurtenances from the Commercial Unit to the exterior of the Condominium, including vents for the furnace, clothes dryer, rangehood, all other exhaust fans, and such other vents appurtenant to each Commercial Unit, condensers and all connections thereto serving each Commercial Unit.

Specifically not included as part of the Commercial 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 Commercial Unit.

3.3 Portions of Leased Premises Located Adjacent to Units. Notwithstanding the above, certain portions of the Leased Premises, specifically the building bays shown on the Condominium Plat, are directly attached to and appear to be an indivisible part of adjacent Residential Units. That is, such portions of the Leased Premises are indistinguishable from the Units to which they are immediately adjacent and obtain their only access and appear to be part of the adjacent Unit. Any and all such portions of the Leased Premises shall not be part of the Unit. Nonetheless, the Unit that is immediately adjacent to such portions of the Leased Premises shall have the exclusive right to use and occupy such portions of the Leased Premises located adjacent to such Unit. Any and all such areas shall at all times be subject to the terms and conditions of the City Lease, including, but not limited to, the City of Madison's right, as set forth in the City Lease, to terminate the City Lease.

Any such portions of the Leased Premises located in the public right of way, pursuant to the terms and conditions of the City Lease, shall not be part of a Unit or the Condominium, but instead shall be appurtenant to the Condominium, and at all times subject to the terms and conditions of the City Lease, as described in Section 2.1(C) above. In the event the City Lease is terminated for any reason or not renewed or otherwise renegotiated, any portion of the Leased Premises located in the public right of way, pursuant to the terms and conditions of the City Lease, shall automatically cease to be appurtenant to the Condominium with no further act by the Association, the municipality or any other party.

3.4 Legal Description. Units shall be identified by the number or other designation as specified on the Condominium Plat, which Condominium Plat was recorded contemporaneously with the original Declaration.

## 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 underlying the Condominium described in Exhibit “A”. The Parkside Building Parcel shall be subject to the terms and conditions of Section 8.4 hereof.

B. The foundations, columns, pilasters, girders, beams, supports, main walls (which shall be defined as exterior walls and surfaces, structural walls and walls common to two (2) or more Units), roof trusses, roofs, drive aisles, halls, corridors, lobbies, stairs, entrances, and exits of the building, and any other improvement not included within the definition of Unit as set forth in Article III above.

C. The three (3) parking levels, as depicted on the Condominium Plat, including all garage doors, garage door operating mechanisms, drive aisles, but specifically excluding those portions of the three (3) parking levels designated on the Condominium Plat as Parking Units or Commercial Units. All areas designated as Storage Areas are limited common elements as described in Article V, below.

D. The areas identified on the Condominium Plat as “Mechanical Room,” “Generator Room”, “Electrical Switchboard Room”, “Electrical Vault”, “Fire & Domestic Pump Room”, “Trash Room,” “Elevator Lobby”, “Stair 1”, “Stair 2”, “Elevator Lobby”, “Vestibule”, “Building Lobby”, “Service Area”, “Lobby”, “Corridor”, and “Electrical”. The abbreviations “Mech.” and “Ele.”, as used on the Condominium Plat, refer to “Mechanical” and “Electrical”, respectively, and such areas are common elements of the Condominium.

E. Any mechanical or utility mechanism, connection or service that serves more than one (1) Unit such as power, gas, hot and cold water, heat, water softeners, water heaters, elevators and elevator operating mechanisms.

F. The fire sprinkler system and its associated piping and operating mechanisms.

G. Any other portion of the improvements to the land described in Exhibit “A”, but specifically excluding any improvements located on that portion of the land referred to herein as the Parkside Building Parcel, which is not included within the boundary of a Unit as described above. That is, the Condominium specifically excludes any and all improvements constructed or located on the Parkside Building Parcel, which Parkside Building Parcel improvements are a part of an adjacent condominium as described in Section 8.4 below.

H. Rooftop Garden Area and Mechanical Area located on Parkside Building Parcel and depicted on the Condominium Plat, which Rooftop Garden Area and Mechanical Area exist pursuant to the terms and conditions of the Rooftop Declaration.

I. The Association’s interest in the City Lease.

4.3 Use. Except as otherwise provided herein, and subject to the by-laws of 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 decoration, 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. Decks, balconies and terraces attached to, leading directly to or from, or adjacent to a Residential Unit and designated as “LCE” on the Condominium Plat.

B. The door leading to or from each Unit, and all windows in each Unit.

C. Storage Areas identified on the Condominium Plat as S-1 to S-76, including the door leading to or from each Storage Area.

1) Boundaries of Storage Areas. The boundaries of each Storage Area shall be the vertical or horizontal planes, the elevations of which coincide with the interior planes of the ceiling, floor and walls of each Storage Area extended to the intersection with each other, but excluding such wall, floor or ceiling. It is intended that the surface of each plane described above (be it tiled, papered, paneled, painted,

carpeted or otherwise covered) is included as part of each defined Storage Area. Any and all appliances and other fixtures contained within and serving each Storage Area whether they are inside or outside the defined cubicle of air, including, without limitation, the interior lights and light fixtures and all floor, wall, baseboard, or ceiling electrical outlets, switches and junction boxes serving a Storage Area, if any, are made a part of the Storage Area. Specifically not included as part of the Storage Area are those structural components of the building and any portion of the plumbing, electrical, or mechanical systems of the Condominium serving more than one (1) Unit or more than one (1) Storage Area, even if located within the cubicle or cubicles of air comprising the Storage Area.

