

**SARAH R VAN CAMP, REGISTER OF DEEDS**  
Returned to: **REIJO WAHLIN**

**FIRST AMENDED AND RESTATED  
DECLARATION OF SINGLE-FAMILY  
RESTRICTIONS AND COVENANTS  
FOR FOX HIGHLANDS SUBDIVISION  
IN THE TOWN OF GREENVILLE,  
OUTAGAMIE COUNTY, WISCONSIN**

Re: Lots 1 through 26 and Lots 28 through 78

Recording Area

11

Drafted by:  
Reijo Wahlin  
Forward Development Group  
161 Horizon Drive  
Madison, WI 53703

PIN(s): See attached

WHEREAS, School Road At 76, LLC, a Wisconsin limited liability company, ("Declarant") is the owner of Lots 1 through 26, inclusive, and 28 through 78, inclusive (each, a "Lot," collectively, the "Lots"), in the plat of Fox Highlands, in the Town of Greenville, Outagamie County, Wisconsin, recorded in the office of the Outagamie County Register of Deeds on the 24th day of May, 2017, in Vol. \_\_\_ of Plats, Cabinet M, Pages 55-60 as Document No. 2104711 (the "Subdivision");

WHEREAS, Declarant intends these seventy-seven (77) Lots to be developed as a community of single-family residences; and

WHEREAS, Declarant desires to control the purposes for which the Lots are used, as well as obligating the owners of said Lots to be bound by certain restrictions and covenants for the benefit of the owners of said Lots as a whole and individually;

WHEREAS, Declarant first filed the Covenants and Restrictions in the office of the Outagamie County Register of Deeds on the 24<sup>th</sup> of May, 2017 as Document No. 2104712.

NOW THEREFORE, the Declarant hereby declares and provides that all Lots are hereby subject to the following restrictions and covenants:

**I. General Use Restrictions**

- A. All Lots shall be utilized exclusively for single-family detached dwellings with attached garage for residential purposes only.

- B. No Lot may be further subdivided. No Lots may be combined nor the common lot line between any two Lots reconfigured without the written approval of the Architectural Control Committee and the Town of Greenville.
- C. No single-family dwelling, outbuilding, fence, pool, recreational equipment (including children's play structures) or other structures of any kind shall be erected, placed, externally modified or added to, or on, any Lot until the building plans, specifications, footing elevations, plat plan, minimum landscaping requirements and elevations have been approved by the Architectural Control Committee.
- D. All single-family detached dwellings must be completed (in such condition to have a certificate of occupancy issued) within 9 months from the date of the issuance of the building permit.
- E. The Architectural Control Committee, shall have the right, but shall not be obligated, to extend in writing the deadline as set forth in above paragraph D, but any one extension shall not obligate the Architectural Control Committee to issue further or other extensions.
- F. If the owner(s) fails to meet the deadline as set forth above, then upon 90 days' notice to the owner(s), the Architectural Control Committee shall have the right, but shall not be obligated, to enforce specific performance. The Architectural Control Committee shall be entitled to collect all costs of enforcement, including reasonable attorney's fees, from the defaulting Lot owner(s).
- G. Common storm water drainage easements exist over each Lot as more particularly shown on the plat of Fox Highlands. No Lot owner(s) shall interfere with said storm water drainage easement rights, whether by changing any grades or the planting of any trees or shrubs or the placement of any structures or materials or otherwise within said storm water drainage easement areas.
- H. Common utility easements exist over each Lot as more particularly shown on the plat of Fox Highlands. No Lot owner(s) shall interfere with said utility easement rights, whether by changing any grades in excess of six (6) inches or the planting of any trees or shrubs or the placement of any structures within said utility easement area. Each Lot owner(s) shall be responsible for any damage to any public utility located within the utility easement area by any excavation by that Lot owner(s) within the utility easement area.
- I. No ground surface elevations within any Lot may be changed except with the written approval of the Architectural Control Committee.
- J. Lot corner elevations and water flow must match the approved drainage plan. Mitigation and correction of any violation of the approved drainage plan shall be the responsibility

of the Lot owner(s) whose actions violated the approved drainage plan as determined by the Town of Greenville.