2) Storage Areas Adjacent to Parking Units. Certain of the Storage Areas, as identified and depicted on the Condominium Plat, have their sole and only access over, across and through an adjacent Parking Unit. Such Storage Areas, located immediately adjacent to and obtaining their access over, across and through a Parking Unit, are hereby made appurtenant to and a limited common element of such adjacent Parking Unit. That is, such Storage Areas are reserved for the use of the owner of the Parking Unit to which it is adjacent and from which it obtains access, and shall be conveyed and encumbered as a permanent appurtenance to said adjacent Parking Unit.

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, violate the terms and conditions of the SIP or otherwise cause harm to the Condominium or violate the rules and regulations of the Condominium, as adopted or amended from time-to-time. 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 that portion of the Limited Common Elements that are a part of the exterior of the structure comprising the Condominium (including all windows, and exterior doors and doors leading to common hallways and further including all water repelling membranes and pavers on any terrace located in the Condominium and the pavers on any balconies and decks located in the Condominium), repair and replacement of which (including the choice of color and finish on all surfaces exposed to the general public or other Unit Owners) 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 (except Commercial Units), Limited Common Elements, and Common Elements of the Condominium shall be used for residential occupancy, vehicular driving and parking purposes and pedestrian use only, as appropriate, and shall not be used for any other purpose. Occupancy of the Residential Units shall be governed by the zoning text of the SIP, which, in general, provides for R-2 occupancy, which classification limits occupancy to two (2) unrelated individuals or a family and one (1) unrelated individual (which shall be the occupancy standard notwithstanding any exceptions to the R-2 zoning classification as more particularly stated in the SIP). Occupancy of the

Commercial Units shall be governed by City of Madison Zoning District C-4 as set forth and described in the zoning text of the SIP. 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 or governmental rules, regulations or ordinances, and any other restrictions as contained in the Association’s Articles of Incorporation, By-Laws and any rules and regulations adopted by the Association from time-to-time and as such may be amended from time to time. 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 of the Condominium, create or otherwise constitute a material risk of harm to other Unit Owners or constitute a nuisance. The Parking Units may be used only for motor vehicular parking and the parking of accessory vehicles such as motorcycles, boats and trailers. No Parking Unit or Storage Area shall be owned or occupied by anyone other than a Residential Unit Owner or the Association. Any and all attorney’s 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, limited partnership, limited liability partnership, limited liability company, corporation or other entity, 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 recorded land contract or other similar document, “Unit Owner” shall mean the land contract purchaser.

## **ARTICLE VIII**

### **ASSOCIATION**

8.1 **Definition.** “Association” as used herein shall mean the Capitol Point Condominium Association, Inc., a Wisconsin non-stock corporation.

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 from time to time for the use and management of the Condominium.

8.3 **Voting.** Each Residential Unit Owner and each Commercial Unit Owner 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.

Parking Units shall not have a vote separate from the vote of the Residential Unit Owner who owns such Parking Unit. That is, there are no votes in the Association appurtenant to any Parking Unit.

8.4 Matters Regarding Certain Common Elements. This Declaration submits the land described in Exhibit “A” to the condominium form of ownership. Notwithstanding the foregoing, that portion of the land described herein as the Parkside Building Parcel, shall be subject to the terms and conditions of a Declaration of Condominium for the Parkside Capitol Condominium (the “**Parkside Condominium**”). The Parkside Condominium consists of a four-level (4) structure located on the land described in Exhibit “A-1” which was attached to the original Declaration. Under no circumstances shall the Parkside Condominium be a part of the Condominium, but shall exist as a separate and distinct condominium. A Declaration of Condominium for the Parkside Condominium has been recorded in the Dane County Register of Deeds office. In addition to the foregoing, in the event either the Condominium or the Parkside Condominium are ever removed from the condominium form of ownership, under the provisions of Section 703.28, Wisconsin Statutes, or otherwise, or a casualty occurs to the Condominium or the Parkside Condominium, and the Unit Owners of either the Condominium, the Parkside Condominium or both, as the case may be, decide not to rebuild the Condominium for any reason or no reason, or any other act occurs, by which either the Condominium, the Parkside Condominium or both, as the case may be, no longer exist, then, the land described in Exhibit “A” shall be automatically, and without any further action or approval by any party, divided into two (2) parcels. One parcel shall be the land underlying the Parkside Condominium, which land is described in Exhibit “A-1” to the original Declaration and referred to herein as the Parkside Building Parcel, and the second parcel shall be the land underlying the Condominium, which is described in Exhibit “A-2”, attached to the original Declaration, and referred to herein as the Capitol Point Parcel. In such event, such two (2) parcels shall be automatically divided, without action by any party, to create two (2) distinct and separate parcels of land. The parcel of land described in Exhibit “A-1” attached to the original Declaration shall automatically, and without the consent of any person or entity, including such persons or entities having an ownership interest in the Capitol Point Parcel or the Condominium, pass to those persons or entities having an ownership interest in any Unit in the Parkside Condominium as tenants in common, as if the land described in Exhibit “A-1” attached to the original Declaration were owned solely by unit owners of the Parkside Condominium and Stat. Sec. 703.28 were applied. Likewise, the parcel of land described in Exhibit “A-2” attached to the original Declaration shall automatically, and without the consent of any person or entity, including such persons or entities having an ownership interest in the Parkside Building Parcel or the Parkside Condominium, pass to those persons or entities having an interest in any Unit in the Condominium as tenants in common as if the land described in Exhibit “A-2” attached to the original Declaration were owned solely by Unit Owners of the Condominium and Stat. Sec. 703.28 were applied. To the extent any deed or any other document is required to confirm the division of ownership of the land described in Exhibit “A” attached to the original Declaration, as set forth herein, then any parties required to sign such documents covenant and agree, by taking title to a Unit in the Condominium, or granting any mortgage or land contract thereon, to execute any such document to formally divide the land described in Exhibit “A” attached to the original Declaration into two (2) parcels as described herein.

The respective presidents of the Association and the condominium association governing the Parkside Condominium are hereby appointed as attorneys-in-fact to execute any such documents to confirm the division of the land described in Exhibit “A” attached to the original Declaration. Notwithstanding the foregoing, the division of the land described in Exhibit “A” attached to the

original Declaration, as set forth herein, is intended to be a self-executing event and to the extent permitted by law no consent to such division shall be necessary to effect such land division.

## 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 that portion of the Limited Common Elements that are a part of the exterior of the structures comprising the Condominium (including all exterior doors and doors leading to common hallways and further including all water repelling membranes and pavers on any terrace located in the Condominium and the pavers on any balconies and decks located in 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, but only if the reason for the entry was not due to any negligence, misuse, act, or omission of the Unit Owner. 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

### 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. Any approved

improvement or alteration which changes the exterior dimensions of a Unit must be evidenced by the recording of a modification to the Capitol Point Condominium Declaration and Plat before it shall be effective and must comply with the then-legal requirements for such amendment or addendum. 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 contact, 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.

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

B. An amendment to the Declaration and an addendum to the 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 Register of Deeds Office.

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 and 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 Register of Deeds Office. 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's 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 or addendum 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 Register of Deeds Office. 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 Unit Owners involved and may be charged as a special assessment to the affected Units.

## **ARTICLE XI**

### **INSURANCE**

11.1 Property Insurance. The Board of Directors of the Association shall obtain, to the extent available in the normal commercial marketplace, broad form insurance against loss by fire and against loss by lightning, windstorm, hail, snow storm and other risks normally included within risk of loss extended coverage, including vandalism and malicious mischief, insuring all Common Elements, Units and Unit upgrades or betterments (including without limitation, all interior finishes, built-in cabinets, plumbing fixtures, heating, ventilating and air conditioning equipment, partition walls and floor coverings), together with all service machinery appurtenant thereto, as well as all personal property belonging to the association, but excluding any Unit Owner personal property, in an amount equal to the full replacement value, with code upgrades, without deduction for depreciation. Premiums 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. To the extent possible, the insurance shall provide that the

insurer waives its rights of subrogation as to any claim against unit owners, the Association, and their respective agents and guests, and that the insurance cannot be cancelled, invalidated nor suspended on account of conduct of any one or more unit owners, or the Association, or their agents and guests, without thirty (30) days prior written notice to the Association giving it opportunity to cure the defect within that time. The Board of Directors shall obtain a third-party insurance appraisal, to be updated at least every five (5) years, to determine the full replacement value of the Property insured. 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.

11.2 Additional Insurance. In addition to the insurance required above, the Board shall obtain, to the extent available in the normal commercial marketplace, with the costs thereof to be borne as a Common Expense:

- A. Worker's compensation insurance;
- B. Liability insurance providing coverage in an amount not less than two million dollars (\$2,000,000) per occurrence for injury, including death, and property damage covering the Association, the Board of Directors, officers, and all agents and employees of the Association, and all Unit Owners and other persons entitled to occupy any Unit or other portion of the Property;
- C. Directors and Officers Insurance covering the officers, directors, property managers and volunteers;
- D. Fidelity insurance covering officers, directors, property managers, employees, and other persons who handle or are responsible for handling Association funds. Such insurance shall be in an amount at least equal to no less than three (3) months' operating expenses plus reserves on hand as of the beginning of the fiscal year and shall contain waivers of any defense based upon the exclusion of persons serving without compensation; and

In addition to the insurance required above, the Board of Directors may obtain such other insurance, including cyber or automobile insurance, as it deems necessary.

11.3 Insurance Deductible. In the event of any insured loss on the Association's master insurance policy, the Association's deductible shall be the responsibility of the person or entity (including the Association) who would be responsible for such damage under the Condominium Documents, in the absence of insurance, in the discretion of the Board. If the cause of loss originates within a Unit, the Unit Owner is responsible for the damage costs up to the Association's master insurance policy deductible, if so decided by the Board. If the cause of the loss originates in more than one Unit or a Unit and the Common Elements, the responsibility for paying the Association's deductible shall be equitably apportioned by the Board in its sole discretion among the Unit(s) and/or Common Elements where the loss originated.