## **II. Architectural Control Committee**

- A. These restrictions and covenants shall be administered by an unincorporated nonprofit association established under Chapter 184 of the Wisconsin Statutes. Each Lot owner shall be a member of said association. The association shall act through its duly-constituted Architectural Control Committee, which shall consist of three (3) members. The initial members of the Architectural Control Committee shall be appointed by the Declarant. All action of the Architectural Control Committee shall be by majority vote of the entire committee. The Declarant shall remain in control of the Architectural Control Committee until its representatives on the committee are succeeded by members duly-elected by the Lot owners, as provided for herein.
- B. The Declarant shall remain in control of the Architectural Control Committee until the earliest of: (i) fifteen (15) years from the date the first Lot is conveyed to any person other than the Declarant, (ii) thirty (30) days after the last Lot has been conveyed to a person other than the Declarant, or (iii) thirty (30) days following written notice from the Developer to all Lot owners that the Developer is resigning control of the Architectural Control Committee. At that time, and annually thereafter, Lot owners in the Subdivision shall elect, by majority vote, members of the Architectural Control Committee. Notwithstanding any such change in control, the Declarant shall continue to act as the Architectural Control Committee for any Lots that continue to be owned by the Declarant.
- C. The Architectural Control Committee may periodically establish a schedule of fee(s) reasonably based upon the cost of plan review and the operation of the Architectural Control Committee, including enforcement of these restrictions and covenants and the giving of notice for and the conducting of the annual meeting to elect the new members of the Architectural Control Committee.
- D. The owner(s) or potential purchaser(s) of any Lot seeking approval of the Architectural Control Committee shall complete such application form as specified by the Architectural Control Committee (which application form shall require specification of the details as specified in paragraph E below), submit 3 sets of plans for which approval is sought and shall pay the required plan review fee as specified by the Architectural Control Committee. If the Architectural Control Committee fails to act on said complete application (including application form, complete plans and the payment of the plan review fee) within 20 business days of complete submission (whether by approval, conditional approval or disapproval), the application shall be deemed approved. Any disapproval shall specify the reasons for disapproval. All action by the Architectural Control Committee must be in writing to be effective; a record of which will be maintained

by the Architectural Control Committee. Oral approvals of whatever kind are null and void.

- E. In deciding whether to approve or disapprove submitted applications and plans, the Architectural Control Committee shall consider and pay particular attention to exterior design including exterior elevations, basement materials, siding, number of windows and window size and location, trim, roof pitch and material, soffits, fascia, minimum floor areas, landscaping, quality of materials and workmanship, and location and plan aesthetics, including color, in relation to surrounding structures, landscaping, street and adjacent structure and finished grades and topography. All colors, whether for trim, siding or roofing, shall be coordinated to provide for the most aesthetic combination for a particular structure as well as for the overall development of the Lots. The Architectural Control Committee shall apply reasonable consideration and discretion to avoid repetitive design of adjacent or nearby single-family homes. Conditional approval may be given for contemplated single-family detached dwelling plans or designs and other structures submitted by a person considering the purchase of a Lot.
- F. The Architectural Control Committee has sole and unlimited discretion of approval, conditional approval or disapproval, in good faith exercised, including the right to provide for exceptions as it deems necessary and proper. No changes or deviations may be made in or from such approved plans and specifications, nor changes or modifications to the exterior appearance of any existing structures including, but not limited to, exterior remodeling, repainting or staining, or construction of patios, decks or swimming pools, shall be made without the prior approval of the Architectural Control Committee. Approval of such plans does not constitute a warranty or representation that such plans are structurally sound or that the plans meet municipal or state codes, same being the responsibility of the Lot owner(s) and his, her, or their builder. The Lot owner(s) shall hold the Architectural Control Committee harmless from any and all claims with respect to design, construction and materials used in the structure or abuse of the sole and unlimited discretion of the Architectural Control Committee.
- G. The Architectural Control Committee may bring an action in a court of competent jurisdiction to enforce any provision of these restrictions and covenants and shall be entitled to recover reasonable and necessary attorney's fees in any successful suit.

### **III. Architectural Control and Covenants and Restrictions**

- A. For all buildings or other improvements of any kind to be erected or placed on any Lot subject to this Declaration, the building plans, specifications, footing elevations, plat plan, landscape plan and building elevations must be submitted to the Architectural Control Committee for written approval as to overall appearance, quality of workmanship and materials, harmony of existing design including, but not limited to, exterior colors, size, location with respect to topography and finish grade elevation, prior to the application for a Town Building Permit for commencement of any construction on any Lot.

- B. All single-family residential dwellings shall meet the square foot requirement, for their corresponding lot, as shown below:
  - i. Single-story dwelling: 1750 square feet
  - ii. Two-story dwelling: 2000 square feet

For the purpose of determining minimum square foot requirements as set forth above, stair openings, all finished areas of the dwelling, including closets and bathrooms shall be included, but shall exclude open or screened porches, decks, attached garages and basements (whether finished or not finished for living or recreational use, except in the case of split level or raised ranch dwellings).

The minimum square footage or other requirements may be waived by the Architectural Control Committee in its sole and unlimited discretion, as it deems necessary and proper, in the event that the proposed architecture of the structure is such as to present a pleasing appearance compatible with other structures within the plat.

- C. Each single-family residential dwelling shall have not less than two (2) and no more than four (4) parking stalls which shall be located within an attached, enclosed garage. Carports, which are defined as garages not enclosed on all four (4) sides, are prohibited.
- D. All driveways shall be poured concrete and shall be completed within nine (9) months from the date of issuance of a building permit, weather permitting.
- E. Each single-family residential dwelling shall have at minimum 45% brick or stone or other natural material on the front elevation. This requirement may be waived by the Architectural Control Committee provided that such homes are held to a higher level of design standard and material use, including, but not limited to, the use of shutters, front porch detail, accent corners, dentils, moldings and window grills.
- F. Fascia shall be at least six (6) inches wide.
- G. Texture 111 (one eleven) or similar materials shall not be permitted for exterior finish. The Architectural Control Committee may adopt a list of further prohibited exterior finishes.
- H. Any fireplace, water heater or furnace chimney which is constructed of metal shall be encased by siding material used on the house, except that portion which must be exposed as required by the building code. Any furnace or water heater venting shall either be on the roof or on the rear or side of the structure. If located on the side of the structure, the Lot owner shall install reasonable screening to minimize visual or vapor/exhaust impact for existing buildings on adjoining lots.
- I. All exterior doors, including garage doors, shall be panel style. No plain or flat exterior doors shall be permitted.

- J. The roof pitch must be a minimum of 7/12. 30-year architectural dimensional shingles are required. Standard 3-in-1 shingles are not permitted.
- K. All fencing shall be constructed of wood or wood-appearing plastic. No chain link fencing shall be permitted. All wood fencing shall be painted or stained to maintain a neat appearance; excluding cedar fencing which shall be permitted to weather to a natural grey color. All fencing shall be erected with the finished side out (finished side facing the adjoining property or street). Gates are permitted and shall be consistent with the fencing style, opening inwards into the lot. Fencing shall be limited to the rear or side yards only; no fencing shall be permitted in the front yard. Only one fence shall be permitted along a common lot line (with fences on adjoining property meeting at the common corners). No fencing over four (4) feet in height shall be permitted unless required by law for private swimming pool areas.
- L. The Architectural Control Committee shall have the right to select a mail box post, mail box type and design, and house number type and design and require each owner of a Lot subject to this Declaration to utilize same on said Lot. The cost of the mail box post and mail box may be included in the design review application fee. Any newspaper delivery box shall be affixed to the mail box post.
- M. All front, side and back yards and terrace areas, except tree, shrub and flower bed areas, shall be seeded except that the owner(s) of any Lot may have a fruit and/or vegetable garden within the yard provided that the same does not exceed 10 percent of the total lot size and same is maintained in a clean and orderly condition. No natural or prairie lawns shall be permitted unless authorized by the Architectural Control Committee. The owner(s) of the Lot shall be responsible for maintaining the entire Lot in a neat appearance, free of debris and noxious weeds. The installation of the lawn is to be within nine (9) months from the date of issuance of a building permit, weather permitting.
- N. Each Lot shall be subject to the following minimum tree and shrub landscaping requirements: (i) not less than one (1) conifer of not less than four (4) feet in height together with not less than one (1) shade tree of not less than two and one-half (2 ½) inches caliper at six (6) inches off ground level to be planted in the front or side yards (with at least one of which is to be planted in the front yard) and (ii) not less than six (6) foundation plantings consisting of twelve (12) inch to eighteen (18) inch diameter (deciduous) and/or two (2) to three (3) feet in height (conifer) shrubs. All specified sizes are minimum allowable size. The installation of the minimum landscaping is to be within nine (9) months of the issuance of the building permit or as soon thereafter as weather permits.