11.4 Unit Owner's Insurance. The Unit Owners shall be responsible for and shall obtain insurance coverage for:

- A. The personal property within the Unit;

B. Coverage A with special perils coverage added, which changes the perils covered from “named perils” to “all risks unless excluded”, which insurance should also cover Building/Additions and Alterations/Improvements and Betterments in an amount of at least the Association’s master policy deductible(s);

C. Loss assessment coverage, at a minimum limit of the maximum amount that the insurer will cover of the Association’s master policy deductible(s); and

D. Special perils contents coverage.

11.5 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 of law 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.

11.6 Insurance for Leased Premises. The City Lease requires that the Association or the Unit Owner maintain insurance for the Leased Premises. Any and all insurance required by the City of Madison, pursuant to the City Lease, shall be deemed to be a common expense of the Association. This shall include any such insurance required to cover any portion of the Leased Premises otherwise located directly adjacent to a Unit, as described in Section 3.3 above. That is, any and all insurance required by the City shall be a common expense regardless of whether or not such insurance covers those portions of the Leased Premises described in Section 3.3 above.

## 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 an addendum to the 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

### COMMON EXPENSES

14.1 Liability of Unit Owner. Each Unit Owner 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 late fees and/or interest as the Association may impose pursuant to the By-Laws for delinquencies and the costs of collection and reasonable attorneys' 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 703.165, 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 703.165, 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. The Association may establish a reserve fund to be used by the Association for capital improvements, repairs or extraordinary expenses, as the Board shall determine.

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, but only to the extent set forth in the Act. The lien shall secure payment of the assessment, late fees, interest, and costs of collection, including the actual attorney's fees incurred by the Association. The lien may be

filed 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, late fees, interest, and costs of collection, including actual attorney's fees. 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, the Unit Owner remains responsible for paying the assessments that come due during the pendency of the foreclosure action. 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, 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 capital improvements, repairs, and 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 animal, 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**

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 mortgage. 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 Office as required by statute.

## **ARTICLE XVI**

### **NOTICES**

The person to receive service of process for the Condominium or the Association shall be the Registered Agent of the Association, which designation shall be filed with the Wisconsin Department of Financial Institutions. At the time of recording this First Amended and Restated

Declaration, the Registered Agent for the Association is Caribou Property Management, LLC, 8309 Greenway Blvd. Suite 220, Middleton, WI 53562.

## ARTICLE XVII

### CLAIMS AND REMEDIES

17.1 Owner Claims. In the event that a Unit Owner or resident has a claim to assert against the Association, that claim must be presented to the Board in a timely manner. If the Board is unable to resolve the issue, the parties shall mutually agree to an individual or individual(s) who will have the sole authority to either mediate or arbitrate the matter. If mediation is successful, the matter shall be fully resolved with each side to bear its own costs. If mediation is unsuccessful, both parties to the dispute shall have the option whether to arbitrate or file suit. If the parties choose arbitration and an arbitration decision is rendered, it shall be binding on all parties and the prevailing party shall be entitled to recover their attorneys' fees and costs.

17.2 Damages. The Association may assess a Unit Owner the actual damages the Association incurs from the Unit Owner's (its residents, occupants, or guests) failure to abide by the Condominium Declaration, Bylaws, or Rules and Regulations, including attorneys' fees and costs. Where appropriate, the Association may also fine for violations of the Condominium Documents as set forth in the Rules and Regulations.

## ARTICLE XVIII

### EASEMENTS

Easements are reserved over, through, across and underneath the Units, Limited Common Elements and Common Elements for ingress and egress and for the presence, installation, maintenance, repair and replacement of present and future utility services, including but not limited to, easements for water pipes, sanitary sewer pipes, emergency sewer lines, storm water drainage pipes, electrical wires, television wires, computer cables, telephone and Internet access wires or cables, wireless equipment, security wires, street lights, traffic signals and signs, appurtenances thereto and the like, whether or not shown on the Condominium Plat. Easements for such utility services are reserved to the Association and the Unit Owners and their contractors or agents. 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

### GENERAL

19.1 Utilities. Each Unit Owner shall pay for his, her or its cable television, telephone, Internet access, electrical, gas, and other utility services which are separately metered or billed to

each user by the respective utility company provider. Utilities (including, but not limited to, any bulk cable or internet service arrangements negotiated by the Association) 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.

19.2 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 to the Units, Limited Common Elements, or Common Elements during construction, and easements for such encroachments and their maintenance shall exist.

19.3 Animal Rules and Regulations. Animals shall be permitted, but shall be strictly subject to rules and regulations adopted by the Board from time-to-time, in the use of the Board's sole discretion. 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 animal to be removed from the Condominium, if such animal constitutes or becomes a nuisance to other Unit Owners, as determined by the Board in the use of its sole discretion.

19.4 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.

19.5 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 or among any of them, this Declaration shall be considered the controlling document.