#### **IV. Discharge of Rooftop Storm Water Runoff from Individual Lots**

- A. Roof water runoff shall not be directed to an impervious surface area or allowed to flow directly to the storm water drainage system serving the plat of Fox Highlands.
- B. Each rooftop shall include a storm water discharge system designed and constructed to infiltrate not less than the first one (1) inch of runoff from the rooftop by directing and discharging storm water onto a permeable area with the Lot (such as grass, gardens, swales and/or rain gardens planted with perennial plants or grasses) or caught in rain barrels for later use for the watering of the lawn or garden areas.
- C. All such storm water systems designed and constructed in compliance with the foregoing shall be maintained in good and functioning condition and repair and not allowed to be removed or significantly altered (such as the grassing over of a rain garden or filling in of a swale) unless replaced by an equivalent system with respect to such infiltration or capture and re-use.

**V. Neighborhood/Subdivision Identification Signs**

The Declarant may grant and declare an easement for the design, construction and placement of a neighborhood/subdivision identification sign and related landscaping. If such an easement is established, the Architectural Control Committee may design, construct, place and maintain such neighborhood/subdivision signage and landscaping. The owners of each Lot shall contribute equally for the design, construction, placement and maintenance of such neighborhood/subdivision identification sign and related landscaping.

**VI. Prohibited Structures and Activities**

- A. Only two (2) domestic animals may be kept on any Lot. All such domestic animals shall be housed within the principal structure. Commercial animal boarding, breeding, kenneling or treatment is expressly prohibited, whether for fee or not. No resident of any Lot may keep a dog upon the Lot whose barking creates a nuisance or which dog displays vicious tendencies. The owner(s) of such Lot shall keep the Lot free from feces from said dog.
- B. Accessory buildings are expressly prohibited except when approved in writing by the Architectural Control Committee. Any such accessory building shall be designed and built consistent with the principal structure.
- C. No above-ground swimming pools shall be permitted, except seasonal small children's pools which are assembled annually no earlier than June 1 and disassembled and removed no later than September 15 shall be permitted.
- D. No trailer, basement, tent, garage, barn or accessory building shall at any time be used as a residence; temporary or permanently.

- E. Parking shall be prohibited on any portion of Lot except the driveway and garage.
- F. Parking of service vehicles (except service vehicles owned by companies performing service on the Lot upon which the service vehicle is parked) and/or storage of boats, travel trailers, mobile homes, campers and other recreational vehicles shall be prohibited unless same are kept in the garage. This shall not prohibit the temporary storage of said vehicles for the purpose of loading or unloading. No junked or disabled vehicles may be left on the exterior grounds of any Lot longer than forty-eight (48) hours.
- G. No satellite dishes (except 24-inch or smaller dishes) or outdoor antenna, or amateur radio towers and antenna shall be permitted except as permitting as required by federal, state or local law. All such dishes, antennas and towers, where permitted, shall be placed to minimize visual impact upon the adjoining Lots. Placement other than the rear of the principal structure/Lots shall be subject to the approval of the Architectural Control committee.
- H. No solar panels shall be permitted without the written approval of the Architectural Control Committee, which shall consider the location, construction and impact of the solar panels upon the adjoining Lots and the subdivision.
- I. Earth shelter / berm structures shall not be permitted.
- J. No building previously erected elsewhere shall be relocated or moved upon any Lot except new panelized construction as approved by the Architectural Control Committee.
- K. Except for Lots owned by the Declarant, no signs except real estate "For Sale" signs, contractor construction signage during the period of construction or political advocacy/candidate signs during election periods shall be permitted. Said signage shall be limited to one (1) professional sign of not more than one (1) square foot, one (1) sign of not more than six (6) square feet advertising the property for sale or for rent, or signs without regard to size, used by the Declarant, a builder or licensed real estate broker to advertise the property during the construction and sales period or to identify the development and/or the Declarant.
- L. No Lot subject to this Declaration shall be used or maintained as a dumping ground for trash, rubbish, garbage or other waste materials (including rocks or cement or other construction debris). Trash, rubbish, garbage or other waste shall not be kept on any said Lot except in sanitary containers which shall be kept in clean and sanitary condition. No lawn clippings or leaves or garden waste may be kept on any said Lot except in composting containers located in the backyard at least ten (10) feet from any common Lot line, except leaves, shrub trimmings, tree trimmings and other garden cuttings may be kept on terrace area adjacent to any Lot for up to one (1) week prior to any routine scheduled collection by the Town of Greenville.