19.6 Lease of Units. The Condominium is intended to be an owner-occupied condominium community. However, a Residential Unit Owner shall be permitted to lease all or a portion of his, her, its or their Unit under the following terms and conditions:

- 1) The lease term may not exceed twelve (12) months in duration, unless approved by the Board.
- 2) Use shall be consistent with Article VI of the Declaration, occupancy restrictions as set forth in the SIP, Madison General Ordinances and all rules and regulations adopted by the Board.
- 3) The lease must be in writing and must provide for the following:
  - (a) the tenant agrees to observe all rules and regulations that affect occupancy or use of the Unit, Common Elements and Limited Common Elements as set forth in the Declaration of Condominium, Association Articles of Incorporation and By-Laws, and rules and regulations adopted by the Board from time-to-time (collectively "**Condominium Rules**"),
  - (b) that a violation of the Condominium Rules shall constitute a default under the lease
  - (c) that if the Unit Owner, as landlord, does not take appropriate action for a violation of the Condominium Rules, including

termination of the tenancy and eviction of the tenant, as appropriate, the Association shall have the right to do so, as the Unit Owner's attorney-in-fact, with all costs associated with such action to be assessed against the Unit Owner as provided in the Declaration.

- 4) A copy of the lease must be filed with Association.

In addition, with respect to Parking Units and Storage Areas, an owner (including the Declarant) of a Parking Unit or Storage Area may only lease such Parking Unit or Storage Area to an owner or a tenant of a Residential Unit. In addition, such lease of a Parking Unit or Storage Area shall be subject to such rules and regulations as may be adopted by the Board. The intent of the restrictions on leasing Parking Units and Storage Areas is to ensure that only owners or tenants of Residential Units have access to the Condominium.

19.7 Limitation on Enforcement of Some Conditions. No covenant, condition or restriction set forth in this Declaration and no by-law, rule or regulation adopted by the Association pursuant to the authority granted to the Association pursuant to this Declaration or the Association's Articles of Incorporation, By-Laws or rules and regulations may be applied to discriminate against any individual in any manner described in Section 106.50, et. seq., Wisconsin Statutes, or as described in any other local, state or federal statutes, ordinances, regulations and rules.

19.8 Window Coverings. All window coverings shall be designed (including, but not limited to, choice of color) and installed in a manner that achieves a uniform appearance from the Condominium's exterior. Prior to the installation by any Unit Owner, of any and all window coverings visible from the exterior, the Unit Owner shall first obtain the prior written consent and approval of the Association, by and through its Board of Directors, to such window coverings, which consent may be withheld by the Board in its reasonable discretion. The Association shall have the right to establish from time-to-time, rules and regulations for window coverings.

This First Amended and Restated Declaration complies with the requirements of the Declaration and the applicable law, Wis. Stat. § 703.09(2), in that it has been approved by the written consent of Unit owners with not less than sixty-six and two-thirds percent (66 2/3%) of the Unit Owners in the Association, and such consents have been approved by the mortgagees or holders of equivalent security interest in the Units to the extent required by the Act.

**{Remainder of Page Intentionally Left Blank}**

**{Signatures on Next Following Page}**





## **EXHIBIT A**

### **Legal Description**

Units 401, 402, 403, 404, 405, 406, 407, 408, 501, 502, 503, 504, 505, 506, 507, 508, 601, 602, 603, 604, 605, 606, 607, 608, 701, 702, 703, 704, 705, 706, 801, 802, 803, 804, 805, 806, 901, 902, 903, 904, 905, 906, 1001, 1002, 1003, 1004, 1005, 1006, 1101, 1103, 1104, 1105, 1106, 1201, 1202, 1203, 1204, 1205, 1206, 1401, 1402, 1403 and 1404 in Capitol Point Condominium(s) created by a "Declaration or Condominium," recorded on April 3, 2002 in the Office of the Register of Deeds for Dane County, Wisconsin, as Document No. 3469446, and any amendments and/or corrections thereto, and by its Condominium Plat, recorded on April 3, 2002 in the Office of the Register of Deeds for Dane County, Wisconsin, as Document No. 3469447, Vol. 3-186B, Pages 1-16, and any amendments and/or corrections thereto. Said land being in the City of Madison, Dane County, Wisconsin.

**EXHIBIT B**

**Tax Key Numbers**

<b>Tax Key</b>	<b>Street Address</b>
0709-133-3213-9	125 N. Hamilton Street
0709-133-4601-5	125 N. Hamilton Street, Unit 401
0709-133-4602-3	125 N. Hamilton Street, Unit 402
0709-133-4603-1	125 N. Hamilton Street, Unit 403
0709-133-4604-9	125 N. Hamilton Street, Unit 404
0709-133-4605-7	125 N. Hamilton Street, Unit 405
0709-133-4606-5	125 N. Hamilton Street, Unit 406
0709-133-4607-3	125 N. Hamilton Street, Unit 407
0709-133-4608-1	125 N. Hamilton Street, Unit 408
0709-133-4609-9	125 N. Hamilton Street, Unit 501
0709-133-4610-6	125 N. Hamilton Street, Unit 502
0709-133-4611-4	125 N. Hamilton Street, Unit 503
0709-133-4612-2	125 N. Hamilton Street, Unit 504
0709-133-4613-0	125 N. Hamilton Street, Unit 505
0709-133-4614-8	125 N. Hamilton Street, Unit 506
0709-133-4615-6	125 N. Hamilton Street, Unit 507
0709-133-4616-4	125 N. Hamilton Street, Unit 508
0709-133-4617-2	125 N. Hamilton Street, Unit 601
0709-133-4618-0	125 N. Hamilton Street, Unit 602
0709-133-4619-8	125 N. Hamilton Street, Unit 603
0709-133-4620-5	125 N. Hamilton Street, Unit 604
0709-133-4621-3	125 N. Hamilton Street, Unit 605

Tax Key	Street Address
0709-133-4622-1	125 N. Hamilton Street, Unit 606
0709-133-4623-9	125 N. Hamilton Street, Unit 607
0709-133-4624-7	125 N. Hamilton Street, Unit 608
0709-133-4625-5	125 N. Hamilton Street, Unit 701
0709-133-4626-3	125 N. Hamilton Street, Unit 702
0709-133-4627-1	125 N. Hamilton Street, Unit 703
0709-133-4628-9	125 N. Hamilton Street, Unit 704
0709-133-4629-7	125 N. Hamilton Street, Unit 705
0709-133-4630-4	125 N. Hamilton Street, Unit 706
0709-133-4631-2	125 N. Hamilton Street, Unit 801
0709-133-4632-0	125 N. Hamilton Street, Unit 802
0709-133-4633-8	125 N. Hamilton Street, Unit 803
0709-133-4634-6	125 N. Hamilton Street, Unit 804
0709-133-4635-4	125 N. Hamilton Street, Unit 805
0709-133-4636-2	125 N. Hamilton Street, Unit 806
0709-133-4637-0	125 N. Hamilton Street, Unit 901
0709-133-4638-8	125 N. Hamilton Street, Unit 902
0709-133-4639-6	125 N. Hamilton Street, Unit 903
0709-133-4640-3	125 N. Hamilton Street, Unit 904
0709-133-4641-1	125 N. Hamilton Street, Unit 905
0709-133-4642-9	125 N. Hamilton Street, Unit 906
0709-133-4643-7	125 N. Hamilton Street, Unit 1001
0709-133-4644-5	125 N. Hamilton Street, Unit 1002
0709-133-4645-3	125 N. Hamilton Street, Unit 1003

Tax Key	Street Address
0709-133-4646-1	125 N. Hamilton Street, Unit 1004
0709-133-4647-9	125 N. Hamilton Street, Unit 1005
0709-133-4648-7	125 N. Hamilton Street, Unit 1006
0709-133-4649-5	125 N. Hamilton Street, Unit 1101
0709-133-4651-0	125 N. Hamilton Street, Unit 1103
0709-133-4652-8	125 N. Hamilton Street, Unit 1104
0709-133-4653-6	125 N. Hamilton Street, Unit 1105
0709-133-4654-4	125 N. Hamilton Street, Unit 1106
0709-133-4655-2	125 N. Hamilton Street, Unit 1201
0709-133-4656-0	125 N. Hamilton Street, Unit 1202
0709-133-4657-8	125 N. Hamilton Street, Unit 1203
0709-133-4658-6	125 N. Hamilton Street, Unit 1204
0709-133-4659-4	125 N. Hamilton Street, Unit 1205
0709-133-4660-1	125 N. Hamilton Street, Unit 1206
0709-133-4661-9	125 N. Hamilton Street, Unit 1401
0709-133-4662-7	125 N. Hamilton Street, Unit 1402
0709-133-4663-5	125 N. Hamilton Street, Unit 1403
0709-133-4664-3	125 N. Hamilton Street, Unit 1404
0709-133-4667-7	125 N. Hamilton Street, Unit S36
0709-133-4701-3	125 N. Hamilton Street, Unit P1
0709-133-4702-1	125 N. Hamilton Street, Unit P2
0709-133-4703-9	125 N. Hamilton Street, Unit P3
0709-133-4704-7	125 N. Hamilton Street, Unit P4
0709-133-4705-5	125 N. Hamilton Street, Unit P5

<b>Tax Key</b>	<b>Street Address</b>
0709-133-4706-3	125 N. Hamilton Street, Unit P6
0709-133-4707-1	125 N. Hamilton Street, Unit P7
0709-133-4708-9	125 N. Hamilton Street, Unit P8
0709-133-4709-7	125 N. Hamilton Street, Unit P9
0709-133-4710-4	125 N. Hamilton Street, Unit P10
0709-133-4711-2	125 N. Hamilton Street, Unit P11
0709-133-4712-0	125 N. Hamilton Street, Unit P12
0709-133-4713-8	125 N. Hamilton Street, Unit P13
0709-133-4714-6	125 N. Hamilton Street, Unit P14
0709-133-4715-4	125 N. Hamilton Street, Unit P15
0709-133-4716-2	125 N. Hamilton Street, Unit P16
0709-133-4717-0	125 N. Hamilton Street, Unit P17
0709-133-4718-8	125 N. Hamilton Street, Unit P18
0709-133-4719-6	125 N. Hamilton Street, Unit P19
0709-133-4720-3	125 N. Hamilton Street, Unit P20
0709-1333-4721-1	125 N. Hamilton Street, Unit P21
0709-133-4722-9	125 N. Hamilton Street, Unit P22
0709-133-4723-7	125 N. Hamilton Street, Unit P23
0709-133-4724-5	125 N. Hamilton Street, Unit P24
0709-133-4725-3	125 N. Hamilton Street, Unit P25
0709-133-4726-1	125 N. Hamilton Street, Unit P26
0709-133-4727-9	125 N. Hamilton Street, Unit P27
0709-133-4728-7	125 N. Hamilton Street, Unit P28
0709-133-4729-5	125 N. Hamilton Street, Unit P29