**VII. Time Period for Covenants; Amendments; Severability; Code Requirements; Enforcement**

- A. This Declaration shall run with the land and shall be binding upon all owners of Lots subject to this Declaration for a period of thirty (30) years from the date this Declaration is recorded in the office of the Outagamie County Register of Deeds, after which time, it shall automatically stand renewed for successive ten (10) year periods unless an instrument amending or terminating this Declaration in whole or in part is signed by the owners of at least two-thirds (2/3) of the Lots subject to this Declaration. As long as the Declarant owns any Lots subject to this Declaration, no amendment or termination shall be effective unless the Declarant concurs in writing.
- B. Notwithstanding any provision of these restrictions and covenants, no structure constructed in the plat shall be in violation of any government zoning or building codes. In case any of these restrictions and covenants herein are contrary in part or in total with any government zoning or building code, the government zoning or building code shall be determinative. In case these restrictions and covenants are more restrictive than a government zoning or building code or a government zoning or building code is more restrictive than these restrictions and covenants, the more restrictive shall apply.
- C. Invalidation of any one of these restrictions and covenants shall in no way affect any other provisions, which other provisions shall remain in full force and effect.
- D. So long as Declarant owns any Lots in the Subdivision, Declarant reserves the right to submit some or all of said Lots as a site for the Parade of Homes. In the event that some or all of said Lots are selected as a site for a Parade of Homes, this Declaration of restrictions and covenants shall, as to the Lots enrolled in the Parade of Homes, for a limited period of time ending forty-eight (48) hours after the conclusion of the Parade of Homes, be deemed temporarily altered and modified, to the extent necessary, to permit the local Builders Association to hold its Parade of Homes in this Subdivision in conformance with current Parade Rules and Checklist of the local Builders Association. All purchasers of Lots, and/or their successors and assigns, shall take title subject to this specific reservation by the Declarant and shall waive all rights to object to violations of this Declaration of restrictions and covenants by the Declarant, the local Builders Association, or any of the builders or participants in the Parade of Homes for the period of the Parade of Homes as set forth above, including the closing of any public streets in the Parade of Homes area. All Lot owners appoint the Declarant their attorney-in-fact to execute all necessary petitions; applications and consents to facilitate street closings for the Parade of Homes.
- E. The provisions of this Declaration may be enforced by the Declarant, the Architectural Control Committee, or the owner(s) of any Lot. The successful party in an enforcement action shall be entitled to recover all costs of enforcement, including reasonable attorney's fees.

F. This Declaration shall be interpreted consistent with the laws of the State of Wisconsin. Jurisdiction and venue shall lie with the Circuit Court for Outagamie County, Wisconsin. This Declaration shall be binding upon each owner(s) of a Lot and his or her successors and assigns and shall run with the land. Invalidation of any of the provisions herein shall in no way effect any other provision of this Declaration, same to remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has executed this Declaration this 13<sup>th</sup> day of March, 2019.

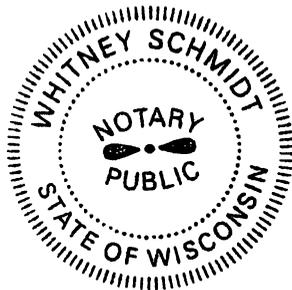
DECLARANT:  
SCHOOL ROAD AT 76, LLC

By: David M. Jenkins  
Name: David M. Jenkins  
Title: Manager

ACKNOWLEDGEMENT

STATE OF WISCONSIN        )  
  ) SS.  
COUNTY OF Dane        )

Personally came before me this 13<sup>th</sup> day of March, 2019, the above-named David M. Jenkins, to me known to be the Manager of School Road at 76, LLC, who executed the foregoing and acknowledged the same.



Whitney Schmidt  
Notary Public, State of Wisconsin  
My Commission Expires: 09/12/2021