Tax Key	Street Address
0709-133-4730-2	125 N. Hamilton Street, Unit P30
0709-133-4731-0	125 N. Hamilton Street, Unit P31
0709-133-4732-8	125 N. Hamilton Street, Unit P32
0709-133-4733-6	125 N. Hamilton Street, Unit P33
0709-133-4734-4	125 N. Hamilton Street, Unit P34
0709-133-4735-2	125 N. Hamilton Street, Unit P35
0709-133-4736-0	125 N. Hamilton Street, Unit P36
0709-133-4737-8	125 N. Hamilton Street, Unit P37
0709-133-4738-6	125 N. Hamilton Street, Unit P38
0709-133-4739-4	125 N. Hamilton Street, Unit P39
0709-133-4740-1	125 N. Hamilton Street, Unit P40
0709-133-4741-9	125 N. Hamilton Street, Unit P41
0709-133-4742-7	125 N. Hamilton Street, Unit P42
0709-133-4743-5	125 N. Hamilton Street, Unit P43
0709-133-4744-3	125 N. Hamilton Street, Unit P44
0709-133-4745-1	125 N. Hamilton Street, Unit P45
0709-133-4746-9	125 N. Hamilton Street, Unit P46
0709-133-4747-7	125 N. Hamilton Street, Unit P47
0709-133-4748-5	125 N. Hamilton Street, Unit P48
0709-133-4749-3	125 N. Hamilton Street, Unit P49
0709-133-4750-0	125 N. Hamilton Street, Unit P50
0709-133-4751-8	125 N. Hamilton Street, Unit P51
0709-133-4752-6	125 N. Hamilton Street, Unit P52
0709-133-4753-4	125 N. Hamilton Street, Unit P53

Tax Key	Street Address
0709-133-4754-2	125 N. Hamilton Street, Unit P54
0709-133-4755-0	125 N. Hamilton Street, Unit P55
0709-133-4756-8	125 N. Hamilton Street, Unit P56
0709-133-4757-6	125 N. Hamilton Street, Unit P57
0709-133-4758-4	125 N. Hamilton Street, Unit P58
0709-133-4759-2	125 N. Hamilton Street, Unit P59
0709-133-4760-9	125 N. Hamilton Street, Unit P60
0709-133-4761-7	125 N. Hamilton Street, Unit P61
0709-133-4762-5	125 N. Hamilton Street, Unit P62
0709-133-4763-3	125 N. Hamilton Street, Unit P63
0709-133-4764-1	125 N. Hamilton Street, Unit P64
0709-133-4765-9	125 N. Hamilton Street, Unit P65
0709-133-4766-7	125 N. Hamilton Street, Unit P66
0709-133-4767-5	125 N. Hamilton Street, Unit P67
0709-133-4768-3	125 N. Hamilton Street, Unit P68
0709-133-4769-1	125 N. Hamilton Street, Unit P69
0709-133-4770-8	125 N. Hamilton Street, Unit P70
0709-133-4771-6	125 N. Hamilton Street, Unit P71
0709-133-4772-4	125 N. Hamilton Street, Unit P72
0709-133-4773-2	125 N. Hamilton Street, Unit P73
0709-133-4774-0	125 N. Hamilton Street, Unit P74
0709-133-4775-8	125 N. Hamilton Street, Unit P75
0709-133-4776-6	125 N. Hamilton Street, Unit P76
0709-133-4777-4	125 N. Hamilton Street, Unit P77



<b>Tax Key</b>	<b>Street Address</b>
0709-133-4778-2	125 N. Hamilton Street, Unit P78
0709-133-4779-0	125 N. Hamilton Street, Unit P79
0709-133-4780-7	125 N. Hamilton Street, Unit P80
0709-133-4781-5	125 N. Hamilton Street, Unit P81
0709-133-4782-3	125 N. Hamilton Street, Unit P82
0709-133-4783-1	125 N. Hamilton Street, Unit P83
0709-133-4784-9	125 N. Hamilton Street, Unit P84
0709-133-4785-7	125 N. Hamilton Street, Unit P85
0709-133-4786-5	125 N. Hamilton Street, Unit P86
0709-133-4787-3	125 N. Hamilton Street, Unit P87
0709-133-4788-1	125 N. Hamilton Street, Unit P88
0709-133-4789-9	125 N. Hamilton Street, Unit P89
0709-133-4790-6	125 N. Hamilton Street, Unit P90
0709-133-4791-4	125 N. Hamilton Street, Unit P91

## EXHIBIT C

### Percentage Interest in Common Elements

	RESIDENTIAL UNITS	%INTEREST IN COMMON ELEMENTS	VOTE(S) IN ASSOCIATION
	401	1.27%	1
	402	1.30%	1
	403	1.12%	1
	404	1.01%	1
	405	1.04%	1
	406	1.23%	1
	407	1.33%	1
	408	1.46%	1
	501	1.27%	1
	502	1.30%	1
	503	1.12%	1
	504	1.01%	1
	505	1.04%	1
	506	1.23%	1
	507	1.33%	1
	508	1.46%	1
	601	1.27%	1
	602	1.30%	1
	603	1.12%	1
	604	1.01%	1
	605	1.04%	1
	606	1.23%	1
	607	1.33%	1
	608	1.46%	1
	701	1.27%	1
	702	1.30%	1
	703	1.12%	1
	704	1.01%	1
	705	1.79%	1
	706	1.47%	1
	801	1.27%	1
	802	1.30%	1
	803	1.12%	1
	804	1.01%	1
	805	1.79%	1
	806	1.47%	1
	901	1.27%	1
	902	1.30%	1

	<b>RESIDENTIAL UNITS</b>	<b>%INTEREST IN COMMON ELEMENTS</b>	<b>VOTE(S) IN ASSOCIATION</b>
	903	1.12%	1
	904	1.01%	1
	905	1.79%	1
	906	1.47%	1
	1001	1.27%	1
	1002	1.30%	1
	1003	1.12%	1
	1004	1.01%	1
	1005	1.79%	1
	1006	1.47%	1
	1101	2.57%	1
	1103	1.12%	1
	1104	1.01%	1
	1105	1.79%	1
	1106	1.47%	1
	1201	1.27%	1
	1202	1.30%	1
	1203	1.12%	1
	1204	1.01%	1
	1205	1.79%	1
	1206	1.47%	1
	1401	3.75%	1
	1402	2.25%	1
	1403	3.50%	1
	<u>1404</u>	<u>2.62%</u>	<u>1</u>
<b>TOTALS</b>	<b>63</b>	<b>89.16%</b>	<b>63</b>

	<b>COMMERCIAL UNITS</b>	<b>% INTEREST IN COMMON ELEMENTS</b>	<b>VOTES IN ASSOCIATION</b>
	120	0.55%	1
	<u>127</u>	<u>0.50%</u>	<u>1</u>
<b>TOTALS</b>	<b>2</b>	<b>1.05%</b>	<b>2</b>

	<b>PARKING UNITS</b>	<b>% INTEREST IN COMMON ELEMENTS</b>	<b>VOTES IN ASSOCIATION</b>
	1	0.10%	0
	2	0.10%	0
	3	0.10%	0
	4	0.10%	0
	5	0.10%	0
	6	0.10%	0
	7	0.10%	0
	8	0.10%	0
	9	0.10%	0
	10	0.10%	0
	11	0.10%	0
	12	0.10%	0
	13	0.10%	0
	14	0.10%	0
	15	0.10%	0
	16	0.10%	0
	17	0.10%	0
	18	0.10%	0
	19	0.10%	0
	20	0.10%	0
	21	0.10%	0
	22	0.10%	0
	23	0.10%	0
	24	0.10%	0
	25	0.10%	0
	26	0.13%	0
	27	0.13%	0
	28	0.13%	0
	29	0.13%	0
	30	0.13%	0
	31	0.10%	0
	32	0.10%	0
	33	0.10%	0
	34	0.10%	0
	35	0.10%	0
	36	0.10%	0
	37	0.10%	0
	38	0.10%	0
	39	0.10%	0

	<b>PARKING UNITS</b>	<b>% INTEREST IN COMMON ELEMENTS</b>	<b>VOTES IN ASSOCIATION</b>
	40	0.10%	0
	41	0.10%	0
	42	0.10%	0
	43	0.10%	0
	44	0.10%	0
	45	0.10%	0
	46	0.10%	0
	47	0.10%	0
	48	0.10%	0
	49	0.10%	0
	50	0.10%	0
	51	0.10%	0
	52	0.10%	0
	53	0.10%	0
	54	0.10%	0
	55	0.10%	0
	56	0.13%	0
	57	0.13%	0
	58	0.13%	0
	59	0.13%	0
	60	0.13%	0
	61	0.10%	0
	62	0.10%	0
	63	0.10%	0
	64	0.10%	0
	65	0.10%	0
	66	0.10%	0
	67	0.10%	0
	68	0.10%	0
	69	0.10%	0
	70	0.10%	0
	71	0.10%	0
	72	0.10%	0
	73	0.10%	0
	74	0.10%	0
	75	0.10%	0
	76	0.10%	0
	77	0.10%	0
	78	0.10%	0
	79	0.10%	0

	<b>PARKING UNITS</b>	<b>% INTEREST IN COMMON ELEMENTS</b>	<b>VOTES IN ASSOCIATION</b>
	80	0.10%	0
	81	0.10%	0
	82	0.10%	0
	83	0.10%	0
	84	0.10%	0
	85	0.10%	0
	86	0.10%	0
	87	0.10%	0
	88	0.10%	0
	89	0.13%	0
	90	0.13%	0
	<u>91</u>	<u>0.13%</u>	<u>0</u>
	<b>91</b>	<b>9.49%</b>	<b>0</b>

<b>STORAGE AREA</b>	<b>% INTEREST IN COMMON ELEMENTS</b>	<b>VOTES IN ASSOCIATION</b>
S-36	.30%	0

**GRAND TOTAL**

<b>UNIT TYPE</b>	<b>NUMBER OF UNITS</b>	<b>% INTEREST IN COMMON ELEMENTS</b>	<b>VOTES IN ASSOCIATION</b>
Residential Units	63	89.16%	63
Commercial Units	2	1.05%	2
	91	9.49%	0
	0*	0.30%	0
<b>TOTALS</b>	<b>156</b>	<b>100%</b>	<b>65</b>

\*This is not a Unit, but is a Limited Common Element